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PHILADELPHIA ENTERTAINMENT AND
DEVELOPMENT PARTNERS, L.P. d/b/a
FOXWOODS CASINO PHILADELPHIA

COMMONWEALTH OF
PENNSYLVANIA

PENNSYLVANIA GAMING
CONTROL BOARD

IN RE: SLOT MACHINE LICENSE
NUMBER 1367

PGCB DOC. # 1367

CONSENT AGREEMENT AND STIPULATION OF SETTLEMENT

THIS CONSENT AGREEMENT AND STIPULATION OF SETTLEMENT is made and entered into by the Commonwealth of Pennsylvania, Gaming Control Board (the "Board"), an independent administrative board of the Commonwealth of Pennsylvania, Bureau of Investigations and Enforcement ("BIE"), on the one hand; and Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP"). PEDP and BIE collectively are referred to as the "Parties"; and

WHEREAS, the BIE is the investigative body established by 4 Pa. C.S. § 1517 (a) for the purpose of, *inter alia*, enforcing the provisions of 4 Pa C.S. §§ 1101 et seq., as amended, known as the Pennsylvania Race Horse Development and Gaming Act (the "Act"), investigating licensees, permittees, registrants and other persons for potential violations of the Act, including potential violations referred to BIE by the Board or other persons; and

WHEREAS, the Office of Enforcement Counsel (hereinafter referred to as OEC) is the prosecutorial arm of the BIE established by 4 Pa. C.S. § 1517 a.2 "which shall act as the prosecutor in all noncriminal enforcement actions initiated by the bureau..." 4 Pa C.S. § 1517 a.2(1), with the power "to initiate, in its sole discretion, proceedings for noncriminal violations of this part by filing a complaint or other pleading with the board." 4 Pa. C.S. § 1517 a.2 (iii); and

WHEREAS, PEDP is an enterprise organized and existing under the laws of Pennsylvania and at all times referenced herein, has its principal place of business at 200 South

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Broad Street, Suite 400, Philadelphia, Pennsylvania 19102. PEDP is the holder of a Category 2 slot machine license as approved by the Board on December 20, 2006, and issued on May 29, 2008; and

WHEREAS, PEDP, and BIE, through their authorized representatives whose signatures are affixed hereto, have discussed the events that are the subject of this Consent Agreement ("the Events"), have conferred extensively as to the Events, and now desire to amicably resolve all matters arising out of the Events, and enter into a Consent Agreement, pursuant to 58 Pa. Code § 493a.13(a), which provides "[p]arties may propose consent agreements at any time prior to the entry of a final order"; and

WHEREAS, pursuant to Condition 1 of the Statement of Conditions to its Category 2 Slot Machine License, signed on July 11, 2007, PEDP agreed "To at all times comply with any and all provisions of the Pennsylvania Race Horse Development and Gaming Act ("Act") and any rules, regulations, technical standards or orders in effect as of this date or later amended or promulgated by the Board"; and

WHEREAS, pursuant to Condition 5 of the Statement of Conditions to its Category 2 Slot Machine License, signed on July 11, 2007, PEDP agreed "(T)o exercise due diligence to ensure that at all times, Philadelphia Entertainment and Development Partners, LP, its affiliates, intermediaries, subsidiaries, holding companies, management companies, principals, and key employees meet and maintain the suitability requirements of the Act, including but not limited to, those relating to good character, honesty, integrity and financial fitness."; and

WHEREAS, prior to January 7, 2010, the Act provided at 4 Pa. C. S. § 1210 (a) that all slot machine licensees "shall be required to operate and make available to play a minimum of 1,500 machines at any one licensed facility within one year of the issuance by the board of a slot machine license unless otherwise extended by the board, upon application and for good cause shown, for an additional period not to exceed 24 months."; and

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WHEREAS, on January 7, 2010, the Act was amended to provide at 4 Pa. C.S. 1210(a)(2) that "Each slot machine licensee shall be required to operate and make available to play a minimum of 1,500 slot machines at its licensed facility within one year of the issuance by the board of a slot machine license to the slot machine licensee. The board, upon application and for good cause shown, may grant an extension for an additional period ending on the later of 36 months from the end of the initial one-year period or December 31, 2012."; and

WHEREAS, pursuant to PEDP's request and Petition, on September 1, 2009, pursuant to its authority under the Act, the Board issued an Order (hereinafter "September 1, 2009 Order") extending the time to May 29, 2011 for PEDP to make 1,500 slot machines available for play, but subject to certain conditions; and

WHEREAS, the September 1, 2009 Order required that PEDP (in the September 1, 2009 Order PEDP is referred to as "Foxwoods") comply with certain conditions set forth below:

- (1) Within 45 days of the date of this Order, Foxwoods shall provide the Board with a written plan to make a minimum of 1500 slot machines available for play, on or before May 29, 2011, at the Columbus Boulevard site;
- (2) Foxwoods shall Provide the Bureau of Investigations and Enforcement ("BIE") written monthly updates, beginning October 1, 2009, regarding its efforts to develop a facility with a minimum of 1,500 slot machines available for play, on or before May 29, 2011 at the Columbus Boulevard site;
- (3) Foxwoods shall provide BIE written monthly updates, beginning October 1, 2009, regarding its efforts and progress to obtain financing for developing a facility with a minimum of 1,500 slot machines available for play, on or before May 29, 2011;
- (4) Within 6 months of the date of this Order, Foxwoods shall submit to BIE all financing documents and commitments for financing regarding development of its facility with a minimum of 1500 slot machines available for play, on or before May 29, 2011;
- (5) Within 3 months of the date of this Order, Foxwoods shall submit to BIE architectural renderings, artist renderings, conceptual proposals, engineering opinions, any and all other documents relating to construction of a facility, substantially similar to that approved by the Board on December 20, 2006. The submissions must provide for a minimum of 1500 slot machines available for play, on or before May 29, 2011, at the Columbus Boulevard site;

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- (6) Within 3 months of the date of this Order, Foxwoods shall submit to BIE a timeline for commencement and completion of all phases of development regarding its facility with a minimum of 1500 slot machines available for play, on or before May 29, 2011;
- (7) Foxwoods shall provide BIE with monthly updates, beginning October 1, 2009, regarding the status of all outstanding licenses, certifications and permits required by all federal, state, county, local or other agency as prerequisites for construction and development of its facility with a minimum of 1500 slot machines available for play, on or before May 29, 2011, at the Columbus Boulevard site;
- (8) Foxwoods shall notify the Board prior to or immediately upon becoming aware of any impending change of ownership or change in control, material change in financial status, including debt position, restructuring, receivership, merger, dissolution, bankruptcy or transfer of assets to any third party; and
- (9) Foxwoods will be required to periodically provide updates as to the status of its project, including, but not limited to, financing, zoning, permits and certifications, at public meetings, as scheduled by the Board.

WHEREAS, the Parties do not dispute the jurisdiction of the Board; and

NOW, THEREFORE, the Parties stipulate and agree, and present to the Board for its consideration, the following:

STIPULATED FACTS

WHEREAS, on May 22, 2009, PEDP filed a Petition in accordance with the requirements of the Act, in which it requested an additional 24 month period of time to make 1,500 slot machines available for play.

WHEREAS, on September 1, 2009, the Board granted PEDP's request to Extend the time period to make 1,500 slot machines available for play until May 29, 2011, subject to the nine aforementioned conditions.

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WHEREAS, on November 30, 2009, PEDP filed a Motion for additional time to comply with Conditions 5 and 6 of the Board's Order¹ of September 1, 2009 and, on February 10, 2010, the Board denied PEDP's Motion, imposed Sanctions against PEDP of \$2,000 per day for failure to comply with the Board's Order of September 1, 2009, and issued a Rule to Show Cause why the Board should not levy further sanctions, including revocation of PEDP's license, for failure to comply with the Board's Order of September 1, 2009.

WHEREAS, on March 3, 2010, following a Hearing before the Board, the Board issued an Order holding that PEDP had failed to meet its burden, by clear and convincing evidence, of achieving substantial compliance with Conditions 5 and 6 of the Board's September 1, 2009 Order and directed PEDP to submit definitive financial documents to the Board and OEC no later than March 31, 2010, and to submit the documents required by Conditions 5 and 6 of the Board's September 1, 2009 Order by April 26, 2010.

WHEREAS, PEDP disagrees with the holding of the Board on March 3, 2010, including whether the standard to be applied was one of "clear and convincing" evidence.

WHEREAS, on March 31, 2010, PEDP submitted to the Board and OEC an executed cover letter, along with unexecuted definitive financial documents (collectively the "Documents") which, at that time, complied with the Board's March 3, 2010 Order as it related to definitive financing documents and Condition 4 of the Board's September 1, 2009 Order. The Documents were formally executed on April 2, 2010 and submitted by PEDP to the Board and OEC.

WHEREAS, the Documents provided for a new ownership structure and financing, both of which included a major role by Wynn Resorts Limited and its affiliates (collectively "Wynn").

¹ Condition 5 required Foxwoods to provide documents relating to construction of their facility. Condition 6 required Foxwoods to submit a timeline for construction of their facility. Those conditions are recited verbatim in the body of this Consent Agreement.

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The Documents also provided an Architectural Development agreement with Wynn.² The Documents were subject to Board approval as well as other conditions.

WHEREAS, on April 8, 2010, Wynn unilaterally terminated all agreements and negotiations with PEDP.

WHEREAS, as a direct result of the April 8, 2010 termination of such agreements by Wynn, PEDP is in the same position it was on September 1, 2009, with no plan, no financial commitments, no facility design which could be completed by May 29, 2011, and no documents relating to plans, financial commitments, or facility designs that have been or could be submitted to the Board and OEC by any date required by any current Board Order. However, PEDP is actively pursuing other sources of investment and financing as a result of the Wynn termination.

WHEREAS, PEDP is presently without documents and commitments for financing or funding that would provide for the development of its facility with a minimum of 1,500 slot machines available for play on or before May 29, 2011, at the Columbus Boulevard site.

WHEREAS, at this time, it is PEDP's contention that as a direct result of the April 8, 2010 termination of such agreements by Wynn, PEDP cannot produce or does not have a timeline for the commencement and completion of all phases of development regarding its facility with a minimum of 1,500 slot machines available for play on or before May 29, 2011, at the Columbus Boulevard site.

WHEREAS, at this time, it is PEDP's contention that as a direct result of the April 8, 2010 termination of such agreements by Wynn, PEDP cannot produce or does not have architectural renderings, artist renderings, conceptual proposals, engineering opinions, or any other documents relating to the construction of a facility substantially similar to that approved by the Board on December 20, 2006 which provides for a minimum of 1,500 slot machines available for play, on or before May 29, 2011, at the Columbus Boulevard site.

² Wynn produced construction timelines, designs, drawings and architectural renderings and

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WHEREAS, at this time, it is PEDP's contention that as a direct result of the April 8, 2010 termination of such agreements by Wynn, PEDP will not have 1,500 slot machines available for play in a facility substantially similar to that approved by the Board on December 20, 2006, on or before May 29, 2011, at the Columbus Boulevard site.

WHEREAS, on July 11, 2007, representatives authorized to legally bind PEDP signed a Statement of Conditions (hereinafter referred to as "SOC") to slot machine license 1367.

WHEREAS, the SOC require PEDP to maintain the suitability requirements of the Act, including and among other things, financial fitness.

WHEREAS, at this time, it is PEDP's contention that as a direct result of the unilateral termination by Wynn of the agreements between Wynn and PEDP, PEDP does not have financing or funding available which would enable it to construct and open a licensed facility substantially similar to that approved by the Board on December 20, 2006 and make 1,500 slot machines available for play on or before May 29, 2011, at the Columbus Boulevard site.

WHEREAS, PEDP's slot machine license, number 1367, was issued on May 29, 2008, and pursuant to the terms of the Act at the time of issuance, PEDP was required to open its licensed facility with a minimum of 1,500 slot machines available for play by May 29, 2009.

WHEREAS, pursuant to an Order of the Board extending the time to make slot machines available, PEDP is now required to open its licensed facility, substantially similar to the facility for which it was licensed, with 1,500 slot machines available for play, by May 29, 2011, at the Columbus Boulevard site.

WHEREAS, PEDP has not made an additional request to extend the time to make 1,500 slot machines available for play or to extend the time to comply with the Conditions set forth in the Board's September 1, 2009 Order..

WHEREAS, it is PEDP's contention that as a direct result of the unilateral termination by Wynn of the agreements between Wynn and PEDP, PEDP has not submitted a facility design or

PEDP submitted them to OEC on April 6, 2010.

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a construction timeline which would enable it to make slot machines available for play by May 29, 2011, at the Columbus Boulevard site.

WHEREAS, it is PEDP's contention that as a direct result of the unilateral termination by Wynn of the agreements between Wynn and PEDP, at the present time, PEDP has no definitive plan to construct a facility, substantially similar to the facility for which it was licensed, and without financing or additional time to obtain financing, PEDP will be unable to construct and open a facility, substantially similar to the facility for which it has been approved and licensed by the Board, at the Columbus Boulevard site.

TERMS OF AGREEMENT

In consideration of the foregoing Stipulated Facts, the Parties do hereby further stipulate and agree that:

1. This Consent Agreement, and the representations, covenants, obligations and stipulated facts contained herein, shall become effective only upon the approval of this Consent Agreement by the Board.

2. This Consent Agreement is offered and, if approved by the Board, entered into for settlement purposes only. If the Board determines not to approve the effectiveness of same, then this Consent Agreement and the representations, covenants, obligations and stipulated facts contained herein shall be null and void, and neither Party nor any other person shall be entitled to use or rely on any portion hereof for any purpose whatsoever or to admit any portion hereof into evidence in the captioned matter or any proceeding, whether in this action or otherwise.

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3. The Bureau of Investigations and Enforcement, as represented by the Office of Enforcement Counsel, will refrain from filing an Enforcement Action Complaint to Revoke PEDP's Slot Machine License for its failure to fully comply with the Board's September 1, 2009 Order, February 10, 2010 Order and March 3, 2010 Order, subject to the following conditions listed a. through f. below:

- a. Within 180 days from the date this Consent Agreement is approved by the Board (which may hereinafter be referred to as the "Consent Period"), PEDP will provide to BIE, through OEC, a written plan for the funding, construction and opening of a non-temporary facility at the Columbus Boulevard site, substantially similar to the facility approved by the Board on December 20, 2006, and for which it was licensed to construct, open, and operate, subject to such extension of time as is granted by the Board for the completion of the facility pursuant to application by PEDP. The Parties agree that "non-temporary" means a structure intended to be permanent in nature and, while interim, is intended to eventually become part of a larger permanent facility.
- b. Within 180 days from the date this Consent Agreement is approved by the Board, PEDP will negotiate and enter into an agreement, with a reputable financial institution and/or investors who have executed financing documents or a commitment letter, subject to Board approval, which provides for the construction and opening of a facility substantially similar to the facility approved by the Board on December 20, 2006 and which will make available for play a minimum of 1,500 slot machines at the Columbus Boulevard site, and will provide such definitive documentation of such financing and/or funding to BIE through OEC, subject to such extension of time as is granted by the Board for the completion of the facility pursuant to application by PEDP;

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- c. Within 180 days from the date this Consent Agreement is approved by the Board, PEDP will submit to BIE, through OEC, final, detailed and definitive architectural plans, renderings, engineering opinions, a detailed construction timeline, and all other documents reasonably necessary to construct a facility at the Columbus Boulevard site that is substantially similar to the facility approved by the Board on December 20, 2006, subject to any changes therein as may thereafter be required in connection with the issuance of all required federal, state or local permits or approvals;
- d. Within 180 days from the date this Consent Agreement is approved by the Board, PEDP will submit to BIE, through OEC, a report from an independent Board licensed engineer or contractor agreed upon by the Parties, who is not affiliated with PEDP or its casino project, that the plan submitted by PEDP as set forth above can be completed on or before the time mandated by 4 Pa C.S. §1210(a)(2);
- e. Within 180 days from the date this Consent Agreement is approved by the Board, PEDP will file all Petitions or requests to the Board that are necessary to begin and complete the construction of its licensed facility, which at the discretion of PEDP may include, without limitation, petitions or applications with respect to any contemplated extension of time, change of control or ownership, or change of design; and
- f. PEDP will provide monthly reports on the first day of each month to BIE, through OEC, regarding its progress, and further agrees to bi-weekly meetings or

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conference calls with BIE to discuss progress and issues of relevance to the parties.

4. If, at the end of 180 days from the date this Consent Agreement is approved by the Board, the Board determines that PEDP has not submitted to the Board by the end of the Consent Period all of the documents identified in subparagraphs 3a. through 3f in the preceding paragraph 3 set forth above, at the request of the Board, PEDP agrees to thereupon immediately and voluntarily surrender its slot machine license 1367 issued by the Board, and waives and forfeits the following: all rights to appeal regarding the above Board determination and surrender of said license, all funds expended pursuant to licensure, including, but not limited to, the \$50,000,000 licensure fee or any portion thereof; and all sums paid by PEDP prior to the approval by the Board of this Consent Agreement for all fees expended for investigative purposes; and all other funds, fees, or penalties paid to the Board or the Commonwealth of Pennsylvania relating to the regulatory oversight of gaming. PEDP further agrees not to commence any legal proceedings or to seek any injunctive relief to enjoin or restrain the Board and/or the Commonwealth from seeking other applicants for the License surrendered by PEDP or the award of such License to another applicant as part of the competitive process to award such License to another applicant. In the event of and upon the consummation by PEDP of the surrender of its slot machine license, as set forth above, all licenses of the principals and affiliates of PEDP shall automatically be deemed to be withdrawn, without prejudice, and each principal and affiliate shall have no further liability to the Board with regard to the PEDP license. The foregoing requirement to submit such documents to the Board by the expiration of the Consent Period does not contemplate or require that the Board and/or BIE shall have reviewed and/or taken any action on same before such expiration. Any determination by the Board to not approve or to reject any petition or application submitted by PEDP as set forth in subparagraphs

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3a through 3e, and any rights of appeal therefrom, shall not be subject to the provisions of this Consent Agreement

5. On the date this Consent Agreement is approved by the Board, PEDP agrees to pay to the Commonwealth of Pennsylvania any monetary penalty previously assessed by the Board for PEDP's failure to fully comply with the Board's September 1, 2009 Order, February 10, 2010 Order and March 3, 2010 Order to the extent so directed by the Board.

6. If, during the Consent Period, the Office of Enforcement Counsel determines, in its discretion, after reasonable notice to PEDP and an opportunity to cure, that PEDP is not making good faith efforts to comply with this Consent Agreement, its Statement of Conditions, the Act, and the Regulations of the Pennsylvania Gaming Control Board, the Office of Enforcement Counsel has the right to terminate this Consent Agreement, and thereafter file an Enforcement Action Complaint for Revocation of Slot Machine License against PEDP forthwith, in the event of which termination this Consent Agreement and the representations, covenants, obligations and stipulated facts contained herein shall be null and void, and neither Party nor any other person shall be entitled to use or rely on any portion hereof, whether in this action or otherwise.

7. BIE agrees not to make public this Consent Agreement or any information contained herein, and this Consent Agreement and its provisions shall be maintained as confidential by BIE under Section 1206(f) of the Act, as amended, and under such other statutes and/or regulations as may be applicable thereto. OEC will not object to a motion by PEDP to the Board to have portions of this Consent Agreement and its provisions (including, without limitation, regarding the 180 day period provided hereunder) held and maintained as confidential, so long as that request is in compliance with the provisions of the Act and the Regulations promulgated thereunder.

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8. Prior to the expiration of the Consent Period or to the earlier termination, if any, of this Consent Agreement if terminated by BIE and/or the Board prior to the expiration of the Consent Period as provided in this Consent Agreement, PEDP shall not file a Petition in Bankruptcy under Chapter 7 or Chapter 11 of the United States Bankruptcy Code or under the Bankruptcy laws of any other jurisdiction.

9. This Consent Agreement may be terminated by the Board if any material term hereof is violated by PEDP, in which event this Consent Agreement and the representations, covenants, obligations and stipulated facts contained herein shall be null and void, and neither Party nor any other person shall be entitled to use or rely on any portion hereof whether in this action or otherwise.

10. PEDP, through its authorized representative whose signature appears below, has read and fully understands the terms of this Consent Agreement.

11. Upon approval of this Consent Agreement by the Board, in the event of any conflict between the provisions of the Board's Orders issued September 1, 2009, February 10, 2010 and March 3, 2010, on the one hand, and the provisions of this Consent Agreement, the provisions of this Consent Agreement shall govern and prevail so long as this Consent Agreement remains in effect.

And,

12. PEDP expressly acknowledges and agrees that the Board reserves the right to take any actions that the Board, in its sole discretion, is empowered to take under the Gaming Act and Regulations promulgated thereunder that it believes are necessary to protect the integrity of gaming in Pennsylvania, including the right to suspend or revoke its slot machine license in which event upon the commencement of any of such actions this Consent Agreement

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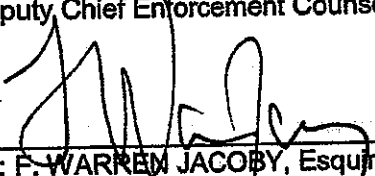
and the representations, covenants, obligations and stipulated facts contained herein shall be null and void, and neither Party nor any other person shall be entitled to use or rely on any portion hereof, whether in this action or otherwise

The undersigned consent to the form and entry of the above:

**Pennsylvania Gaming Control Board
Bureau of Investigations and Enforcement
Cyrus R. Pitre, Chief Enforcement Counsel**


By: DALE W. MILLER, Esquire
Deputy Chief Enforcement Counsel

DATED: April 29, 2010


By: F. WARREN JACOBY, Esquire
Counsel, Philadelphia Entertainment and
Development Partners, L.P.

DATED: Apr. 28, 2010