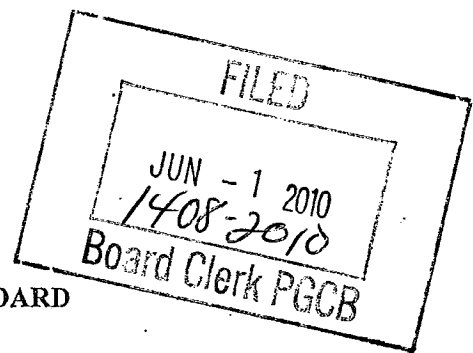


BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD



COMMONWEALTH OF PENNSYLVANIA GAMING CONTROL BOARD BUREAU OF INVESTIGATIONS AND ENFORCEMENT, Complainant,	:	Docket No. 1367
	:	Office of Hearings and Appeals Docket
	:	Number: 1408-2010
v.	:	ADMINISTRATIVE HEARING
PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P. D/B/A FOXWOODS CASINO PHILADELPHIA SLOT MACHINE LICENSE 1367, Respondent.	:	ANSWER, NEW MATTER, LEGAL OBJECTIONS, AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR REVOCATION OF SLOT MACHINE LICENSE COMPLAINT, ORDER AND RULE TO SHOW CAUSE
Filed By: Philadelphia Entertainment and Development Partners, L.P.	:	<u>Counsel of Record:</u> Stephen A. Cozen, Esquire (PA ID #03492) F. Warren Jacoby, Esquire (PA ID #10012) John V. Donnelly III, Esquire (PA ID #93846) Jared D. Bayer, Esquire (PA ID #201211) COZEN O'CONNOR 1900 Market Street Philadelphia, PA 19103 (215) 665-2000 LeRoy S. Zimmerman, Esquire (PA ID #07278) Robert A. Graci, Esquire (PA ID #26722) ECKERT SEAMANS CHERIN & MELLOTT, LLC 213 Market Street, 8 th Floor Harrisburg, PA 17101 (717) 237-6000

**ANSWER, NEW MATTER, LEGAL OBJECTIONS,
AND AFFIRMATIVE DEFENSES OF PHILADELPHIA ENTERTAINMENT AND
DEVELOPMENT PARTNERS, L.P., D/B/A FOXWOODS CASINO PHILADELPHIA
TO COMPLAINT FOR REVOCATION OF SLOT MACHINE LICENSE
AND REQUEST FOR AN ORAL HEARING**

Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP"), by and through undersigned counsel, hereby files its Answer, New Matter, Legal Objections, and Affirmative Defenses to the Complaint for Revocation of Slot Machine License filed by the Office of Enforcement Counsel ("OEC") of the Bureau of Investigations and Enforcement ("BIE") of the Pennsylvania Gaming Control Board ("Board"), and its Request for an Oral Hearing, and in support thereof, avers as follows:

ANSWER TO COMPLAINT

COUNT I

**FAILURE TO COMPLY WITH BOARD ORDER(S)
OF SEPTEMBER 1, 2009 AND/OR MARCH 3, 2010**

1. Admitted.
2. Admitted.
3. Denied. The allegations of this paragraph are conclusions of law to which no response is required. By way of further response, PEDP specifically denies all characterizations and interpretations of the Pennsylvania Race Horse Development and Gaming Act (the "Gaming Act") and any sections thereof, the terms and provisions of which speak for themselves. Strict proof thereof is therefore demanded.
4. Admitted. By way of further response, PEDP's Petition to Extend Time to Make Slot Machines Available is in writing and speaks for itself; all characterizations of the Petition and its contents are therefore denied. Strict proof thereof is therefore demanded.

5. Admitted. By way of further response, the August 28, 2009 Hearing on PEDP's Petition to Extend Time to Make Slot Machines Available was transcribed and the transcript thereof speaks for itself; all characterizations of the August 28, 2009 Hearing transcript and its contents are therefore denied. Strict proof thereof is therefore demanded.

6. Admitted in part; denied in part. It is admitted only that the Board issued a written Adjudication and Order dated September 1, 2009 ("September Adjudication and Order"), which granted PEDP's Petition to Extend Time to Make Slot Machines Available. The September Adjudication and Order are in writing and speak for themselves; all characterizations of the Adjudication and Order and their contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, prior to and after September 1, 2009, PEDP has undertaken substantial efforts to finance, fund, plan, develop, construct, open, and operate its licensed gaming facility and to comply with and otherwise satisfy the Conditions in the Board's September Adjudication and Order. Despite its substantial efforts, PEDP has been delayed and otherwise prevented from completing and opening its licensed gaming facility to date by factors beyond its control. PEDP intends to present testimony and evidence of its efforts to date in that regard, and the factors beyond its control that have adversely affected, delayed and otherwise frustrated its efforts, at the oral hearing in this matter.

7. Denied as stated. The allegations of this paragraph, and of the Complaint generally, present a misleading and out-of-context depiction and representation of the facts, circumstances and events that ignore and obfuscate PEDP's substantial good faith efforts to develop its licensed gaming facility and the exceptional obstacles that have been in PEDP's path due to factors and forces beyond its control from the issuance of its License to the present day. By way of one of many examples, commencing immediately after the Board's September Adjudication and Order, PEDP and its consultants identified and distributed marketing materials

to at least fifteen potential investors and/or funders for the project ("Candidates"). During that period, and into November 2009, PEDP and its consultants entered into confidentiality agreements and non-disclosure agreements, and engaged in extensive meetings, telephone conferences and other communications, with the various Candidates, and facilitated the conduct of due diligence inquiries, including answering questions, providing information and documents, and otherwise soliciting and cultivating interest in the Project and negotiating to obtain commitments for financing and funding. During that same period, PEDP also timely satisfied Condition 1 of the September Adjudication and Order by submitting to the Board on October 16, 2009 its written plan to make a minimum of 1,500 slot machines available for play. Furthermore, PEDP has to date timely satisfied Conditions 2, 3, and 7 of the September Adjudication and Order by submitting written monthly updates to the BIE in October, November, and December 2009 and in January, February, March, April, and May 2010. PEDP intends to present testimony and evidence of its development efforts, and the factors beyond its control that have frustrated its efforts, at the oral hearing in this matter. PEDP further incorporates all pleadings, motions, and other papers and documents it has filed with or submitted to the Board, BIE, or OEC, in connection with its application for the License, and during that period from that time to the present as well as all testimony and argument it has presented to the Board during that period, while reserving the right to maintain the confidentiality of its confidential submissions and other papers. By way of further response, PEDP admits that it filed a Motion to Extend Time on November 30, 2009. That Motion is in writing and speaks for itself; all characterizations of the Motion and its contents are therefore denied. Strict proof thereof is therefore demanded.

8. Admitted in part; denied in part. It is admitted only that the OEC filed an Answer, Objection, and Motion for Sanctions on December 15, 2009. That pleading is in writing

and speaks for itself; all characterizations of the filing and its contents are therefore denied. Strict proof thereof is therefore demanded.

9. Admitted. By way of further response, the January 27, 2010 hearing on PEDP's Motion to Extend Time to Make Slot Machines Available was transcribed and the transcript thereof speaks for itself; all characterizations of the January 27, 2010 hearing transcript and its contents are therefore denied. Strict proof thereof is therefore demanded.

10. Admitted in part; denied in part. It is admitted only that the Board issued an Order and Adjudication dated February 10, 2010 ("February Order and Adjudication"). The February Order and Adjudication are in writing and speak for themselves; all characterizations of the Order and Adjudication are therefore denied. By way of further response, it is specifically denied that the Board issued the February Order and Adjudication on February 10, 2010. To the contrary, the February Order and Adjudication are docket-stamped February 12, 2010 and were not provided to PEDP until February 17, 2010. Strict proof thereof is therefore demanded. PEDP further states that it has timely paid all per diem fines that have been assessed and became due and payable to date pursuant to the February Order and Adjudication.

11. Denied as stated. PEDP admits that the Board held a Hearing on March 3, 2010 and issued an Order dated March 3, 2010 ("March Order"). The Hearing was transcribed and the transcript of the hearing and the March Order are in writing and speak for themselves; all characterizations of them and their contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, to the extent that this paragraph is deemed to argue the applicability of any particular burden of proof, such allegations are erroneous conclusions of law, which PEDP denies. The Board's finding in the March Order that PEDP was required to demonstrate by "clear and convincing" evidence that it had achieved substantial compliance with

Conditions 5 and 6 of the Board's September Order was a clear error of law. Neither the Gaming Act nor the Board's implementing regulations impose any such an elevated standard of proof outside of the context of applications for a license or renewal of a license -- which is not applicable in this case. Moreover, despite the clear thrust of the Board's reasoning in its February Order and Adjudication in imposing the *per diem* sanction, the Board failed to consider important evidence of PEDP's efforts to attain substantial compliance with Conditions 5 and 6. Importantly, on March 2, 2010, as requested by BIE/OEC, PEDP made a detailed six-page Submission to the BIE/OEC detailing its progress over the preceding month towards these goals and presenting a timeline for submitting the required deliverables and obtaining the remaining Board approvals necessary to construct and open its facility. Representatives of PEDP also met and spoke with representatives of the BIE/OEC on several occasions throughout the month to keep them apprised of PEDP's progress and anticipated next steps and to determine what additional submissions the BIE/OEC needed to receive in order for it to consider PEDP to be back in compliance with the spirit and letter of the Board's Orders. While during the Hearing PEDP acknowledged that it had not "literally" complied with Conditions 5 and 6, it was clear from the testimony of Mr. Wynn, Mr. Keating and PEDP, and the aforementioned submission and other communications and meetings with BIE/OEC, that PEDP had "substantially complied" with such Conditions, which is the very standard acknowledged by the Board to be applicable.

12. Denied. The March Order is in writing and speaks for itself; all characterizations of the Order and its contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, as set forth in Paragraph 11 above, PEDP timely made all submissions required by the March Order.

13. Admitted in part; denied in part. It is admitted that on March 31, 2010, PEDP submitted to the Board and OEC a cover letter, a Partnership Interest Purchase Agreement, and a

Termination Agreement. These documents are in writing and speak for themselves; all characterizations of them and their contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, during the time leading up to the submission of these documents, and thereafter, PEDP kept BIE and OEC fully informed of its efforts, the obstacles that it faced, and its progress on a regular basis, including through numerous telephone conferences and meetings and through PEDP's written monthly status updates. PEDP intends to present testimony and evidence at the oral Hearing in this matter concerning its conferences, communications, meetings, and other briefings with the BIE and OEC, as well as those of the BIE and OEC with Wynn and its representatives directly.

14. Denied. The Termination Agreement and the Partnership Interest Purchase Agreement are in writing and speak for themselves; all characterizations of them and their contents are therefore denied. Strict proof thereof is therefore demanded.

15. Denied. The Partnership Interest Purchase Agreement is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded.

16. Admitted in part; denied in part. It is admitted that a Partnership Interest Purchase Agreement and a Termination Agreement (collectively, the "Wynn Transaction Documents") were executed by the parties to the respective Agreements and that copies of these executed Agreements were promptly submitted to the Board and the OEC. These Agreements are in writing and speak for themselves; all characterizations of them and their contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, during the time leading up to the submission of these documents and thereafter, PEDP kept BIE and OEC fully informed of its efforts, the obstacles that it faced, and its progress on a regular basis,

including through numerous telephone conferences and meetings and through PEDP's written monthly status updates. PEDP intends to present testimony and evidence at the oral hearing in this matter concerning its conferences, meetings, and other briefings with the BIE and OEC, as well as those of the BIE and OEC with Wynn and its representatives directly.

17. Denied. The Termination Agreement is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. As was provided in the Wynn Transaction Documents, their execution and effectiveness of the terms and provisions thereof were subject to the approval of the Board, BIE and/or OEC, as and to the extent required.

18. Denied. The Partnership Interest Purchase Agreement is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. As was provided in the Wynn Transaction Documents, their execution and effectiveness of the terms and provisions thereof were subject to the review and/or approval of the Board, BIE and/or OEC, as and to the extent required. By way of further response, neither PEDP nor the Board, BIE or OEC had any reason to believe or anticipate that Wynn Resorts Limited (hereinafter referred to collectively with its subsidiaries as "Wynn") would not honor this Agreement. Moreover, at the Board Hearing on March 3, 2010, in response to an inquiry from a member of the Board, Steve Wynn, the Chief Executive Officer and Chairman of Wynn testified under oath that, upon executing a Term Sheet with PEDP, Wynn believed that it was bound "to act in good faith" and was "required to proceed" with the transaction as agreed, except for limited circumstances. Mr. Wynn testified:

It is a nonbinding agreement in the sense that we can leave, but we are required to act in good faith. It's not binding if you don't license us. It's nonbinding if they don't let us build the building.

But we are required --- my interpretation of this agreement is we are required to proceed. . . .

(Notes of Testimony, March 3, 2010 Hearing, at 73-74.)

19. Admitted in part; denied in part. It is admitted that Wynn issued a press release on April 8, 2010. That press release is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, on April 8, 2010, without prior notice or indication to PEDP, the Board, BIE and/or OEC, Wynn for the first time informed PEDP that it did not intend to honor its Agreement and the other Transaction Documents with PEDP and instead was unilaterally terminating all such agreements with PEDP, notwithstanding Wynn's negotiations and agreements with PEDP, and testimony and statements to the Board, BIE and OEC, as the result of which PEDP is now -- due to no fault of its own -- in the position where PEDP now finds itself at risk of the loss of its License, given the instant proceedings, and/or being unable to find a fair and reasonable solution to the situation in which it currently finds itself, for reasons beyond its own reasonable control.

20. Admitted in part; denied in part. It is admitted that Wynn Pennsylvania, Inc., without justification or warning, issued a letter dated April 8, 2010 in which it purported to terminate the Partnership Interest Purchase Agreement. That letter is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, Wynn's claim at the time that it purported to unilaterally terminate (through no fault of PEDP) the Partnership Interest Purchase Agreement pursuant to Section 12.5 thereof was without factual or legal basis.

21. Admitted upon information and belief.

22. Denied as stated. To the contrary, notwithstanding the admittedly negative impact of the unilateral termination (through no fault of PEDP) by Wynn of the Transaction

Documents (OEC just two days before having testified to the Board that PEDP had satisfied the Board's requirements regarding the submission of the documents and arrangements directed by the Board), PEDP has at all times relevant hereto proceeded in good faith and diligently, and continues to proceed in good faith and diligently, in an effort to complete the development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, all financial aspects thereof. In that regard, under the circumstances, PEDP has requested relief with respect to the due dates of the Conditions imposed upon PEDP by the Board's September 1st Order, but such requests have been denied. Moreover, as PEDP has disclosed to both the Board and to BIE, it was and is the intention of PEDP to submit a request pursuant to Section 1210 of the Act for an extension of time within which to have 1,500 slot machines available to the public. Strict proof thereof is therefore demanded.

23. Admitted in part; denied in part. It is admitted that on April 6, 2010, PEDP submitted to the BIE and OEC conceptual renderings and a proposed construction timeline for its licensed gaming facility. Those documents are in writing and speak for themselves; all characterizations of them and their contents are therefore denied. This submission had been discussed previously with BIE, which understood that it was the intention of PEDP to submit a request pursuant to Section 1210 of the Act for an extension of time within which to have 1,500 slot machines available to the public.

24. Admitted in part; denied in part. It is admitted that, as stated above, Wynn Design & Development, LLC issued a letter dated April 8, 2010 in which it purported to terminate the Development and Architectural Services Agreement. That letter is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. By way of further

response, Wynn's claim at the time that it purported to unilaterally terminate the Partnership Interest Purchase Agreement pursuant to Section 12.5 thereof was without factual or legal basis.

25. Admitted upon information and belief.

26. Denied. To the contrary, as BIE and OEC is fully aware, the renderings were prepared by Wynn for, and submitted by, PEDP, the current Licensee. Strict proof thereof is therefore demanded.

27. Denied as stated. To the contrary, as BIE and OEC are fully aware, the renderings were prepared by Wynn for, and submitted by PEDP, the current Licensee. Strict proof thereof is therefore demanded. By way of further response, following the unilateral termination (through no fault of PEDP) of the Transaction Documents by Wynn, PEDP does not currently anticipate developing its licensed gaming facility according to those renderings. However, notwithstanding the hardship imposed upon PEDP by Wynn's unilateral termination (through no fault of PEDP), PEDP continues to diligently work to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, necessary renderings. Moreover, as was acknowledged by BIE and OEC at the Board's hearing of April 7, 2010, as of that time PEDP had complied with the Conditions imposed upon PEDP pursuant to the Board's prior Orders. In fact, on April 6, 2010, Steve Wynn met with the Mayor of Philadelphia and with the Head of the Philadelphia Planning Commission to talk about and promote the proposed development of the casino project by PEDP based upon the Transaction Documents. Thus, the present situation is, in fact, due solely to Wynn's unilateral termination (through no fault of PEDP), which was beyond the control and anticipation of PEDP, as well as the Board, BIE and OEC, and with

respect to which the Board, BIE and OEC have unjustly failed and refused to grant PEDP relief to which it is entitled.

28. Admitted in part; denied in part. It is admitted that PEDP submitted correspondence to the BIE and the Board on April 26, 2010. That correspondence is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. By way of further response, following the unilateral termination (through no fault of PEDP) of the Transaction Documents by Wynn, PEDP does not currently anticipate developing its licensed gaming facility according to those renderings. However, notwithstanding the hardship imposed upon PEDP by Wynn's unilateral termination (through no fault of PEDP), PEDP continues to diligently work to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, necessary renderings. Moreover, as was acknowledged by BIE and OEC at the Board's hearing of April 7, 2010, as of that time PEDP had complied with the Conditions imposed upon PEDP pursuant to the Board's prior Orders. In fact, on April 6, 2010, Steve Wynn met with the Mayor of Philadelphia and with the Head of the Philadelphia Planning Commission to talk about and promote the proposed development of the casino project by PEDP based upon the Transaction Documents. Thus, the present situation is, in fact, due solely to Wynn's unilateral termination (through no fault of PEDP), which was beyond the control and anticipation of PEDP, as well as the Board, BIE and OEC, and with respect to which the Board, BIE and OEC have unjustly failed and refused to grant PEDP the relief to which it is entitled.

29. Denied. The allegations of this paragraph are improper legal argument and erroneous conclusions of law to which no response is required. Strict proof thereof is therefore demanded. By way of further response, following the unilateral termination (through no fault of

PEDP) of the Transaction Documents by Wynn, PEDP does not currently anticipate developing its licensed gaming facility according to those renderings. However, notwithstanding the hardship imposed upon PEDP by Wynn's unilateral termination (through no fault of PEDP), PEDP continues to diligently work to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, necessary renderings. Moreover, as was acknowledged by BIE and OEC at the Board's hearing of April 7, 2010, as of that time PEDP had complied with the Conditions imposed upon PEDP pursuant to the Board's prior Orders. In fact, on April 6, 2010, Steve Wynn met with the Mayor of Philadelphia and with the head of the Philadelphia Planning Commission to talk about and promote the proposed development of the casino project by PEDP based upon the Transaction Documents. Thus, the present situation is, in fact, due solely to Wynn's unilateral termination (through no fault of PEDP), which was beyond the control and anticipation of PEDP, as well as the Board, BIE and OEC; and with respect to which the Board, BIE and OEC have unjustly failed and refused to grant PEDP the relief to which it is entitled. PEDP has proceeded in good faith and diligently, and continues to proceed in good faith and diligently to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility. The allegations of this paragraph misrepresent and mischaracterize the substantial efforts by PEDP to overcome obstacles beyond its control and develop its licensed gaming facility. Indeed, OEC acknowledged at the Board's April 7, 2010 meeting that PEDP had complied with the March Order.

30. Denied. The allegations of this paragraph are erroneous conclusions of law to which no response is required. Strict proof thereof is therefore demanded. By way of further response, PEDP incorporates its response to paragraph 29.

WHEREFORE, PEDP prays that the Board conduct an oral hearing, find in PEDP's favor, dismiss BIE's Complaint, and issue such other and further relief in PEDP's favor as the Board deems just and proper.

COUNT II

FAILURE TO COMPLY WITH STATEMENT OF CONDITIONS

31. PEDP incorporates all paragraphs of its Answer, New Matter, Legal Objections, Affirmative Defenses, and Request for a Hearing as though fully set forth herein.

32. Admitted in part; denied in part. It is admitted only that on July 11, 2007, the Statement of Conditions was executed on PEDP's behalf. The Statement of Conditions is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. PEDP furthermore specifically denies as conclusions of law any contentions by the BIE as to the legal effect of the Statement of Conditions or any Condition set forth therein.

33. Denied. The Statement of Conditions is in writing and speaks for itself; all characterizations of it and its contents are therefore denied. Strict proof thereof is therefore demanded. PEDP furthermore specifically denies as legal argument and conclusions of law any contentions by the BIE as to the legal effect of the Statement of Conditions or any Condition set forth therein. Strict proof thereof is therefore demanded.

34. Denied. To the contrary, notwithstanding the material adverse negative impact of the unilateral termination (through no fault of PEDP) by Wynn of the Transaction Documents, PEDP continues to proceed in good faith and diligently in an effort to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, funding and/or financing development

of the facility. Strict proof thereof is therefore demanded. Under the circumstances, PEDP has requested relief with respect to the due dates of the Conditions imposed upon PEDP by the Board's September 1st Order, but such requests have been denied. Moreover, as PEDP has disclosed to both the Board and to BIE, it was and is the intention of PEDP to submit a request pursuant to Section 1210 of the Act for an extension of time within which to have 1,500 slot machines available to the public.

35.-36. Denied. The August 28, 2009 hearing, including Mr. Ford's testimony, was transcribed. The transcript is in writing and speaks for itself; all characterizations of Mr. Ford's transcribed testimony are therefore denied. Strict proof thereof is therefore demanded. By way of further response, notwithstanding the hardship imposed upon PEDP by Wynn's unilateral termination (through no fault of PEDP), PEDP continues to diligently work to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, necessary renderings. Moreover, as was acknowledged by BIE and OEC at the Board's hearing of April 7, 2010, as of that time PEDP had complied with the Conditions imposed upon PEDP pursuant to the Board's prior Orders. In fact, on April 6, 2010, Steve Wynn met with the Mayor of Philadelphia and with the head of the Philadelphia Planning Commission to talk about and promote the proposed development of the casino project by PEDP based upon the Transaction Documents. Thus, the present situation is, in fact, due solely to Wynn's unilateral termination (through no fault of PEDP), which was beyond the control and anticipation of PEDP, as well as the Board, BIE and OEC, and with respect to which the Board, BIE and OEC have unjustly failed and refused to grant PEDP the relief to which it is properly entitled. PEDP has proceeded in good faith and diligently, and continues to proceed in good faith and diligently to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its

licensed gaming facility. The allegations of this paragraph misrepresent and mischaracterize the substantial efforts by PEDP to overcome obstacles beyond its control and develop its licensed gaming facility. Indeed, OEC acknowledged at the Board's April 7, 2010 meeting that PEDP had complied with the March Order.

37. Denied. PEDP incorporates herein its responses to paragraphs 35 and 36 above. By way of further response, as stated to the Board and BIE at the August 28, 2009 hearing, and in subsequent pleadings and correspondence submitted, and testimony presented, to the Board and BIE, the financial downturn and contraction of the national financial and credit markets that began in the summer and fall of 2008 was beyond PEDP's control, and was wholly unexpected and unprecedented in its scope. In tandem with the long-running delays in development of PEDP's licensed gaming facility also caused by outside forces beyond its control – including litigation, community opposition, and City Council obstruction, as well as the impact upon Foxwoods Development Company of such economic events – the financial downturn forced PEDP to consider new financing and/or funding options to complete development of its licensed facility. PEDP is not responsible for the financial downturn or the litigation, community opposition, and City Council obstruction that have impacted the development of its licensed gaming facility, nor could it avoid the effect of same on Foxwoods Development Company, but PEDP undertook and continues to undertake significant efforts to overcome these obstacles. Most prominent is the execution of the Transaction Documents. Notwithstanding the adverse negative impact of the unilateral termination by Wynn (through no fault of PEDP), PEDP continues to diligently and in good faith work to complete development of its licensed gaming facility, and PEDP anticipates being able to successfully complete development of its licensed gaming facility, including, but not limited to, funding and/or financing development of the facility. Under the circumstances, PEDP has requested relief with respect to the due dates of the

Conditions imposed upon PEDP by the Board's September 1st Order, but such requests have been denied. Moreover, as PEDP has disclosed to both the Board and to BIE, it was and is the intention of PEDP to submit a request pursuant to Section 1210 of the Act for an extension of time within which to have 1,500 slot machines available to the public.

38. Denied. PEDP incorporates herein its responses to paragraphs 35 through 37, inclusive, above. PEDP pursued a transaction with Wynn as a solution to the circumstances with which it was confronted by reason of the foregoing events and conditions. Wynn provided PEDP with the management and funding necessary to develop its casino, given the effect of the financial markets on PEDP's prior plans, and the need to address same, much the same as was permitted by the Board with the Rivers Casino in Pittsburgh, and possibly other casinos of which PEDP does not presently have knowledge. Strict proof thereof is therefore demanded.

39. Admitted in part; denied in part. It is admitted that PEDP negotiated with and ultimately entered into the Transaction Documents with Wynn pursuant to which Wynn was to acquire a majority interest in PEDP, and to provide funding and/or financing for development of PEDP's licensed facility, as well as design and operational expertise. PEDP expected and anticipated Wynn to honor those Agreements, but fell victim to the unilateral termination (through no fault of PEDP) by Wynn of the Transaction Documents. Notwithstanding the adverse negative impact of the Wynn unilateral termination on PEDP -- at a time when it had addressed the Board's concerns regarding the Conditions imposed upon it by the September Order, PEDP continues to diligently and in good faith work in an effort to complete development of its licensed gaming facility, and anticipates being able to successfully complete development of its licensed gaming facility. Strict proof thereof is therefore demanded.

40. Denied. The testimony given at the March 3, 2010 hearing was transcribed, and the transcript is in writing and speaks for itself. All characterizations of this testimony are therefore denied. Strict proof thereof is therefore demanded. At the time of the March 3, 2010, PEDP had not yet entered into and executed the Transaction Documents with Wynn. Subsequently, these documents were executed on April 2, 2010, and delivered to the Board and BIE on April 5, 2010, after which time BIE and OEC acknowledged that PEDP had satisfied the Conditions imposed upon PEDP by the September Order. The unilateral termination (through no fault of PEDP) by Wynn was unexpected by not only PEDP, but by the Board, BIE and OEC -- as well as the Mayor of Philadelphia and the Governor of Pennsylvania, among others. Under the circumstances, the refusal of the Board, and BIE and OEC, to permit PEDP a reasonable period time to submit a plan in place of that based upon the Transaction Documents, which had been negotiated in one form or another since November, 2009, is unreasonable and without legal or factual basis.

41. Denied. To the contrary, PEDP incorporates its responses to Paragraphs 34, 37, 39 and 40, above. By way of further response, the BIE -- and the Board -- have ignored the significant past and ongoing diligent and good faith efforts by PEDP to overcome the many obstacles that have impacted its ability to develop its licensed gaming facility. Strict proof thereof is therefore demanded. Under the circumstances, PEDP has requested relief with respect to the due dates of the Conditions imposed upon PEDP by the Board's September 1st Order, but such requests have been denied. Moreover, as PEDP has disclosed to both the Board and to BIE, it was and is the intention of PEDP to submit a request pursuant to Section 1210 of the Act for an extension of time within which to have 1,500 slot machines available to the public.

42. Denied. The allegations of this paragraph are improper legal argument and conclusions of law to which no response is required. By way of further response, PEDP

incorporates its responses to Paragraphs 34, 37, 39, and 41 above. Since the Wynn unilateral termination (through no fault of PEDP), as PEDP has advised BIE and OEC, as well as the Board, PEDP has proceeded expeditiously to prepare and submit to the Board a revised plan. Moreover, in that regard, PEDP and BIE negotiated and Consent Agreement which provided PEDP with time to submit such revised plan, which was not approved by the Board without comment, direction or opinion. Strict proof thereof is therefore demanded. Under the circumstances, PEDP has requested relief with respect to the due dates of the Conditions imposed upon PEDP by the Board's September 1st Order, but such requests have been denied. Moreover, as PEDP has disclosed to both the Board and to BIE, it was and is the intention of PEDP to submit a request pursuant to Section 1210 of the Act for an extension of time within which to have 1,500 slot machines available to the public.

WHEREFORE, PEDP prays that the Board conduct an oral hearing, find in PEDP's favor, dismiss the BIE's Complaint, and issue such other and further relief in PEDP's favor as the Board deems just and proper.

COUNT III

INABILITY TO HAVE A MINIMUM OF 1,500 SLOT MACHINES AVAILABLE FOR PLAY BY MAY 29, 2011

43. PEDP incorporates all paragraphs of its Answer, New Matter, Legal Objections, Affirmative Defenses, and Request for a Hearing as though fully set forth herein.

44. Denied. The allegations of this paragraph are improper legal argument and conclusions of law to which no response is required. By way of further response, PEDP specifically denies all characterizations and interpretations of the Gaming Act and any sections thereof, the terms and provisions of which speak for themselves. Strict proof thereof is therefore demanded. Furthermore, the relevant provisions of the Gaming Act have been amended since

that time to permit a further extension of time with Board approval for PEDP to commence operations up until December 31, 2012.

45. Denied. The allegations of this paragraph are improper legal argument and conclusions of law to which no response is required. Strict proof thereof is therefore demanded. By way of further response, PEDP's slot machine license was issued May 29, 2008, PEDP timely filed a Petition to Extend Time to Make Slot Machines Available – as authorized by the Gaming Act – and the Board granted PEDP's Petition, extending the time by which PEDP was required to make 1,500 slot machines available until May 29, 2011. Furthermore, the relevant provisions of the Gaming Act have been amended since that time to permit a further extension of time with Board approval for PEDP to commence operations up until December 31, 2012.

46. Admitted in part; denied in part. It is admitted that by the September Order and Adjudication, the Board granted PEDP's Petition to Extend Time to Make Slot Machines Available, extending the time by which PEDP was required to make 1,500 slot machines available until May 29, 2011. The Order and Adjudication are in writing and speak for themselves; all characterizations of them and their contents are therefore denied. Strict proof thereof is therefore demanded.

47. Denied. To the contrary, as the BIE has admitted, PEDP submitted renderings and a proposed construction timeline for its proposed casino on April 6, 2010. Strict proof thereof is therefore demanded. By way of further answer, PEDP incorporates herein the allegations set forth above in Paragraphs 22, 23 and 29.

48. Denied as stated. As BIE and OEC is fully aware, BIE and PEDP entered into a Consent Agreement dated April 28, 2010, pursuant to which BIE agreed that PEDP would have 180 days to submit renderings, financial documents and a time line as the result of the unilateral

termination (through no fault of PEDP) by Wynn of the Transaction Documents. The Consent Agreement specifically contemplated that prior to the expiration of the 180 day period, PEDP would submit an application for an extension of time within which to have its casino operational pursuant to Section 1210, as amended. Notwithstanding the extenuating conditions, and the hardship imposed on PEDP by Wynn's unilateral termination (through no fault of PEDP), the Board refused to approve the Consent Agreement, without comments, opinion or direction. Strict proof thereof is therefore demanded.

49. Denied. The Board's September 1, 2009 Order is in writing and speaks for itself; all characterizations of that Order and its contents are therefore denied. Strict proof thereof is therefore demanded.

50. Denied. PEDP's proposed project was submitted to the Board in writing, and those written documents speak for themselves; all characterizations of those documents and their contents are therefore denied. Strict proof thereof is therefore demanded.

51.-52. Denied. PEDP incorporates herein its response to Paragraph 50 above. Strict proof thereof is therefore demanded.

53. Denied. PEDP incorporates herein its responses to Paragraphs 34, 37, 39, and 41 above. Strict proof thereof is therefore demanded.

54. Denied. The allegations of this paragraph repeat the allegations of prior paragraphs of the Complaint. PEDP incorporates herein its responses to the preceding paragraphs, including, specifically, Paragraphs 6-7, 16, 18-19, 27, 29-30, 34, 37, 39, and 41 above. Strict proof thereof is therefore demanded.

55. Denied. There is no factual basis for the averments in this paragraph. To the contrary, as PEDP has informed the BIE, it is actively and diligently negotiating to obtain the necessary financing and/or funding to complete development of its licensed facility, and PEDP anticipates reaching an agreement on such financing and/or funding to present to the BIE and the Board for review and approval shortly. Strict proof thereof is therefore demanded.

56. Denied. PEDP incorporates herein its responses to Paragraphs 51-55 above. Strict proof thereof is therefore demanded.

57.-60. Denied. There is no factual basis for the conclusory and unsubstantiated averments of these paragraphs. Strict proof thereof is therefore demanded. By way of further response, the testimony given at the March 3, 2010 hearing, as well as all other hearings before the Board where PEDP representatives gave testimony, has been transcribed, and the transcripts are in writing and speak for themselves. All characterizations of this testimony are therefore denied. Finally, PEDP incorporates herein its responses to Paragraphs 51-55 above.

61. Denied. To the contrary, as PEDP has informed the BIE, it is actively and diligently negotiating to obtain the necessary financing and/or funding to complete development of its licensed facility, and PEDP anticipates reaching an agreement on such financing and/or funding to present to the BIE and the Board for review and approval shortly, which will enable PEDP to finalize and submit to the BIE and the Board appropriate development plans, renderings, and a proposed construction timeline shortly thereafter. Moreover, as the BIE is well aware, PEDP is not responsible for the numerous obstacles that have impacted its ability to complete development of its licensed facility, including the unprecedented financial downturn; litigation, community opposition, and City Council obstruction; and, last but not least, the Wynn unilateral termination (through no fault of PEDP). PEDP has proceeded diligently and in good

faith and continues to make significant efforts to overcome these obstacles. PEDP continues to diligently work to complete development of its licensed gaming facility, and PEDP anticipates being able to successfully complete development of its licensed gaming facility. As both BIE and OEC, and the Board, were and are fully aware, the plan based upon the Transaction Documents, and based upon the revised plan that PEDP anticipates submitting to the Board shortly, contemplate that – as specifically provided by the Gaming Act – PEDP would request the Board's approval of an extension of time to have 1,500 slot machines operational based upon an appropriate hearing before the Board where it would have the opportunity to determine whether good cause exists for such extension. Strict proof thereof is therefore demanded.

62. Denied. PEDP incorporates herein its response to Paragraph 61 above. Strict proof thereof is therefore demanded.

WHEREFORE, PEDP prays that the Board conduct an oral hearing, find in PEDP's favor, dismiss the BIE's Complaint, and issue such other and further relief in PEDP's favor as the Board deems just and proper.

COUNT IV

FAILURE TO MAINTAIN SUITABILITY

63. PEDP incorporates all paragraphs of its Answer, New Matter, Legal Objections, Affirmative Defenses, and Request for a Hearing as though fully set forth herein.

64.-66. Denied. The allegations of these paragraphs are improper legal argument and conclusions of law to which no response is required. Strict proof thereof is therefore demanded. By way of further response, PEDP specifically denies all characterizations and interpretations of the Gaming Act and any sections thereof, the terms and provisions of which speak for themselves.

67.-69. Denied. The allegations of this paragraph are conclusions of law to which no response is required. Strict proof thereof is therefore demanded. By way of further response, PEDP incorporates herein its responses to Paragraphs 34, 37, 39, 41, and 61 above.

WHEREFORE, PEDP prays that the Board conduct an oral hearing, find in PEDP's favor, dismiss the BIE's Complaint, and issue such other and further relief in PEDP's favor as the Board deems just and proper.

NEW MATTER, OBJECTIONS, AND AFFIRMATIVE DEFENSES

70. PEDP incorporates all paragraphs of its Answer, New Matter, Legal Objections, Affirmative Defenses, and Request for a Hearing as though fully set forth herein.

71. The allegations of the Complaint fail to set forth a cause of action against PEDP for the revocation of its license.

72. The BIE and OEC lack any factual or legal basis for the allegations of their Complaint.

73. There is no good cause or evidentiary basis to revoke PEDP's slot machine license, and any such revocation would be arbitrary and capricious.

74. BIE and OEC have made recommendations and/or been prepared to make recommendations in support of the relief requested by PEDP, and to which it is entitled, but the Board, over the last 12 month period, has improperly failed to follow or accept same.

75. The evidence already of record in this matter establishes PEDP's right to the relief sought by PEDP from the Board, including such relief as the Board has denied.

76. PEDP has fully or substantially complied with all applicable requirements of the Gaming Act, implementing Regulations, and Orders and Adjudications of the Board.

77. Assuming, *arguendo*, that PEDP may not have fully complied with any applicable requirements of the Gaming Act, implementing Regulations, or Orders and Adjudications of the Board, PEDP was prevented from full compliance solely because of factors beyond its control, including, but not limited to, the unprecedented financial downturn, litigation, community opposition, and City Council obstruction, and the Wynn unilateral termination (through no fault of PEDP) of the Transaction Documents.

78. PEDP has consistently and diligently and in good faith used its best efforts to fully and/or substantially comply with all applicable requirements of the Gaming Act, implementing Regulations, and Orders and Adjudications of the Board.

79. PEDP has consistently kept the BIE and OEC fully apprised of its efforts and progress in developing its licensed gaming facility.

80. The BIE and OEC had knowledge of and acquiesced in PEDP's efforts and course of conduct in developing its licensed gaming facility.

81. The Board has concluded that substantial compliance is the standard by which PEDP's progress in developing its licensed gaming facility must be judged, and that conclusion is the law of this case.

82. The statements and actions of the BIE and OEC establish that PEDP has substantially complied with all applicable requirements of the Gaming Act, implementing Regulations, and Orders and Adjudications of the Board.

83. The Board has erred and will continue to err in applying a clear and convincing evidence standard in ascertaining whether PEDP has substantially complied with all applicable requirements of the Gaming Act, implementing Regulations, and Orders and Adjudications of the Board, and the application of such an elevated evidentiary standard is contrary to law.

84. The imposition by the Board of sanctions against PEDP pursuant to the March Order is without factual or legal basis.

85. The imposition by the Board of sanctions against PEDP pursuant to its Order of April 29, 2010 is without factual or legal basis.

86. The Board's refusal to approve the Consent Agreement entered into by PEDP and the BIE/OEC was arbitrary and capricious.

87. The failure of the Board to properly apply the law to the various requests of PEDP in this matter, have contributed to the difficulties encountered by PEDP in finding a solution to the problems which it has experienced in developing its casino facility.

88. The Board's refusal to grant PEDP's Motion for a thirty-day extension of time to respond to the Complaint in this matter, to which the BIE/OEC had no objection, was arbitrary and capricious.

89. Wynn unilaterally (through no fault of PEDP) terminated the Transaction Agreements, and PEDP is entitled to the relief that it has requested from the Board in conjunction therewith.

90. The Board's refusal to permit PEDP sufficient time to respond to and overcome unexpected and unanticipated obstacles to PEDP's development of its licensed facility, caused

by forces and factors beyond PEDP's control, is unreasonable, arbitrary, capricious, and an abuse of discretion, and it violates PEDP's right to due process of law and other rights established by the United States and Pennsylvania Constitutions.

91. The Board's practices and procedures as to PEDP are unreasonable, arbitrary, capricious, and an abuse of discretion, and violate PEDP's right to due process of law and other rights established by the United States and Pennsylvania Constitutions.

92. Upon information and belief, BIE, OEC and the Board are applying to PEDP standards and requirements in a manner that is not consistent with its application of the same or similar standards to other licensees of the Board.

93. Nothing contained in this Answer, New Matter, Legal Objections, and Affirmative Defenses to the Complaint for Revocation of Slot Machine License is intended to waive or release any claim by or on behalf of PEDP to recover the \$50 million slot machine license fee that it paid for its License.

94. The relief sought by the BIE and OEC is barred by the doctrine of laches.

95. The relief sought by the BIE and OEC is barred by the doctrine of unclean hands.

96. The relief sought by the BIE and OEC is barred by the doctrine of estoppel.

97. The relief sought by the BIE and OEC is barred by the doctrine of waiver.

WHEREFORE, PEDP prays that the Board conduct an oral hearing, find in PEDP's favor, dismiss the BIE's Complaint, and issue such other and further relief in PEDP's favor as the Board deems just and proper.

REQUEST FOR A HEARING

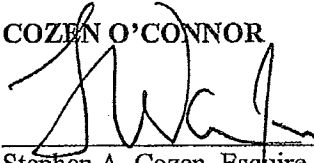
98. PEDP incorporates all paragraphs of its Answer, New Matter, Legal Objections, Affirmative Defenses, and Request for a Hearing as though fully set forth herein.

99. PEDP hereby requests an oral hearing in the present matter pursuant to 58 Pa. Code § 493a.5(c)(5) and 58 Pa. Code § 494a.1 *et seq.*

WHEREFORE, PEDP prays that the Board conduct an oral hearing, find in PEDP's favor, dismiss the BIE's Complaint, and issue such other and further relief in PEDP's favor as the Board deems proper.

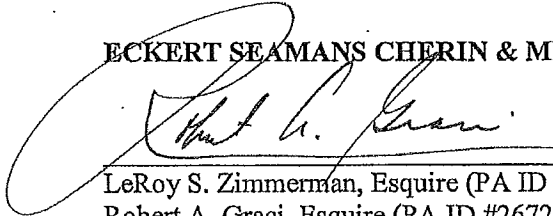
Respectfully submitted,

COZEN O'CONNOR



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June 1, 2010

VERIFICATION

I, Brian Ford, hereby state that I am authorized to make this Verification, and state that the facts above set forth in the foregoing Answer, New Matter, Legal Objections, and Affirmative Defenses to the Complaint for Revocation of Slot Machine License and Request for an Oral Hearing are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: June 1, 2010

Brian R. Ford

CERTIFICATE OF SERVICE

I certify that I am this day serving a complete copy of the foregoing Answer, New Matter, Legal Objections, and Affirmative Defenses to the Complaint for Revocation of Slot Machine License and Request for an Oral Hearing by E-Mail upon the following:

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By: 

Robert A. Graci, Esquire

Dated: June 1, 2010