COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

CITY OF BOSTON,

Plaintiff,

v.

MASSACHUSETTS GAMING COMMISSION, and
STEPHEN P. CROSBY,
GAYLE CAMERON,
JAMES F. McHUGH,
BRUCE STEBBINS, and
ENRIQUE ZUNIGA,
in their official capacities,

Defendants.

CIVIL ACTION No. 15-0012-BLS2

AMENDED COMPLAINT

CITY OF REVERE, *et al*.,
Plaintiffs,
v.

MASSACHUSETTS GAMING COMMISSION, *et al*.,
Defendants.

CIVIL ACTION No. 14-3253-BLS2

CITY OF SOMERVILLE,
Plaintiff,
v.

MASSACHUSETTS GAMING COMMISSION, *et al*.,
Defendants.

CIVIL ACTION No. 14-3805-BLS2

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INTRODUCTION

1. The City of Boston (the "City" or "Boston") brings this action for certiorari and declaratory relief against the Massachusetts Gaming Commission (the "Commission") and its five Commissioners, requesting the Court to nullify and vacate all decisions made by the Commission leading to and resulting in its award of the Region A casino gaming license to Wynn MA, LLC, an affiliate of Wynn Resorts, Ltd. of Las Vegas (collectively, "Wynn"). The City also requests the Court to declare invalid the Commission's regulations regarding the arbitration of surrounding community agreements. Finally, the City requests the Court to issue a declaration disqualifying all Commissioners from further participating in the gaming licensing process for Region A.

2. The Commission's award of the license was the product of a corrupt process to favor Wynn, which deprived the citizens of Boston of their statutory right to vote on the proposed casino development and caused additional grave harm to the City's residents. The Commissioners have manipulated the gaming licensing process by (1) refusing to enforce mandatory provisions of the Expanded Gaming Act, (2) committing unauthorized acts outside the scope of their statutory authority, (3) violating the ethical provisions of the Expanded Gaming Act, and (4) adopting and implementing illegal regulations. Their conduct has irreparably tainted the gaming licensing process, and has demonstrated that they are unwilling and unable to fulfill their legal obligations to serve as independent regulators.

The Expanded Gaming Act

3. The controlling statute in this case is the Expanded Gaming Act (the "Gaming Act" or "Act"), which the Massachusetts Legislature enacted in response to the

financial crisis of 2008. The Legislature looked for ways to alleviate the strain caused by the depressed economy. One measure was the passage of the Act in 2011, which permitted casino gambling in the Commonwealth for the first time in state history. While the law sparked spirited public debate, the Legislature believed that gaming would create much-needed jobs, while simultaneously generating vast revenue for Massachusetts.

4. In drafting the Gaming Act, the Legislature was keenly aware of the many evils commonly associated with casino gambling, including public corruption, fraud, bribery, and organized crime. To prevent these evils from infecting the gaming licensing process, the Legislature included a host of safeguards in the Act to be implemented and enforced by an independent regulator. Many of those statutory safeguards target gaming's malefactors; they prohibit unsuitable applicants, convicted felons, and other bad actors from participating in, and profiting from, the development and operation of a casino in Massachusetts.

5. Wary that wrongdoers may seek to improperly influence those involved in the licensing process, the Legislature put in place a strict statutory code of ethics to ensure that Commissioners adhere to the letter of the law and conduct themselves in a fair and unbiased manner. In that regard, the Gaming Act requires the Commissioners to:

> (1) render decisions that are fair and impartial and in the public interest;
>
> (2) avoid impropriety and the appearance of impropriety in all matters under their jurisdiction;
>
> (3) avoid all prohibited communications; and
>
> (4) disqualify themselves from proceedings in which their impartiality might reasonably be questioned.

The Commission's own Enhanced Code of Ethics further forbids Commissioners from

participating in matters before the Commission that may affect the financial interest of a person with whom they have a significant relationship.

6. Underscoring the law and order directive of the new law, the Legislature declared that the Act's overarching "paramount policy objective" is to ensure "public confidence in *the integrity of the gaming licensing process* and in the *strict oversight of all gaming establishments* through a rigorous regulatory scheme."

Suitability

7. The Gaming Act requires that all applicants establish, by clear and convincing evidence, that they are "suitable" to receive a casino license. Suitability factors include integrity, honesty, good character, and sound reputation, among others. Regulated individuals are automatically disqualified as unsuitable if they have been convicted of a felony or other crime involving embezzlement, fraud, theft, or perjury. In addition, they are disqualified if they have "committed prior acts that form a pattern of misconduct," or have relationships with others that pose an injurious threat to the interests of the Commonwealth.

8. The law's suitability requirements also apply to certain regulated individuals and entities connected to the applicant, including those with a financial interest in the applicant's gaming establishment. Applicants are required to establish the *integrity* of all these individuals and entities. If a regulated individual or entity connected to the applicant is unsuitable, or if the applicant cannot establish the integrity of the regulated individual or entity, then the Commission *must* reject the applicant's application. The Commission has no discretion; enforcement of the Act's suitability conditions, including the disqualification of unsuitable applicants, is mandatory.

9. To facilitate the Commission's implementation and enforcement of the Act, the Legislature created an Investigations and Enforcement Bureau (the "Bureau"). The Bureau is a law enforcement agency within the Commission, subject to the direction and control of the Commission's Chair. The Bureau investigates the suitability of applicants and other regulated individuals, as well as any suspected violations of the Act.

Host and Surrounding Communities

10. The Act requires casino licensees to reduce harm to the communities adversely impacted by the development and operation of their casinos. Casino applicants must enter into agreements with impacted communities to mitigate the adverse impacts, such as traffic, crime, and pollution. The Commission cannot issue a gaming license to an applicant unless it has entered into a "host community agreement" with the municipality or municipalities in which the proposed "gaming establishment" is located, and "surrounding community agreements" with other nearby municipalities that are adversely impacted. Under the Act, a casino may have more than one host community.

11. A fundamental feature of the Act is that a host community has the right to vote on whether a casino can be developed in that municipality. A license to operate a casino cannot be issued unless each host community votes in a public election in favor of the issuance of the license to the applicant.

<u>Ineligibility of the Former Monsanto Chemical Site as a Casino Site</u>

12. Wynn chose to develop its proposed casino on a parcel of land in Everett and Boston known as the former Monsanto Chemical Site. The parcel is heavily-contaminated with arsenic, lead, and other toxic materials posing danger to humans. The site is located in close proximity to Rutherford Avenue and Sullivan Square in

Charlestown, an area that has been plagued by severe traffic congestion for many years. The only access to the site is a private road in Boston known as Horizon Way.

13. The former Monsanto Chemical Site was owned by a limited liability company called FBT Everett Realty, LLC ("FBT Everett"). FBT Everett's two founders were Gary DeCicco, a convicted felon, and Paul Lohnes, a long-term friend and former business partner of Commission Chairman Stephen P. Crosby. DeCicco, Lohnes and Anthony Gattineri were original owners. Shortly after FBT Everett acquired the land, DeCicco transferred some of his ownership interest to Charles Lightbody, another convicted felon.

14. Wynn first considered FBT Everett's property as a potential casino site only two months before the deadline for filing its license application. Wynn had scrambled to find a new site following a failed attempt to develop a casino in Foxborough. Before entering into any agreement with FBT Everett, Wynn learned that two convicted felons—DeCicco and Lightbody—had been owners of FBT Everett. Given the Act's suitability requirements, it was critical for Wynn to determine what had happened to their ownership interests, and whether either convicted felon still was an owner of FBT Everett.

15. Wynn was aware that if a convicted felon was a current owner, then Wynn would be unable to use the former Monsanto Chemical Site for its casino for at least two reasons. First, under the Act, FBT Everett and the felon would be unsuitable and thus prohibited from profiting from the development of a casino. Second, Wynn would be unable to establish the integrity of FBT Everett and its owners, resulting in the denial of Wynn's application.

16. FBT Everett also knew about the Act's prohibition, and took steps to conceal Lightbody's ownership interest. While Wynn was in discussions with FBT Everett, Lightbody had a series of telephone calls with a state prisoner with organized crime ties, during which Lightbody boasted about his concealed ownership interest in the property. The calls, which were recorded by prison officials, revealed that Lightbody closely tracked the negotiations between Wynn and FBT Everett, and was kept apprised of all key developments.

17. During one of the calls, Lightbody informed the prisoner that he and his partners had used a "blind LLC . . . so my name don't show up" because if "these casinos . . . see my name in there . . . they ain't gonna like it." In another call, Lightbody explained that he and his partners had had a conference call with Lightbody's lawyer, who told them that a felon could not receive proceeds from the sale of land used as a site for a casino.

18. Rather than perform a comprehensive investigation of FBT Everett and its owners, as required by the Act, Wynn decided to conduct cursory, superficial due diligence of FBT Everett, deliberately excluding any meaningful investigation of DeCicco and Lightbody. This way, Wynn was able to avoid confirming whether either convicted felon still had an ownership interest in its proposed site.

19. Wynn easily could have determined the true ownership of FBT Everett by simply asking FBT Everett to provide it with corporate documents that the company was required to maintain by law. Those documents showed the transfer of DeCicco's ownership interest to Lightbody as well as Lightbody's capital investments in the company, which foreclosed the use of the former Monsanto Chemical Site for a casino

under the Act. Wynn, however, chose to remain willfully blind about the true ownership of FBT Everett and the former Monsanto Chemical Site.

20. Less than a month before the license application deadline, Wynn entered into an option agreement with FBT Everett, giving Wynn the right to purchase the former Monsanto Chemical site for $75 million (the "Option Agreement"). Under the Option Agreement, FBT Everett agreed to perform extensive real estate development and environmental remediation work on the site in collaboration with Wynn. In turn, Wynn agreed to pay FBT Everett $100,000 per month until closing. Wynn's payments to FBT Everett totaled $2.4 million over a 24-month period.

21. As the owner of the land—and co-venturer with Wynn in developing the site—FBT Everett had both a "financial interest" in Wynn's proposed gaming establishment and a "business association" with Wynn. Under the Act, FBT Everett and all of its owners were subject to the Act's suitability requirements. Wynn also was obligated to establish the *integrity* of FBT Everett and its owners. Wynn could not do so.

22. On January 14, 2013, however, Wynn filed its gaming license application with the Commission, even though the site could not be used as a location for its proposed casino. This caused the City to expend significant public resources to assess the possible adverse impacts, since the vast majority of casino patrons would be required to travel through Charlestown to the site.

Manipulation of the Gaming Licensing Process

23. Soon after Wynn filed its application, the gaming licensing process for Region A ran amok. Contrary to the ethical provisions of the Act, Chairman Crosby failed to disclose his conflict of interest with Lohnes. He also declined to recuse himself

even though Lohnes—who had bailed out Chairman Crosby's failing publishing business in the 1980s—stood to earn over $30 million in profits if the Commission awarded the license to Wynn. Chairman Crosby instead became a zealous advocate for Wynn, participating in critical decisions to advance Wynn's application.

24. The Bureau commenced its suitability investigation of Wynn in early 2013. Chairman Crosby immediately began engaging in prohibited *ex parte* communications with Wynn regarding the scope and conduct of the Bureau's probe. One of Wynn's main suitability concerns pertained to scrutiny of its casino operations in Macau, China. At that time, there were several pending shareholder lawsuits alleging that Wynn's board of directors allowed potential violations of the Foreign Corrupt Practices Act to occur in connection with a $135 million donation to a university in Macau. The U.S. Securities and Exchange Commission ("SEC") was simultaneously investigating the donation by Wynn Macau, Ltd. to the University of Macau Development Foundation. Wynn informed the Commission that it was withholding certain documents that the Bureau had requested regarding its operations in Macau.

25. Wynn also successfully requested the Commission to remove Spectrum Gaming from the Bureau's suitability investigation. Spectrum Gaming, a gaming consulting group that the Commission retained to assist the Bureau with Wynn's suitability investigation, was well-known in the casino industry for its criticism of casino operations in Macau. The Commission replaced Spectrum Gaming with a law firm that had no experience evaluating casino operations in Macau.

26. Also at this time, Chairman Crosby played a key role in engineering an expedited process to adopt an "emergency" regulation that favored Wynn. Previously,

the Commission was adamant that an applicant could not enter into a host community agreement until the Commission had determined whether the applicant was suitable. Wynn made a personal call to Chairman Crosby voicing opposition to the Commission's position. Then, within days of receiving an additional sharp objection from the City of Everett, the Commission suddenly reversed its position, adopting a so-called "emergency" regulation that allowed Wynn to sign a host community agreement with the City of Everett before Wynn was determined suitable. This measure also sought to preempt Boston from asserting its status as a host community to Wynn's proposal. The reason for the Commission's expedited action became apparent when—the very next day—Wynn and the City of Everett signed a host community agreement. In fact, Wynn representatives had traveled to Boston in the company's private jet the day *before* the hearing on the regulation in anticipation of the Commission's favorable vote.

Discovery of the Scheme to Defraud

27. Although the Commission had cleared obstacles for Wynn early in the suitability investigation, Wynn encountered a major setback in July of 2013, when federal law enforcement authorities notified the Bureau about the recorded calls between Lightbody and the state prisoner. In coordination with the federal inquiry, the Bureau investigated FBT Everett's scheme to defraud the Commission and the Commonwealth, uncovering compelling evidence that FBT Everett's owners had colluded to conceal Lightbody's ownership interest. The Bureau also discovered proof that they had conspired to obstruct the Bureau's investigation by fabricating and backdating documents, and by providing false testimony regarding the ownership of the former Monsanto Chemical Site.

28. The Bureau notified Wynn and the Commissioners of its findings. The disclosure of the fraud was explosive, triggering a series of key events. On August 21, 2013, the Massachusetts State Police questioned Chairman Crosby. The very next day, for the first time, Chairman Crosby filed a conflict of interest disclosure form with the State Ethics Commission, revealing his relationship with Lohnes. His disclosure was untimely. He also was required to recuse himself from participating in Region A proceedings under both the Act and the Enhanced Code of Ethics. He declined to do so.

29. Evidence of the criminal ownership of the proposed site and the attempted cover-up by the owners of FBT Everett sounded the death knell to Wynn's license application. Recognizing that Wynn was unable to establish the *integrity* of FBT Everett and that FBT Everett was unsuitable, the Bureau was required under the Act to "cease any further review and recommend that the commission deny" Wynn's application. The Commission, in turn, was required under the Act to find FBT Everett unsuitable and deny Wynn's application, as Wynn had no plan to use a different site for its proposed casino. Under the leadership of Chairman Crosby, both the Commission and its Bureau refused to enforce these mandatory provisions of the Act, and permitted Wynn's application to proceed.

Boston's Host Community Status

30. In the meantime, a dispute developed between the City and Wynn regarding Boston's host community status. Wynn had tried to foreclose Boston from asserting its host community status by signing a host community agreement with Everett in April 2013; Everett then held its vote on the proposed casino in June 2013. Boston nevertheless informed Wynn that it was a host community to its proposed development

because Boston provided the *only* access to the site through Horizon Way. Without access and egress, Wynn could not operate a casino. This meant that the citizens of Boston had a statutory right to vote on whether to approve Wynn's proposal. Wynn vehemently rejected Boston's claim, arguing that the City was merely a surrounding community because its proposed casino would be located entirely in Everett and would be accessed through Everett.

31. Despite its aggressive rhetoric, Wynn conceded that "[a]ccess to the Project Site is via Horizon Way" in a public filing with state environmental officials at that time. To date, Wynn still has no legal right of access in Everett. Wynn cannot operate its planned casino without using entry and exit points in Boston.

32. Aware of the ongoing dispute, the Commission pressed Boston to attend a public hearing in early September 2013 to address the City's status with respect to Wynn's proposal. The Commission knew that Wynn lacked a viable site and was unsuitable, but it failed to tell Boston and the public about the criminal ownership of Wynn's proposed casino site.

33. Incredibly, despite his conflict of interest and the appearance of impropriety, Chairman Crosby insisted on participating in the September proceedings. During the hearing, Wynn argued that if Boston were deemed to be a host community, it "effectively could kill the project." This was a reference to the fact that Boston, as a host community, would have a statutory right to vote on whether to approve the proposed casino. Siding with Wynn, Chairman Crosby lamented, "If Boston were a host community, there would be a host of problems—yes, if Boston were a host community."

34. The hearing was a costly charade, tainted by Chairman Crosby's

involvement and the entire Commission's knowledge of the attempted scheme to defraud. The issue of Boston's status was moot. By law, Wynn could not use the site, and it was no longer eligible as a gaming license applicant.

35. By conducting the hearing instead of disclosing the evidence of the attempted fraud, the Commission misled the City and the public. As a result, Boston needlessly expended public funds and resources to prepare for and attend the hearing. From the Commission's standpoint, however, the hearing had strategic significance; it served as the springboard for its plan to relegate Boston to surrounding community status and to advance Wynn by any means necessary.

The "Cure" to Wynn's FBT Everett Problem

36. The mountain of incriminating evidence compiled by the Bureau also demonstrated that FBT Everett's execution of the Option Agreement with Wynn was a central act in furtherance of a conspiracy to defraud the Commission and the Commonwealth. The agreement was void and unenforceable when it was signed because it was an illegal contract and one that contravened public policy.

37. Intent on salvaging Wynn's defective application, the Commission, through its Bureau, nevertheless secretly collaborated with Wynn to formulate a "cure" to "fix" Wynn's FBT Everett problem. When word of Wynn's FBT Everett problem leaked to the press in the fall of 2013, Chairman Crosby publicly defended Wynn even though the Commission had not yet held a public hearing on the issue. This violated the Act and created the appearance of impropriety.

38. The contrived "cure" attempted to sidestep the strictures of the Act by imposing "conditions" for permitting Wynn to use FBT Everett's property as a site. One

condition purported to punish FBT Everett's owners by eliminating the so-called "casino profit" from the sale and lowering the purchase price from $75 million to $35 million. This condition both ignored and forgave the illicit conduct of the owners of FBT Everett, who had purchased the land for only $8 million, permitting them to earn a whopping 200% profit on the land transaction, in violation of the Act.

39. The Commission's role in devising and endorsing this "cure" was unauthorized, *ultra vires* conduct. It, too, created an impermissible appearance of impropriety. Rather than reject Wynn's now defunct application—as required by law—the Commission willfully ignored evidence of Wynn's culpability and the pivotal role that it had played in creating this debacle. It then unlawfully resurrected Wynn's flawed application, and handsomely rewarded Wynn with an outlandish monetary windfall.

40. As the co-architect of the clandestine "cure," the Commission then held a perfunctory suitability hearing three days later, during which it went through the motions and found Wynn suitable. Once again, a biased Chairman Crosby presided over the hearing.

41. Moreover, as the backroom discussions between Wynn and the Commission were afoot, Chairman Crosby and Wynn had other private *ex parte* communications regarding Macau—Wynn's other problematic suitability issue. The Legislature's mandate that the Commission would ensure "strict oversight" of a "rigorous regulatory scheme" became hollow words, brushed aside by the Commission.

The Sham Hearing on Boston's Status

42. Undaunted by the Commission's unprecedented advocacy for Wynn, Boston continued to maintain that it was a host community and served the Commission

with a declaration of its status. The Commission, however, already had privately decided the issue, concluding that it would label Boston a surrounding community to prevent its residents in Charlestown from voting on Wynn's proposed development.

43. The Commission's plan to relegate Boston to surrounding community status reached its zenith during a sham hearing on May 8, 2014, at which the Commission purported to conduct a fair and impartial proceeding to decide the issue of Boston's status. Before the hearing, the Commission again initiated improper *ex parte* communications with Wynn, this time to assist Wynn in preparing its presentation. The Commission then withheld important documents from the City bearing on its host community status. And before the hearing even commenced, the Commission had predetermined its outcome, contrary to the Open Meeting Law and the Act.

44. The Commission's resulting written decision merely memorialized its predetermined conclusion. The decision is riddled with legal and factual errors, rendering it null, void, and without legal effect. Through its decision, the Commission sought to force the City to enter into a surrounding community agreement with Wynn.

<u>The Commission's Award of the License to Wynn</u>

45. The Commission's plan backfired. By declaring Boston a surrounding community, the Commission was prevented from granting a license to Wynn unless Wynn and Boston signed a surrounding community agreement. Due to the gross unfairness of the arbitration process, the invalidity of the Commission's arbitration regulations, and the Commission's staging of the sham hearing, the City declined to arbitrate with Wynn. As a result, there was no surrounding community agreement between the City and Wynn, and the Commission was barred from awarding a gaming

license to Wynn.

46. Unwilling to permit Wynn's application to be derailed by the predicament that *it* had created, the Commission brazenly stripped Boston of its surrounding community status pursuant to an illegal regulation. It then publicly criticized Boston for "abandoning" its residents by declining to operate by its rules. This was a transparent effort by the Commission to deflect responsibility for its manipulation of the gaming licensing process to advance Wynn's defective application. On September 17, 2014, the Commission agreed to award the Region A Category 1 license to its favored candidate, Wynn.

47. Two weeks later, federal and state law enforcement authorities initiated criminal proceedings against the owners of FBT Everett and the former Monsanto Chemical Site, charging them with conspiring to defraud the Commission and the Commonwealth. Following the indictments, the Commission formally awarded the Region A Category 1 license to Wynn on November 6, 2014, even though the unsuitability of FBT Everett and Wynn was beyond dispute.

The Commission's Failure to Impose Adequate License Conditions

48. In awarding the license to Wynn, the Commission was responsible for imposing conditions on the license to ensure adequate mitigation of the adverse impacts caused by Wynn's casino, including, most notably, traffic impacts in Boston. Most of Wynn's casino patrons would be required to travel on Rutherford Avenue and through Sullivan Square in Charlestown. Existing traffic gridlock in this area has adversely impacted the quality of life and the safety of City residents for many years.

49. Well before the Gaming Act was passed, the City began developing plans

to transform the Sullivan Square area from a major traffic thoroughfare into a walkable, pedestrian-friendly neighborhood. The City has incurred considerable costs to determine how to achieve its principal objectives of diminishing traffic congestion and improving public safety in this area.

50. The Commission's traffic mitigation conditions are wholly contrary to the City's planned use of its streets in Charlestown. The Commission was required to impose license conditions that would *mitigate* traffic, by requiring Wynn to re-route casino traffic away from Rutherford Avenue and Sullivan Square. Instead, the Commission accepted watered-down conditions drafted by Wynn, which, if implemented, will exacerbate existing congestion by introducing thousands of additional vehicles to the area.

51. Under these conditions, the City would bear all of the burdens of the casino, and obtain none of the benefits. If the Commission was unwilling to devise conditions that would *mitigate* traffic, then it should not have awarded the license to Wynn.

52. As a result of the Commission's dereliction of its statutory obligations, it is directly responsible for creating a future intolerable traffic crisis that will threaten the safety of City residents and diminish the quality of life in this neighborhood if Wynn's plans are allowed to proceed.

The Untimely and Unlawful Land Transfer

53. After the Commission had jumped through hoops to award the license to Wynn, Wynn engaged in post-award conduct that forfeited its eligibility.

54. In late February 2015, the MBTA unlawfully transferred several parcels of

land in Everett to Wynn. Wynn had planned to use those parcels to access its casino site exclusively in Everett, to avoid using Horizon Way in Boston and to deprive Boston of its rightful status as a host community to Wynn's casino.

55. However, the land transfers were too late under the Gaming Act because they occurred well over 60 days after the effective date of the license. Moreover, the land transfers were unlawful because they violated the Commonwealth's public bidding and environmental laws. Consequently, Wynn is definitively barred from using the MBTA land as access points to its casino. Wynn also cannot use Horizon Way to access the site because the road is not zoned for use as a casino under the Boston Zoning Code. Today, Wynn has no lawful access point to its proposed casino.

56. In the end, the Commission awarded the Region A license to an ineligible and unsuitable applicant to develop a casino on a landlocked, highly-toxic brownfield, in one of the most congested traffic areas in Massachusetts with no traffic mitigation plan.

57. As these events reveal, the Commission's licensing process followed one principle: the ends justify the means. The Commission ignored its statutory mandate. It acted outside the boundaries of the law. It violated the ethical mandates of the Act. And it disregarded the Legislature's declared "paramount policy objective" of ensuring "public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme." The Commission's decision-making—if permitted to stand—will imperil Boston's residents in Charlestown. Judicial intervention is necessary to restore fairness, transparency, and integrity to the process.

THE PARTIES

58. Plaintiff City of Boston is a municipal corporation located in the Commonwealth of Massachusetts.

59. Defendant Massachusetts Gaming Commission is an agency of the Commonwealth of Massachusetts established in 2011 by an Act Establishing Expanded Gaming in the Commonwealth. Its office is located at 101 Federal Street, Boston, Massachusetts.

60. Defendant Stephen P. Crosby is a resident of Massachusetts. He has been the Chairman of the Massachusetts Gaming Commission and Director of the Bureau since 2012.

61. Defendant Gayle Cameron is a resident of Massachusetts. She has been a member of the Massachusetts Gaming Commission since 2012.

62. Defendant James F. McHugh is a resident of Massachusetts. He has been a member of the Massachusetts Gaming Commission since 2012.

63. Defendant Bruce Stebbins is a resident of Massachusetts. He has been a member of the Massachusetts Gaming Commission since 2012.

64. Defendant Enrique Zuniga is a resident of Massachusetts. He has been a member of the Massachusetts Gaming Commission since 2012.

JURISDICTION AND VENUE

65. The Court has subject matter jurisdiction pursuant to G.L. c. 30A, § 7, G.L. c. 231A, §§ 1 and 2, G.L. c. 249, § 4, G.L. c. 212, § 4, and under Massachusetts common law.

66. The Court has personal jurisdiction over the Commission, which is an

agency of the Commonwealth of Massachusetts, and over the defendant Commissioners, who are residents of the Commonwealth of Massachusetts.

67. Venue in Suffolk County is proper pursuant to G.L. c. 223, § 9 because this is an action brought by the City of Boston. Venue also is proper under G.L. c. 223, § 1 because (1) the Commission's place of business is in Suffolk County; (2) the City of Boston suffered harm caused by the defendants' conduct in Suffolk County; and (3) events giving rise to this dispute occurred in Suffolk County.

STATEMENT OF FACTS

A. RELEVANT PROVISIONS OF THE GAMING ACT

1. The Gaming Commission

68. In November 2011, the General Court of the Commonwealth of Massachusetts enacted, and the former Governor signed into law, "An Act Establishing Expanded Gaming in the Commonwealth," Mass. St. 2011, c. 194 (codified in part at G.L. c. 23K, § 1 *et seq.*). The Gaming Act sets forth a comprehensive regulatory scheme governing the issuance of gaming licenses in the Commonwealth.

69. A Category 1 license is a "license issued by the commission that permits the licensee to operate a gaming establishment with table games and slot machines," commonly known as a casino. G.L. c. 23K, § 2.

70. The Gaming Act provides for the formation of the Commission, which is empowered, *inter alia*, to approve and disapprove applications for gaming licenses, monitor the conduct of licensees, and conduct investigations regarding the issuance, suspension, and revocation of gaming licenses. G.L. c. 23K, §§ 3 and 4.

71. The Commission consists of five Commissioners and is headed by a Chair, who supervises and controls all of the Commission's and the Bureau's affairs. G.L. c. 23K, § 3(a).

72. Additionally, the Act provides for the creation of an Investigations and Enforcement Bureau, a law enforcement agency within the Commission. The Bureau is tasked with conducting investigations into the suitability of applicants for gaming licenses, and making recommendations on applicants' suitability to the Commission. The duties of the deputy director of the Bureau ("Director") are subject to the direction, control, and supervision of the Chair. G.L. c. 23K, § 6(a); 205 CMR 105.01(5).

2. The Act's Paramount Policy Objective

73. The paramount policy objective of the Gaming Act is to ensure "public confidence in the *integrity* of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme." G.L. c. 23K, § 1(1) (emphasis supplied).

74. An "integral and essential element of the regulation and control of gaming" is "establishing the financial stability and *integrity* of gaming licensees." G.L. c. 23K, § 1(2) (emphasis supplied).

75. Under the Gaming Act, "gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their *integrity* and financial stability." G.L. c. 23K, § 1(3) (emphasis supplied).

3. The Commission's Mission and Ethical Standards

76. The self-declared mission of the Commission is "to create a fair, transparent, and participatory process for implementing the expanded gaming law."

77. Given the historical association between gaming, criminal conduct, and corruption, the Legislature imposed strict ethical standards to govern the conduct of the Commissioners in the performance of their duties as independent regulators.

78. The Gaming Act provides that the Commissioners and employees of the Commission shall be held to the highest standards of ethics and impartiality, standards that surpass even those imposed by the Commonwealth's Conflict of Interest Law for State Employees, G.L. c. 268A and G.L. c. 268B. G.L. c. 23K, § 3(m). In that regard, Section 3(u) of the Act requires the Commissioners to:

> (1) conduct themselves in a manner so as to render decisions that are fair and impartial and in the public interest;
>
> (2) avoid impropriety and the appearance of impropriety in all matters under their jurisdiction;
>
> (3) avoid all prohibited communications;
>
> (4) require staff and personnel subject to their direction and control to observe the same standards of fidelity and diligence;
>
> (5) disqualify themselves from proceedings in which their impartiality might reasonably be questioned; and
>
> (6) refrain from financial or business dealings which would tend to reflect adversely on their impartiality.

79. Moreover, the Gaming Act requires the Commission to "establish a code of ethics for all members and employees that shall be more restrictive than said chapters 268A and 268B." The code of ethics must include provisions that (1) prohibit Commissioners from participating in matters that affect the financial interest of a person with whom a Commissioner has a significant relationship; and (2) require the recusal of a Commissioner in a licensing decision due to a potential conflict of interest. G.L. c. 23K, § 3(m).

80. Pursuant to the Gaming Act's directive, on February 21, 2013, the Commission adopted the Enhanced Code of Ethics "to help ensure the highest level of public confidence in the *integrity* of the regulation of all gaming activities in the Commonwealth" (emphasis supplied). A true and accurate copy of the Enhanced Code of Ethics is attached as Exhibit 1.[1]

81. As required by the Act, the Enhanced Code of Ethics provides ethical rules prohibiting Commissioners from participating in matters pending before the Commission that may affect the financial interest of "a person with whom they have a significant relationship." Exhibit 1 at 9.A.

82. Also as required by the Act, the Enhanced Code of Ethics requires Commissioners to "recuse themselves from any licensing decision in which a *potential* conflict of interest exists" (emphasis supplied). Commissioners must disqualify and recuse themselves, and abstain from participating or voting in "any proceeding in which their impartiality may reasonably be questioned." This includes instances where Commissioners have "a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding." Exhibit 1 at 9.C.

83. Unlike G.L. c. 268A and G.L. c. 268B, both the Gaming Act and the Enhanced Code of Ethics require *recusal*—not mere disclosure—by Commissioners in the event that a potential or actual conflict of interest exists or "their impartiality might reasonably be questioned." G.L. c. 23K, § 3(m).

84. In addition to the Gaming Act's blanket requirement that Commissioners "avoid *all* prohibited communications," the Enhanced Code of Ethics prohibits

[1] The exhibits cited in this Amended Complaint are included in the Appendix to Plaintiff City of Boston's Amended Complaint.

Commissioners from engaging in communications outside of public hearings or meetings governed by the Open Meeting Law that a reasonable person would view as "likely to affect the Commissioner's judgment regarding":

(1) a gaming license application;

(2) any matter pending before the Commission in an adjudicatory proceeding; or

(3) any matter reasonably likely to come before the Commission in such a proceeding.

The Enhanced Code of Ethics further mandates that Commissioners must "take all reasonable actions necessary to avoid receiving such communications." Exhibit 1 at Section 22.A.

85. Under the Enhanced Code of Ethics, any Commissioner who receives a communication that a reasonable person would view as an improper attempt to influence that Commissioner's official action is required to disclose the source and content of the communication to the Commission's Executive Director. Exhibit 1 at Section 22.B.

86. The Legislature drafted the stringent ethical provisions of the Gaming Act to ensure that the Commissioners—gatekeepers of the gaming licensing process and overseers of the gaming industry in Massachusetts—will scrupulously adhere to the law, act in a transparent and ethical manner, and render decisions that are fair, impartial, unimpeachable, and in the best interests of the citizens of the Commonwealth.

87. As a state agency, the Commission also is subject to the Massachusetts Open Meeting Law, which requires that all meetings of a public body shall be open to the public. With limited exceptions, the Open Meeting Law prohibits a quorum of members

of state agencies from deliberating orally or in writing, on any public subject matter within their jurisdiction, outside of the public's view. G.L. c. 30A, §§ 18 and 20(a).

4. <u>The Casino Licensing Process</u>

88. The Act governs various aspects of gaming conducted in Massachusetts, including applications for and the issuance of Category 1 licenses.

89. The Act established three regions in Massachusetts. The Commission may award up to one Category 1 license per region. G.L. c. 23K, § 19(a). Region A, the relevant region in this case, includes Suffolk, Middlesex, Essex, Norfolk, and Worcester Counties. G.L. c. 23K, § 19(a). If applicants for a region have not met the eligibility criteria, no gaming license shall be awarded in that region. G.L. c. 23K, § 19(a).

a. <u>Phase 1</u>

90. The Act and the regulations promulgated under the Act establish a two-phase application process for Category 1 licenses. 205 CMR 110.01. Phase 1, known as "Request for Applications Phase 1" ("RFA-1"), begins when the Commission receives an application for a gaming license. 205 CMR 110.01(2); G.L. c. 23K, § 12(a).

91. The purpose of Phase 1 is to determine whether the applicant and others related to the applicant are "suitable" to be awarded a gaming license. The concept of "suitability" is central to Phase 1. A "suitable" applicant must possess reputational traits and attributes of integrity, honesty, and good character. Conversely, convicted felons, fraudsters, and other bad actors are "unsuitable" and, as such, cannot be awarded a gaming license or associated with a licensee.

92. When the Commission receives an application for a gaming license, it must instruct the Bureau to commence an investigation into the suitability of the applicant and "all parties in interest to the gaming license," including close associates of

the applicant, "anyone with a financial interest in a gaming establishment," as well as other "qualifiers." G.L. c. 23K, §§ 12(a) and 14(a); 205 CMR 115.03.

93. The Commission "shall require anyone with a financial interest in a gaming establishment . . . to be qualified for licensure by meeting the criteria provided in sections 12 and 16 and to provide any other information that the commission may require." G.L. c. 23K, § 14(a).

94. If an applicant is a limited liability company ("LLC"), the following persons must be determined suitable as part of the Phase 1 determination: (1) each member of the LLC, (2) each transferee of a member's interest in the LLC, (3) each director of the LLC, and (4) each manager of the LLC. G.L. c. 23K, § 14(b); 205 CMR 116.02(1)(b).

95. In addition, the Commission is empowered to "require a person who has a business association of any kind with a gaming licensee or applicant to be qualified for licensure." G.L. c. 23K, § 4(11); 205 CMR 116.02(2).

b. Suitability Factors

96. The burden of proving that an applicant is qualified for licensure rests squarely on the applicant, who must establish its qualifications by "clear and convincing" evidence. G.L. c. 23K, § 13(a). Importantly, the Act also requires an applicant to establish the *integrity* of all persons required to be qualified for licensure by the Commission. G.L. c. 23K, § 12(b)(i).

97. An applicant or any other person required to be qualified for licensure is prohibited from "willfully provid[ing] false or misleading information" to the Commission and has a "continuing duty to provide any assistance or information required by the commission and to cooperate in any inquiry or investigation conducted by the

commission." G.L. c. 23K, §§ 13(b) and 13(c).

98. When evaluating suitability, the Commission shall consider the overall reputation of the applicant, including, without limitation, the following seven factors:

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

(2) the financial stability, integrity and background of the applicant;

(3) the business practices and business ability of the applicant to establish and maintain a successful gaming establishment;

(4) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;

(5) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;

(6) the suitability of all parties in interest to the gaming license, including affiliates and close associates and the financial resources of the applicant; and

(7) whether the applicant is disqualified from receiving a license under section 16.

G.L. c. 23K, § 12(a)(1)-(7). The Commission must also consider these criteria with respect to all persons required to be qualified for licensure. G.L. c. 23K, § 14(a).

c. <u>Suitability Disqualifiers</u>

99. The Legislature determined that certain applicants are outright prohibited from obtaining a gaming license due to their past criminal behavior and misconduct. In addition, applicants who submit false or misleading applications cannot obtain a casino license. Section 16 of the Act states that the Commission shall deny a gaming license application if the applicant or any person required to be qualified for licensure who is connected to the applicant:

(1) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;

(2) submitted a false or misleading application;

(3) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license; or

(4) has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the commonwealth in awarding a gaming license to the applicant.

G.L. c. 23K, §§ 14(a) and 16(a).

100. If the Bureau determines during its investigation that the applicant has failed to "establish the applicant's integrity or the integrity of any affiliate, close associate, financial source or any person required to be qualified by the commission" or "demonstrate responsible business practices in any jurisdiction," the Bureau "*shall cease any further review and recommend that the commission deny the application.*" G.L. c. 23K, § 12(b) (emphasis supplied). Section 12(b) provides no discretion to the Bureau.

101. If the Bureau determines that an applicant is suitable to receive a gaming license, the Bureau shall recommend that the Commission commence a review of the applicant's entire application. G.L. c. 23K, § 12(c).

102. If the Commission also determines that an applicant and its qualifiers are suitable, the applicant then becomes eligible to submit a Phase 2 application, RFA-2. G.L. c. 23K, § 12(c); 205 CMR 118.01(1).

103. "Only those applicants that are found by the commission to be qualified pursuant to a determination of suitability at the conclusion of RFA-1 [Phase 1] . . . shall be permitted to proceed to the second phase, RFA-2 [Phase 2]." 205 CMR 110.01(2).

d. <u>Phase 2</u>

104. The second phase, Phase 2, is known as "Request for Applications Phase

2" ("RFA-2"). 205 CMR 110.01(1). The RFA-2 focuses on the site, design, operation, and other attributes of the gaming establishment, including mitigation of adverse impacts. 205 CMR 118.00 and 119.00.

105. The RFA-2 requires the applicant to attest to the truthfulness of the contents of the submission "under the pains and penalties of perjury." 205 CMR 119.01.

106. The applicant must provide "the location of the proposed gaming establishment, which shall include the . . . ownership interests over the past 20 years, *including all interests, options,* [*and*] *agreements in property*." G.L. c. 23K, § 9(a)(15) (emphasis supplied).

107. When the applicant "does not presently possess an ownership interest in the location," the RFA-2 must include "an agreement, and description of its plan as to how it intends to own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed." 205 CMR 119.01(41). This requirement embraces the established Massachusetts real estate development concept known as "site control."

108. The Gaming Act also makes clear that "[n]o applicant shall be eligible to receive a gaming license unless [it]. . . own[s] or acquire[s], *within 60 days* after a license has been awarded, the land where the gaming establishment is proposed to be constructed[.]" G.L. c. 23K, § 15(3) (emphasis supplied).

5. <u>Host Community Status</u>

109. The Gaming Act defines "host community" as "a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment." G.L. c. 23K, § 2; 205 CMR 123.01.

110. The term "gaming establishment" is broadly defined 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." G.L. c. 23K, § 2. The Commission's regulations also make clear that "the location of the proposed gaming establishment . . . include[s] all amenities . . ." 205 CMR 119.00(40).

111. The Gaming Act envisions that there may be more than one host community for an applicant's proposed casino "if a proposed gaming establishment is situated in 2 or more cities or towns." G.L. c. 23K, § 15(13); 205 CMR 123.01.

112. An applicant is ineligible to receive a Category 1 gaming license unless it provides the Commission with "a signed agreement between the host community and the applicant setting forth the conditions to have a gaming establishment located within the host community." G.L. c. 23K, § 15(8).

113. The agreement, known as a "host community agreement," must include provisions setting forth 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." G.L. c. 23K, § 15(8).

114. "[I]f 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 . . . ." G.L. c. 23K, § 15(13).

6. <u>Host Community Elections</u>

115. A Category 1 license cannot be granted unless each host community has voted in a public election in favor of the issuance of the license. G.L. c. 23K, § 15(13).

116. A certified and binding vote from each host community in favor of the

license is a prerequisite to filing an RFA-2. G.L. c. 23K, § 15(13); 205 CMR 124.01.

117. After a host community agreement is executed, the applicant must file a written request for an election with the host community's governing body on whether the host community shall permit the operation of a gaming establishment at a specified site within the community. G.L. c. 23K, § 15(13); 205 CMR 124.02.

118. At the election, the question submitted to the voters must 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 __." "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 deemed to have voted in favor of the applicant's license. G.L. c. 23K, § 15(13).

119. If there are two or more host communities, then the applicant must receive a certified and binding vote in favor of such a license from each host community. G.L. c. 23K, § 15(13); 205 CMR 124.02. "[I]n the event that a municipality has executed a host community agreement with more than one applicant the election on each shall be set for the same date." 205 CMR 124.03.

7. <u>Surrounding Community Status</u>

120. The Gaming Act defines "surrounding communities" 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." G.L. c. 23K, § 2.

121. No applicant shall be eligible to receive a gaming license unless it provides the Commission with signed surrounding community agreements with all

surrounding communities. G.L. c. 23K, § 15(9).

122. The Gaming Act recognizes that an applicant's mere filing of an application for a Category 1 license causes host and surrounding communities to incur substantial costs to assess the adverse impacts on traffic, pollution, the environment, and the health, safety, and general welfare of their citizens. G.L. c. 23K, § 15(11).

B. WYNN'S INITIAL EFFORTS TO DEVELOP A CASINO IN MASSACHUSETTS

123. Wynn's interest in developing a casino in Massachusetts began well before the Gaming Act was passed in November 2011. By 2007, Wynn had engaged lobbyists to represent its interests during the Act's legislative process.

124. Shortly after the law was passed, Wynn sought to develop a casino on property near Gillette Stadium in Foxborough. An election of Foxborough's Board of Selectmen in early May 2012, however, resulted in a majority of its members opposing the casino. Recognizing the futility of the proposal in light of the vote, Wynn abandoned its plan to use the Foxborough site.

125. This setback was abrupt and unexpected. The next month, the Commission proposed a timeline for the licensing process that would require casino applicants to file their RFA-1s by December 2012 or January 2013. This left Wynn with only seven or eight months to identify a new casino site.

126. Wynn immediately began its search, viewing sites in Boston's Seaport, Somerville, Palmer, New Bedford, Bridgewater, Haverhill, and off of Route 495 in the Mansfield area. It determined that none of the sites were viable.

C. WYNN'S PROPOSED CASINO IN EVERETT AND BOSTON

1. The Former Monsanto Chemical Site

127. Soon after Wynn withdrew from Foxborough, the Mayor of Everett began actively marketing and promoting the former Monsanto Chemical Site as a possible site for a casino in Region A.

128. The former Monsanto Chemical Site is a heavily contaminated 37-acre parcel of land located in Everett and Boston. Arsenic and lead contamination at the site significantly surpasses permissible levels of those hazardous materials set by state regulations.

129. The property is landlocked for use as a casino. The only potential access to the property is a private road known as Horizon Way, formerly called "Chemical Lane." Horizon Way is located primarily in Boston, with a portion extending into Everett. The Boston Zoning Code prohibits the use of Horizon Way for casino access.

130. The former Monsanto Chemical site was owned by a limited liability company called FBT Everett. FBT Everett was formed in 2009 by Gary DeCicco and Paul Lohnes as the vehicle to purchase the property for approximately $8 million.

131. FBT Everett's initial owners, known as "members" under Massachusetts law, included DeCicco, Lohnes, and Anthony Gattineri. Lohnes is a longtime friend and former business partner of Chairman Crosby. DeCicco is a convicted felon. At the time, DeCicco and Lohnes were partners in at least five other Massachusetts LLCs.

132. Shortly after FBT Everett acquired the property, DeCicco transferred some of his ownership interest in FBT Everett to Charles Lightbody, another convicted felon. Dustin DeNunzio, a property manager for FBT Everett, also obtained a small ownership interest in FBT Everett. DeCicco later lost his remaining ownership interest in FBT

Everett due to his inability to make required payments on a loan from Gattineri and his failure to meet FBT Everett's capital calls.

133. While the Mayor of Everett was promoting the property, his only contact at FBT Everett was Lightbody, a friend of many years. The Mayor knew that Lightbody was a convicted felon with a financial interest in FBT Everett. He believed that Lightbody would benefit financially if the land was sold to a casino developer.

2. FBT Everett's Early Discussions with Casino Developers

134. In July and August of 2012, FBT Everett held discussions with Och-Ziff Capital Management ("Och-Ziff"), a prominent hedge fund, regarding Och-Ziff's possible interest in developing a casino with Hard Rock International ("Hard Rock") on the former Monsanto Chemical Site.

135. According to one of Hard Rock's local partners, as reported by *The Republican*, Chairman Crosby had encouraged Hard Rock to submit an application for a casino license in Region A. At the time, Hard Rock had been evaluating a possible site in Downtown Springfield, in Region B. A true and accurate copy of *The Republican* article is attached as Exhibit 2.

136. Och-Ziff and FBT Everett discussed the possibility that FBT Everett would have an equity interest in the casino. The owners of FBT Everett knew that the Gaming Act disqualified casino applicants and others connected to an applicant who had been convicted of a felony or other crime involving embezzlement, theft, fraud, or perjury.

137. To facilitate the possible acquisition of the site by a casino developer willing to pay a premium price for the land, the owners of FBT Everett conspired to conceal Lightbody's financial interests in FBT Everett and the former Monsanto

Chemical Site. They attempted to create the impression that Lohnes, DeNunzio, and Gattineri were the only owners of FBT Everett.

138. The scheme to defraud later became the subject of a federal indictment, eleven state indictments, and a report prepared by the Bureau on Wynn MA, LLC's suitability titled, "Report of Suitability of Applicant Entities and Individual Qualifiers" (the "Bureau's Report"). The federal indictment is pending in the United States District Court for the District of Massachusetts in a case titled *United States v. Dustin J. DeNunzio, Anthony Gattineri, and Charles A. Lightbody*, Criminal No. 1:14-CR-10284-NMG (the "Federal Indictment"). The state indictments are pending in the Middlesex Superior Court, and include charges against Gattineri, Lightbody, and DeNunzio (the "State Indictments"). True and accurate copies of the Federal Indictment, the State Indictments, and the Bureau's Report are attached as Exhibit 3, Exhibit 4, and Exhibit 5, respectively. The allegations in this Amended Complaint regarding the scheme to defraud are based on information set forth in the Federal Indictment, the State Indictments, and/or the Bureau's Report.

139. Although concealment of Lightbody's interest was crucial to the scheme, Lightbody shared details of the plot with his friend and confidant, Darin Bufalino, an incarcerated state prisoner. Lightbody and Bufalino regularly communicated by phone, even though they knew that prison officials recorded their calls.

140. One call occurred on August 16, 2012, during FBT Everett's negotiations with Och-Ziff. Bufalino asked Lightbody, "How's Everett goin' for ya?" Lightbody responded, "[W]e got a deal on the table right now." Lightbody reported, "It's gonna be a real home run if we can get the permits through, and you know the Mayor's all for it."

Lightbody explained that Hard Rock would be the casino operator and Och-Ziff was "gonna put up the money to get the deal done." Lightbody stated he had "the documents right—right in my briefcase."

141. Knowing that felons were prohibited from profiting from the development of a casino under the Act, Lightbody boasted that FBT Everett was incorporated as a "blind LLC," and his name would never surface:

> Ah, yeah, well I put it in an LLC so my name don't show up because, um, between you and I, I think I told you my partner was like, 'you know, if you take your name off it and just put it in a blind LLC' . . . I go 'listen, I have no problem with that' . . .
>
> I said I'll take my name off. I got no problem and now actually it works out cause these casinos—they see my name in there—and they ain't gonna like it . . .
>
> So, I'll never show up on it, which is a good thing.

142. Discussions between FBT Everett and Och-Ziff advanced. On August 21, 2012, Och-Ziff and FBT Everett signed a letter of intent. After a period of due diligence, the discussions ended.

143. The Mayor of Everett continued to engage in discussions with casino developers. According to a *Boston Herald* article on November 8, 2012, the Mayor of Everett reported that he had had preliminary talks with representatives of Hard Rock and Rush Street Gaming LLC of Chicago. The article noted the Mayor's enthusiasm, quoting him as saying that Hard Rock was "serious" about the property. A true and accurate copy of the *Boston Herald* article dated November 8, 2012 is attached as Exhibit 6.

3. Wynn's Interest in the Former Monsanto Chemical Site

144. Wynn learned of the availability of the former Monsanto Chemical Site from a news report in which the Mayor of Everett made a "plea to casino developers to

come and visit his city as he had property to offer." Wynn also reviewed the *Boston Herald* article referencing Hard Rock's and Rush Street Gaming's interest in the land.

145. By this time, the Commission had set the RFA-1 deadline for January 15, 2013. With the deadline only two months away, Wynn immediately arranged to meet with the Mayor of Everett to discuss the land.

146. Lightbody closely followed the ensuing meetings and negotiations between Wynn, the City of Everett, and FBT Everett. He often discussed developments with DeNunzio.

147. Wynn's initial meeting with the Mayor of Everett was the topic of a call between Lightbody and Bufalino on November 13, 2012. Lightbody told Bufalino that "Steve Wynn is supposed to be coming down tomorrow [November 14, 2012] at 10:30 to talk to the Mayor." They also discussed FBT Everett's prior negotiations with Hard Rock, which had stalled. In response to Bufalino's statement that Lightbody's "earning potential might get bigger than what it, what it was [with Hard Rock]," Lightbody stated, "That's what I'm hoping for, you know what I mean."

4. <u>Wynn's Initial Meeting with FBT Everett</u>

148. Lightbody's report to Bufalino was accurate. On November 14, 2012, Wynn's General Counsel and Wynn's then-Chief Financial Officer met with the Mayor of Everett. They also met with FBT Everett earlier that same day.

149. The first meeting between Wynn and FBT Everett occurred at the site. Wynn's General Counsel, Wynn's then-CFO, and two representatives of FBT Everett attended.

150. Later that day, Wynn's General Counsel and Wynn's then-CFO met with the Mayor of Everett and other city officials at Everett City Hall to discuss the site and

view a map of the property. Stephen Wynn, Wynn's Chief Executive Officer, participated by telephone. The Mayor of Everett painted an encouraging picture about Wynn's opportunity to use the site.

151. By day's end, Wynn's key representatives viewed the site with skepticism due to its heavy contamination, traffic issues, and less than optimal size. Wynn's then-CFO characterized the property as a "nasty site leaking into the Mystic River and the Boston Harbor for 30-plus years."

152. Despite harboring reservations, Wynn calculated a possible purchase price for the property, as time was rapidly winding down on the RFA-1 filing date. Mr. Wynn planned to visit the site on Wednesday, November 28, 2012.

153. Lightbody was anxious to provide Bufalino with this crucial update. During a call on Monday, November 26, 2012, he told Bufalino that Mr. Wynn was coming to Everett on Wednesday, November 28, to "meet with the Mayor . . . and my partners over at the site." He assured Bufalino that the meeting would be "in the news."

154. On November 27, 2012, before Mr. Wynn even visited the site, Wynn rushed to sign a Memorandum of Agreement ("MOA") with FBT Everett. The MOA included an option for Wynn to purchase the property for $75 million with additional payments to FBT Everett of $100,000 per month until closing. This enabled the owners of FBT Everett to immediately realize meaningful revenue from Wynn's proposed casino.

155. Wynn reached this preliminary agreement with FBT Everett less than two weeks after its initial site visit, and well before it investigated the many concerns and risks associated with the site. From Wynn's standpoint, there was no time to delay: it

needed to secure a site with only six weeks remaining before the RFA-1 deadline.

156. The next day, November 28, Mr. Wynn and his colleagues toured the property with FBT Everett, the Mayor of Everett, city officials, and others, just as Lightbody had mentioned to Bufalino.

157. A week later, on December 5, a jubilant Lightbody had a call with Bufalino, stating, “We got Steve Wynn in our corner.” He explained: “Wynn is supposed to start paying us $100,000 a month December 14th . . . and then we sign a purchase and sales with him. It’s not binding yet; it will be when they give us their first check for $75 million.”

158. Days later, on December 11, Lightbody confided in Bufalino about the details of a prior conference call that Lightbody had had with his partners and his lawyer. He told Bufalino that his lawyer had explained that a convicted felon could not share in the proceeds of the sale of land to be used as a casino:

> So my attorney, he calls my partners and myself and we have a little conference call and says, ‘Listen, do you know that this Commission, when, when there’s a casino . . . not only them but whoever’s selling the land cannot have a criminal record’ . . . So what they’re saying is any proceeds that come from a sale of a casino, or a casino, cannot go to a felon . . . But the only good thing is, nobody knows who’s involved, which makes it good.

Bufalino counseled Lightbody: “You need to double-blind it. You need to triple-blind it, actually.” Lightbody concurred, replying, “Well, that’s what we’re doing.”

5. The *Boston Business Journal*’s Article—Red Flags regarding FBT Everett’s Ownership

159. While Lightbody and Bufalino discussed the need to “double-blind” and “triple-blind” Lightbody’s ownership interest in the site, the *Boston Business Journal* was preparing to publish an article revealing the past ownership interest in FBT Everett of another convicted felon—DeCicco.

160. Before publishing the article, the *Boston Business Journal* called Wynn, seeking comments on DeCicco's ownership in FBT Everett. DeCicco's ownership in FBT Everett and his role as one of the company's founders was a red flag raising serious questions about FBT Everett's legitimacy and possible ongoing criminal ownership of the land.

161. After learning of the *Boston Business Journal*'s inquiry, Wynn's General Counsel called DeNunzio and asked, "Who is Gary DeCicco and is he part of your deal?" Wynn's General Counsel later claimed that DeNunzio had replied that DeCicco was not an equity owner in the deal, and that he had been "out since January 2012."

162. Wynn had no prior business dealings with FBT Everett. It knew virtually nothing about DeNunzio, including his veracity. Yet Wynn's General Counsel remarkably later claimed that she had accepted DeNunzio's oral representation as true. Notably, she also confessed that Wynn took no steps whatsoever—*absolutely none*—to verify DeNunzio's representation. Wynn consciously ignored this critical red flag.

163. In connection with the *Boston Business Journal*'s inquiry, Wynn's representatives had discussions about Lightbody's possible ownership interest in the site. Wynn was concerned that if Lightbody, a convicted felon, was a current owner of FBT Everett, it would foreclose its use of the land and cast further doubt on FBT Everett's legitimacy. Although Wynn was aware of this second red flag, it did not take any meaningful steps to independently determine whether Lightbody was, in fact, a current owner, which he was.

164. The *Boston Business Journal* article was published on December 14, 2012. It posited that DeCicco's past ownership interest in the property could jeopardize Wynn's efforts to develop a casino on that site because he was a convicted felon:

> If Wynn's Everett casino proposal gets past Monsanto, Menino and Thibeault, it may still face a final obstacle in Gary P. DeCicco.
>
> DeCicco, who developed the Atlantis Marina in Winthrop with DeNunzio, is on early incorporation documents for FBT. Co-owners DeNunzio, Paul Lohnes and Anthony Gattineri removed him in January 2012—two months after Gov. Deval Patrick signed the law allowing three resort casinos and one slot machine parlor to be built in the state—and DeNunzio said DeCicco is no longer an owner of the property.
>
> Nonetheless, Massachusetts' new casino gambling law requires state gambling officials to investigate 'the suitability of all parties in interest to the gaming license.' DeNunzio declined to discuss the terms of DeCicco's separation. But if the remaining partners bought him out at a casino-related premium, DeCicco's background could play into a decision by the Massachusetts Gaming Commission about FBT's suitability.
>
> DeCicco in 2004 was sentenced to two years of probation after being convicted of insurance fraud related to a 1995 fire that destroyed a building he owned in Chelsea.

A true and accurate copy of the *Boston Business Journal*'s article dated December 14, 2012, is attached as Exhibit 7.

165. Wynn's General Counsel later testified before the Commission that the article's secondhand reporting of DeNunzio's oral representation that DeCicco was "out" had "*resolved* the issue about whether DeCicco was in or out consistent with our understanding. So, it frankly didn't change our due diligence" (emphasis supplied).

166. Contrary to Wynn's General Counsel's testimony, the issue was far from "resolved."

167. Wynn claimed that it had reviewed FBT Everett's corporate filings as part of its due diligence. FBT Everett's corporate filings, which were publicly available on

the Secretary of State's website, contained information supporting the reporter's suggestion that DeCicco's role with FBT Everett may be problematic for Wynn.

168. FBT Everett's first filing, its Certificate of Organization dated October 9, 2009, identified Lohnes and DeCicco as its original managers. FBT Everett's 2010 Annual Report, dated February 15, 2011, designated DeCicco as one of its signatories.

169. Other available public records also showed that DeCicco was convicted in November 2004 in federal court on four counts of mail fraud, and that his convictions were affirmed on appeal in a case titled *United States v. Gary P. DeCicco*, 439 F.3d 36 (1st Cir. 2006). DeCicco's criminal conviction had also been referenced in the *Boston Business Journal* article.

170. Collectively, this information strongly suggested that FBT Everett was a dubious company, having been co-founded by a felon convicted of a federal offense involving fraud. And neither the corporate records nor DeNunzio's statement to Wynn's General Counsel provided any explanation about what had happened to DeCicco's ownership interest.

171. Had Wynn focused its inquiry on DeCicco—as it should have—it would have easily learned that DeCicco had transferred some of his interest to Lightbody. Until Wynn ascertained exactly what had become of DeCicco's former ownership interest, the issue was far from "resolved."

172. Wynn consciously ignored the red flags, opting to forego investigation. Instead, Wynn continued its negotiations with FBT Everett for a definitive option agreement.

173. As a substitute for investigation, Wynn attempted to rely on language in its draft option agreement pertaining to the suitability of FBT Everett's owners. One provision in the draft option agreement, titled "Suitability or Licensure by Gaming Regulatory Agency," gave Wynn the right to terminate the agreement if FBT Everett engaged in activity that could adversely affect Wynn's business or its gaming licenses. The provision emphasized that Wynn was required to comply with strict gaming laws and regulations regarding its business relationships.

174. Another similar provision defined "unsuitable person" as one who (1) had failed to be found suitable as required by law or (2) could jeopardize the future award of a gaming license to Wynn or later cause Wynn to lose or forfeit its existing gaming licenses. Finally, the draft option agreement had a provision requiring FBT Everett to cooperate with Wynn as to providing information that Wynn needed for its RFA-1 as well as in responding to the Commission's inquiries.

175. The *Boston Business Journal* article and the suitability provisions in the draft option agreement triggered direct additional discussions between Wynn and FBT Everett's counsel about the questionable backgrounds of FBT Everett's owners.

176. The discussions concerned *both* DeCicco and Lightbody. In one discussion, FBT Everett's counsel informed Wynn that DeCicco previously was a member in the deal, but had no present ownership interest in FBT Everett. Again, Wynn made no request for documentation to verify what had happened to DeCicco's ownership interest.

177. In another discussion, FBT Everett's counsel identified the existence of a *second* felon who held an ownership interest in FBT Everett, explaining that the second

convicted felon had agreed to transfer his interest and was no longer in the deal. FBT Everett's counsel's reference was to Lightbody. These discussions occurred before Wynn signed the Option Agreement and well before it filed its RFA-1.

6. **Wynn's Cursory Due Diligence of FBT Everett**

178. Before signing the Option Agreement, the information that Wynn had learned regarding FBT Everett and its ownership by convicted felons raised the following critical questions: Was FBT Everett a legitimate entity? Did the alleged owners of FBT Everett, particularly DeNunzio, have reputations of integrity and good character? Who are the true owners of FBT Everett? What happened to the ownership interests of DeCicco and Lightbody? Did FBT Everett have any current owners who are convicted felons? There were a plethora of red flags as to each of these crucial questions, yet Wynn had no concrete answers. From a suitability standpoint, the answers to these questions were vital to whether Wynn's application could proceed.

179. Moving forward, the law was clear that Wynn was not only required to prove its own integrity, it also had to demonstrate the integrity, honesty, good character, reputation, and suitability of FBT Everett and its owners. G.L. c. 23K, §§ 12(b)(i), 13, and 14(a). Wynn acknowledged this obligation by including suitability provisions in the Option Agreement.

180. Aside from the Act's suitability requirements, another significant provision obligated Wynn to provide the Commission with *documentary evidence* of the current ownership interests in the site, as well as all ownership interests in the property for the preceding 20 years, including options and transfers. G.L. c. 23K, § 9(a)(15).

181. Simply put, the Act imposed a clear, affirmative duty on Wynn to thoroughly investigate FBT Everett and its owners, and to prove—by documentary

evidence—the current ownership of the former Monsanto Chemical Site. Wynn was acutely aware of its statutory obligations, having engaged in pre-legislation lobbying related to the drafting of the Act, and having already unsuccessfully attempted to develop a casino in Foxborough.

182. Wynn had other compelling business reasons to perform a full-fledged investigation of the ownership of FBT Everett, including:

(1) Wynn, a publicly-traded company owing fiduciary duties to its shareholders, was poised to make a $1.5 billion investment;

(2) Wynn was proposing to enter into a joint venture with FBT Everett to remediate and develop the former Monsanto Chemical Site;

(3) Wynn planned to make nonrefundable monthly payments of $100,000 to its new business associate, FBT Everett; and

(4) Wynn planned to file an RFA-1, identifying the former Monsanto Chemical Site in Everett and Boston as the site for its proposed casino, which meant that several municipalities, including Everett, Boston, Revere, and Somerville, among others, as well as multiple state agencies, would immediately begin devoting limited public resources and incurring considerable costs to assess adverse impacts of Wynn's proposed casino.

183. Wynn's myriad legal and business obligations underscored its essential need to conduct a thorough investigation of FBT Everett and its owners before committing vast resources to the proposed development. All signs, however, pointed to a highly probable result: a competent, thorough investigation would uncover conclusive proof of the unsuitability of FBT Everett and its owners, thereby barring Wynn from using the site. And with the RFA-1 deadline rapidly approaching, the likelihood that Wynn could secure an alternate site in time was remote.

184. Wynn's due diligence plan—in which Wynn's General Counsel was integrally involved—was designed to create the appearance of a professional, thorough

probe. In reality, the inquiry was cursory, omitting even the most basic investigatory steps.

185. Wynn's due diligence consisted of (1) reviewing scant corporate records filed by FBT Everett with the Massachusetts Secretary of State, (2) asking DeNunzio to identify the owners of FBT Everett, and (3) conducting superficial background checks on the three alleged owners whom DeNunzio had identified: Lohnes, Gattineri, and DeNunzio.

186. FBT Everett's corporate records contained minimal information about the entity, and no information about its *owners*. From FBT Everett's inception on October 9, 2009 to Wynn's RFA-1 filing on January 14, 2013, FBT Everett made only six filings comprising a small handful of pages. True and accurate copies of FBT Everett's filings with the Massachusetts Secretary of State are attached as Exhibit 8.

187. Wynn's questioning of DeNunzio about the identities of FBT Everett's owners was plainly insufficient. Wynn summarily accepted DeNunzio's representations on their face, never asking that he provide corporate documents to confirm his statements. DeNunzio had an obvious financial interest in the transaction, providing a motive to shade the truth. And Wynn had no prior business dealings with DeNunzio or FBT Everett. Wynn thus had no basis to assume DeNunzio's truthfulness, and good cause to be skeptical of his veracity.

188. Finally, Wynn's background checks barely skimmed the surface. Publicly-available information regarding Lohnes, Gattineri, and DeNunzio at the time showed that they had multiple, ongoing business ventures with DeCicco, and that DeCicco had additional business ventures with Lightbody. Any competent investigator

would have uncovered this information in a matter of minutes by searching the Massachusetts Secretary of State's public website. It is inconceivable that Wynn did not discover this information.

189. Wynn's due diligence exemplified the concept of "what you don't know can't hurt you." Wynn chose to be willfully blind regarding the criminal ownership of the former Monsanto Chemical Site. Wynn took deliberate actions to avoid obtaining hard evidence of true facts. Given the rigors of the Act's suitability requirements, Wynn's perfunctory investigation of FBT Everett was substandard, insufficient, and did not pass muster. If anything, it demonstrated Wynn's lack of "responsible business practices," yet another basis to deny its application as unsuitable. G.L. c. 23K, § 12(b)(ii).

190. Wynn's cursory approach toward due diligence was especially egregious given the suitability language that Wynn inserted in the Option Agreement. According to Wynn's General Counsel, the suitability language gave Wynn "the right to ask . . . for anything," thereby obligating FBT Everett "to cooperate with giving [Wynn] anything."

191. And as a Massachusetts LLC, FBT Everett was required to comply with the record-keeping requirements of the Massachusetts Limited Liability Company Act. That law obligated FBT Everett to maintain: (1) a current list of the full names of each member and manager; (2) copies of the LLC's income tax returns for the past 3 years; (3) copies of operating agreements then in effect; (4) financial statements for the past 3 years; and (5) records regarding ownership interests and capital contributions by each member. G.L. c. 156C, § 9(a).

192. Had Wynn merely exercised its rights under the suitability provision and

asked to review FBT Everett's corporate documents, it would have learned answers to all of the questions that had been raised and discovered that FBT Everett was unsuitable.

193. Had Wynn requested FBT Everett to provide it with FBT Everett's operating agreement, it would have learned that FBT Everett did not have one, creating doubt about its legitimacy.

194. Had Wynn requested documentary proof of DeCicco's transfer of his ownership interest, it would have learned that DeCicco had transferred part of his ownership interest to Lightbody.

195. Had Wynn requested documentary proof of FBT Everett's capital calls, it would have learned that Lightbody had made over $200,000 in capital contributions.

196. Had Wynn requested documentary proof of Lightbody's transfer of his ownership interest, it would have learned that no such proof existed, indicating that Lightbody was a current owner.

197. Had Wynn conducted a basic Internet search, it would have learned that DeNunzio, Lohnes, Gattineri, and DeCicco had engaged in numerous business ventures, all of which were established as LLCs, just like FBT Everett. A search of DeCicco would have revealed that DeCicco and Lightbody also were business partners. As of the date Wynn submitted its RFA-1, public records showed:

(1) DeNunzio, Lohnes, DeCicco, and Gattineri were all identified in FBT Everett's corporate filings;

(2) DeNunzio, Lohnes, and DeCicco were managers of Boston Development Ventures LLC, the precursor to FBT Everett;

(3) DeNunzio, Lohnes, and DeCicco were managers of Atlantis Marina Docks, LLC;

(4) DeNunzio, Lohnes, and DeCicco were all identified in GDPL Topsfield LLC's corporate filings;

(5) Lohnes, Gattineri, and DeCicco were managers of Marginal Leasing LLC;

(6) DeNunzio, Lohnes, Gattineri, and DeCicco were all identified in 245 and 257 Marginal Street, LLC's corporate filings;

(7) DeCicco and Lightbody were managers of 120 Banks Street, LLC; and

(8) DeCicco, Lightbody, and James Russo were managers of 426 Ferry Street, LLC.

A true and accurate copy of these records from the Massachusetts Secretary of State are attached as Exhibit 9.

198. Had Wynn actually utilized its alleged sophisticated personnel and vast compliance expertise to perform any of these basic investigatory steps, it would have known that it could not establish the integrity of FBT Everett and its owners, thereby eliminating use of the former Monsanto Chemical Site for a casino.

7. The Option Agreement

199. With under a month until the expiration of the RFA-1 deadline, on December 19, 2012, Wynn and FBT Everett signed the Option Agreement. A true and accurate copy of the Option Agreement is attached as Exhibit 10.

200. Under the Option Agreement, Wynn had the right to purchase the land for $75 million at any time within 24 months following the execution of the agreement. The Option Agreement described the land as property bounded by Horizon Way.

201. Pursuant to the agreement, FBT Everett was required to perform the following extensive real estate development work on the site in collaboration with and for the benefit of Wynn:

(a) obtain a permanent easement agreement providing vehicular access to Mystic View Road, known as the Ring Road Access Easement, at a cost to FBT Everett of up to $2.5 million;

(b) subdivide the former Monsanto Chemical Site in collaboration with Wynn, including pursuing and obtaining all subdivision approvals, use permits, site plans, rezoning and other necessary agreements;

(c) at its "sole cost and expense" engage in environmental remediation of the former Monsanto Chemical Site that would result in "a Permanent Solution to any Releases of Oil and Hazardous Waste Material at and from the Property," in compliance with applicable Massachusetts regulations prior to closing; and

(d) submit to the Massachusetts Department of Environmental Protection a Phase III Identification, Evaluation and Selection of Comprehensive Remedial Action Alternatives, a Phase IV Implementation of the Selected Remedial Action Alternative Report, and a Phase V Completion Statement Report, all in collaboration with Wynn and Wynn's environmental consultants.

202. The Option Agreement required FBT Everett and Wynn to negotiate a "mutually accepted cost-sharing agreement" regarding the incremental environmental remediation costs related to Wynn's development and use of the site. Additionally, Wynn and FBT Everett agreed to work together to maximize the benefit of the 2006 "Pharmacia Judgment," a court order obligating a prior site owner to pay for certain future environmental remediation costs.

203. Wynn further agreed to make monthly payments of $100,000 to FBT Everett, which totaled approximately $2.4 million over a 24-month period that commenced on December 19, 2012.

204. As the owner of the site, FBT Everett had a "financial interest" in Wynn's "gaming establishment" under the Act. G.L. c. 23K, § 14(a). FBT Everett's "financial interest in the gaming establishment" also included (1) the $100,000 monthly payments from Wynn, (2) the real estate development work that FBT Everett had agreed to perform on the gaming establishment, and (3) FBT Everett's ongoing contractual and financial

obligations to remediate the site.

205. FBT Everett, its members, transferees of its members' interests, its directors, and its managers, were all required to be qualified as suitable by meeting the criteria set forth in Sections 12 and 16 of the Act. G. L. c. 23K, §§ 14(a) and (b).

206. Once Wynn filed its RFA-1, FBT Everett, its members, transferees of its members' interests, its directors, and its managers, had to be qualified for licensure, and Wynn was required to establish their *integrity*. G.L. c. 23K, §§ 12(b) and 13(a).

8. <u>Evidence of Lightbody's Continuing Interests in FBT Everett</u>

207. The execution of the Option Agreement was a major event for Lightbody. It prompted him to engage in a series of acts that demonstrated his continued ownership interest in FBT Everett. On December 20, Lightbody shared the big news with Bufalino, reporting, "We signed the deal yesterday." And in late December 2012, Lightbody submitted a mortgage application to a bank stating that he owned a 13.5% interest in the "Monsanto Property" that would be worth $10 million within one year due to "Wynn's purchase."

208. Meanwhile, DeNunzio and Lightbody arranged to have fraudulent documents prepared to indicate that Lightbody had previously transferred his interest in FBT Everett to Gattineri in exchange for a $1.7 million promissory note—a mere fraction of the sum that Lightbody would receive from a $75 million transaction. Approximately one month later, Lohnes, Gattineri, the DeNunzio Group, and Lightbody signed FBT Everett's Operating Agreement, which had been backdated to January 1, 2012. The Operating Agreement stated that Lightbody had a 12.05% ownership interest in FBT Everett, and that his investment in the entity was approximately $1.1 million as of January 1, 2012.

209. As the January 15 deadline for filing the RFA-1 approached, Lightbody alerted Bufalino that Wynn would file its casino license application and pay the $400,000 application fee on January 14. Once again, Lightbody's statement was confirmed when Wynn filed its RFA-1 and paid the application fee on January 14, 2013.

210. Lightbody and Bufalino later reveled in the developments regarding the land. Lightbody asked if Bufalino had seen the "big, big news" in the newspaper that day, and commented, "They say we're the favorite by a long shot right now." Bufalino asked, "You're the favorite?" Lightbody replied, "Steve Wynn, to win the casino license. They said he's a big favorite."

9. <u>Chairman Crosby's Conflict of Interest regarding FBT Everett</u>

211. Wynn's submission of a casino application posed a serious ethical issue for Chairman Crosby because of his relationship with Lohnes.

212. The 40-year friendship between Chairman Crosby and Lohnes dated back to their service together in the National Guard in the 1970s.

213. In the early 1980s, Chairman Crosby asked Lohnes for financial support because his publishing company, the Crosby Vandenburgh Group, was struggling at that time. Lohnes came to his friend's aid, invested in the company, and then joined its executive team as the company's Treasurer while Chairman Crosby served as President. The two men were business partners for many years.

214. Over the past ten years, Lohnes and Chairman Crosby have maintained a close friendship, socializing on at least twenty occasions. In May 2012, around the same time that Wynn withdrew from Foxborough, Lohnes hosted a dinner party for Chairman Crosby and his wife. Lohnes surprised Chairman Crosby by inviting two of their ex-business partners from the Crosby Vandenburgh Group.

215. In approximately the same timeframe, in the summer of 2012, Hard Rock and Och-Ziff seriously considered using the former Monsanto Chemical Site as a casino site. Before Wynn became interested in Lohnes's land, Chairman Crosby had encouraged Hard Rock to submit a casino application in Region A.

216. Lohnes clearly recognized the obvious ethical problem. Before Wynn filed its RFA-1, Lohnes delicately broached the issue by requesting one of his ex-business partners from the Crosby Vandenburgh Group to privately notify Chairman Crosby of Lohnes's ownership interest in Wynn's proposed casino site.

217. Once Wynn filed its RFA-1, Chairman Crosby was required to recuse himself *immediately* from all Region A proceedings. Recusal was required by at least two of the Act's ethical provisions and the Enhanced Code of Ethics. First, Commissioners must disqualify themselves from proceedings in which their impartiality "might *reasonably be questioned*" (emphasis supplied). G.L. c. 23K, § 3(u). Second, Commissioners must "avoid impropriety and the *appearance of impropriety* in all matters under their jurisdiction" (emphasis supplied). G.L. c. 23K, § 3(u)(ii). And third, Commissioners must not participate in matters before the Commission that may affect the financial interest of a person with whom he had a significant relationship. Exhibit 1 at 9.A.

218. Chairman Crosby knew that Lohnes stood to earn tens of millions of dollars from the land transaction if the Commission issued the Region A casino license to Wynn. Even Chairman Crosby later acknowledged that Lohnes would reap a "windfall" profit from the sale of the property to Wynn. This posed a dangerous ethical situation for the Chair.

219. If the gaming license were awarded to Wynn, Chairman Crosby reasonably could be accused of helping Lohnes earn millions because Lohnes had helped bail out his failing business—a classic case of "*you scratch my back, and I'll scratch yours.*"

220. Yet Chairman Crosby inexplicably balked at the notion of recusal, further compounding his transgression by failing to disclose his conflict of interest in violation of 9.C of the Enhanced Code. Eight months later, Chairman Crosby was forced to reveal his relationship with Lohnes when questioned by the State Police.

10. ***Ex Parte* Communications between Wynn and the Commission at the Outset of Wynn's Suitability Investigation**

221. Chairman Crosby soon faced additional ethical issues involving improper communications with Wynn shortly after the Bureau began its suitability investigation of Wynn. The ethical proscriptions on Commissioners' participation in *ex parte* communications are relatively straightforward. Commissioners are required to "avoid *all* prohibited communications." G.L. c. 23K, § 3(u). Commissioners cannot partake in communications that a reasonable person would view as "likely to affect the Commissioner's judgment regarding an application." In addition, Commissioners must "take all reasonable actions necessary to avoid receiving such communications." Exhibit 1 at Section 22.A.

222. During the early stage of the suitability investigation, however, Chairman Crosby violated all of these rules by engaging in private discussions with Wynn concerning the scope and conduct of the Bureau's suitability investigation.

223. These improper communications appear to have commenced in mid-February 2013, when Mr. Wynn called Chairman Crosby to voice his "concerns" about

the suitability investigation. At that time, Wynn faced several pending shareholder lawsuits alleging that its board of directors had allowed potential violations of the Foreign Corrupt Practices Act in connection with the company's $135 million donation to a university in Macau. A true and accurate copy of the verified shareholder derivative complaint of one of the lawsuits is attached as Exhibit 11. The SEC was simultaneously investigating the donation by Wynn Macau, Ltd. to the University of Macau Development Foundation, as disclosed by Wynn's public filings. A true and accurate copy of Wynn's Form 8-K filing dated February 13, 2012 is attached as Exhibit 12.

224. On February 27, 2013, Chairman Crosby sent a letter to Mr. Wynn, thanking him for his personal call and promising to address the concerns that he had raised about the Bureau's investigation of his company. A true and accurate copy of Chairman Crosby's letter to Mr. Wynn dated February 27, 2013 is attached as Exhibit 13.

225. That same day, Wynn's representative sent an e-mail to Bureau Director Karen Wells "following up on [their] recent call." Wynn's representative informed Director Wells that Wynn was withholding certain documents regarding Macau that the Bureau had requested. In the e-mail, Wynn's representative further indicated that he wished to discuss Wynn's earlier request to remove Spectrum Gaming—a gaming consulting group hired by the Commission—from the investigation. A true and accurate copy of Wynn's representative's e-mail to Director Wells dated February 27, 2013 is attached as Exhibit 14.

226. At that time, it was well known in the casino industry that Spectrum Gaming was highly critical of casino operations in Macau. According to *Global Gaming Business Magazine*, Spectrum Gaming had issued a report linking VIP rooms at casinos

in Macau "to increased gambling addiction and the growth of organized crime." The *Global Gaming Business Magazine* article dated June 2, 2009 is attached as Exhibit 15.

227. The following day, February 28, 2013, Director Wells forwarded the e-mail from Wynn's representative to all of the Commissioners. Also on February 28, Mr. Wynn sent a letter to Chairman Crosby that simply stated, "I want to thank you for your time and clarity in your response to me." A true and accurate copy of Mr. Wynn's letter to Chairman Crosby dated February 28, 2013 is attached as Exhibit 16.

228. By late April 2013, the Commission had complied with Wynn's request, removing Spectrum Gaming from its suitability investigation and assigning the law firm of Michael & Carroll to the investigation in Spectrum Gaming's place. Michael & Carroll lacked experience evaluating casino operations in Macau, and had to engage a third-party consultant, Steve Vickers and Associates ("SVA"), to "support the Asian aspect" of Wynn's suitability investigation. A true and accurate copy of an e-mail dated April 27, 2013 containing excerpts of SVA's scope of work is attached as Exhibit 17.

11. Chairman Crosby's Advocacy regarding a Proposed Regulation to Benefit Wynn

229. By April 2013, there was little doubt that Chairman Crosby favored Wynn, when he played a central role in the Commission's adoption of a drastic change in a draft gaming regulation to benefit Wynn. The regulatory change championed by Chairman Crosby was initiated by Mr. Wynn, who reached out directly to the Chair.

230. The regulation in question was a central topic of a public hearing of the Commission held on December 11, 2012, before Wynn filed its RFA-1. The Commission adopted a "key policy" prohibiting a host community from conducting a referendum unless and until the Commission determined that an applicant was suitable.

At the meeting, Chairman Crosby forcefully defended the need for the policy:

> It's absolutely critically important that the communities not make final agreements with people who have not passed the background checks. *There's nothing more fundamental in our licensing and regulatory process than to make sure that the people who are in the game are people who we want in the game and will pass the most rigorous standards* (emphasis supplied).

Other Commissioners concurred; no Commissioner opposed the policy. A true and accurate copy of the transcript of the Commission's meeting dated December 11, 2012 is attached as Exhibit 18.

231. Following the hearing, the Commission prepared a draft regulation memorializing Chairman Crosby's position, which stated:

> A host community may not hold an election in accordance with M.G.L. c. 23K, § 15(13) until the commission has issued a positive determination of suitability to the applicant in accordance with 205 CMR 115.05(3).

A true and accurate copy of draft regulation 205 CMR 115.05 is attached as Exhibit 19.

232. Not surprisingly, Wynn strongly opposed the draft regulation, as it sought to quickly sign a host community agreement with the City of Everett. Wynn also wanted to conduct a referendum in Everett before the City of Boston could act on its proposed development and claim co-host community status. Such a claim would require simultaneous referenda in Everett and Boston if the City were deemed a host community to the proposed development. Wynn recognized that a positive vote by Everett would exert tremendous pressure on the Commission to find Wynn suitable, and then to convince Boston that it was merely a surrounding community.

233. Thus, Mr. Wynn called Chairman Crosby to lodge his objection. According to Mr. Wynn, he stated, "Mr. Chairman, with respect, my job is to help you. Do you understand the position we're in with respect to your law?"

234. Wynn's plan began to play out at a public meeting of the Commission held on April 4, 2013. In a complete about-face, Chairman Crosby shockingly proposed that the Commission reevaluate its position regarding holding host community referenda only after suitability decisions had been made, citing the City of Everett's interest in holding its election sooner. A true and accurate copy of the transcript of the Commission's meeting dated April 4, 2013 is attached as Exhibit 20 at 73-74.

235. The other Commissioners rejected the concept outright. One Commissioner strenuously opposed the proposed change, and even quoted Chairman Crosby's prior comments from the meeting on December 11, 2012. Chairman Crosby was left to comment that there was "a consensus" to "leave the reg[ulation] as it is." Exhibit 20 at 90.

236. But four days later, the Mayor of Everett sent a sharp letter to Chairman Crosby, vehemently protesting the Commission's decision against changing the draft regulation. Mr. Wynn and Wynn's General Counsel were copied on the correspondence. A true and accurate copy of the Mayor of Everett's letter to Chairman Crosby dated April 8, 2013, is attached as Exhibit 21.

237. Within a week of rejecting Chairman Crosby's proposed change to the draft regulation, the Commission met again to discuss a new "emergency" version of the regulation. The new "emergency" version *permitted* an applicant to enter into a host community agreement before the Commission rendered its suitability determination—precisely what Wynn and the City of Everett had requested. The Commission hastily scheduled a public meeting to occur on April 18, 2013 to vote on the "emergency" regulation. A true and accurate copy of the transcript of the Commission's meeting dated

April 11, 2013 is attached as Exhibit 22.

238. On April 17, 2013—the day before the Commission's vote—one of Wynn's private jets flew from Teterboro, New Jersey, to Boston.

239. On April 18, 2013, the Commission unanimously voted to approve the revised regulation. Once again, Chairman Crosby did Wynn's bidding and swayed the Commission.

240. On April 19, the day after the vote, Wynn's then-CFO and the Mayor of Everett signed a host community agreement. That afternoon, Wynn's private jet departed from Boston to Las Vegas.

12. The Bureau's Discovery of the Scheme to Defraud

241. Unbeknownst to the Commission, during the suitability investigation of Wynn, the Federal Bureau of Investigation ("FBI") and the U.S. Attorney's Office for the District of Massachusetts were investigating the land transaction between Wynn and FBT Everett. The federal probe focused on the ownership of the former Monsanto Chemical Site, including Lightbody's continued financial interest in the property. The federal government monitored the recorded calls between Lightbody and Bufalino.

242. Aware of the Bureau's suitability investigation of Wynn, in early July 2013, the FBI disclosed the Lightbody/Bufalino recordings to the Bureau. Thereafter, in coordination with the federal probe, the Bureau initiated an investigation of FBT Everett and its alleged owners, as required by the Gaming Act. G.L. c. 23K, §§ 6 and 14(a). In the Bureau's Report, the Bureau acknowledged it was "*statutorily required*" to investigate the sellers of the land as part of its investigation of Wynn's suitability. Exhibit 5 at 48.

243. The details of the Bureau's investigation that follow are based on the

Bureau's Report and the Commonwealth's Statement of the Case filed by the Massachusetts Attorney General in connection with the State Indictments in *Commonwealth v. Dustin DeNunzio, et al.*, Case Nos. MICR2014-1354, MICR2014-1353, MICR2014-1352 (Middlesex Sup. Ct. 2014). A true and accurate copy of the Commonwealth's Statement of the Case is attached as Exhibit 23.

244. The Bureau initially received information from the FBI that Lightbody, a convicted felon and a person with reputed ties to organized crime, had a continuing ownership interest in FBT Everett, and was taking actions to conceal his ownership from authorities. On July 9, 2013, the Bureau interviewed DeNunzio. Although the Bureau asked DeNunzio to identify everyone with a financial stake in FBT Everett, he did not mention Lightbody.

245. The next morning, DeNunzio called Lightbody and told him to inform DeCicco that he should not to talk to the Bureau. DeNunzio further counseled Lightbody to tell DeCicco that he (Lightbody) had been bought out a long time ago. Lightbody called DeCicco that afternoon, telling him of the Bureau's investigation and securing DeCicco's agreement that he would not speak with the Bureau. Lightbody added that the Bureau would not be able to identify him because his name was not on any paperwork.

246. On July 10, 2013, DeNunzio called the Bureau and stated that Lightbody had been an owner of FBT Everett at one time, but had been bought out of the company the previous summer. That same day, DeNunzio created two documents: a "Promissory Note" and a "Memorandum of Transfer." DeNunzio did this to convince the Bureau that the buy-out of Lightbody had occurred in the summer of 2012. DeNunzio backdated both documents to August 15, 2012. DeNunzio met Lightbody in Everett later that day to

obtain Lightbody's signature on the fraudulent documents.

247. DeNunzio then arranged to have his assistant obtain Gattineri's signature that evening. But before Gattineri had the chance to see the fraudulent documents, the Bureau interviewed him on July 10. Gattineri told the investigators that he had signed a promissory note with Lightbody in the summer of 2012, and either FBT Everett or its counsel had possession of it. Gattineri could not recall the details of the note, including the terms of his agreement with Lightbody, the interest he owed to Lightbody, or the payment date.

248. After his meeting with the Bureau, Gattineri met DeNunzio's assistant and signed the fraudulent documents. DeNunzio then arranged for the fraudulent documents to be delivered to the office of FBT Everett's attorney, who was on vacation.

249. On July 11, 2013, the Bureau interviewed DeNunzio a second time. DeNunzio denied that Lightbody had a continuing interest in FBT Everett after the summer of 2012. DeNunzio explained that documents existed evidencing Gattineri's acquisition of Lightbody's interest.

250. Both Gattineri and DeNunzio denied that Lightbody was an original owner of FBT Everett. Bank documents, however, showed that in September 2009, a month before FBT Everett was formed, DeNunzio was instrumental in obtaining financing for Lightbody to buy an ownership interest in FBT Everett.

251. After DeNunzio's interview on July 11, 2013, he met Lightbody and others for dinner at a restaurant in Boston. Lightbody had previously scheduled a meeting with the Bureau for the following afternoon.

252. On July 12, 2013, the Bureau interviewed Lightbody, who denied that the

other members of FBT Everett knew that he was an owner until well after the closing on the property in October of 2009. Lightbody denied having any continuing ownership interest in the property. He claimed to have signed a promissory note with Gattineri, transferring his interest in FBT Everett to Gattineri. Lightbody described the terms of the promissory note, stating that it was executed in July or August of 2012. Lightbody explained that he had sold his interest in FBT Everett because he lacked funds to meet his financial obligations as an owner. He offered to provide the Bureau with copies of checks to substantiate payments he made as part of FBT Everett capital calls.

253. On July 16, 2013, at a second meeting between the Bureau and Lightbody, the Bureau asked whether Lightbody had signed any documents for FBT Everett. Although Lightbody had signed documents just six days earlier, he answered that he had not done so within the last year.

254. When FBT Everett's attorney returned from vacation, he was surprised to learn that the documents dated August 15, 2012 had the same unique document control number that appeared on the documents he had prepared for DeNunzio in December of 2012. The attorney explained to DeNunzio that the August documents could not have the same unique document control number as the December documents. DeNunzio then instructed the attorney to prepare new documents dated August 15, 2012. FBT Everett's counsel did so after DeNunzio assured him that an actual transaction had occurred in August 2012. DeNunzio instructed his assistant to deliver the second set of fraudulent documents to Lightbody and Gattineri for their signatures.

255. After DeNunzio's assistant left FBT Everett's attorney's office with the documents, the FBI stopped him and seized the documents. The assistant later spoke

with DeNunzio, who told him that it was a high priority to get the documents signed because the Bureau was expecting them.

256. By the end of July 2013, the Bureau had compiled a mountain of incriminating evidence establishing that the owners of FBT Everett, including Lightbody, were attempting to perpetrate a fraud on the Commission and the Commonwealth, and that they had attempted to obstruct the Bureau's investigation. By late July 2013, the Bureau informed Wynn of these developments, advising Wynn that they posed "a potential hurdle to its suitability." Exhibit 5 at 89.

257. Contrary to the Bureau's characterization, the evidence did not merely pose a "hurdle" to Wynn's suitability—it was an outright bar. The Bureau knew that Wynn could not possibly establish the integrity of FBT Everett, its members, transferees of its members' interests, its directors, and its managers, as required by the Act. G.L. c. 23K, § 12(b). Moreover, the Bureau knew that neither Wynn nor FBT Everett could establish the suitability of FBT Everett, its members, transferees of its members' interests, its directors, and its managers. G.L. c. 23K, § 13(a).

258. There was clear and convincing evidence that FBT Everett failed to meet the suitability requirements of Section 12 of the Gaming Act because it:

(1) lacked integrity, honesty, and good character under G.L. c. 23K, § 12(a)(1);

(2) failed to meet the Act's standards of integrity and background under G.L. c. 23K, § 12(a)(2); and

(3) failed to demonstrate sound business practices under G.L. c. 23K, § 12(a)(3).

259. There was clear and convincing evidence that FBT Everett also failed to meet the suitability requirements of Section 16 of the Gaming Act because:

(1) an owner of FBT Everett had been convicted of a felony (G.L. c. 23K, § 16(a)(i));

(2) FBT Everett had committed acts that formed a pattern of misconduct, rendering it unsuitable under G.L. c. 23K, § 16(a)(iii); and

(3) owners of FBT Everett had close associates who would not qualify for a license or whose relationship with the FBT Everett posed an injurious threat to the interests of the Commonwealth under G.L. c. 23K, § 16(a)(iv).

260. The Bureau further determined that FBT Everett did not cooperate during its investigation, and that its members refused to answer questions or produce information, evidence, or testimony. G.L. c. 23K, § 13(b). In that regard, the Bureau concluded that certain members of FBT Everett had willfully withheld information from the Commission, and knowingly gave false and misleading information to the Commission, which precluded a finding of suitability. G.L. c. 23K, § 13(c).

261. On August 9, 2013, the Bureau formally reported this evidence to the Commissioners during an executive briefing. There was no suggestion that Wynn would cut ties with FBT Everett and seek another site. Rather, it intended to proceed with the former Monsanto Chemical Site as the location for its proposed casino. At that time, the Gaming Act required the Bureau to "cease any further review and recommend that the commission deny [Wynn's] application." G.L. c. 23K, § 12(b). The Bureau violated the Gaming Act both by (1) failing to cease its suitability investigation of Wynn and (2) failing to recommend to the Commission that it deny Wynn's application.

262. Given the Commission's knowledge of the evidence and the situation, it too was required to immediately halt all proceedings pertaining to Wynn's application and to deny the application. Moreover, as an independent regulator with a self-stated mission of creating a fair, transparent and participatory process for implementing the law,

the Commission should have publicly disclosed the attempted fraud. Instead, the Commission refused to enforce its obligations under the Gaming Act, thereby violating the law. G.L. c. 23K, §§ 12 and 16.

263. Two weeks later, on August 21, 2013, the Massachusetts State Police interviewed Chairman Crosby and questioned him about his relationship with Lohnes. The next day, August 22, 2013, Chairman Crosby finally disclosed his relationship with Lohnes to the State Ethics Commission in a "Disclosure of Appearance of Conflict of Interest as Required by G.L. c. 268A, § 23(b)(3)." A true and accurate copy of Chairman Crosby's disclosure is attached as Exhibit 24.

264. But Chairman Crosby's disclosure was incomplete and downplayed his relationship with Lohnes. He acknowledged that Lohnes had invested in his company 30 years earlier, but did not reveal that, in addition to providing necessary capital to Chairman Crosby's struggling business, Lohnes had served as Chairman Crosby's business partner and as Treasurer of his company for many years. In his disclosure, Chairman Crosby further claimed to have "socialized" with Lohnes only "5-10 times" since 1990, but Lohnes has confirmed that they met approximately 20 times over the past ten years.

265. Chairman Crosby also should have recused himself from all Region A proceedings, as required by Section 3(u) of the Act and Sections 9.A and 9.C of the Enhanced Code of Ethics. He refused to do so, and continued to participate.

13. The Dispute between Wynn and the City of Boston regarding Boston's Status as a Host Community

266. In the months following Wynn's filing of its RFA-1, Boston began assessing the many adverse impacts that Wynn's proposal would have on the City. To

that end, Boston expended considerable funds and resources on transportation, environmental, and legal consultants to evaluate Wynn's proposal, as contemplated by the Gaming Act. G.L. c. 23K, § 15(11).

267. The City had heightened concern about the proposal's impact on traffic in Charlestown. The vast majority of casino patrons would be required to travel on Rutherford Avenue and through Sullivan Square, an area plagued by severe congestion for many years.

268. As Boston closely evaluated Wynn's proposed site, it was evident that Horizon Way—in Boston—provided the only access to and egress from the site. This rendered Boston a host community with the right to vote on whether Wynn's application could proceed. G.L. c. 23K, § 2.

269. A dispute regarding the City's status soon arose when Boston informed Wynn of its host community status. Wynn insisted that the City was merely a surrounding community, claiming that its proposed casino would be located entirely in Everett. Wynn represented that it would construct a new driveway on the MBTA's adjacent land in Everett. Wynn, however, had no ownership of or control over the property. Wynn declined to provide Boston with key information regarding its proposal, and adamantly refused to conduct discussions unless the City conceded that it was a surrounding community. A true and accurate copy of the letter from Wynn to the City dated August 9, 2013, is attached as Exhibit 25.

270. The Commission became aware of the dispute, and scheduled a public hearing for September 4, 2013 to address the City's status. Since the Commission already knew of FBT Everett's unsuitability, the scheduling of the public hearing was a

sham. Boston's status relative to Wynn's application was moot because Wynn's application was no longer viable.

271. The Commission, nevertheless, held the hearing, continuing to withhold information about FBT Everett's unsuitability from the City of Boston and the public. This lack of transparency and failure to adhere to the law caused the City to needlessly expend public resources and funds to prepare for and attend the sham hearing.

272. At the hearing, Wynn maintained that its proposed development would be located entirely in Everett. It presented a site plan showing a sketch of a hypothetical driveway on the MBTA's land in Everett, which Wynn neither owned nor had under agreement.

273. When the Commission inquired about Wynn's proposed access, Wynn vacillated, noting that it was "in discussions with the abutter regarding that land." Wynn then admitted that its "proposed access" was in question, acknowledging that "access is something that we continue to work on" and that "the geometry of that access continues to be a point of discussion." The dispute remained unresolved. A true and accurate copy of the transcript of the hearing on September 4, 2013 is attached as Exhibit 26.

14. The Commission's Unauthorized Efforts to Salvage Wynn's Application

274. By the mid-summer of 2013, the Commission was faced with a serious dilemma: the law required the Commission to oust Wynn, but Wynn was its favored applicant. Rather than implement and enforce the law, the Commission instead chose to commit *ultra vires* acts to save Wynn's application. In the ensuing months, the Commission, including its Bureau, collaborated with Wynn behind closed doors to "fix" Wynn's FBT Everett problem. These secret discussions were "prohibited

communications" that violated the Gaming Act and the Enhanced Code of Ethics.

a. Improper Reformulation of the Land Deal

275. The central feature of the Commission's self-labeled "cure" for Wynn's FBT Everett problem involved reformulating the land deal between Wynn and FBT Everett. The reformulated land deal was embodied in an amendment of the Option Agreement known as the "Ninth Amendment." A true and accurate copy of the Ninth Amendment is attached as Exhibit 27.

276. The Ninth Amendment had two key provisions. First, the Commission and Wynn lowered the purchase price that Wynn would pay FBT Everett from $75 million to $35 million, of which $10 million was reserved for environmental clean-up. The Commission's rationale for the $50 million price reduction was that it reflected the difference between the value of the property as a casino and its best non-casino use.

277. Second, the Commission and Wynn inserted a clause requiring FBT Everett's alleged owners—Lohnes, DeNunzio, and Gattineri—to sign under oath a Confirmation of Representation verifying that they were the sole owners of FBT Everett and would be the only beneficiaries of the proceeds of the land sale. The Confirmation of Representation stated:

> Schedule 3 is a true and accurate list of (i) each person with a legal or beneficial ownership interest, direct or indirect, in Seller (a "Beneficiary"), (ii) the percentage interest in Seller of each such Beneficiary, and (iii) the address of each Beneficiary. Neither Seller nor any Beneficiary has made, or has any agreement, whether oral or written, to make, any payments to any other person or entity from the proceeds of the Agreement including, without limitation, any of the option payments made pursuant to Section 2.2 or any portion of the Purchase Price.

278. Schedule 3 listed Lohnes, the DeNunzio Group, and Gattineri. It did not include Lightbody or DeCicco.

279. The $50 million reduction of the purchase price was premised on flawed assumptions and gave Wynn a tremendous financial windfall.

280. To support the price reduction, the Commission and Wynn relied on an appraisal report of the property prepared by Colliers International ("Colliers"), a respected commercial real estate company. At Wynn's direction, Colliers valued the former Monsanto Chemical Site at $35 million based on the assumptions that the property was environmentally clean and available for development to its highest and best non-casino use. A true and accurate copy of the report prepared by Colliers International is attached as Exhibit 28.

281. As Colliers observed, the assumptions were "contrary to what is known by the appraiser to exist." The highest and best use of the property had to be based on the actual state and condition of the property—a toxic chemical waste site—not on a fictitious, environmentally pristine site. There also was no basis to assume that FBT Everett's expenditure of $10 million to remediate the land would yield an environmentally clean property.

282. Colliers carefully qualified its valuation, pointing out that it was based on "Hypothetical Conditions" that "are contrary to what is known by the appraiser to exist," and "Extraordinary Assumptions," which "presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property."

283. Regardless of the meaningless hypothetical valuation, any reduction in the purchase price to eliminate the "casino profit" was a smoke screen—it had no impact on the unsuitability of FBT Everett and Wynn. Most significantly, the Commission endorsed a revised purchase price that still permitted the corrupt land owners to *triple*

their investment and earn more than a *200% profit* on the sale of their land to Wynn. This act alone was a reprehensible violation of the Act.

284. The second condition—signing the Confirmation of Representation—was simply nonsensical. It did not prevent Lightbody or any other undisclosed person from profiting from the sale of the land to Wynn. It was predicated on the "truthfulness" of three individuals who had attempted to defraud the Commission and obstruct the Bureau's investigation. Having already determined that FBT Everett's alleged owners were *untruthful* people who had committed unlawful acts, the requirement that they sign sworn certifications was meaningless. Wynn and FBT Everett executed the Ninth Amendment on November 26, 2013.

285. After the Commission, the Bureau, and Wynn collaborated to devise the "cure" to Wynn's FBT Everett problem, they decided that Wynn then would then file a petition with the Commission to make it appear to the public as though Wynn alone was proposing the "cure" for the Commission's consideration in the context of a public hearing.

286. The plan was to delay disclosure of the facts and circumstances regarding Wynn's FBT Everett problem until the eve of Wynn's suitability hearing, which was scheduled for December 16, 2013. By doing so, the Commission would effectively hinder any interested party—including the public—from scrutinizing the evidence and challenging Wynn's suitability based on FBT Everett's unsuitability.

287. This entire "cure" was based on a wholly improper, backroom deal between the Commission—*the regulator*—and Wynn, the applicant. The Gaming Act prohibits the Commission from engaging in *ex parte* communications with an applicant to

circumvent the strictures of the law. The "fix" to Wynn's FBT Everett problem was the product of unauthorized *ultra vires* conduct, which irreparably corrupted the gaming licensing process.

b. Further *Ex Parte* Communications between Chairman Crosby and Wynn

288. The Commission's secret discussions with Wynn to rectify its FBT Everett suitability problem, however, were not enough to mollify Wynn. On October 17, 2013, at a public hearing of the Commission, Mr. Wynn voiced concern that if the Commission awarded the license to Wynn and Wynn incurred the cost of developing a casino, the Commission might later determine that Wynn had a "bad guy" involved in its Macau operations, which would cause "big trouble" in Massachusetts:

> We're scared to death, Chairman. We're scared to death that—not that you won't pick us, that you will and there goes a billion three or a billion five. Less [*sic*] someone jumps up later and says did you know that that subjunket operator from Fujian is a bad guy and he got licensed anyway and you didn't catch it and now you're in big trouble in Massachusetts. Oh, my God.

A true and accurate copy of the transcript of the Commission's meeting dated October 17, 2013 is attached as Exhibit 29 at 169.

289. Shortly after the hearing, Mr. Wynn and Chairman Crosby engaged in yet another *ex parte* communication. According to media reports, Chairman Crosby, accompanied by another Commissioner, returned Mr. Wynn's call, and they discussed the possibility that Wynn would withdraw from the Region A licensing process. Although the media report did not provide all details of the discussion, after the call, Wynn promptly dropped its threat. True and accurate copies of articles from *The Boston Globe* dated January 3, 2014, and the *Las Vegas Review-Journal* dated January 2, 2014 are attached as Exhibit 30.

290. Months later, when the call was publicly-disclosed, both Mr. Wynn and Chairman Crosby both confessed that it had occurred. *The Boston Globe* reported that it had interviewed Chairman Crosby and he acknowledged, "Wynn called me all the time." A true and accurate copy of *The Boston Globe* article dated January 23, 2014, is attached as Exhibit 31.

15. The Commission's Disparate Treatment of Sterling Suffolk and Wynn

291. Although the Commission found ways to eliminate and ignore obstacles to Wynn's suitability, it treated the other Region A applicant, Sterling Suffolk, quite differently. The Commission and the Bureau went out of their way to torpedo Sterling Suffolk's application by attacking the suitability of Caesars Entertainment Corporation ("Caesars"), the operator of Sterling Suffolk's proposed casino. The Bureau had determined that Caesars was a qualifier of Sterling Suffolk.

292. At the same time that the Commission was working with Wynn to "cure" its FBT Everett problem, the Bureau aggressively challenged Caesars's suitability based on a trademark licensing agreement that a subsidiary of Caesars had entered into with a subsidiary of Gansevoort Hotel Group, LLC. The Bureau cited unsubstantiated rumors regarding alleged criminal activities of a principal of the hotel group.

293. Unlike the convicted felons involved in FBT Everett, the Gansevoort principal had never been convicted of a crime. Moreover, Caesars had comprehensively investigated the rumors about the Gansevoort principal, leading the Bureau to acknowledge that Caesars's compliance department had conducted appropriate due diligence and informed its compliance committee that the matter had been investigated, but not substantiated. However, the Bureau criticized Caesars's decision-making in proceeding with the license agreement despite the unsubstantiated allegations regarding

the Gansevoort principal.

294. The Bureau adopted this hardline approach even though the trademark licensing agreement was unrelated to the proposed Region A gaming establishment. When Caesars learned that this issue was a potential obstacle to its suitability, its subsidiary cancelled the trademark licensing agreement. Nevertheless, the Bureau advised the Commission that Caesars, a qualifier of Sterling Suffolk, had not established its suitability by clear and convincing evidence.

295. But unlike Wynn, Sterling Suffolk was not offered the opportunity to "cure" this problem or to demonstrate that it was unaware or played no role in the alleged misconduct of the Gansevoort principal. The Bureau simply determined that Sterling Suffolk had failed to demonstrate the suitability of a qualifier, which barred a positive suitability determination for Sterling Suffolk if Caesars remained a part of its application. Wynn, by contrast, was given a free pass and a "cure."

296. Upon learning of the Bureau's conclusion, Caesars was forced to withdraw from Sterling Suffolk's application.

297. The vastly different standards by which the Bureau judged Wynn and Sterling Suffolk cannot be reconciled. The Commission's disparate treatment of Wynn and Sterling Suffolk provides yet another example of the Commission's extraordinary manipulation of the gaming licensing process to favor Wynn.

16. <u>The Media's Disclosure of Wynn's FBT Everett Problem</u>

298. The plan to delay public disclosure of Wynn's FBT Everett problem until the eve of Wynn's suitability hearing was foiled on November 21, 2013, when *The Boston Globe* reported that a federal grand jury and two state agencies were investigating whether Lightbody had a hidden ownership interest in FBT Everett's property. *The*

Boston Globe revealed the land ownership issues that the Commission and Wynn had withheld from the public since July 2013. A true and accurate copy of *The Boston Globe'*s article dated November 21, 2013 is attached as Exhibit 32.

299. Having learned of the imminent publication of the article, Wynn was forced to acknowledge to the press its behind-the-scenes collaboration with the Bureau:

> [I]n cooperation with the IEB, we have agreed with the sellers to amend our option agreement to clearly confirm ownership and to reduce the option price to reflect fair market value without casino use.

In this manner, Wynn confirmed that it had already worked out a deal with the Bureau. Wynn further stated that it intended to petition the Commission for approval of its action, thereby attempting to create the impression that the Commission had not already participated in and blessed the "cure." A true and accurate copy of Wynn's statement to WBZ-TV dated November 21, 2013, is attached as Exhibit 33.

300. Though Chairman Crosby should have had no role in the Region A licensing process due to his disqualifying conflict of interest, he remarkably defended Wynn to the press with the following partisan comments: "*It didn't have anything to do with Wynn . . . This is nothing Wynn knew anything about.*" A true and accurate copy of *The Boston Globe* article dated December 8, 2013 is attached as Exhibit 34. Chairman Crosby's conclusory comments absolving Wynn of any wrongdoing established that the Commission already had determined the outcome of Wynn's petition, which had yet to be filed.

301. On December 5, 2013, as planned, Wynn submitted a document titled "Petition Regarding Everett Land Transaction" ("Wynn's Petition") to the Commission. Wynn's Petition asserted that its purpose was "to request a response from the

Commission regarding a proposed resolution to concerns raised by the Division of Investigation/Enforcement of the Massachusetts Gaming Commission." A true and accurate copy of Wynn's Petition dated December 5, 2013 is attached as Exhibit 35.

302. Noting that the Bureau had raised concerns about undisclosed interests in FBT Everett, Wynn wrote that the Bureau's "investigation indicated that Wynn did not have knowledge of any undisclosed interests." But at that time, the Bureau's Report setting forth its conclusions had not even been issued yet.

303. Wynn's Petition described the terms of the "cure" for its FBT Everett problem. Wynn purported to seek the Commission's "determination regarding the proposed resolution to the concerns raised" by the Bureau. Yet Wynn and FBT Everett already had signed the Ninth Amendment well before Wynn filed its petition.

304. That day, the Commission posted Wynn's Petition on its website, noting that Wynn had "requested an opportunity to address the Massachusetts Gaming Commission, to discuss Commission approval of a proposed resolution of concerns raised by [the Bureau] involving Wynn's option to purchase land in Everett." A true and accurate copy of the Commission's blog post dated December 5, 2013 is attached as Exhibit 36.

305. In the same post on December 5, Chairman Crosby announced his recusal from "the Commission's decision-making process involving Wynn's land option." He stated:

> Although I believe I have met all the requisite legal and ethical standards so that I could be involved in the resolution to this land issue, and I have no doubt about my ability to be objective on the issue of the land option, it is due to my intense commitment to the integrity of the overall licensing process, that I have made the decision not to participate in this upcoming decision.

. . .

> Meanwhile I will continue to participate in the important decision-making for the completion of the licensing process for the state's . . . resort-casino licenses in Eastern and Western Mass.

306. Chairman Crosby's belated and improperly-limited recusal was a ruse. For months, the Commission and the Bureau—led by Chairman Crosby—had been jointly formulating a "cure" for Wynn's FBT Everett problem with the applicant. When the story about the FBT Everett problem first surfaced in the press in late November 2013, Chairman Crosby acknowledged the Commission's active involvement, stating, "*We are investigating this. We have been for some time.*"

17. <u>The Staged Hearing on Wynn's FBT Everett Problem</u>

307. On December 5, 2013, the Commission scheduled a public hearing to address Wynn's Petition on December 13, 2013, just three days before Wynn's suitability hearing. This gave the public and any concerned party little, if any, opportunity to understand the issue, formulate a response, and meaningfully participate.

308. At the outset of the hearing, the Commission announced that its purpose was "to explore the issues surrounding a *land transaction* between FBT, LLC [*sic*] and . . . Wynn MA, LLC dealing with land in Everett on which Wynn, the applicant for a class Category 1 gaming license wishes to build its property" (emphasis supplied).

309. While Wynn and the Commission couched the purpose of the hearing in terms of the land transaction, the only relevant issue was FBT Everett's unsuitability, and how it rendered Wynn unsuitable. Yet the Commission insisted that "the investigation has been completed and this is *not* part of the suitability hearing" (emphasis supplied). A true and accurate copy of the transcript of the Commission's hearing on December 13, 2013 is attached as <u>Exhibit 37</u> at 2.

310. Consistent with the plan, the Commission conveyed the misleading impression to the public that this hearing was the Commission's first opportunity to evaluate and consider Wynn's proposed "cure" for its FBT Everett problem:

> We'll hear from the IEB to begin, then we'll here [*sic*] from the applicant's representatives. We'll have an opportunity for the commissioners to ask questions, and then at the end we will have a discussion among the commissioners ourselves and announce the result of our conclusions based on the hearing.

311. The Commission did not, of course, disclose to the public that it had been an active participant in and co-architect of the resolution. However, during the course of the hearing, Wynn's General Counsel disclosed this fact by thanking the Bureau on the record for "helping us to craft a proposed curative action in the effort to continue to move our application forward."

312. The Commission's primary objective at the hearing was to execute a choreographed plan to convince the public that FBT Everett was at fault, Wynn was not to blame, and Wynn should be permitted to use the former Monsanto Chemical Site as the location for its proposed casino. This flawed approach ignored the suitability requirements of the Act and mischaracterized Wynn's culpability in creating the problem in the first place.

313. The Bureau's Report was the tool through which the Bureau and Commission portrayed FBT Everett and its owners as perpetrators of a fraud, while simultaneously exonerating Wynn from any knowledge of, or participation in, the wrongdoing. It was a slanted document, written in a manner to confirm the predetermined outcome.

314. To that end, the Bureau's Report provided a detailed summary of evidence

obtained during the Bureau's investigation demonstrating that FBT Everett and its owners had engaged in a scheme to defraud regarding the ownership of the former Monsanto Chemical Site. As to Wynn, the Bureau's Report further concluded: "No evidence whatsoever was developed that suggested any involvement or knowledge of the applicant or any of its qualifiers, principals, or key representatives in the cited misconduct."

315. Director Wells was the primary advocate for the Commission at the hearing. Before delivering a prepared statement of the evidence, she conceded that the Bureau was "statutorily required" to examine "the land ownership of the property . . . for purposes of [Wynn's] suitability investigation." Indeed, the Gaming Act required the Commission to determine the suitability of FBT Everett and its owners because they "had a financial interest in Wynn's proposed gaming establishment." G.L. c. 23K, § 14(a).

316. Relying on the Bureau's Report, Director Wells provided a lengthy summary of evidence confirming the unsuitability of FBT Everett, its members, transferees of its members' interests, its directors, and its managers, highlighting the following facts:

(1) FBT Everett withheld material information from Wynn and the Bureau;

(2) FBT Everett provided false and deceptive information and documents;

(3) At least one seller, Lightbody, had a significant criminal history and took affirmative steps to conceal his interest in the transaction;

(4) Lightbody may have retained an interest in the Everett property well after the applicant had been advised that he had been removed;

(5) Lightbody may have a legal reversionary interest in the event Anthony Gattineri does not repay his promissory obligations;

(6) One document evidenced a transfer of DeCicco's ownership interest in FBT Everett to Lightbody in April of 2012;

(7) DeCicco's ownership interest in FBT Everett was not identified in FBT Everett's operating agreement dated January 2012;

(8) The Mayor of Everett reported that Lightbody was excited about Everett's overwhelming approval of Wynn's proposal in June 2013;

(9) The Mayor of Everett further confirmed that, as of mid-2013, Lightbody was "still involved" and would financially benefit from the FBT transaction;

(10) Gattineri and DeCicco asserted their Fifth Amendment privileges against self-incrimination and refused to testify before the Bureau; and

(11) Lightbody also refused to appear and provide testimony under oath to the Bureau.

317. This summary constituted incontrovertible evidence that FBT Everett was unsuitable, and conclusive proof that Wynn could not establish FBT Everett's integrity. Under these circumstances, the Bureau was required to "cease any further review and recommend that the commission deny [Wynn's] application," which should have happened back in July 2013. G.L. c. 23K, § 12(b). Director Wells made no mention of the Bureau's statutory duty to halt its suitability investigation.

318. Instead, Director Wells attempted to circumvent the Act's suitability requirements and reframe the legal issue by introducing a non-existent, bogus exception to, or exemption from, the Act to extricate Wynn from its FBT Everett problem. In that regard, she testified that a key aspect of the investigation was "to conclusively determine if the applicant had any complicity or knowledge of the misconduct and/or concerns outlined in the report by the sellers of the property." In effect, Director Wells impermissibly imported concepts of criminal law into Wynn's suitability determination as a means to raise the bar for finding Wynn unsuitable.

319. This newly-minted standard provided no safe harbor for Wynn, as it sharply conflicted with the Gaming Act's requirement that the applicant establish "the integrity of all persons required to be qualified for licensure by the Commission." G.L. c. 23K, § 12(b). Under the law, the question was whether FBT Everett was unsuitable, not whether Wynn knew about it or participated in the wrongdoing, which would have provided an independent basis to disqualify Wynn and report Wynn to law enforcement. G.L. c. 23K, § 4(30). The Bureau's duty was to enforce the Act, not to fabricate an exception to, or exemption from, the law to benefit a favored applicant.

320. Director Wells then made the erroneous, categorical statement that "[n]o evidence whatsoever was developed that suggested any involvement or knowledge of the applicant regarding the conduct at question in this part of the investigation."

321. But even under Director Wells's contrived exemption, the Bureau's investigation had uncovered ample evidence that Wynn knew, should have known, or chose to be willfully blind to the fact that a convicted felon (DeCicco) had an ownership interest in the former Monsanto Chemical Site, and that a second convicted felon (Lightbody) had an ownership interest in the property when Wynn signed the Option Agreement and filed its RFA-1.

322. The doctrine of willful blindness is well-established in criminal law. As observed by the United States Supreme Court, "[m]any criminal statutes require proof that a defendant acted knowingly or willfully, and courts applying the doctrine of willful blindness hold that defendants cannot escape the reach of these statutes by deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances." *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068-69

(2011).

323. During the Bureau's investigation, at least three witnesses testified that FBT Everett's attorney had informed Wynn that—in addition to DeCicco—a *second* convicted felon had been a member of FBT Everett. There was evidence that the second convicted felon was identified as Lightbody.

324. In addition, Director Wells failed to disclose that Wynn strategically avoided conducting any meaningful due diligence regarding the ownership of the former Monsanto Chemical Site.

325. Director Wells effectively condoned Wynn's failure to request FBT Everett to produce corporate documents that FBT Everett was required to maintain by law, including: (1) a current list of the full names of each member and manager of FBT Everett; (2) copies of FBT Everett's income tax returns for the past 3 years; (3) copies of FBT Everett's operating agreement; (4) FBT Everett's financial statements for the past 3 years; and (5) records regarding ownership interests (such as DeCicco's and Lightbody's alleged transfers of their interests) and capital contributions by each member. G.L. c. 156C, § 9(a). Director Wells even acknowledged that there was existing documentary proof that DeCicco had transferred his interest in FBT Everett to Lightbody. Those documents would have revealed Lightbody's existing ownership.

326. Director Wells failed to disclose that a basic Internet search of publicly-available documents uncovered proof that FBT Everett's owners had engaged in numerous additional business ventures with DeCicco, and that DeCicco and Lightbody were business partners.

327. Finally, Director Wells failed to disclose Wynn's cavalier approach to, and

lack of respect for, its statutory due diligence obligations under the Gaming Act. During the Bureau's investigation, Wynn's then-CFO dismissed the significance of the Bureau's probe concerning the ownership of the former Monsanto Chemical Site, testifying that it was a "*waste of time*." He further testified that he was even unaware that the Gaming Act required Wynn to conduct due diligence of the historical ownership of the proposed site of its gaming establishment.

328. Wynn's General Counsel echoed Wynn's then-CFO's sentiments, testifying, "I don't know that a licensee is responsible for whatever happened to a piece of dirt since the beginning of time." The comments and conduct of both Wynn's then-CFO and General Counsel during the investigation cast doubt on their own suitability. G.L. c. 23K, § 23(b).

329. The independent regulator grossly mischaracterized to the public the evidence of Wynn's knowledge and its instrumental role in causing this debacle, while carefully omitting reference to evidence that undermined the Commission's objective.

330. The Bureau's portrayal of the evidence was not due to sloppy or careless reporting. Rather, the Bureau used carefully-crafted language in its report to create a legally erroneous distinction between Wynn's knowledge and the knowledge of Wynn's representatives, stating:

> [C]onflicting information was presented as to whether Lightbody's name was also provided or discussed at this time, although no evidence was developed whatsoever that indicated that Lightbody's name, criminal history and certainly involvement in this transaction *was ever relayed or disclosed to the applicant by its representatives* at this time (emphasis supplied).

331. Under well-established principles of agency law, the knowledge of Wynn's authorized representatives was imputed to Wynn.

332. Irrespective of the Bureau's mischaracterization of the evidence, the entire discussion of Wynn's knowledge was irrelevant under the Act. What *was* highly relevant was the evidence demonstrating that FBT Everett was unsuitable, and that Wynn could not—and did not—establish FBT Everett's integrity.

333. The Bureau's Report also was legally flawed because it omitted FBT Everett from the list of Wynn's qualifiers, and failed to include any discussion or recommendation regarding FBT Everett's suitability. The Commission was required to qualify FBT Everett for licensure because FBT Everett had a financial interest in Wynn's gaming establishment. G.L. c. 23K, § 14(a).

334. As planned, the hearing was a staged production. Predictably, the Commission rubber-stamped the "cure" that it had formulated jointly with Wynn, resulting in a tremendous $50 million windfall for the favored applicant.

335. The extraordinary means that the Commission employed to salvage Wynn's defunct application were antithetical to the Commission's role as an independent regulator and violated several provisions of the Act and the Enhanced Code of Ethics.

18. <u>The Staged Hearing on Wynn's Suitability</u>

336. Three days later, the Commission held an adjudicatory proceeding on Wynn's suitability. The Commission had predetermined the outcome, deciding that Wynn was suitable. The two hearings were back-to-back charades. Like the earlier hearing on Wynn's FBT Everett problem, the suitability hearing was carried out to create the appearance that the Commission was performing its obligations under the Act.

337. The Commission's suitability determination ignored undisputed testimony of Wynn's own witnesses, who unwittingly gave evidence of Wynn's perfunctory and substandard investigation of FBT Everett and its owners. Wynn attempted to portray its

compliance unit as sophisticated and thorough. Wynn's General Counsel boasted that compliance was "an essential part" of Wynn's "entire corporate culture" and was critical to identifying and addressing problems:

> If one is to conduct one's business with integrity and in an ethical manner, compliance becomes part of what you do. And it shows up in very many ways. As Mr. Wynn also noted is the key for us on compliance is to be anticipatory. We try to develop an infrastructure before we start an area of operations that equips us to identify problems to stop them from happening. Of course, being imperfect, and dealing with imperfect people, problems will arise. And the hallmark of a good compliance program is being able to identify those problems and deal with them in a reasonable way.

She also acknowledged that Wynn, as a licensee, "is responsible for the entity or the person with whom [Wynn had] a commercial relationship." A true and accurate copy of the transcript from the Commission's hearing on December 16, 2013 is attached as Exhibit 38 at 49-50, 113.

338. James Stern, Wynn's Senior Vice President and Head of Corporate Security, also touted Wynn's ability to conduct superior background investigations:

> Getting to the intensive background initiatives that we have, I think they speak for themselves from World-Check, etc. We are very thorough. All of our reports are sent to the regulators and enforcement agencies. We do maintenance checks. We do them every six months. In addition, to the checks that we have access to, we also because of our law enforcement background, we glean and extrapolate intelligence information from our law enforcement sources, etc. All of that information is put into our reports.

Exhibit 38 at 64-65.

339. Yet, when pressed to provide details of its investigation of FBT Everett and its owners, Wynn's witnesses faltered. Wynn's shoddy investigation was unveiled during questioning of Wynn's General Counsel by the Commission's outside counsel. First, she admitted that "there was not [*sic*] particular diligence done with respect to DeCicco." Exhibit 38 at 101. Second, when asked to recount her conversation with

DeNunzio regarding what had happened to DeCicco's ownership interest in FBT Everett, Wynn's General Counsel confessed:

(1) she did not ask DeNunzio what had happened to DeCicco's ownership interest in FBT Everett;

(2) she did not ask DeNunzio to whom DeCicco had conveyed his interest; and

(3) she did not ask DeNunzio to provide documents that reflected DeCicco's transfer of his interest.

Exhibit 38 at 104.

340. Notably, Wynn's General Counsel testified that, between January and July 2013, she had no "curiosity" about what had happened to DeCicco's interest in FBT Everett. Exhibit 38 at 110. She did, however, acknowledge that it would be a "concern" if people with whom Wynn had a relationship were associated with convicted felons or those with unsuitable backgrounds. Exhibit 38 at 114.

341. When the Commission's outside counsel questioned Mr. Stern regarding Wynn's investigation, he claimed that Wynn had "backgrounded the current owners of the property" and "use[d] all of the resources that we had access to." Exhibit 38 at 108. According to the PowerPoint presentation that Wynn submitted regarding its global compliance program, Wynn's "Intensive Background Checks" included probes of "property ownership," "criminal records," and "local intelligence," among other inquiries. But when counsel asked Mr. Stern about specifics of the background checks conducted on FBT Everett, he floundered, providing evasive responses with no recollection of the facts. Exhibit 38 at 109. A true and accurate copy of Wynn's PowerPoint presentation dated December 16, 2013 is attached as Exhibit 39.

342. Wynn's General Counsel nonetheless sought to convince the Commission

that Wynn had conducted "very extensive due diligence on all matters related to the acquisition." Exhibit 38 at 93-94.

343. The testimony of Wynn's representatives demonstrated the company's utter failure to investigate FBT Everett's owners. This reflected Wynn's strategy of consciously avoiding a rigorous investigation that would have uncovered conclusive proof of FBT Everett's unsuitability, barring Wynn's use of the site.

344. Wynn's feigned investigation of FBT Everett established that Wynn had failed to "demonstrate responsible business practices," as required by the Act. G.L. c. 23K, § 12(b)(ii). Wynn's testimony also made clear that it did not fulfill its statutory obligations to investigate the ownership interests in the former Monsanto Chemical Site for the preceding 20 years. G.L. c. 23K, § 9(a)(15). Finally, Wynn flatly failed to prove the integrity, honesty, good character, reputation and suitability of FBT Everett and its owners. G.L. c. 23K, §§ 12(b)(i), 13, 14(a).

345. The egregious conduct of Wynn's compliance committee and its executives regarding the company's pseudo investigation of FBT Everett—including their suspect testimony at the hearing—provided a cogent basis for the Commission to determine that Wynn and its executives were unsuitable.

346. None of this mattered to the Commission, as it had put this issue to rest well before the hearing.

19. The Commission's Refusal to Enforce the Conditions It Imposed on Wynn's Use of FBT Everett's Land

347. Within days of Wynn's suitability hearing, the Commission learned that the Confirmation of Representation condition of its "cure" was problematic. On December 23, 2013, Lohnes and DeNunzio signed a Confirmation of Representation

under oath; Gattineri refused to do so. True and accurate copies of the Confirmations of Representation of Lohnes and DeNunzio are attached as Exhibit 40 and Exhibit 41.

348. Significantly, Lohnes and DeNunzio had amended their Confirmations of Representation "for clarity," disclosing that proceeds from the Option Agreement would flow to a fourth person, a so-called "consultant" named James Russo. Neither Lohnes nor DeNunzio provided any background information on Russo or his role in the transaction. At that time, publicly-available corporate filings revealed that Russo was a business associate of DeCicco and Lightbody. Together, they had jointly formed a real estate company called 426 Ferry Street, LLC. A true and accurate copy of the corporate filings of 426 Ferry Street, LLC is attached as Exhibit 42.

349. Having just gone to great lengths to clear the suitability path for Wynn, the Commission now had a major problem on its hands. The Bureau attempted to interview Russo, who refused to cooperate. Unable to speak with Russo, the Bureau interviewed Lohnes and DeNunzio. Neither one could explain the alleged consulting arrangement between FBT Everett and Russo, noting that there was no written agreement. They also did not know how much Russo was to be paid for his consulting services. Although they claimed that Russo was to receive a 3% fee, they were unable to articulate whether that fee—which could exceed $1 million—would be calculated based on FBT Everett's profits or the gross sum paid for the property.

350. Russo's undisclosed involvement in the land transaction provided the Commission with a powerful basis to revoke Wynn's suitability. The Commission turned a blind eye to this evidence and took no action.

351. Gattineri's refusal to sign the Confirmation of Representation similarly

raised more questions about the legitimacy of FBT Everett and the efficacy of the Commission's absurd condition. On April 11, 2014, *The Boston Globe* reported that Gattineri's business attorney had stated, "He's not signing [the Confirmation of Representation] under the advice of his criminal counsel." A true and accurate copy of *The Boston Globe* article dated April 11, 2014 is attached as Exhibit 43.

352. On June 13, 2014, *The Boston Globe* reported that Gattineri was expected to sign the Confirmation of Representation, but only if the Commission approved his plan to pay a debt of over $1 million to Lightbody. A true and accurate copy of *The Boston Globe* article dated June 13, 2014 is attached as Exhibit 44.

353. The following day, June 14, 2014, Gattineri signed a "Certificate," which differed materially from the Confirmation of Representation that the Commission required him to sign under oath. A true and accurate copy of the Certificate is attached as Exhibit 45.

354. Gattineri's "Certificate" merely stated that he had "not mortgaged, pledged, or assigned [his] own interest in the Company, nor [has he] granted to any person or entity an option, warrant or other right to [his] interest in the Company or the economic interests represented thereby, in whole or part." He never certified that Schedule 3 to the Ninth Amendment set forth a true and accurate list of each person with a legal and beneficial ownership interest, direct or indirect, in FBT Everett, leaving open the possibility that Lightbody and other hidden owners exist. Gattineri also never represented under oath that FBT Everett and its beneficiaries had not made or agreed to make any payments to any other person from the proceeds of the Option Agreement. Again, the Commission was quite content to ignore Gattineri's refusal to adhere to its

condition, and took no action.

355. Finally, on September 8, 2014, at the outset of the Commission's public hearing on the award of the Region A Category 1 license, the General Counsel of the Commission, Catherine Blue, addressed this thorny situation. In a stunning revelation, General Counsel Blue testified that, on June 12, 2014, "Mr. Gattineri paid in full a note in the approximate amount of around $1.9 million given by Mr. Gattineri to Mr. Lightbody for the purchase of Mr. Lightbody's interest in FBT Everett."

356. General Counsel Blue's statement had serious ramifications for the Commission and Wynn. She effectively acknowledged that the Commission knew that Lightbody's ownership interest in FBT Everett had continued until at least June 12, 2014. In other words, the Commission was prepared to move forward with Wynn's application after permitting a convicted felon to profit from a land transaction with a casino applicant, in violation of the Act. Remarkably, General Counsel Blue disingenuously declared that the documents received from Lohnes, DeNunzio, and Gattineri "*satisfy the conditions* required in the Commission's vote on December 13, 2013" (emphasis supplied).

357. To the contrary, if the June 12, 2014 note was authentic, it indicated that Lohnes's and DeNunzio's certifications were patently false. The revelation about Russo's interest in proceeds of the land transaction, the evidence of Lightbody's ongoing ownership interest in the land, Gattineri's refusal to sign the Certification of Representation, and the submission of false certifications by Lohnes and DeNunzio meant nothing to the Commission. The condition was mere window dressing.

20. <u>The Commission's Erroneous Determination that Wynn Was Suitable</u>

358. On December 27, 2013, the Commission—with only two of the three

Confirmations of Representation in hand—nevertheless issued a favorable Phase 1 Suitability Decision regarding Wynn. A true and accurate copy of the Commission's decision on Wynn's suitability dated December 27, 2013 is attached as Exhibit 46.

359. The Commission's determination that Wynn was suitable was erroneous for multiple reasons. First, Wynn had failed to establish the integrity of FBT Everett. Second, the Commission ignored irrefutable evidence of Wynn's lack of suitability, including its compliance committee's failure to conduct adequate due diligence of FBT Everett, and the roles of Wynn's then-CFO and General Counsel in Wynn's substandard due diligence efforts. Third, Wynn frequently engaged in *ex parte* communications with the Gaming Commission during the suitability phase in an effort to influence the scope of the investigation and its outcome. Fourth, there was a failure to satisfy the Commission's conditions on the use of the land. Finally, the Commission authorized Wynn to pay, under the Option Agreement, a known business associate of the two convicted felons who had been the focal point of the Bureau's lengthy investigation.

21. The Commission's Failure to Reject Wynn's Defective RFA-2

360. The Commission's machinations to favor Wynn did not end in the suitability phase. In Phase 2—which focuses on the site, design, and operation of the gaming establishment—the Commission furthered its corrupt plan by accepting Wynn's defective RFA-2, which Wynn filed on December 31, 2013. A true and accurate copy of Wynn's RFA-2 (without attachments) is attached as Exhibit 47.

361. In its RFA-2, Wynn was required to include "an agreement, and description of its plan as to how it intends to own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed[.]" G.L. c. 23K, § 15(13); 205 CMR 119.01(41).

362. Pursuant to the Act and the regulations, Section 2-4 of the RFA-2 application form obligated Wynn to "attach a copy of a lease, deed, option, or other documentation to this page and provide an explanation as to *the status of the land on which the proposed establishment will be constructed*" (emphasis supplied). A true and accurate copy of Section 2-4 of the RFA-2 application form is attached as Exhibit 48.

363. In its response, Wynn represented that the land on which its proposed gaming establishment was to be built included several parcels on adjacent MBTA property in Everett that Wynn neither owned nor controlled (the "MBTA Parcels"). A true and accurate copy of Wynn's Conceptual Site Plan and Site Circulation Plan in its RFA-2 response to Section 2-4 is attached as Exhibit 49.

364. Before Wynn filed its RFA-2, the City of Everett had determined that a secondary access point to the former Monsanto Chemical Site, in addition to Horizon Way, was needed due to public safety concerns. On October 7, 2013, the Mayor of Everett sent a letter to the Massachusetts Department of Transportation ("MassDOT"), voicing this concern in an effort to obtain the transfer of MassDOT's property to facilitate construction of a secondary access point to the property. A true and accurate copy of the Mayor of Everett's letter to MassDOT dated October 7, 2013 is attached as Exhibit 50.

365. The Mayor of Everett relied on the expert opinions of the Chiefs of the Everett Police and Fire Departments, who warned that secondary access to the site "is critical to providing adequate and necessary public safety" and the prevention of a "potentially catastrophic occurrence." A true and accurate copy of Chief Steven A. Mazzie's and Chief David Butler's letter to Everett dated October 3, 2013 is attached as Exhibit 51.

366. Accordingly, in response to Section 2-4 of the RFA-2 application form, Wynn attached several site plans to describe the parameters of the land on which its proposed gaming establishment was to be built, all of which depicted *two* access points to the proposed casino. Exhibit 49.

367. The access points were envisioned to be built on the MBTA Parcels. However, contrary to the Act's and regulations' requirements, Wynn did not have an agreement with the MBTA to acquire or control the MBTA Parcels within 60 days of the award of the license. In fact, in its RFA-2, Wynn admitted it was still "in discussions" with the MBTA, and there was a possibility that the parcels "cannot be obtained":

> In addition to the Project Site, Wynn and the City of Everett *have been in discussions* with the Massachusetts Bay Transportation Authority (the "MBTA") regarding the Everett Shops Subway Main Repair Facility located adjacent to the Project Site as depicted in Attachment 2-04-06 MBTA Parcel regarding the acquisition of certain parcels of land, identified on Attachment 2-04-07 Access Parcels from the MBTA to provide necessary access points. As the transfer of the identified parcels would not impact the operations of the Everett Shops Subway Main Repair Facility, the Wynn [*sic*] and the City of Everett are confident that the MBTA will make the transfer in order to facilitate this important public safety need. *In the unlikely event that these parcels cannot be obtained, Wynn is seeking alternate means to address these important public safety concerns* (emphasis supplied).

Exhibit 48.

368. Wynn's "alternate" access plan, as referenced in Wynn's RFA-2 response to Section 2-4, contained only one access point, which required the use of Horizon Way in Boston. A true and accurate copy of Wynn's "alternate" plan is attached as Exhibit 52.

369. The Commission was required to reject Wynn's RFA-2 for several reasons. First, Gattineri had not signed the Confirmation of Representation, a condition precedent to Wynn's application proceeding with FBT Everett's land. Second, Lohnes's

and DeNunzio's Confirmations of Representation identified Russo as a previously-undisclosed beneficiary of any proceeds from the sale of the land. Third, Lohnes's and DeNunzio's Confirmations of Representation were false, given Lightbody's continuing ownership interest in the land.

370. Fourth, Wynn violated G.L. c. 23K, § 15(3) and 205 CMR 119.01(41) when it failed to submit, under the pains and penalties of perjury, a plan or agreement granting Wynn the right to access its casino site by using land in Everett owned by the MBTA. Fifth, Wynn also violated G.L. c. 23K, § 15(3) and 205 CMR 119.01(41) because the Option Agreement was void *ab initio* both as an illegal contract and one that violates public policy.

371. Sixth, the RFA-2 clearly showed that Boston was a host community, and Wynn had failed to obtain a vote by Boston's residents in favor of its application for a license and had not submitted to the Commission a signed host community agreement with Boston. G.L. c. 23K, §§ 15(8) and 15(13). Wynn's application revealed that the only viable access point to its proposed gaming establishment was in Boston, and that its proposed gaming establishment extended into Boston, both of which independently rendered Boston a host community under G.L. c. 23K, § 2.

372. Wynn's RFA-2 also acknowledged that several "amenities" related to Wynn's proposed gaming area were in Boston. Although the Act permitted Wynn to build ancillary entertainment services and amenities as part of its development, including a live entertainment venue, G.L. c. 23K, § 9(11), Wynn instead chose to use existing amenities in Boston. According to Wynn, it decided to "partner[] with TD Garden, the Boston Symphony Orchestra and other iconic locations to serve as its de facto sporting

and entertainment locations." Through these Boston-based amenities, Wynn claimed that it would provide "new and unique experiences to its customers." A true and accurate copy of Wynn's RFA-2 response to Sections 3-33 and 4-15 is attached as Exhibit 53.

373. In addition, Wynn planned to run "regular water shuttles connecting the Wynn Resort in Everett to major tourist centers of Boston, specifically the convention center, Faneuil Hall, the Aquarium and North End." A true and accurate copy of Wynn's RFA-2 response to Section 1-5 is attached as Exhibit 54.

374. Although the Commission was statutorily required to reject Wynn's RFA-2 application on multiple grounds, it failed to do so, thereby permitting Wynn's defective application to advance.

D. THE COMMISSION'S PLAN TO DESIGNATE BOSTON A SURROUNDING COMMUNITY

375. The next obstacle that the Commission had to overcome was Boston's persistent assertion that it was a host community to Wynn's proposed casino. In its RFA-2, Wynn designated Boston as a surrounding community. Undaunted, Boston continued to press its host community status, and formally served the Commission and Wynn with a declaration of its status as a host community. A true and accurate copy of Boston's declaration is attached as Exhibit 55.

376. Boston had previously voted against another applicant's proposal to locate a casino in Revere and East Boston. The Commission was fearful that if Boston were allowed to vote, it would reject Wynn's proposal. Wynn shared the Commission's concern. At the public hearing held on September 4, 2013, Wynn openly proclaimed that if Boston were deemed to be a host community, it "effectively could kill the project."

377. The Commission already had taken a drastic measure to foreclose Boston

from asserting that it was a host community to Wynn's proposal when it rushed to adopt the "emergency" regulation at Wynn's and Everett's request. This enabled the City of Everett to hold its host community election in June 2013. Under the Commission's own regulations, if Boston also were deemed a host community, the Everett election result would have to be invalidated because host community elections must occur simultaneously. 205 CMR 124.03.

378. The Commission was not about to let the City of Boston interfere with its plan to award the casino license to Wynn.

379. To push Wynn's application forward, the Commission planned to designate Boston a surrounding community, a scheme conceived no later than the September 4, 2013 hearing. That plan involved restricting the City's access to relevant documents in the Commission's possession, and staging yet another public hearing with a predetermined outcome.

380. Evidence regarding the underlying land agreements between Wynn and FBT Everett as well as documents pertaining to Wynn's proposed access to its development were germane to the issue. The Commission had possession of these documents. When Wynn refused to furnish this evidence to the City, the Commission ignored the City's many requests that it compel Wynn to produce the evidence, even though it was authorized to do so. 205 CMR 112.02.

381. The Commission scheduled an initial public hearing for March 20, 2014 to address Wynn's designation of the City as a surrounding community.

382. At that hearing, the City asserted that the Commission could not render a determination that Boston was a surrounding community because Boston had asserted its

host community status. The City also noted that the Gaming Act did not confer the Commission with authority to rule on the issue.

383. The Commission then formulated an unfair process through which it would appear to consider the merits of the City's position, and scheduled an adjudicatory hearing to occur on April 4, 2014. Three days later, the Commission issued a revised notice, rescheduling the adjudicatory hearing and providing the City with just two weeks to prepare. A true and accurate copy of the Commission's notice and revised notice is attached as Exhibit 56.

384. On March 25, 2014, the City sent a letter to the Commission in response to the two hearing notices, stating that (1) Boston's declaration of host community status was not a petition for an adjudicatory hearing; (2) there was a significant legal question whether the Commission had jurisdiction to decide Boston's host community status; and (3) the Commission's notices were invalid because they did not comply with the Gaming Act and applicable regulations. The City emphasized that the proposed adjudicatory hearing was devoid of due process as it eliminated the City's opportunity to obtain relevant discovery from the applicants and gave the Commission the unilateral right to determine whether Boston could call witnesses and cross-examine other parties' witnesses. A true and accurate copy of the City's letter to the Commission dated March 25, 2014 is attached as Exhibit 57.

385. The Commission promptly withdrew the notice and cancelled the adjudicatory hearing. It then devised an alternative process to deprive the City of any meaningful opportunity to address the host community issue, limit the administrative record, and prevent any effective legal challenge.

386. On April 3, 2014, the Commission announced that, in lieu of an adjudicatory proceeding to address Boston's host community status, it would conduct a public hearing to "determine the premises of the *gaming establishment*" for which Wynn sought approval in its RFA-2 application. A true and accurate copy of the Commission's memorandum dated April 3, 2014 is attached as Exhibit 58.

387. Recognizing the Commission's tactic as a transparent end-run to summarily dispose of Boston's host community claim, the City sent a letter to the Commission objecting to the proposed process on the following grounds:

(1) The process for the public hearing was mutable, unfair, and devoid of procedural safeguards;

(2) The process was improperly structured to be legislative in nature, as opposed to adjudicatory;

(3) The Commission proposed no process for the City to obtain discovery from the applicants, and eliminated the City's opportunity to call witnesses, cross-examine witnesses, and create an appropriate evidentiary record;

(4) The Commission should investigate issues recently reported by *The Boston Globe* concerning alleged criminal involvement in the site underlying Wynn's application; and

(5) The hearing was premature—and likely moot—given the questions regarding the suitability of Wynn.

A true and accurate copy of the City's letter to the Commission dated April 17, 2014 is attached as Exhibit 59.

388. The Commission did not respond to the City's letter.

E. THE MOCK HEARING ON MAY 8, 2014

389. The Commission proceeded with its plan and held a public hearing on May 8, 2014 (the "Hearing"), at which it purported to hear arguments and make a

preliminary decision as to Boston's host community status. A true and accurate copy of the transcript of the Hearing is attached as Exhibit 60. Instead, the Commission had predetermined the outcome and deprived Boston and its citizens of their right to a fair and unbiased hearing.

390. The Commission dictated the outcome of the Hearing by committing the following improper acts:

(1) Staging the "recusal" of Chairman Crosby, even though he had participated in the critical events preceding the Hearing and impacting its outcome;

(2) Knowingly withholding from the City relevant documents directly bearing on Boston's host community status;

(3) Engaging in *ex parte* communications with Wynn before the hearing to discuss the content of the hearing; and

(4) Deliberating and predetermining its outcome outside the public hearing context, in violation of the Open Meeting Law and the Act.

1. Chairman Crosby's Belated and Meaningless Recusal

391. Chairman Crosby commenced the Hearing by admitting that his behavior and his judgment had become "a distraction and a potential threat to the critical appearance of our total impartiality," but maintained that, "neither I nor any of the Commissioners have any doubt about my ability to be impartial in the decision-making process." He then recused himself from further involvement in the licensing decision in Region A.

392. Although Chairman Crosby's recusal was intended to create the appearance that the Hearing would be free from any taint caused by his conflict of interest, he did not recuse himself until *after* the Commission had already predetermined the outcome. Chairman Crosby's position on the issue was well known, particularly in

view of his prior public statements indicating his view that Boston was a surrounding community.

393. Chairman Crosby's after-the-fact recusal did not eliminate the taint of his participation in the Commission's pre-hearing conduct. Rather, it highlighted the impropriety of his influence on the Commission's decision-making on all prior matters relating to Region A since his conflict of interest arose over two years ago, when Wynn filed its RFA-1.

394. Moreover, Chairman Crosby has continued to participate in the licensing process for Region A after his recusal.

2. <u>Nondisclosure of Key Evidence</u>

395. Underscoring the fundamental unfairness of the Hearing, the Commission withheld the specific agreements concerning the land underlying Wynn's casino proposal from the City and the public until *after* the Hearing had concluded.

396. Wynn's Option Agreement, the Ninth Amendment, and all prior amendments with FBT Everett were critical evidence of Boston's host community status.

397. In the months preceding the hearing, the Commission repeatedly declined Boston's requests that it compel Wynn to produce evidence to the City, on the dubious and untenable ground that the documents contained trade secrets.

398. After the Hearing began, the Commission unexpectedly announced the reversal of its decision: "We've looked at it again. We've revised that determination." The documents, however, were not made available until after the Hearing.

399. As a direct result, the City was at a distinct disadvantage because it did not have access to the Option Agreement, the Ninth Amendment, and all prior amendments.

3. <u>The Commission's Prohibited *Ex Parte* Communications with Wynn</u>

400. Although Wynn initiated *ex parte* communications with the Commission during the earlier suitability phase, in Phase 2, it was the Commission that initiated improper *ex parte* communications with Wynn. These prohibited communications were aimed at helping Wynn undermine Boston's claim of host community status at the Hearing.

401. At the Hearing, Wynn admitted that it "did receive yesterday from General Counsel Blue a request to address certain matters." Wynn explained that the Commission had asked that Wynn address the very documents that had been withheld from the City of Boston. Wynn then read the following from an e-mail that it had received from the Commission:

> At tomorrow's Commission hearing regarding the determination of the premises of the gaming establishment for which applicant seeks approval, representatives of *the applicant should be prepared to discuss any option agreements held by the applicant or any applicant affiliate for property located in the city of Boston and how those options may or may not relate to the premises of the proposed gaming establishment*.

<u>Exhibit 60</u> at 150.

402. As Wynn was a party before the Commission, the Commission's initiation of *ex parte* communications with Wynn violated Section 3(u) of the Gaming Act and Section 22.A of Enhanced Code of Ethics.

403. In response to public criticism of the Commission's behind-the-scenes discussions with Wynn, one Commissioner defiantly dismissed any notion of wrongdoing, stating, "The idea that we can't ask questions of our applicants and find out what is in the application, and what they mean by parts of the applications, is absurd." A

true and accurate copy of the *Boston Herald* article dated May 19, 2014 is attached as Exhibit 61.

404. The Commission's comments and actions regarding its improper communications with Wynn illustrated its apparent view that it has an omnipotent role in the licensing process, and that the Legislature's ethical rules do not apply to it.

4. The Predetermined Outcome

405. Even before the Hearing ended, it was apparent that the Commission had already determined the outcome. The Commission had planned to announce verbally its decision at the conclusion of the Hearing, and to issue a formal written decision one week later on May 15, 2014.

406. Immediately after the parties completed their arguments and *before any public deliberations*, the Commission made a statement revealing that it had already decided to declare that Boston was a surrounding community. One Commissioner stated:

> At the same time next week, we take up the question of whether to waive the requirement that the arbitration and negotiation clock starts ticking the moment we issue that decision[.]

Exhibit 60 at 162.

407. This slip of the tongue was particularly telling because it pertained to the Gaming Act's mandated procedure following the designation of a municipality as a *surrounding* community. Under G.L. c. 23K, § 17(a), surrounding communities have 30 days to negotiate an agreement with a casino applicant. If no agreement is reached by the deadline, the Commission's regulations require that the municipality and the applicant must arbitrate. On the other hand, there is no 30-day negotiation and arbitration period for *host* communities.

408. The Commissioner's comment about the commencement of the

negotiation and arbitration period evidenced that the Commission already had decided that Boston was a surrounding community—*even though the Commissioners had yet to publicly deliberate the issue.* Such discussions by the Commissioners outside the public hearing context violated the Open Meeting Law.

409. The speed and brevity of the Commission's public deliberations that followed provided further evidence that the result had been predetermined. The Commission heard over four hours of adversarial presentations from the City, the applicants, and an advocacy group opposed to the development of a casino in East Boston. One Commissioner acknowledged, "I heard some things for the first time that I hadn't thought about[.]" Nonetheless, the Commission's hasty deliberation and vote took a mere 25 minutes.

410. The colloquy between the Commissioners was minimal; there was virtually no collective discussion of the complex and important issues. Rather, each Commissioner read into the record, from what appeared to be a prepared script, their reasons for voting against Boston. One Commissioner even stated, "[W]e had anticipated making this decision a week ago."

411. On May 15, 2014, the biased Commission issued its written decision titled, "Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC" (the "Decision"), to memorialize its oral decision rendered on May 8, 2014. A true and accurate copy of the Decision is attached as Exhibit 62. By designating Boston a surrounding community, the Commission believed that it had successfully eliminated the threat that Boston posed to Wynn's application.

F. <u>THE COMMISSION'S "DE-DESIGNATION" OF BOSTON AS A SURROUNDING COMMUNITY</u>

412. The ensuing events did not go according to the Commission's plan. The City declined to participate in the Commission's unfair and invalid arbitration process. This precluded the Commission from awarding the Region A Category 1 license to Wynn because the Commission was prohibited from taking any action on an application before the execution of the surrounding community agreement. G.L. c. 23K, § 17(a).

413. To overcome this obstacle, the Commission then stripped Boston of its surrounding community status pursuant to an illegal regulation that it had adopted.

414. The Commission's regulations concerning arbitration of surrounding community agreements, codified at 205 CMR 125.01(6), directly conflicted with the Gaming Act. Under the Act, when an applicant and a surrounding community cannot reach an agreement within 30 days, the Commission is required to "have established protocols and procedures for ensuring the conclusion of a negotiation of a fair and reasonable agreement between the applicant and the surrounding community[.]" G.L. c. 23K, § 17(a).

415. Instead of following the Legislature's directive, the Commission promulgated illegal regulations that provide for an unfair and unlawful adversarial arbitration process. Section 125.01(6)(b) of the regulations provides that "[i]n the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure."

416. The Act required the Commission to promulgate regulations that allow for the *negotiation* of a fair and reasonable surrounding community agreement between the parties. The arbitration process, however, created by the Commission was designed to

force the parties to submit to a binding outcome after an *adversarial* proceeding—the exact opposite of a negotiated agreement. The regulations are blatantly unfair to surrounding communities and contravene the Gaming Act.

417. On July 10, 2014, Boston sent a letter to the Commission stating that it respectfully declined to arbitrate with Wynn. This threatened to derail the Commission's plan to advance Wynn's application. G.L. c. 23K, §§ 15(9) and 17(a).

418. The Commission expressed frustration with the predicament that *it* had created, and hypocritically accused Boston of not following the rules, claiming that *Boston* had abandoned the Charlestown section of the City.

419. The Commission quickly sought to remove this impediment to its plan by sending a letter to Boston that threatened to de-designate the City as a surrounding community unless it signed an agreement with Wynn. A true and accurate copy of the Commission's letter to the City dated July 30, 2014 is attached as Exhibit 63. One week later, the Commission followed through on its threat, de-designating Boston as a surrounding community and paving the way for Wynn's application to proceed.

G. HEARING ON THE ISSUANCE OF THE GAMING LICENSE

420. Believing that it had finally eliminated Boston as an obstacle, the Commission scheduled its final Evaluation Presentations and Category 1 License Determination for Region A to take place from September 8-17, 2014.

421. Before the Commission had concluded its evaluation, the City sent a letter to the Commission expressing its vehement objection to the Commission's plan to award a Category 1 license in Region A. The City again voiced its view that the Commission had improperly ignored and violated the mandates of the Gaming Act. A true and

accurate copy of the City's letter to the Commission dated September 11, 2014, is attached as Exhibit 64. The Commission ignored the City's letter and proceeded with the hearing.

422. In its evaluation, the Commission was required to address the adequacy of Wynn's proposed mitigation of the traffic and offsite impacts that would result from the construction and operation of its proposed casino. Under Section 10(c) of the Gaming Act, the Commission was obligated to ensure that "total infrastructure improvements onsite and around the vicinity of the gaming establishment, including projects to account for traffic mitigation as determined by the commission, shall be completed before the gaming establishment shall be approved for opening by the commission."

423. Well before Wynn proposed building a casino in Region A, the City of Boston and its Transportation Department engaged in various studies on ways to mitigate the severe traffic congestion in that neighborhood. The most recent study is the December 2013 Sullivan Square Disposition Study (the "Study"). A true and accurate copy of the Study is attached as Exhibit 65.

424. The Study was conducted "to guide the upcoming revitalization of Sullivan Square" and its transformation into "a pedestrian-friendly neighborhood." According to the Study, "[t]ransitioning [Sullivan Square] from an intersection to drive through, back to its rightful place in the urban fabric of Charlestown, Sullivan Square is primed for its reestablishment as a vital and walkable . . . neighborhood." To achieve this vision, traffic flowing through Sullivan Square would be significantly reduced.

425. Wynn's plan to introduce thousands of casino-bound vehicles into the already over-burdened Sullivan Square and to construct thousands of new parking spaces

for these vehicles is antithetical to—and incompatible with—Boston's plans for the area. Sullivan Square cannot be transformed into a pedestrian-friendly neighborhood if traffic is exponentially increased, rather than decreased.

426. In the Commission's own words during its presentation on September 9, 2014, Wynn's "proposed mitigation at Sullivan Square is inadequate and incomplete, because the proposed improvements do not fully mitigate the additional traffic."

427. Thus, on September 11, 2014, the Commission proposed the following traffic mitigation license conditions, among others, including several that directly impacted Charlestown:

> (1) If the MEPA process does not require mitigation measures for Main Street and Rutherford Avenue access into Sullivan Square Wynn shall nonetheless mitigate the traffic impacts of the Gaming Establishment on the Main Street and Rutherford Avenue access into Sullivan Square as may be reasonably required by the City of Boston based upon the data provided and used as basis for its issuance of any required permits. ("Boston Vehicle Traffic Data"). Wynn will complete all measures necessary for the mitigation of such traffic impacts and mitigation required by MEPA (together "Interim Mitigation Plan") and such measures will be in place prior to the Opening Date. Such measures shall include, without limitation, physical improvements and Transportation Demand Management ("TDM") measures;
>
> (2) Wynn, at its expense, will conduct a look back study by an independent third party to analyze any significant adverse impact experienced by the City of Boston caused by (a) Gaming Establishment related public safety costs in excess of Public Safety Mitigation Payment above; (b) Gaming Establishment related traffic impacts with the exception of those on Rutherford Avenue and in Sullivan Square that cannot be mitigated by the Traffic Infrastructure Payments above; (c) Gaming Establishment related water, sewer, or storm water impacts; (d) Gaming Establishment related construction noise in the City of Boston in excess of levels permitted by federal, state or applicable and lawful City of Boston laws or codes; or (e) Gaming Establishment related construction or traffic impacts on Ryan Park . . . . ; and
>
> (3) If Wynn fails to obtain any permits required from the City of Boston

> for the traffic mitigation described in Section 3 and Section 4 in the City of Boston by July 1, 2015 the Commission may in the Commission's discretion revoke the License awarded to Wynn.

A true and accurate copy of the Commission's original license conditions for Wynn is attached as Exhibit 66.

428. On September 12, 2014, Wynn submitted a revised draft that outright eliminated two of the conditions and substantially weakened the third. A true and accurate copy of Wynn's letter to the Commission dated September 12, 2014 is attached as Exhibit 67.

429. During a colloquy with Wynn, the Commission emphasized that each license condition was a prerequisite to the validity of the Category 1 license. While discussing the license condition pertaining to Wynn's application for permits from the City of Boston, Wynn's General Counsel reluctantly agreed with the Commission's interpretation:

COMMISSIONER: The intent was to impose a condition that you get if you're the licensee the permits required for the Sullivan Square interim improvements by July 1, 2015.

WYNN: Part of our discipline involves understanding what we are in control of and what we are not in control of. So, the way we responded to that condition, which came across as if we did not obtain all conditions—all permits necessary from the City of Boston by July 1, 2015 *we forfeited our license*.

COMMISSIONER: Let me just interrupt there**.** *That's true of any of these conditions that ultimately are in there. In that sense, it was no different than any other condition.*

WYNN: *Correct.* So, notwithstanding everybody's good faith, we have had not a lot of success thus far with the city of Boston. So, what we did commit to and our response included is a commitment on our part to complete all applications for permits for Sullivan Square, which we thought is what you were worried about, within 90 days from the effective date of the license, to vigorously pursue

> the issuance of those permits, and to take whatever action is available to us to get those permits issued (emphasis supplied).

430. On September 17, 2014, rather than compel Wynn to adhere to its original licensing conditions, or else forgo the license, the Commission kowtowed to the applicant and accepted wholesale Wynn's redrafted traffic mitigation conditions. The new conditions read as follows:

> (1) [Condition Eliminated];
>
> (2) [Condition Eliminated]; and
>
> (3) 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.

431. The Commission's imposition of these watered-down license conditions was a violation of its statutory obligation to mitigate negative consequences arising out of the operation of a gaming establishment. G.L. c. 23K, § 10(c).

432. On September 17, 2014, the Commission voted to enter into an agreement to award the Region A Category 1 license to Wynn pursuant to its revised set of license conditions. A true and accurate copy of the Agreement to Award the Category 1 License in Region A to Wynn MA, LLC, dated September 17, 2014, is attached as Exhibit 68. The award of the license was subject to the defeat of the ballot initiative seeking repeal of expanded gaming in the Commonwealth on November 4, 2014.

433. Wynn agreed to accept the award of the license, including the final license conditions, as modified by the Commission pursuant to Wynn's requests.

434. The Commission voted to agree to award the Category 1 license to Wynn even though, among other things: (1) Wynn failed to demonstrate site control under G.L.

c. 23K, § 15(3) and 205 CMR 119.01; (2) Wynn failed to disclose the actual parameters of its proposed casino site; and (3) Wynn failed to submit a viable mitigation plan.

H. THE FEDERAL AND STATE INDICTMENTS

435. Within two weeks of the Commission's vote, federal and state criminal charges were brought against DeNunzio, Gattineri, and Lightbody arising out of their attempts to defraud the Commission and the Commonwealth.

436. On October 1, 2014, a federal grand jury in Boston returned an indictment charging DeNunzio, Gattineri, and Lightbody with conspiracy, wire fraud, aiding and abetting, and criminal forfeiture. The Federal Indictment alleged that the criminal defendants conspired to conceal the "financial interests of LIGHTBODY, a convicted felon and known associate of the New England Family of La Cosa Nostra . . . in the Everett Parcel [the former Monsanto Chemical Site] and to obtain money from Wynn in exchange for the Everett Parcel on the basis of false representations and concealment of material facts concerning the financial interests in the Everett Parcel." Exhibit 3.

437. A critical aspect of the scheme to defraud, as alleged in the Federal Indictment, was the Option Agreement between Wynn and FBT Everett. The Federal Indictment alleged that Wynn had paid FBT Everett $100,000 per month from December 2012 through at least September 2014 pursuant to the Option Agreement.

438. On September 29, 2014, a state grand jury in Suffolk County returned eleven indictments pertaining to the scheme to defraud. Gattineri, DeNunzio, and Lightbody are all charged with various counts of impeding the Bureau and the Commission by making false and misleading statements; conspiring to impede the Bureau and the Commission; and tampering with documents for use in an official

proceeding of the Commission.

439. The Bureau and the Commission were aware of the conduct and evidence alleged in the Federal and State Indictments well before they voted. The indictments provided a cogent basis for the Commission to revoke its determination that Wynn was suitable. The Commission failed to act.

I. AWARD OF THE REGION A GAMING LICENSE TO WYNN

440. On November 4, 2014, voters in Massachusetts defeated the ballot initiative seeking the repeal of expanded gaming in Massachusetts.

441. On November 6, 2014, the Commission formally awarded the Region A Category 1 license to Wynn. The Effective Date of the license was November 7, 2014. A true and accurate copy of the Determination of Issuance of a License to Operate a Category 1 Gaming Establishment in Region A is attached as Exhibit 69.

J. WYNN'S FAILURE TO OBTAIN MEPA CERTIFICATION

442. The Commission awarded the license to Wynn even though Wynn had failed to obtain final certification for its project pursuant to the Massachusetts Environmental Policy Act ("MEPA"), G.L. c. 30, § 61 *et seq*.

443. MEPA directs all state agencies to "review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment." G.L. c. 30, § 61.

444. The Commission was prohibited from taking agency action and issuing a gaming license to Wynn before completion of the MEPA review process and the preparation of findings as to the project's impact on the environment and the measures

taken to avoid or mitigate any damage ("Section 61 findings"). G.L. c. 30, § 61; 301 CMR 11.12(3) and (5).

445. On August 15, 2014, after reviewing Wynn's Final Environmental Impact Report ("FEIR") concerning its proposed casino, the Secretary of EEA determined that Wynn's project "does not adequately and properly comply with MEPA and its implementing regulations" and required Wynn to submit a Supplemental Final Environmental Impact Report ("SFEIR") to address its traffic and transportation issues. A true and accurate copy of the Executive Office of Energy and Environmental Affairs ("EOEEA") Certificate on Wynn's FEIR dated August 15, 2014 is attached as Exhibit 70.

446. As of the date of the award of the Category 1 license for Region A, the Commission had not yet filed its Section 61 findings because Wynn had yet to submit its SFEIR, rendering its MEPA review incomplete.

447. While the Commission acceded to Wynn's refusal to adequately address the traffic nightmare in Boston that would result from the construction and operation of its proposed casino, state environmental authorities did not.

448. From the outset of the environmental review process, Wynn has failed to propose satisfactory responses to the traffic and transportation concerns raised in the comment letters submitted by a number of entities, including the City of Boston, MassDOT, and the cities of Medford, Somerville, and Revere.

449. After many months of delay, Wynn finally submitted its SFEIR on transportation and traffic to the EOEEA on February 17, 2015, well after the Commission had awarded the license to Wynn.

450. On March 27, 2015, the City submitted a comment letter in response to

Wynn's SFEIR, opposing Wynn's plan for Sullivan Square in its entirety as inconsistent with the City's planned use of its streets in Charlestown. The City's letter further explained that the plan described in Wynn's SFEIR proposed a dramatic increase—rather than decrease—in traffic in Sullivan Square, which would "jeopardize the health, safety, and welfare of Boston's citizens."

451. On April 3, 2015, EOEEA Secretary Beaton determined that Wynn's SFEIR on transportation and traffic, like its prior FEIR, did not "adequately and properly comply" with MEPA. A true and accurate copy of the EOEEA's Certificate on Wynn's SFEIR dated April 3, 2015 is attached as Exhibit 71.

452. Secretary Beaton directed Wynn to submit a Second Supplemental Final Environmental Impact Report that would, among other things, adequately mitigate the transportation and traffic issues in Sullivan Square in Boston. To date, Wynn has failed to do so.

K. THE UNTIMELY AND UNLAWFUL LAND TRANSACTION BETWEEN WYNN AND THE MBTA

453. Although the Commission's complex maneuverings resulted in its award of the license to Wynn, Wynn thereafter became ineligible for the license because it entered into an untimely and unlawful land transaction with the MBTA.

454. Under the Gaming Act, Wynn forfeited its eligibility for the license because it failed to acquire the MBTA Parcels within 60 days of the issuance of the license. The law makes clear that: "No applicant shall be eligible to receive a gaming license unless the applicant . . . shall own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed[.]" G.L. c. 23K, § 15(3).

455. In its RFA-2, Wynn had represented—under the pains and penalties of perjury—that the MBTA Parcels were part of the land where its gaming establishment was proposed to be constructed. Exhibit 48.

456. Land providing access to, and egress from, a gaming establishment constitutes a vital part of the gaming establishment. Without access and egress, there simply is no gaming establishment.

457. To avoid using Horizon Way in Boston, Wynn sought the MBTA Parcels for use as its primary and secondary access points. Wynn's negotiations with the MBTA took place over a one-year period.

458. On August 2, 2013, Wynn sent a letter to the Executive Director of the MBTA offering to purchase the MBTA Parcels, writing:

> I hope you will agree that the MBTA should be actively pursuing any and all offers from which it stands to benefit financially or otherwise. Given the myriad of dire financial woes facing the MBTA, I would think an *eight figure proposal* [*i.e.*, at least $10 million] from a private operator should be welcomed and encouraged by the MBTA and MassDOT (emphasis supplied).

A true and accurate copy of the letter from Wynn's representative to the Executive Director of MassDOT dated August 2, 2013 is attached as Exhibit 72.

459. Thereafter, on October 4, 2013, then-Secretary of Transportation Richard A. Davey generated an internal memorandum that stated, "[t]he net value of [Wynn's] proposal to the MBTA is calculated to be roughly $30 million dollars." A true and accurate copy of then-Secretary Davey's memorandum dated October 4, 2013, is attached as Exhibit 73.

460. Then-Secretary Davey further recognized that any sale of MBTA land would be subject to the bidding process set forth in G.L. c. 161A, § 5(b). In that regard,

then-Secretary Davey's memorandum noted the possibility that Wynn would abandon its proposal if it were subject to a public bidding process:

> Before the terms of the Wynn proposal are published in a Request for Responses, Wynn would need to be consulted. The MBTA does not know whether Wynn would continue to pursue this transaction once notified of the public process requirements. Should Wynn decide not to pursue the transaction, strong and public adverse reaction from both Wynn and the Mayor of Everett is anticipated.

461. Then-Secretary Davey recognized that any contract between Wynn and the MBTA required authorization by the MassDOT Board, and that the MBTA needed to "act expeditiously in order for such authorization to be secured in sufficient time to meet the Gaming Commission deadline of December 31, 2013." The deadline by which Wynn was required to file its RFA-2 with the Commission was December 31, 2013.

462. When then-Secretary Davey informed Wynn of the MBTA's and MassDOT's public bidding requirements, Wynn appeared to lose interest in the transaction. On October 16, 2013, then-Secretary Davey sent a letter to the Mayor of Everett, stating that he had contacted Wynn to move discussions forward in accordance with the law, only to have his offer "rejected by Wynn in its entirety." The letter further explained that "we were told that Wynn would have no further contact with the MBTA directly," and "it seems Wynn is no longer interested in proceeding." A true and accurate copy of then-Secretary Davey's letter to the City of Everett dated October 16, 2013 is attached as Exhibit 74.

463. As a result, Wynn and the MBTA failed to enter into a land transaction before the December 31, 2013 RFA-2 deadline.

464. After Wynn filed its RFA-2, however, it realized that the City of Boston maintained that it was a host community because the access point to the site was in

Boston. Wynn then resumed discussions with the MBTA to acquire the MBTA Parcels in an attempt to construct access to the site through Everett.

465. In late August 2014, mere weeks before the Commission was to make its final decision on the Region A applications, Wynn submitted an offer to the MBTA to purchase the MBTA Parcels for $6 million. The proposed purchase price was significantly less than Wynn's "eight figure" proposal referenced in its letter dated August 2, 2013, as well as the "roughly $30 million" net value mentioned by then-Secretary Davey in his memorandum dated October 4, 2013. A true and accurate copy of Wynn's offer, dated August 26, 2014, is attached as Exhibit 75.

466. The offer acknowledged Wynn's awareness that the MBTA Parcels were subject to the advertisement and bid requirements of G.L. c. 161A, § 5(b). Although Section 5(b) required that all bids be submitted during the bidding process and that the land be sold to the highest bidder, the offer required the MBTA to notify Wynn if another bidder met or exceeded Wynn's pre-negotiated offer and to re-open the bidding process. This, in effect, provided Wynn with a right of first refusal, in violation of G.L. c. 161A, § 5(b).

467. While it was clear that the proposed deal was a one-sided transaction to benefit Wynn, the offer made no reference to Wynn's intent to use the land as access to its proposed casino. Instead, the offer attempted to create the false impression that the proposed transaction was for the MBTA's sole benefit:

> The transfer of these parcels *will facilitate the relocation of the main entrance to the MBTA Everett Shops site* from Horizon Way to a new location off Lower Broadway which provides substantially equivalent operational access for the MBTA (emphasis supplied).

468. Despite the legal infirmity of the offer, then-Secretary Davey signed the

offer that same day.

469. On September 3, 2014, the MBTA publicly disclosed Wynn's offer and issued a Notice of Proposal and Request for Response ("Notice and RFR") for the sale of the MBTA Parcels, setting the final response deadline as October 3, 2014. A true and accurate copy of the MBTA's Notice and RFR, dated September 3, 2014, is attached as Exhibit 76.

470. The October 3, 2014 response deadline for competing bidders meant that Wynn could not acquire the MBTA Parcels before the Commission awarded the Category 1 license for Region A, which it did on September 17, 2014.

471. Although the MBTA received no bids during the bidding period—not even from Wynn—it nevertheless unlawfully transferred the MBTA Parcels to Wynn on February 26, 2015, in violation of G.L. c. 161A, § 5(b).

472. The MBTA Parcels conveyance was unlawful for several reasons. First, the MBTA failed to comply with and enforce the Commonwealth's advertisement and bidding requirements under G.L. c. 161A, § 5(b). Second, neither Wynn nor any other party submitted a bid during the bidding period established by the MBTA, from September 3, 2014 to October 3, 2014. Third, Wynn's offer to purchase the MBTA Parcels—which the MBTA improperly accepted before the bidding process even began—granted Wynn an effective right of first refusal, which is not authorized under G.L. c. 161A, § 5(b).

473. The land transaction also imploded when state officials declared it to be a violation of MEPA because, as of the date of the conveyance, the EOEEA Secretary had not completed environmental review of Wynn's project. G.L. c. 30, §§ 61-62 and 301

CMR 11.12(4)(a).

474. MassDOT and the MBTA later were forced to concede that the conveyance of the MBTA Parcels to Wynn violated the MEPA statute and regulations. A true and accurate copy of MassDOT's letter to EOEEA Secretary Beaton dated March 27, 2015 is attached as Exhibit 77.

475. The deed to the MBTA Parcels has been placed in escrow until, at a minimum, MEPA review is completed. Wynn cannot enter the property through Everett. Wynn cannot use Horizon Way in Boston because it is not zoned for casino use. As a result, the former Monsanto Chemical Site is landlocked and cannot be used as a casino site.

476. In any event, the land conveyance did not cure Wynn's ineligibility to receive a gaming license—and cannot in the future—because it (1) occurred more than 60 days after the award of the license to Wynn, and (2) was an unlawful transaction. G.L. c. 23K, § 15(3); G.L. c. 161A, § 5(b); G.L. c. 30, §§ 61-62.

477. Wynn's initiation of this unlawful attempt to purchase publicly-owned land further mandated the Commission to disqualify Wynn because it demonstrated Wynn's (1) lack of integrity, honesty, and good character under Section 12(a)(1) of the Gaming Act; (2) lack of responsible business practices under Section 12(b)(ii); and (3) commission of conduct injurious to the interests of the Commonwealth under Section 12(b)(iii). Wynn further breached a central condition of licensure: that it "comply with all laws of the commonwealth, the laws of the United States and all rules and regulations promulgated under [chapter 23K]." G.L. c. 23K, § 21(a)(2). The Commission, however, has still failed to revoke its determination that Wynn is suitable.

L. WYNN'S FAILURE TO TIMELY SUBMIT PERMIT APPLICATIONS FOR TRAFFIC MITIGATION TO THE CITY OF BOSTON

478. Finally, the Commission conditioned Wynn's license on Wynn's submission of applications for required permits to the Boston Public Improvement Commission ("PIC") within 90 days of the Effective Date of the license, which was February 5, 2015. The Commission had originally required Wynn to secure "any permits required from the City of Boston for the traffic mitigation [in Sullivan Square] . . . by July 1, 2015." Wynn rejected this condition and instead substituted a proposed condition requiring only that it:

> [V]igorously 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.

The Commission adopted Wynn's diluted condition on September 17, 2014.

479. As the Commission emphasized when it issued Wynn's license, if Wynn failed to meet any of the license conditions, the license would be revoked.

480. Two Commissioners made this clear to the public at a Community Information Session in Charlestown on October 15, 2014. According to the Commissioners' presentation, in determining the conditions for the license award to Wynn, "the Commission identified that Wynn shall apply to Boston Public Improvements [*sic*] Commission for a local permit within 90 days for Sullivan Square permit. Now that 90-day clock ends somewhere in February." A true and accurate copy of the transcript of the Community Information Session on October 15, 2014 is attached as Exhibit 78.

481. During the information session, one Commissioner confirmed that Wynn's failure to meet this condition would result in the revocation of the gaming license:

> The 90 days is the 90 days to get a permit application before the Public Improvement Commission. If there is no collaboration with the city before that's put before the Commission and it's unacceptable *then the license doesn't get granted. And the license never gets granted. And the project can't move forward* (emphasis supplied).

482. Wynn failed to comply with this condition. On January 30, 2015, one week before the expiration of the 90-day license condition deadline, Wynn submitted an "Engineering Report for Sullivan Square Mitigation Boston, MA" (the "Engineering Report") to PIC. A true and accurate copy of the Engineering Report is attached as Exhibit 79. The Engineering Report was not a permit application to the PIC. The Engineering Report had only 42 pages, consisting mainly of copies of 13 identical letters that Wynn's civil engineering firm had sent to various public and private entities.

483. Incredibly, in its presentation to the Gaming Commission on March 19, 2015, Wynn's representative declared, "We have also submitted our PIC application, the public improvement commission application related to our Sullivan Square mitigation." In addition, Wynn submitted a PowerPoint presentation, representing that it had fulfilled this license condition. A true and accurate copy of Wynn's PowerPoint presentation on March 19, 2015 is attached as Exhibit 80 at 5.

484. In response, Chairman Crosby asked Wynn's representative when the PIC application was submitted. Wynn's representative erroneously replied, "It was before the 90-day deadline. I think it was in January." A true and accurate copy of the transcript of the Commission's hearing on March 19, 2015 is attached as Exhibit 81.

485. Wynn appeared to equate its Engineering Report with a valid permit application to PIC. Wynn's Engineering Report was wholly inadequate as a permit application: it did not contain the vast majority of the materials required—including a

petition or request for a permit—even though the list of application requirements was publicly-disclosed on PIC's website. A true and accurate copy of the list is attached as Exhibit 82.

486. Thus, although the validity of the Category 1 Gaming License depended on it, Wynn failed to submit permit applications to PIC. Wynn defaulted on this license condition, requiring the Commission to revoke Wynn's license. The Commission has failed to do so.

487. In essence, after the expenditure of millions of dollars of private and public funds over a two-year period, the Commission agreed to award a license to an unsuitable and ineligible applicant to develop a casino on a landlocked, highly-toxic brownfield, in one of the most congested traffic areas in Massachusetts with no traffic mitigation plan. Judicial intervention is necessary to remedy the Commission's repeated violations of law.

LEGAL CLAIMS

COUNT 1: DECLARATORY JUDGMENT

(Invalidation of the Decision to Hold the Hearing, the Conduct of the Hearing, and Annulment of the Commission's Decision)

488. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 487 of this Amended Complaint.

489. This Court is authorized to issue binding declarations of the rights, duties, status, and other legal relations of parties under statutes and administrative regulations, including determinations of questions of construction or validity, in any case in which an actual controversy has arisen. G.L. c. 231A, §§ 1 and 2.

490. This Court also is empowered to issue binding declarations under G.L.

c. 231A, §§ 1 and 2 to enjoin and determine the legality of the administrative practices and procedures of any state agency alleged to be in violation of the laws of the Commonwealth of Massachusetts.

491. An actual controversy has arisen between the City of Boston and the Commission regarding the legality of the scheduling and conduct of the Hearing and the Commission's erroneous Decision that Boston is a surrounding community to Wynn's proposed casino.

A. THE MOCK HEARING ON MAY 8, 2014

1. The Hearing Should Never Have Been Held

492. By the summer of 2013, the Commission and its Bureau were well aware of the criminal ownership of Wynn's proposed site, and that the members of FBT Everett had engaged in a scheme to defraud the Commission and the Commonwealth regarding the ownership of the property. FBT Everett had a financial interest in Wynn's gaming establishment and was required to be qualified for licensure by meeting the criteria provided in Sections 12 and 16 of the Act. G.L. c. 23K, § 14(a).

493. Since FBT Everett was required to be qualified, Wynn was obligated to establish FBT Everett's integrity. G.L. c. 23K, §§ 12(b)(i) and 13(a). The Bureau was required to cease review of Wynn's application and recommend that the Commission deny the application. G.L. c. 23K, § 12(b). In turn, at that time, the Commission was required to determine that FBT Everett was unsuitable and that the former Monsanto Chemical Site could not be used as the location of a casino. Given FBT Everett's unsuitability, the Commission also was required to determine that Wynn was unsuitable, as Wynn had no plan to use an alternate site.

494. The Commission was required to reject Wynn's RFA-2 for several additional reasons, as set forth in Section C.21 at Paragraphs 369 to 371 of this Amended Complaint.

495. The Commission violated the Act by refusing to perform its statutory obligations and permitting Wynn's invalid application to proceed. Additionally, the Commission unlawfully scheduled the Hearing to determine whether Boston was a host community to Wynn's proposed casino. At that time, Wynn did not have a valid gaming establishment because both Wynn and FBT Everett were unsuitable, and Wynn's RFA-2 was defective. The mere holding of the Hearing was an *ultra vires* and unlawful act.

2. **The Hearing Was Improperly and Unfairly Conducted**

496. The Commission's staged Hearing—with a predetermined outcome—deprived Boston and its citizens their rights to a fair and impartial hearing, in violation of Article 29 of the Massachusetts Declaration of Rights, which provides:

> It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

497. Chairman Crosby had a disqualifying conflict of interest from the date of Wynn's submission of its RFA-1. His after-the-fact recusal did not eliminate the taint of his participation in the Commission's pre-Hearing conduct.

498. In addition, the manner by which the four remaining Commissioners conducted the Hearing was unlawful because they (1) engaged in non-public communications with Wynn before the Hearing occurred, to provide counsel to Wynn in formulating its argument for the Hearing; (2) withheld key evidence from the City; and

(3) deliberated about the issues and predetermined the outcome, in violation of the Open Meeting Law and the Act.

B. THE FLAWED DECISION OF MAY 15, 2014

499. The Commission's written Decision that Boston is a surrounding community to Wynn's proposed casino is based on erroneous legal analysis and is unsupported by substantial evidence.

1. The Commission's Erroneous Definition of "Gaming Establishment"

500. The Commission applied a flawed legal standard to determine the "premises" of Wynn's proposed "gaming establishment." Rather than apply the clear and unambiguous language of the Gaming Act, the Commission instead created a result-determinative four-part analysis that conflicts with the statute.

501. Under Section 2 of the Gaming Act, "gaming establishment" is defined 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" (emphasis supplied).

502. Applying basic principles of statutory construction, the plain meaning of "premises" is "*a tract of land* with the buildings thereon" (Merriam-Webster, 2003) or the "*land* and the buildings on it" (American Heritage, 2002). In addition, in a variety of contexts, Massachusetts courts have repeatedly defined "premises" as "a house or building, *along with its grounds*," "*lands* and tenements," and "*the entire lot of land*." *Commonwealth v. Anderson*, 82 Mass. App. Ct. 1119 (App. Ct. 2012); *Western Mass. Theatres, Inc. v. Liberty Mut. Ins. Co.*, 354 Mass. 655 (1968); *Wadman v. Boudreau*, 270 Mass. 198 (1930) (emphasis supplied).

503. Under the Act's definition, Boston is a host community to Wynn's proposed casino. The Commission possessed uncontroverted evidence that the *premises* of Wynn's proposed casino included land in Boston. The access and egress point of the casino site is located in Boston. Moreover, several amenities of Wynn's casino are located in Boston.

504. Instead of applying the plain meaning of the law as written, the Commission erroneously limited the meaning of "gaming establishment" to include only "structures" or "features" and to exclude land, including Horizon Way in Boston. To achieve this result, the Commission concocted four additional "mandatory" requirements for a "feature" to qualify as part of the gaming establishment, effectively failing to give effect to the word "*premises*" in the statute. The term "feature," however, does not appear in the definition of "gaming establishment" in G.L. c. 23K, § 2. The term "feature" does not appear anywhere in the entire Gaming Act.

505. The Commission's spurious test excludes a "feature" from an applicant's "gaming establishment" unless (1) it is a *non-gaming structure*; (2) related to the gaming area; (3) under the 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. This four-part test is legally incorrect. Although the Act defines "gaming establishment" as "the *premises*," the Commission excludes the "premises" from the statutory definition. Moreover, the four-part test create an absurd result and is not viable because it excludes casinos—which are *gaming* structures—from the definition of "gaming establishment."

506. Moreover, the Commission's inclusion of its "regulatory interest" in its definition of the "gaming establishment" is nowhere to be found in the Gaming Act.

507. The Commission's contrived four-part test was results-oriented, specifically devised to render Boston a surrounding community. This is underscored by the fact that the Commission immediately rendered its oral decision at the end of the Hearing without ever referencing a "4-part test."

2. Wynn's Failure to Establish Site Control

508. The Commission erroneously failed to recognize that the gaming establishment of Wynn's proposed casino is located, in part, in Boston because the only access and egress point is Horizon Way, which is located primarily in Boston. In its RFA-2 application, Wynn admitted that it had not yet been able to obtain access to its proposed site through Everett. This remains the case today, over six months after Wynn was awarded the license. In fact, state officials have determined that Wynn's attempt to acquire the MBTA Parcels was unlawful.

509. Additionally, the City of Boston's zoning laws prohibit the use of Horizon Way for access to a casino. Under well-established Massachusetts law, "use of land in one zoning district for an access road to another zoning district is prohibited where the road would provide access to uses that would themselves be barred if they had been located in the first zoning district. In such a situation, the access is considered to be the same use as the parcel to which the parcel leads." *Beale v. Planning Bd. of Rockland*, 432 Mass 690, 694 (1996). As a result, Horizon Way cannot legally be used as an access road to Wynn's proposed casino.

510. Wynn's gaming establishment was legally landlocked as of the filing of Wynn's RFA-2 and remains so well over 60 days following the effective date of the award of the gaming license. Consequently, Wynn failed to establish site control.

511. The Commission, however, has committed yet another legal error by declining to enforce the site control provisions of its regulations, 205 CMR 119.01(40) and (41). The Commission has also violated G.L. c. 23K, § 15(3) of the Act.

512. The Commission should have determined that Wynn did not have a valid gaming establishment. As a result, the Commission erroneously determined that Boston is a surrounding community.

3. Everett Approved a Gaming Establishment Located in Everett and in Boston

513. The Commission's Decision further ignored evidence that the description of the gaming establishment provided in Wynn's RFA-2 varied substantially from the proposed gaming establishment approved by the voters of Everett on June 22, 2013.

514. On April 19, 2013, Wynn and the City of Everett signed a host community agreement, which stated that Wynn would apply for a Category 1 license to develop a casino on the former Monsanto Chemical Site. A true and accurate copy of the host community agreement between Wynn and the City of Everett is attached as Exhibit 83.

515. On June 22, 2013, the City of Everett held a referendum on Wynn's proposed casino. The voters were presented with a ballot question, which clearly stated that the proposed "gaming establishment" would be "located on Horizon Way" on property known as the former "Monsanto Chemical Site." It read:

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

A true and accurate copy of the ballot question presented to the voters in Everett on June 22, 2013 is attached as Exhibit 84.

516. In addition to Horizon Way, approximately eight acres of the former Monsanto Chemical Site are located in Boston.

517. A majority of voters in Everett voted "Yes" to the ballot question, thereby approving the location of the "gaming establishment" in both Everett *and* Boston.

518. The Commission's Decision is legally erroneous because the Commission ignored undisputed evidence of the location of the voter-approved gaming establishment, which rendered Boston a host community.

519. The entire Decision is invalid because it rests on the Commission's flawed analytical framework.

520. The Commission's actions were arbitrary and capricious, exceeded its statutory authority and were *ultra vires*, constituted an abuse of its discretion, and were not in accordance with the law.

521. The Commission's decision to hold the Hearing, its conduct of the Hearing, and its resulting Decision have resulted in manifest injustice to Boston and its citizens, in violation of Article 29 of the Massachusetts Declaration of Rights. The Commission deprived Boston and its citizens of their rights under the Gaming Act, including the rights to vote and to negotiate a host community agreement.

522. If the Decision is allowed to stand, the City of Boston will continue to suffer harm arising from (1) the loss of its statutory right to vote as a host community; (2) the serious adverse impacts of Wynn's proposed casino, including traffic, construction, environmental, and crime; and (3) its needless expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts.

523. Pursuant to G.L. c. 231A, §§ 1 and 2, it is appropriate for this Court to

issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and other laws of the Commonwealth.

524. This Court should issue a declaratory judgment that the Commission's decision to hold the Hearing and its conduct of the Hearing were unlawful, and that the resulting Decision is null, void, and without legal effect.

COUNT 2: DECLARATORY JUDGMENT

(Annulment of the Decision Based on Wynn's Illegal and Unenforceable Land Agreement with FBT Everett)

525. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 524 of this Amended Complaint.

526. An actual controversy has arisen between the City of Boston and the Commission concerning the legality of the Decision, because the parties dispute whether the fraud underlying the Option Agreement between Wynn and FBT Everett renders it void, invalid, and unenforceable. Further, the parties dispute the validity of the Ninth Amendment.

527. The Gaming Act required Wynn to identify the location of its proposed gaming establishment in its application. G.L. c. 23K, § 9(a)(15). In addition, Massachusetts regulations concerning RFA-2 applications required Wynn to have a valid option agreement to acquire the land on which it proposed to locate its gaming establishment. 205 CMR 119.01(40), (41).

528. A condition precedent to a municipality serving as a host or a surrounding community is the inclusion of a valid and enforceable option agreement identifying the proposed gaming establishment in an applicant's RFA-2. G.L. c. 23K, §§ 9(a)(15) and

15(3); 205 CMR 119.01(40), (41).

529. This condition precedent has not and cannot be met.

530. Under Massachusetts law, contracts that are illegal and those that are contrary to public policy are void and unenforceable. A contract made in violation of a statute violates public policy and is void and unenforceable.

531. Wynn's Option Agreement with FBT Everett was made in violation of the Gaming Act, is contrary to public policy, and consequently is void and unenforceable. The Option Agreement also is illegal because it is the essential vehicle used in a criminal conspiracy committed by the alleged principals of FBT Everett and Lightbody to defraud the Commission and the Commonwealth, as alleged in the Federal and State Indictments. Because the Option Agreement is void and unenforceable, Wynn does not have a valid gaming establishment.

532. The Ninth Amendment also is contrary to public policy. The Ninth Amendment was the product of the Commission's *ultra vires* conduct and *ex parte* communications with Wynn. As such, the Ninth Amendment consequently is void and unenforceable. Because the Ninth Amendment is void and unenforceable, Wynn does not have a valid gaming establishment.

533. The "paramount public policy objective" of the Act, as declared by the Legislature, is to ensure "public confidence in the integrity of the gaming licensing process and in the strict oversight of the gaming establishments through a rigorous regulatory scheme." The Gaming Act mandates that the Commission determine the suitability of applicants and other related parties prior to awarding a gaming license. Suitability determinations are required to ensure the integrity, honesty, good character,

and reputation of applicants and others involved with the applicants.

534. FBT Everett, Lohnes, DeNunzio, Gattineri, and Lightbody attempted to defraud the Commission and the Commonwealth and to obstruct the Bureau's investigation, in violation of the Gaming Act. Their fraud was designed to conceal the fact that at least one convicted felon, Lightbody, had an ownership interest in the proposed site for Wynn's casino. The disclosure of Lightbody's status would have precluded Wynn from filing an application proposing the development of a casino on that site.

535. Enforcing the Option Agreement and the Ninth Amendment would (1) allow those who have committed unlawful acts to defraud the Commission and the Commonwealth to earn substantial illicit profits; (2) violate the public policy of the Gaming Act; (3) undermine the Act's paramount policy objective; and (4) cause further financial harm to the City of Boston and other nearby communities who are victims of the conduct of the parties to the agreement.

536. The Commission has ignored the facts, implemented unlawful procedures, conducted an improper Hearing, engaged in *ultra vires* conduct and *ex parte* communications, and rendered a Decision that is legally and factually defective.

537. Because of the Commission's misconduct, the City of Boston needlessly expended public funds to evaluate Wynn's proposal and establish Boston's rightful status as a host community, even though the Commission should have denied Wynn's application by August 2013.

538. If the Decision is allowed to stand, the City of Boston will continue to suffer harm arising from (1) the loss of its statutory right to vote as a host community; (2)

the serious adverse impacts of Wynn's proposed casino, including traffic, construction, environmental, and crime; and (3) its needless expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts.

539. Pursuant to G.L. c. 231A, §§ 1 and 2, it is appropriate for this Court to issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and other laws of the Commonwealth.

540. This Court should declare that the Commission's Decision that Boston is a surrounding community to Wynn's proposed casino is null, void, and without legal effect because the Option Agreement and the Ninth Amendment between FBT Everett and Wynn are illegal, contrary to public policy, void, and unenforceable, and, as a result, there is no viable gaming establishment to which Boston could be a surrounding community.

COUNT 3: DECLARATORY JUDGMENT

(Annulment of the Decision Based on the Commission's *Ultra Vires* Reformulation of Wynn's Land Agreement)

541. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 540 of this Amended Complaint.

542. An actual controversy has arisen between the City of Boston and the Commission concerning the Decision, because the parties dispute the validity of the Commission's *ultra vires* conduct to salvage Wynn's land agreement and avoid disqualifying Wynn as unsuitable.

543. The Commission acted *ultra vires* by actively participating in the amendment of the Option Agreement between FBT Everett and Wynn, and then holding

a procedurally deficient sham hearing through which it approved the amended land agreement as a purported means to negate the taint caused by FBT Everett, Lightbody, Lohnes, Gattineri, and DeNunzio.

544. The Bureau's investigation, as reported in the Bureau's Report and at the Commission's hearing on December 13, 2013, uncovered conclusive evidence that FBT Everett and its principals attempted to defraud the Commission and obstruct the Bureau's investigation.

545. Under G.L c. 23K, § 38, it is illegal to willfully resist, prevent, impede, interfere with, or make any false, fictitious or fraudulent statement or representation to employees of the Bureau or the Commission in the performance of their duties under the Gaming Act. Credible evidence adduced to the Commission, and set forth in the Federal and State Indictments, indicate that Gattineri, DeNunzio, Lightbody, and others likely violated and conspired to violate G.L. c. 23K, § 38 by concealing the true identity of FBT Everett's owners, making false statements to the Bureau, and creating false and backdated documents after the commencement of the Bureau's investigation.

546. Section 14(a) of the Gaming Act required the Commission to determine the suitability of FBT Everett as part of its determination of Wynn's suitability. Upon learning about the unlawful scheme to defraud the Commission and obstruct the Bureau's investigation, the Bureau was aware that Wynn could not establish the integrity of FBT Everett. As a result, the Bureau was required to "cease any further review and recommend that the commission deny the application." G.L. c. 23K, § 12(b). The Commission, in turn, was required to immediately deny Wynn's application.

547. Instead, the Commission abdicated its role of regulator and acted as a

partisan by collaborating with Wynn to devise a so-called "cure" for a problem that was fatal to Wynn's application under the Gaming Act.

548. The Commission ignored its statutory mandate under the Gaming Act. The Commission's so-called "cure" had no basis in law, was contrary to public policy, and violated the Gaming Act, including G.L. c. 23K, §§ 4, 12, 14, and 16.

549. Because of the Commission's misconduct, the City of Boston needlessly expended public funds to evaluate Wynn's proposal and establish Boston's rightful status as a host community, even though the Commission should have denied Wynn's application by August 2013.

550. If the Decision is allowed to stand, the City of Boston will continue to suffer harm arising from (1) the loss of its statutory right to vote as a host community; (2) the serious adverse impacts of Wynn's proposed casino, including traffic, construction, environmental, and crime; and (3) its needless expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts.

551. Pursuant to G.L. c. 231A, §§ 1 and 2, it is appropriate for this Court to issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and other laws of the Commonwealth.

552. The Commission had no basis or authority to determine that Boston was a surrounding community to a fatally flawed proposal submitted by an unsuitable applicant. The Commission should have disqualified Wynn under the Gaming Act. Instead, the Commission committed *ultra vires* acts to "cure" Wynn's FBT Everett problem. Accordingly, this Court should declare that the Commission's Decision that Boston is a

surrounding community to Wynn's proposed casino is null, void, and without legal effect.

COUNT 4: DECLARATORY JUDGMENT

(Annulment of the Commission's Decision Based on Its Failure to Find FBT Everett and Wynn Unsuitable)

553. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 552 of this Amended Complaint.

554. An actual controversy has arisen between the City of Boston and the Commission concerning the legality of the Decision, because the parties dispute whether the Gaming Act obligated the Commission to disqualify Wynn based on its unsuitability and the unsuitability of FBT Everett.

555. Under the Gaming Act, the Commission is mandated to require "anyone with a financial interest in a gaming establishment" to be "qualified for licensure by meeting the criteria provided in sections 12 and 16 and provide any other information that the commission may require." G.L. c. 23K, § 14(a).

556. When the Commission issued its Decision and awarded the license to Wynn, FBT Everett had a financial interest in Wynn's proposed "gaming establishment." FBT Everett owned the land on which Wynn proposed to develop its casino and had been receiving monthly payments from Wynn of $100,000 from December 2012 through December 2014. In addition, FBT Everett had a significant "business association" with Wynn under G.L. c. 23K, § 4(11), as evidenced by the requirements in the Option Agreement that FBT Everett (1) fund and engage in real estate development in collaboration with Wynn and on Wynn's behalf, and (2) use $10 million of the purchase price paid to FBT Everett to remediate the former Monsanto Chemical Site.

557. As a result of FBT Everett's ongoing business relationship with Wynn and its financial interest in the gaming establishment, FBT Everett was a "qualifier" for the Wynn application. Thus, as the Bureau recognized in its Report, it was "statutorily required to" investigate the alleged owners of FBT Everett.

558. Despite uncovering evidence showing that Wynn and FBT Everett would be unable to establish FBT Everett's integrity, the Bureau failed to comply with the Gaming Act's mandate to "cease any further review and recommend that the commission deny the application." G.L. c. 23K, § 12(b).

559. The Commission, in turn, shirked its statutory duty to render a suitability determination as to FBT Everett pursuant to G.L. c. 23K, § 14(a) to avoid disqualifying Wynn. The Commission failed to find FBT Everett and its alleged principals unsuitable under G.L. c. 23K, § 12(b), and failed to disqualify Wynn as required by G.L. 23K, § 16(a).

560. The Commission had no basis or authority to determine that Boston is a surrounding community to Wynn's proposed gaming establishment because Wynn was unsuitable, and the Decision was the product of a procedurally defective hearing.

561. Because of the Commission's misconduct, the City of Boston needlessly expended public funds to evaluate Wynn's proposal and establish Boston's rightful status as a host community, even though the Commission should have denied Wynn's application by August 2013.

562. If the Decision is allowed to stand, the City of Boston will continue to suffer harm arising from (1) the loss of its statutory right to vote as a host community; (2) the serious adverse impacts of Wynn's proposed casino, including traffic, construction,

environmental, and crime; and (3) its needless expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts.

563. Pursuant to G.L. c. 231A, §§ 1 and 2, it is appropriate for this Court to issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and other laws of the Commonwealth.

564. Accordingly, this Court should declare that the Commission's Decision that Boston is a surrounding community to Wynn's proposed casino is null, void, and without legal effect.

COUNT 5: DECLARATORY JUDGMENT

(Boston's Status as a Host Community to Wynn's Proposed Casino)

565. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 564 of this Amended Complaint.

566. An actual controversy has arisen between the City of Boston and the Commission regarding the City's status as a host community under G.L. c. 23K, § 2 as to Wynn's proposed casino in Everett and in Boston.

567. Assuming, *arguendo*, that Wynn has a valid gaming establishment, Boston is a host community because (1) Boston provides the only existing access to and egress from Wynn's proposed casino; (2) the voters in Everett approved the development of the casino on property located in Boston; and (3) many of the proposed casino's "amenities" are located in Boston. Wynn's proposed "gaming establishment" is located, in part, in Boston, rendering Boston a host community under G.L. c. 23K, § 2.

568. Wynn, however, has refused to negotiate a host community agreement with the City of Boston.

569. As an applicant for a Category 1 license, Wynn was ineligible to receive a gaming license without entering into a signed host community agreement with all host communities. G.L. c. 23K, § 15(8).

570. Wynn's gaming establishment is situated in more than one city, which required Wynn to execute an agreement with each host community, or a joint agreement with both communities. G.L. c. 23K, § 15(13).

571. The Commission also had no authority to grant a Category 1 license to Wynn because Boston had not voted in a public election in favor of the issuance of the license, as was its statutory right as a host community. G.L. c. 23K, § 15(13).

572. The citizens of Boston—whose quality of life will be directly impacted by the development of a casino by Wynn—have been denied their right to vote on whether Boston should permit the operation of a gaming establishment licensed by the Commission to be located in Boston and Everett. The City has further been denied its statutory right to negotiate and enter into a host community agreement with Wynn. The City has suffered harm as a result.

573. The Commission's public hearing to determine the "gaming establishment" of Wynn's application was procedurally improper and abridged the City of Boston's and its citizens' due process rights in violation of Article 29 of the Massachusetts Declaration of Rights.

574. Under G.L. c. 231A, § 2, the Legislature has specifically empowered this Court to make determinations of the status of a person or entity under a statute, such as Boston's status as a host community under the Gaming Act. Conversely, the Legislature did not specifically empower the Commission to determine a municipality's host

community status under the Gaming Act.

575. Pursuant to G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the status and rights of the City of Boston with respect to Wynn's proposed casino under G.L. c. 23K, § 2.

576. This Court should issue a declaratory judgment that Boston is a host community to Wynn's casino development.

COUNT 6: DECLARATORY JUDGMENT

(Declaration that the Regulations regarding Arbitration of a Surrounding Community Agreement Are Invalid)

577. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 576 of this Amended Complaint.

578. The Commission's regulations regarding arbitration of a surrounding community agreement, codified at 205 CMR 125.01(6), are invalid because, contrary to the language of the Act, they (1) set forth a process involving adversarial arbitration instead of a negotiated agreement; (2) implement an arbitration process that is neither fair nor reasonable; and (3) purport to permit the Commission to de-designate a surrounding community if a municipality refuses to participate in the unlawful arbitration process.

A. ADVERSARIAL ARBITRATION

579. The Gaming Act required the Commission to establish "protocols and procedures for ensuring the conclusion of a negotiation of a fair and reasonable agreement between the applicant and a surrounding community in order to allow the applicant to submit a timely and complete application." G.L. c. 23K, § 17(a).

580. Rather than adhere to the Legislature's directive, the Commission instead adopted regulations establishing a mandatory, truncated, and adversarial arbitration

process to force surrounding communities to submit to an arbitrator's determination regarding a surrounding community agreement.

581. The arbitrations conducted to date pursuant to these regulations have closely resembled judicial bench trials. The parties presented opening statements, conducted direct and cross-examinations of witnesses, offered exhibits into evidence, and delivered closing arguments. Arbitration panels have made factual findings and legal conclusions, and issued binding awards in which there has been a winner and a loser.

582. This process does not constitute a protocol or procedure resulting in "the conclusion of a negotiation of a fair and reasonable agreement." The regulation directly conflicts with the Gaming Act. By promulgating the regulation, the Commission exceeded its statutory authority and acted *ultra vires*.

B. UNFAIR ARBITRATION PROCEDURE

583. The regulation also is invalid because it is based on an inherently unfair process that deprives citizens of surrounding communities of their statutory right to a "fair and reasonable agreement." The duration of the arbitration process is unrealistically compressed; there is no mechanism for discovery; and the arbitrator is required to select one of two best and final offers ("BAFOs") without modification.

584. Section 125.01(6)(b) of the regulations provides that "[i]n the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure."

585. The parties are required to select an arbitrator and submit their BAFOs for a surrounding community agreement within five days of the expiration of the 30-day period. The arbitrator is required to "conduct any necessary proceedings and file with the

commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community," all within 20 days. 205 CMR 125.01(6)(c)(7).

586. The Commission's regulations provide that "the arbitrator(s) shall select the best and final offer of one of the parties." As a result, the arbitrator is prohibited from exercising his or her discretion to modify either of the parties' BAFO to arrive at a fair or reasonable result, including the negotiation of a possible middle-ground between the parties' BAFOs.

587. The Commission's binding arbitration process is inherently unfair to surrounding communities and heavily slanted to favor applicants. The timeframe for completing the arbitration process is arbitrarily truncated. This is particularly unfair to large cities, such as Boston, because the adverse impacts of each casino proposal are unique and extremely complex. For example, mitigation of traffic issues caused by the injection of thousands of additional vehicles onto already-congested major roads and throughways—such as Route 99, Rutherford Avenue, and Sullivan Square in Charlestown—require many months of study by traffic, environmental, and engineering experts.

588. Moreover, there are no provisions in the Commission's regulations or its "Handbook for Binding Arbitration between an Applicant for a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement" (the "Arbitration Handbook") that permit discovery during the arbitration process.

589. As a result, an applicant can withhold crucial information from the surrounding community and prevent it from properly calculating a fair and reasonable

mitigation payment for its BAFO submission. The impact of no discovery on casino applicants is minimal because they have unrestricted access to public information about the municipality or community to formulate their BAFOs.

590. The Arbitration Handbook also instructs the arbitrator to consider the "known impacts" of the proposed project on the surrounding community as a factor when making his or her decision. This is yet another unfair feature of the regulations as it is virtually impossible for a community to prove the impacts of a casino that is not yet built, and whose parameters, construction plans, and remediation obligations have not even been finalized.

591. In fact, in this case, Wynn's plans for its proposed casino continue to evolve and expand. Wynn has announced that it intends to increase the number of its hotel rooms by over 20%, which inevitably will exacerbate traffic and transportation impacts. To this date, Wynn has failed to obtain MEPA certification for its project.

592. Because the rules and regulations governing the arbitration process (1) prevent communities from accessing information about the applicant's project and (2) are inherently skewed in favor of casino applicants, it is far more likely that an arbitrator will choose the casino applicant's BAFO—which can be artificially low but amply proven—rather than the community's BAFO, which is likely based on predictions of future impacts made on incomplete information about the applicant's plans.

593. The one-sided and unfair arbitration process established by the Commission has benefited Wynn and harmed the surrounding communities of Somerville and Chelsea. The dissenting arbitrator in Somerville's arbitration emphasized this manifest unfairness, stating that the outcome was "not the carefully balanced and

equitable treatment of surrounding community impacts that the Gaming Act and the Commission contemplate."

C. **<u>DE-DESIGNATION OF STATUS</u>**

594. Section 125.01(6)(a)(2) permits the Commission to "deem the community to have waived its designation as a surrounding community" if it "fails or refuses to participate in the arbitration process."

595. In other words, if a surrounding community refuses to participate in the Commission's unfair and unlawful arbitration process, the Commission grants itself the right to strip from the municipality its surrounding community status.

596. The Legislature did not delegate this authority to the Commission. It is contrary to the Act, which requires applicants to reach agreements with all surrounding communities, without exception, in order to qualify for licensure.

597. The Commission's de-designation of Boston as a surrounding community pursuant to its unlawful regulations caused the City harm by allowing Wynn's application to proceed without entering a surrounding community agreement to mitigate the proposed casino's adverse impacts on Boston. The Commission's *ultra vires* act was yet another step in its unlawful, predetermined plan to award the license to Wynn.

598. Pursuant to G.L. c. 30A, § 7 and G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the construction and validity of this administrative regulation.

599. Accordingly, this Court should declare that (1) the regulations codified at 205 CMR 125.01(6) are invalid, and (2) as a result, the Commission's de-designation of Boston as a surrounding community is void and must be vacated.

600. Further, under G.L. c. 23K, § 15(9), given the lack of a host or surrounding community agreement with Boston, this Court should also declare that the Commission's award of the Category 1 license to Wynn was invalid, and that the license itself consequently is invalid.

COUNT 7: CERTIORARI

(Annulment of the License Award to Wynn)

601. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 600 of this Amended Complaint.

602. G.L. c. 249, § 4 authorizes a party to bring a civil action in this Court in the nature of certiorari to correct errors in the Commission's proceedings that contravene the common law, and which are not otherwise reviewable by motion or appeal.

603. There were numerous errors in the Commission's proceedings that contravened the common law and the Gaming Act, and which are not reviewable by motion or appeal. Those errors occurred in the award of the Region A Category 1 license to Wynn. Boston has no other reasonably adequate remedy to correct the Commission's errors.

604. The hearing in September 2014 on the award of the license was a quasi-judicial proceeding.

605. The award of the license to Wynn contravened the common law and violated the Gaming Act for the following reasons:

(a) the Commission erroneously failed to find FBT Everett and Wynn unsuitable, as described in Paragraphs 554 to 564;

(b) the Commission failed to determine that Wynn had no viable gaming establishment because the Option Agreement and the Ninth Amendment with FBT Everett are illegal, violative of public policy, void, and unenforceable, as described in Paragraphs 530 to 540;

(c) the Commission acted *ultra vires* by reformulating Wynn's land agreement instead of excluding the former Monsanto Chemical Site as a site for Wynn's casino, as described in Paragraphs 542 to 552;

(d) the Commission was required to reject Wynn's RFA-2 because Wynn failed to establish site control for its proposed casino, as described in Paragraphs 508 to 511;

(e) the Commission was required to reject Wynn's RFA-2 because it described a gaming establishment materially different from the one approved by the voters of Everett, as described in Paragraphs 513 to 518;

(f) the Commission failed to acknowledge Boston is a host community, which required it to reject Wynn's RFA-2 because Wynn had failed to execute a host community agreement with Boston and secure a favorable vote by the citizens of Boston, as described in Paragraphs 109 to 119 and 371 to 373;

(g) the Commission improperly de-designated Boston as a surrounding community to circumvent the statutory requirement that Wynn execute a surrounding community agreement with the City as a mandatory condition precedent to the award of the license, as described in Paragraphs 578 to 594;

(h) the Commission failed to require Wynn to conduct any meaningful mitigation of traffic impacts in Boston in violation of G.L. c. 23K, § 10(c), as described in Paragraphs 422 to 431;

(i) the Commission unlawfully took agency action when it awarded the license to Wynn prior to filing Section 61 findings in contravention of MEPA, as described in Paragraphs 442 to 446;

(j) the Commission failed to determine that Wynn was ineligible to receive a license when Wynn failed to own or acquire within 60 days after the license had been awarded, the land where the gaming establishment is proposed to be constructed under G.L. c. 23K, § 15(3), as described in Paragraphs 453 to 470 and 453 to 475;

(k) the Commission issued a license to Wynn even though its proposed gaming establishment is landlocked, has no viable point of access or egress, and cannot be used by casino patrons, as described in Paragraphs 453 to 476;

(l) the Commission failed to prohibit Wynn from using the MBTA Parcels for its gaming establishment even though Wynn's land transaction violated G.L. c. 161A, § 5(b), as described in Paragraphs 453 to 470;

(m) the Commission failed to prohibit Wynn from using the MBTA Parcels for its gaming establishment even though Wynn's land transaction violated MEPA and the regulations promulgated thereunder, as described in Paragraphs 442 to 446 and 442 to 452;

(n) the Commission failed to prohibit Wynn from using the MBTA Parcels for its gaming establishment even though Wynn's agreement with the MBTA for the MBTA parcels is void and unenforceable. The agreement was unlawful and against public policy because it violated the public bidding and environmental laws;

(o) the Commission failed to determine that Wynn was unsuitable after learning that it had entered into an unlawful agreement with the MBTA that was injurious to the interests of the Commonwealth; and

(p) the Commission failed to revoke Wynn's license when Wynn failed to submit a permit application to PIC within 90 days of the license award.

606. If the Decision is allowed to stand, the City of Boston will continue to suffer harm arising from (1) the loss of its statutory right to vote as a host community; (2) the serious adverse impacts of Wynn's proposed casino, including traffic, construction, environmental, and crime; and (3) its needless expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts.

607. Accordingly, this Court should grant Boston relief in the form of certiorari, annul the award of the Region A Category 1 license to Wynn, and declare the license to be null, void, and without legal effect.

COUNT 8: DECLARATORY JUDGMENT

(Annulment of the License Award to Wynn)

608. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 607 of this Amended Complaint.

609. An actual controversy has arisen between the City of Boston and the Commission regarding the validity of the award of the Category 1 license for Region A to

Wynn.

610. The City of Boston seeks a declaration that the award of the license to Wynn is null and void for the following reasons:

(a) the Commission erroneously failed to find FBT Everett and Wynn unsuitable, as described in Paragraphs 554 to 564;

(b) the Commission failed to determine that Wynn had no viable gaming establishment because the Option Agreement and the Ninth Amendment with FBT Everett are illegal, violative of public policy, void, and unenforceable, as described in Paragraphs 530 to 540;

(c) the Commission acted *ultra vires* by reformulating Wynn's land agreement instead of excluding the former Monsanto Chemical Site as a site for Wynn's casino, as described in Paragraphs 542 to 552;

(d) the Commission was required to reject Wynn's RFA-2 because Wynn failed to establish site control for its proposed casino, as described in Paragraphs 508 to 511;

(e) the Commission was required to reject Wynn's RFA-2 because it described a gaming establishment materially different from the one approved by the voters of Everett, as described in Paragraphs 513 to 518;

(f) the Commission failed to acknowledge Boston is a host community, which required it to reject Wynn's RFA-2 because Wynn had failed to execute a host community agreement with Boston and secure a favorable vote by the citizens of Boston, as described in Paragraphs 109 to 119 and 371 to 373;

(g) the Commission improperly de-designated Boston as a surrounding community to circumvent the statutory requirement that Wynn execute a surrounding community agreement with the City as a mandatory condition precedent to the award of the license, as described in Paragraphs 578 to 594;

(h) the Commission failed to require Wynn to conduct any meaningful mitigation of traffic impacts in Boston in violation of G.L. c. 23K, § 10(c), as described in Paragraphs 422 to 431;

(i) the Commission unlawfully took agency action when it awarded the license to Wynn prior to filing Section 61 findings in contravention of MEPA, as described in Paragraphs 442 to 446;

(j) the Commission failed to determine that Wynn was ineligible to

receive a license when Wynn failed to own or acquire within 60 days after the license had been awarded, the land where the gaming establishment is proposed to be constructed under G.L. c. 23K, § 15(3), as described in Paragraphs 453 to 470 and 453 to 475;

(k) the Commission issued a license to Wynn even though its proposed gaming establishment is landlocked, has no viable point of access or egress, and cannot be used by casino patrons, as described in Paragraphs 453 to 476;

(l) the Commission failed to prohibit Wynn from using the MBTA Parcels for its gaming establishment even though Wynn's land transaction violated G.L. c. 161A, § 5(b), as described in Paragraphs 453 to 470;

(m) the Commission failed to prohibit Wynn from using the MBTA Parcels for its gaming establishment even though Wynn's land transaction violated MEPA and the regulations promulgated thereunder, as described in Paragraphs 442 to 446 and 442 to 452;

(n) the Commission failed to prohibit Wynn from using the MBTA Parcels for its gaming establishment even though Wynn's agreement with the MBTA for the MBTA parcels is void and unenforceable. The agreement was unlawful and against public policy because it violated the public bidding and environmental laws;

(o) the Commission failed to determine that Wynn was unsuitable after learning that it had entered into an unlawful agreement with the MBTA that was injurious to the interests of the Commonwealth; and

(p) the Commission failed to revoke Wynn's license when Wynn failed to submit a permit application to PIC within 90 days of the license award.

611. As a result of the unlawful license award to Wynn, the City of Boston has suffered harm arising and will continue to suffer harm from (1) the loss of the statutory right to vote on Wynn's proposal; (2) its needless expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts; and (3) the serious adverse impacts of Wynn's proposed casino, including traffic, construction, environmental, and crime.

612. Pursuant to G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the status and rights of the City of Boston

with respect to Wynn's proposed casino under G.L. c. 23K, § 2.

613. This Court should issue a declaratory judgment that the award of the Region A Category 1 license to Wynn is null and void, and declaring that the license to be null and void.

COUNT 9: DECLARATORY JUDGMENT

(Invalidation of the License Award to Wynn)

614. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 613 of this Amended Complaint.

615. An actual controversy has arisen between the City of Boston and the Commission regarding the validity of the award of the Category 1 license for Region A to Wynn.

616. The City of Boston seeks a declaration that the Category 1 license awarded to Wynn has been forfeited and thus is revoked, invalid and/or void because Wynn has failed to fulfill a mandatory condition of the license: Wynn failed to submit required permit applications to the Boston Public Improvement Commission for traffic mitigation in Sullivan Square within 90 days of the Effective Date of the license. G.L. c. 23K, § 23(b)(iii).

617. On September 17, 2014, Wynn accepted, and agreed to the conditions of, the Category 1 license for Region A in the Agreement to Award a Category 1 Gaming License between Wynn MA, LLC and the Commission, including the condition that "within ninety (90) days following the Effective Date, Wynn will submit to the Public Improvement Commission the application relating to Wynn's Sullivan Square mitigation."

618. On November 6, 2014, the Commission issued the Category 1 license for

Region A "subject to the conditions listed in Exhibit 2 to the Agreement to Award a Category 1 Gaming License between Wynn MA LLC [*sic*] and the Commission dated September 17, 2014."

619. The Effective Date of the license was November 7, 2014.

620. As of the ninetieth day following the Effective Date of the license, February 5, 2015, and continuing to date, Wynn has not submitted the required permit applications to the Public Improvement Commission regarding mitigation in Sullivan Square.

621. Contrary to the clear requirement, Wynn has not "vigorously pursue[d] all mitigation (including initiating legal proceedings, if necessary to obtain necessary permits [from the City of Boston])." In fact, Wynn has not even undertaken all the steps that are prerequisites to submitting the required permit applications for any mitigation in Sullivan Square. Wynn still has no viable plan for mitigation in Sullivan Square.

622. Accordingly, Wynn has failed to fulfill a condition of its Category 1 license, rendering the license revoked, invalid, and/or void.

623. Yet the Commission has failed to follow the required procedures under the Act and invalidate Wynn's license. As a result of the Commission's failure to invalidate Wynn's license, the City of Boston has suffered harm and will continue to suffer harm arising from (1) its expenditure of public funds to evaluate Wynn's proposed casino and its adverse impacts; and (2) the serious adverse impacts arising from the construction and operation of Wynn's proposed casino, including traffic, construction, environmental, and crime. Moreover, the City's public interest in planning for, and maintaining control over, its own streets on behalf of the safety and well-being of its residents will be harmed.

624. Pursuant to G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the status and rights of the City of Boston with respect to Wynn's proposed casino, and to issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and the laws of the Commonwealth.

625. This Court should issue a declaratory judgment that the Region A Category 1 license awarded to Wynn is revoked, invalid, and/or void.

COUNT 10: DECLARATORY JUDGMENT

(Disqualification of all Commissioners and Invalidation of all Region A Decisions by the Commission)

626. The City of Boston realleges and incorporates by reference the allegations contained in paragraphs 1 through 625 of this Amended Complaint.

627. An actual controversy has arisen between the City of Boston and the Commission regarding the Commissioners' failure to fulfill their statutory and ethical obligations under, and to adhere to the procedural requirements of, the Gaming Act and the Enhanced Code of Ethics.

628. The Commissioners have violated their ethical obligations under Section 3(u) of the Gaming Act and Sections 9.A, 9.C, 22.A, and 22.B, among others, of the Enhanced Code of Ethics, which collectively required the Commissioners to (1) conduct themselves in a manner to render decisions that are fair and impartial and in the public interest; (2) avoid impropriety and the appearance of impropriety in all matters under their jurisdiction; (3) disqualify themselves from proceedings in which their impartiality might reasonably be questioned; (4) refrain from participating in matters pending before the Commission that may affect the financial interest of a person with whom they have a

significant relationship; (5) recuse themselves from any licensing decision in which a potential conflict of interest exists; and (6) avoid all prohibited communications.

629. The Commissioners have refused to enforce the Gaming Act by ignoring their mandatory duties to, *inter alia*, (1) disqualify FBT Everett from licensure under G.L. c. 23K, §§ 12, 14(a), and 16; (2) to deny Wynn's application under G.L. c. 23K, §§ 12, 14, and 16; (3) to otherwise find Wynn ineligible to receive a gaming license under G.L. c. 23K § 15(3), (7)-(9), and (13); and (4) revoke Wynn's license based on its failure to fulfill a mandatory license condition.

630. The Commissioners' manipulation of the gaming licensing process to favor Wynn, the unlawful procedures under which they have conducted public hearings, their refusal to perform their statutory duties, their commission of *ultra vires* acts, their violations of the Open Meeting Law, their predetermination of outcomes of public hearings, and their numerous ethical violations have raised serious questions about their impartiality and has irreparably tainted all the decisions they have rendered in Region A.

631. Section 3(u)(v) of the Gaming Act mandates the Commissioners to "disqualify themselves from proceedings in which their impartiality might reasonably be questioned."

632. The Commonwealth's Conflict of Interest Law further recognizes that in the face of such misconduct, annulment of the decisions and actions of the tainted body is the proper remedy. Under Section 9(a) of G.L. c. 268A, "[i]n addition to any other remedies provided by law, any violation . . . which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding,

rescinding or canceling the action on such terms as the interests of the commonwealth and innocent third persons shall require."

633. The interests of the Commonwealth and "innocent third persons" such as the citizens of Boston require the annulment of all of the Commission's decisions and actions with respect to Region A. G.L. c. 268A, § 9(a).

634. The City of Boston has suffered harm and will continue to suffer harm arising from the decision-making procedures and flawed decisions of a body that has repeatedly violated the Gaming Act and the codes and regulations promulgated thereunder.

635. Pursuant to G.L. c. 231A, §§ 1 and 2, this is an appropriate case for this Court to issue a binding declaration regarding the legality of the administrative practices and procedures of the Commission, which violated the Gaming Act and the laws of the Commonwealth.

636. The City of Boston seeks a declaration that all of the Commissioners should be disqualified from participating in all proceedings involving Region A under G.L. c. 23K, 3(u)(v), and that all decisions and actions of the Commission with respect to Region A are null, void, and without legal effect.

PRAYERS FOR RELIEF

WHEREFORE, the City of Boston respectfully requests that the Court:

1. As to Counts 1-4, enter a declaratory judgment that the Commission's decision to hold the Hearing and its conduct of the Hearing were unlawful, and that its resulting Decision is null, void, and without legal effect;

2. As to Count 5, enter a declaratory judgment that the City of Boston is a

host community as to Wynn's proposed casino in Everett and Boston;

3. As to Count 6, enter a declaratory judgment that the regulations codified at 205 CMR 125.01(6) are invalid and void, the Commission's de-designation of Boston as a surrounding community was *ultra vires* and void, and, consequently, that the license award to Wynn was null and void;

4. As to Count 7, enter a judgment annulling the Commission's award of the Region A Category 1 license to Wynn;

5. As to Count 8, enter a declaratory judgment that the Commission's award of the Region A Category 1 license to Wynn;

6. As to Count 9, enter a declaratory judgment that the Region A Category 1 license awarded to Wynn is revoked, invalid, and/or void;

7. As to Count 10, enter a declaratory judgment that all Commissioners are disqualified from further participating in any and all proceedings involving Region A, and that all decisions and actions of the Commission with respect to Region A are null, void, and without legal effect; and

8. Grant the City of Boston such other relief that the Court deems to be just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff City of Boston demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

CITY OF BOSTON

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DATED: May 20, 2015

CERTIFICATE OF SERVICE

I, Thomas C. Frongillo, hereby certify that a true copy of the above document was served upon each party by mail and e-mail, to the attorney(s) of record on this 20th day of May 2015.

Thomas C. Frongillo