

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

**In re: Philadelphia Entertainment and  
Development Partners, L.P., d/b/a Foxwoods  
Casino Philadelphia**

Docket Number: 1367

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**MOTION BY PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT  
PARTNERS L.P. D/B/A FOXWOODS CASINO PHILADELPHIA TO EXTEND TIME**

NOW COMES, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP"), by and through its counsel, Cozen O'Connor and Eckert Seamans Cherin & Mellott, LLC, and, pursuant to 58 Pa. Code § 497a.5(a)(1), hereby moves the Pennsylvania Gaming Control Board (the "Board") for an extension of time, for good cause shown, to make further submissions in response to Conditions 4, 5 and 6 ("Conditions") of

the Board's September 1, 2009 Order ("Extension Order"), as modified by the Board's February 10, 2010 Order and March 3, 2010 Order (collectively, the "Amended Order") granting PEDP's Petition to Extend the Time to Make Slot Machines Available (the "Petition to Extend Time"), and for relief from the penalties and fines imposed upon PEDP pursuant to the Amended Order for the period commencing March 3, 2010 to the present time. In support thereof, PEDP avers as follows:

### INTRODUCTION

1. PEDP respectfully requests that the Board grant PEDP an extension of time of one hundred twenty (120) days from the date of the Board's Order approving this Motion, to submit to the Board and/or the Board's Bureau of Investigations and Enforcement (the "BIE"), as the case may be, the reports, information and other documents required to be submitted by PEDP pursuant to Conditions 4, 5 and 6 of the Extension Order, as amended and modified by the February 10, 2010 Order and the March 3, 2010 Order (collectively, the "Amended Order") with respect to PEDP's revised plan for the development of its casino facility ("Casino") at the Columbus Boulevard Site (as that term is defined below).

2. Good cause exists to grant the requested relief because PEDP has, since the issuance of the Extension Order, as amended and modified, moved forward diligently and in good faith in its efforts to develop a licensed gaming facility (the "Project") at Columbus Boulevard between Reed and Tasker Streets on the South Philadelphia Waterfront (the "Columbus Boulevard Site" or "Site") as directed by the Board in the Extension Order. As discussed in more detail below, at the time of the unilateral termination (through no fault of PEDP) by Wynn of the Purchase Agreement (as that term is defined below) and related documents on April 8, 2010, PEDP had complied with the requirements of Conditions 4, 5 and 6

of the Amended Order, as was acknowledged by the Chief Enforcement Counsel for BIE at the Board's public meeting held on April 7, 2010. Thus, but for such termination, which was beyond the control or anticipation of PEDP (as well as the Board and BIE, among others, including the Mayor of Philadelphia and the Governor of Pennsylvania), PEDP had complied with the requirements of such Conditions and would not have been subject to further fines or penalties as imposed by the Board up to and including its Order of April 29, 2010, which, however, continue to the present time because of circumstances beyond the reasonable control of PEDP.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

3. The Board, on December 20, 2006 announced the recipients of the two Category 2 Slot Machine Licenses to be awarded to operate gaming facilities in the City of Philadelphia (collectively, the "Philadelphia Casinos"), and it later memorialized such award in its Order and Adjudication dated February 1, 2007. PEDP was awarded one of the two Licenses ("License").

4. The License permitted PEDP to construct and operate the Casino at the Columbus Boulevard Site on the banks of the Delaware River in the Pennsport neighborhood of South Philadelphia.

5. After having been awarded a License for the Columbus Boulevard Site, PEDP attempted to move forward and obtain the necessary permits and approvals from the City of Philadelphia to begin construction of the Casino at that Site. PEDP had initially proposed in its development plan to begin construction of the Casino in March 2007 and to have the Casino operational by November 2008.

6. However, from the beginning, Philadelphia's City Council and certain local activist groups, among others, disagreed with the Board's decision to locate the Casino at the Columbus Boulevard Site and, thus, actively opposed PEDP's efforts to obtain the necessary permits and licenses to begin construction at the Columbus Boulevard Site. PEDP was therefore required, time and time again, to take action to counter each of these obstacles to its ability to begin construction of the Casino at the Columbus Boulevard Site.

7. In January 2007, for example, between the announcement of the Board's decision and its issuance of its Order and Adjudication in February, 2007, City Council introduced a package of eight Ordinances that it stated were intended to delay, limit, or exclude gaming from the sites selected by the Board for the two Philadelphia Casinos.

8. In March 2007, opponents of the Columbus Boulevard Site then sought to introduce a petition and ballot question to create a 1500 foot buffer zone between the gaming facility and certain other facilities, such as residences. If adopted, the proposed plan would have purported to preclude the construction of a gaming facility at the Columbus Boulevard Site. These efforts were ultimately dismissed by the Court of Common Pleas of Philadelphia County.

9. A few weeks later, City Council approved a bill creating the 1500 foot buffer zone and enacted a resolution seeking to submit to the City's voters an amendment to the Philadelphia Home Rule Charter that would effectively prohibit gaming in the City. Then-Mayor John F. Street vetoed the proposed Ordinance, but City Council overrode that veto on March 29, 2007. Ultimately, the Pennsylvania Supreme Court struck down the bill and the proposed resolution to submit the issue as a ballot question.

10. The following month, City Council introduced another bill which would have the effect of prohibiting a gaming facility at the Columbus Boulevard Site. Later in April 2007, City Council passed a resolution to rezone the Columbus Boulevard Site, which would also have prohibited the building of a gaming facility on that site. Mayor Street vetoed the rezoning legislation, but City Council overrode that veto on May 10, 2007.

11. At the end of May 2007, Mayor Street approved and transmitted to City Council for introduction during the following day's City Council session proposed legislation to zone the Columbus Boulevard Site as a Commercial Entertainment District ("CED") under Philadelphia Code § 14-400, which is the zoning classification needed to operate a gaming facility at that location. However, City Council never acted on the proposed legislation.

12. On August 9, 2007, City Council wrote to Governor Edward Rendell, requesting the Governor's support in relocating the planned Casino from the Columbus Boulevard Site. Two months later, the Governor rejected the request for support in attempting to relocate the Casino.

13. In light of these ongoing obstacles, on September 6, 2007, PEDP requested that the Board extend the time within which PEDP needed to pay the \$50 million fee for its License. PEDP sought to delay incurring this substantial expense and the monthly interest associated therewith until the various political and other issues could be resolved and the planned construction commenced. The Board, however, declined to grant the requested extension, and PEDP timely paid the fee on October 17, 2007, more than two and one-half years ago.

14. In January 2008, City Council proposed two Ordinances that ostensibly would have approved development of the Casino, but contained conditions designed to further delay the

development. Ultimately, City Council took no action on these Ordinances. The introduction of these two Ordinances was among the reasons the PEDP sought relief from the Pennsylvania Supreme Court that culminated in the April 2, 2010 Order directing the City to grant PEDP the CED Zoning.

15. Throughout this process, PEDP continued to pursue the permits and approvals that it needed to construct and operate the Casino. For example, working with Mayor Street's administration, PEDP entered into a Development and Tax Claim Settlement Agreement on January 4, 2008 (based upon a Term Sheet executed on November 23, 2007), that established the future relationship between PEDP and the City in developing the Columbus Boulevard Site, as well as a multitude of other development related matters.

16. PEDP nonetheless remained unable to obtain the CED zoning from City Council for the Columbus Boulevard Site. Over a period of ten months, PEDP filed four applications with the Supreme Court of Pennsylvania, and ultimately it prevailed when the Supreme Court deemed the Columbus Boulevard Site zoned under the CED classification by Opinion dated April 2, 2008.

17. On June 18, 2008, the City Planning Commission claimed that PEDP's Zoning and Use Permit Application for the Columbus Boulevard Site -- which had been submitted shortly after Supreme Court decision of April 2, 2008 - was "incomplete." Three weeks later, the Planning Commission then informed PEDP that it had determined that the application was "incomplete" under a "new" policy the Planning Commission was now applying to projects "of scale" prior to issuing zoning permits.

18. In July 2008, certain State Legislators advised in a press conference that they planned to take legislative action against the two Philadelphia casinos unless they were relocated from the riverfront. At the same time, although the Supreme Court had ordered the Columbus Boulevard Site rezoned under the CED classification, PEDP was still unable to obtain zoning and use permits, building permits, and the other necessary permits and approvals to begin construction. PEDP therefore moved to enforce the Supreme Court's Order of April 2, 2008 and for the appointment of a Special Master to oversee and resolve disputes between Foxwoods and the City.

19. In October 2008, the Supreme Court granted the relief requested by PEDP and directed the issuance of the zoning and use permit, and appointed the Honorable Joseph F. McCloskey, a Senior Judge on the Commonwealth Court, as Special Master with "full authority to consider and resolve such further disputes as may arise regarding the issuance of permits, approvals, licenses or other authorizations by the City of Philadelphia for the construction, use and occupancy of PEDP's licensed gaming facility."<sup>1</sup>

20. In light of the continued obstacles to beginning construction of the Casino at the Columbus Boulevard Site and the concomitant delay in the Commonwealth and City realizing the tax revenues and employment opportunities contemplated, in July 2008, Governor Rendell began to urge PEDP to meet with representatives of the State and City governments and consider the possibility of relocating the Casino to another site. At the Governor's request, during August and September 2008, before the Supreme Court had appointed the Special Master, PEDP met with Governor Rendell, Mayor Nutter and other representatives of the governments of the

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<sup>1</sup> The Honorable John Herron was appointed as the successor Special Master to Judge McCloskey as set forth in an Order issued by the Pennsylvania Supreme Court.

Commonwealth and the City of Philadelphia to discuss the possibility of moving the location of the Casino. However, PEDP repeatedly stressed that the Board had the sole authority to determine where to site the Casino and that, unless and until the Board agreed to relocate the Casino, PEDP intended to develop the Casino at the Columbus Boulevard Site selected by the Board at the time of the issuance of the License.

21. During these discussions, the City leaders who opposed constructing the Casino on the Columbus Boulevard Site urged PEDP to consider relocating the Casino to alternative sites in Philadelphia. While continuing to reserve its rights to proceed with development at the Columbus Boulevard Site, beginning in September 2008, at the behest of the foregoing governmental officials, PEDP initially evaluated the logistical and other issues attendant to relocating the proposed Casino facility to space in the Gallery shopping mall at Eleventh and Market Streets in Center City Philadelphia. However, because the City and the City's Redevelopment Authority both have ownership interests in the Gallery, it was determined that this would not be viable even should a request be submitted to the Board and the Board approve such request.

22. After determining that the Gallery was not a viable alternative, in late February 2009, PEDP evaluated the logistical and other issues attendant to relocating its Casino to the Strawbridge & Clothier Building at 801 Market Street. This was also determined not to be viable.

23. In the meantime, litigation concerning the License awarded to PEDP and other related matters continued on several fronts. In January 2009, unsuccessful license applicant Keystone Redevelopment Partners, LLC ("Keystone") filed a petition with the Board seeking to



have it declare PEDP's License abandoned and to reopen Keystone's licensure application and award a License to Keystone. Keystone is also the Plaintiff in a lawsuit against the Board and its members that is docketed in Federal court in the Middle District of Pennsylvania. In that latter lawsuit, Keystone claims that the Board's licensure adjudication process and its denial of Keystone's application were unconstitutional.

24. Additionally, because -- as the result of the foregoing events and conditions, as well as the dramatic events in the financial market place which unexpectedly adversely affected the economy, including the gaming industry and the Foxwoods Tribe and planned sources of funding for the development of the casino project -- PEDP was not yet able to begin construction of the Casino, on May 22, 2009, it filed with the Board a Petition to Extend the deadline by which the Casino was to be open and operational. Keystone, certain State Legislators, and an anti-casino advocate all sought to intervene in this petition. The Petition to Extend sought an extension of time of 24 months to have at least 1,500 slot machines available for play at the Columbus Boulevard Site, pursuant to § 1210 of the Pennsylvania Race Horse Development and Gaming Act (the "Gaming Act"), 4 Pa. C.S.A. § 1210, as then allowed.

25. On August 28, 2009, the Board, at a public meeting, considered PEDP's Petition to Extend, as well as two Petitions to Intervene filed in the matter and a third Petition for leave to file a brief in the matter as *amicus curiae*. At that meeting, after a hearing on PEDP's Petition to Extend and argument on the two Petitions to Intervene, the Board granted PEDP's Petition to Extend for good cause shown. It denied both Petitions to intervene, but granted the Petition for leave to file a brief as *amicus curiae*. Keystone appealed that determination to the Commonwealth Court.

26. On September 1, 2009, the Board issued four (4) Orders and Adjudications memorializing, and explaining the reasoning for, its decisions of that date, including the Extension Order granting the requested extension to PEDP.

27. The Extension Order granted PEDP's Petition to Extend Time, and extended by twenty-four months, until May 29, 2011, the time within which PEDP was required to have at least 1,500 slot machines operational and available for play at the Columbus Boulevard Site as provided by § 1210 of the Gaming Act.

28. In the Extension Order, the Board also imposed nine Conditions on the extension of PEDP's Category 2 Slot Machine License in connection with its fulfillment of having at least 1,500 slot machines operational and available for play at the Columbus Boulevard Site (collectively, the "Conditions"). The first seven of those Conditions required PEDP to report at designated times to the Board or the BIE, as the case may be, as to the status of various of the specified aspects of PEDP's progress toward having at least 1,500 slot machines available for play by May 29, 2011. The remaining two Conditions required PEDP to report additional information to the Board if certain conditions occurred, or as requested by the Board.

#### **PEDP'S EFFORTS TO COMPLY**

29. PEDP has timely satisfied Condition 1 of the Extension 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 by May 29, 2011 at the Columbus Boulevard Site.

30. PEDP further has timely satisfied Conditions 2, 3, and 7 of the Extension Order, as of the date of this Motion, by submitting written monthly updates to the BIE for October,

2009, November, 2009, December, 2009, January, 2010, February, 2010, March, 2010, April, 2010 and May, 2010 regarding its efforts to develop a facility with a minimum of 1,500 slot machines available for play by May 29, 2011 at the Columbus Boulevard Site, its efforts to and progress in obtaining financing for developing the facility, and the current 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 the facility.

31. PEDP will continue to timely satisfy Conditions 2, 3, and 7 of the Extension Order by submitting to the BIE the required written updates each month as set forth in the Extension Order.

32. With respect to Conditions 4, 5 and 6, as the result of the dramatic adverse turn in the economy, which materially affected the development plans of PEDP, including role of the Foxwoods Tribe in the future development, funding and operation of PEDP's planned casino facility following the issuance of the Extension Order, PEDP worked with its investment advisors and consultants on a non-stop basis in an effort to address financing and funding for its casino project. PEDP was confronted with numerous factors and events as have been presented to the Board and to BIE in previous motions, testimony and submissions of PEDP, and representatives of Wynn (as that term is defined below). These included, without limitation, the global economic downturn and the concomitant adverse effect on the financial markets and gaming industry generally, and the Foxwoods Tribe specifically. As the result, PEDP encountered unexpected significant obstacles and difficulties in moving forward with the development and construction of its casino facility at the Property based upon the timeline proposed by the Board in the Conditions included with its Extension Order. As a consequence, in an effort to find a solution to this problem, which has confronted many other gaming

businesses in the past few years, including those in the Commonwealth of Pennsylvania, PEDP initiated and implemented a plan to identify potential investors and sources of financing to provide funds and to invest in PEDP and its proposed development, and to provide management and expertise regarding the development and operation of its casino.

33. Commencing at that time through late October, 2009, PEDP and its consultants identified and distributed marketing materials to at least fifteen potential investors and/or funders for the project ("Candidates").

34. 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.

35. Thereafter, as part of this process, PEDP reduced the group of Candidates to a smaller sub-set of interested parties, who had retained consultants and counsel and engaged in extensive due diligence with PEDP and its consultants regarding the project, including the review of all acquisition and title documents, existing financing documents, environmental documents, traffic impact and control documents, development and site engineering documents, including meetings and conferences with PEDP's various site, environmental, developmental and other consultants.

36. In addition, PEDP exchanged and negotiated proposed term sheets with this sub-set of interested parties.

37. Furthermore, given the proposed legislation regarding gaming governance and the possible enactment of table games at Pennsylvania's gaming facilities, the interested parties indicated that they were unable to make a final commitment without having an understanding as to what the final form of the proposed legislation would be, since it would impact both their willingness to initially develop a full scale gaming facility at the Columbus Boulevard Site and the conditions and methods under which they would do so, given the effect such legislation might have on the economics of the development and operation of such a facility. In fact, this was acknowledged and testified to by Steven Wynn when he appeared at the hearing held on March 3, 2010.

38. Likewise, obtaining a commitment for third party financing was a critical element of any arrangement with a proposed investor and, while it was anticipated that such a commitment would be obtainable by March, 2010, proposed investors had to explore financing opportunities with potential lenders to determine the availability of such funding as part of the consummation of any term sheet.

39. Importantly, since September 1, 2009, because of the realities of the national credit and financial markets, funding the development of the facility was the first and most critical hurdle to ensuring that PEDP had at least 1,500 slot machines operational and available for play by May 29, 2011, in accordance with the Board's Extension Order. Moreover, the source, manner, timing and amounts of such funding also dictated the timing and direction of a number of development issues and decisions. In the development of Conditions 4, 5 and 6 – which were determined without prior consultation with PEDP – it was envisioned that the financing was the last checkpoint in planning the development of the casino facility. However,

due the foregoing circumstances, which were beyond the expectation and control of PEDP, that was not the case.

40. Because of the foregoing conditions, on November 30, 2009, PEDP filed with the Board its Motion to Extend Time to Comply with Conditions 5 and 6 of the Extended Order. After a hearing held on January 27, 2010, the Board denied such Motion and, on February 10, 2010, issued its Order (a) confirming such denial, (b) granting the BIE's Motion for Sanctions and assessing PEDP the sum of \$2,000 per day beginning on December 1, 2009 and continuing daily under PEDP fully complied with the Board's Extension Order, and (c) issuing a Rule to Show Cause upon PEDP to show, at the hearing of the Board were held on March 3, 2010, why the Board should not levy further sanctions upon PEDP, including the revocation of PEDP's license, for failure to comply with the Board's Extension Order.

41. In its February 10, 2010 Adjudication ("February Adjudication") in support of the its Order of that date, the Board expressed its concern regarding what it perceived to be a lack of progress by PEDP in moving forward on its casino project, notwithstanding the testimony presented that PEDP was in the final stages of its negotiations with a proposed investor, whose name PEDP was precluded from disclosing because of a confidentiality agreement. Part of the Board's concern was that, due to the confidential nature of PEDP's negotiations with Wynn, PEDP was unable to provide any additional detail concerning the identity of the investor or the status of its negotiations. (February Adjudication at 15.) As a result, in the February 10, 2010 Order, the Board imposed Sanctions on PEDP for failing to comply with Conditions 5 and 6 of the Order as set forth above.

42. At that time, the Board further concluded that such monetary Sanction was necessary "to impart upon Foxwoods the importance that Foxwoods progress with its project so that the citizens of Pennsylvania can realize the benefits it will bring" and to "offer any serious investor to the project incentive to bring some closure to the negotiations." (February Adjudication at 16-17.) Although PEDP fully understood and appreciated the importance of the need to make progress in the development of its project, regretfully, for reasons beyond the control of PEDP, it was unable to comply with the specific deadlines established in Conditions 5 and 6. The monetary penalty included in the Sanctions, which totaled \$186,000 for the period ended March 3, 2010 was paid to the Board on March 2, 2010.

#### THE WYNN TRANSACTION

43. As part of the above process, PEDP identified Wynn Resorts, Limited ("Wynn Resorts"), a publicly traded company with extensive international gaming experience (together with its direct or indirect wholly-owned subsidiaries, collectively, "Wynn"), as a source of financing and investment, and management, as it so advised the Board and BIE. Thereafter, as set forth below, PEDP entered into a Term Sheet as of February 18, 2010 with Development Associates LLC, an affiliate of Wynn, which was thereafter modified by First Addendum thereto executed as of March 16, 2010 (collectively, the "Term Sheet") which contemplated that, upon the execution of definitive transaction document, Wynn would, subject to Board approval, obtain control of PEDP.

44. Following the February 10, 2010 Adjudication, the situation changed dramatically, as was contemplated and presented by PEDP at the time of the hearing on its Motion to Extend Time. PEDP entered into a Term Sheet (as that term is defined below) which contemplated that Wynn and PEDP would enter into a purchase agreement which, if the

transactions contemplated by PEDP and Wynn were approved by the Board, would result in Wynn becoming a controlling owner of PEDP and developing a casino at the Columbus Boulevard Site.

45. Thereafter, at a hearing held on March 3, 2010, at which the Chairman of Wynn and other witness on behalf of Wynn testified, in addition to the testimony of counsel for PEDP, the Board determined that PEDP had not met its burden, by clear and convincing evidence, that it had achieved substantial compliance with Conditions 5 and 6 of the Extension Order, although it found that progress had been made by submission to BIE of a Term Sheet and related documents. However, the Board refused to lift its Order of February 10, 2010 and therefore that Order remained in effect, with the *per diem* Sanction previously imposed continuing to accrue pending further Order of the Board. Finally, the Board directed that (a) PEDP submit definitive financing documents to the Board and BIE no later than March 31, 2010, (b) submit the documents required by Conditions 5 and 6 of the Extension Order by April 26, 2010, (c) BIE report to the Board at its April 7, 2010 meeting as to the status of the receipt of these documents, and (d) the Board shall receive further evidence of this matter at the Board's public meeting scheduled for April 29, 2010, at which time the Board was to assess the need for further Board action to achieve compliance with the Board's Orders.

46. As Wynn made clear in its testimony on March 3, 2010, the recent changes to the Gaming Act meant that, if the Board approved a further extension of the time to make slot machines operational – for which, as PEDP indicated, Wynn intended to submit an application – the tight deadlines that drove the timelines in the Extension would no longer apply.



47. PEDP believes and respectfully submits that, notwithstanding the Board's ruling in its Order of March 3, 2010, PEDP had established through the testimony and presentation of PEDP, Daniel J. Keating and Wynn at the March 3, 2010, and its submissions to BIE on March 2, 2010, that it had substantially complied with Conditions 5 and 6 of the Extension Order and that, in any event, the standard applied by the Board in reaching its determination – the imposing of a “clear and convincing evidence” standard – was nevertheless erroneous.

48. Moreover, as hereinafter set forth, and acknowledged by BIE at the April 7, 2010 meeting, PEDP has complied with the deadlines imposed by the Board in its March 3, 2010 Order for the submission of definitive financial documents and the documents required by Conditions 4, 5 and 6 of the Extension Order.

49. On March 31, 2010, and again on April 5, 2010, as was acknowledged by BIE at the Board's Meeting held on April 7, 2010, PEDP made its submission in response to Condition 4 of the Extension Order, as amended and modified by the Board's Order of March 3, 2010, within the time period required by the Amended Order.

50. Thereafter, on April 2, 2010, Wynn and PEDP entered into and executed a Partnership Interest Purchase Agreement (“Purchase Agreement”) and other related documents in order to effectuate the transactions contemplated by the Term Sheet, pursuant to which the parties agreed to consummate the Proposed Transactions as more fully set forth therein. Among other things, the Purchase Agreement contemplated that the parties thereto would submit to the Board and BIE petitions and applications seeking the Board Approvals as set forth in Paragraph 53 below.

51. On April 6, 2010, as was acknowledged by BIE at the Board's Meeting held on April 7, 2010, PEDP made its submissions in response to Conditions 5 and 6 of the Extension Order, as amended and modified within the time period required by the Amended Order.

52. On April 8, 2010, without any warning to the Board, BIE or any state or local officials, or PEDP, Wynn unilaterally terminated (through no fault of PEDP) the Purchase Agreement, and the other related documents between Wynn and PEDP, notwithstanding that Wynn had (a) executed the Purchase Agreement and related other documents on April 2, 2010, (b) presented testimony through its Chairman and Chief Financial Officer at the Board Hearing held on March 3, 2010 as to the plans of Wynn for the development of the proposed casino and its ability to fund such development from its own funds, as well as readily available institutional funds, (c) through its counsel and its executive officers met and conferred with BIE and the Bureau of Licensing to develop a program and schedule for the licensing of Wynn personnel and the approval by the Board of a change of control and ownership, including the funding and financing of the activities of PEDP during the period following the execution of the Purchase Agreement, and (d) on April 5, 2010 met with the Mayor of Philadelphia and the head of the Philadelphia Planning Commission to review its proposed casino with them, and had thereafter produced for submission by PEDP to BIE and the Board on April 6, 2010 the documents and timeline required by Conditions 5 and 6 of the Extension Order.

53. At the time of such unilateral termination, Wynn and PEDP had prepared a Joint Application for Change of Control/Ownership, an Extension of the Deadline to Commence Operations, Board Approval for a proposed Redesign of the Casino Facility, and other Board approvals in connection with proposed Wynn Transaction, to be submitted to the Board on or before April 8, 2010.

54. During the period commencing with its active negotiations with Wynn in November, 2009, through the negotiation and execution of the Term Sheet and the Purchase Agreement and other related documents, and the other actions taken by Wynn in furtherance of the parties' agreement, PEDP rightfully and justifiably had the reasonable expectation that, as presented by Wynn to the Board on March 3, 2010 and to BIE in its meetings with BIE, and as set forth in the Purchase Agreement and other related documents, Wynn would thereafter provide the design and financing required to continue to comply with the Amended Order, thereby satisfying Conditions 4, 5 and 6 of the Extended Order, and justifying the termination of the penalties and fines imposed pursuant to the Amended Order.

55. During this time period, for the reasons more fully set forth herein, PEDP reasonably and justifiably did not prepare or develop for its own account – in the absence of the involvement of Wynn – the documents provided under Conditions 4, 5 and 6 of the Extension Order to submit to the BIE.

56. Immediately following the unilateral termination of Wynn, PEDP re-engaged with its financial advisors and consultants to identify and negotiate on a "fast track" basis with potential investors and sources of financing for the development of its casino project. At the present time, PEDP has received term sheets from five prospective investors in and managers of its project, and is working on an accelerated schedule in an effort to narrow this group down and reach an agreement in principle with one of the investors.

57. Once definitive transaction documents are consummated and executed, subject to prior Board approval, it is contemplated that the development of the Project will move forward,

either through the construction of an interim facility or based upon a course of action to initially develop a full scale facility.

58. Thus, for the foregoing reasons and extenuating circumstances, PEDP does not anticipate being able to make its submissions in response to Conditions 4, 5 and 6 until the source, manner, timing and amounts of funding for the development of the facility have been finalized.

59. Recognizing the need for PEDP to have a reasonable period of time to submit a revised plan for the development of its casino facility – given the unanticipated action of Wynn in unilaterally terminating (through no fault of PEDP) the transaction between Wynn and PEDP - on April 28, 2010, BIE and the PEDP entered into a certain Consent Agreement, pursuant to which BIE and PEDP agreed, among other things, to an extension of the timelines for the compliance by PEDP with Conditions 4, 5 and 6 as set forth in the Amended Order. At its meeting of April 29, 2010, without substantive comment, opinion or direction, the Consent Agreement was not approved by the Board, it issued an Order refusing to approve of such Consent Agreement, refusing to grant PEDP's Motion seeking confidentiality of such Consent Agreement, and continuing the foregoing sanctions and requiring PEDP to pay the sum of \$114,000 in sanctions by May 6, 2010, notwithstanding the many equitable and other reasons why the Consent Agreement should have been approved and the sanctions not continued or assessed.

60. As PEDP, for reasons beyond its control and anticipation, does not expect to be able to respond to Conditions 4, 5 and 6 within the respective timeframes set forth in the Amended Order (which were established based upon the contemplated Wynn transaction, and

have now expired), there is good cause for extending these timeframes by one hundred twenty (120) days, and PEDP is therefore filing the present Motion, which it respectfully requests be granted for all of the reasons set forth herein.

#### **REQUEST FOR RELIEF**

61. PEDP incorporates all paragraphs of this Motion as though fully set forth herein.

62. Pursuant to § 497a.5 of the Board's regulations, 58 Pa. Code § 497a.5, the Board may, upon timely motion and for good cause shown, extend any period of time set forth in any order of the Board. Section 497a.5(a)(1) provides:

Whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may be extended by the Board, for good cause, upon a motion made before expiration of the period originally prescribed or as previously extended. Upon a motion made after the expiration of the specified period, the time period within which the act may be permitted to be done may be extended when reasonable grounds are shown for the failure to act.

63. While the Gaming Act and the Board's Regulations do not specifically define the term "good cause," in prior adjudications involving the License, the Board has construed the term "good cause" to mean "a substantial reason amounting to legal excuse for failing to perform any act required by law as determined on a case-by-case basis." Adjudication of September 1, 2009 at 13.

64. As set forth above, PEDP has shown here that it has good cause as defined by the Board to seek the requested extension of time.

65. Under these unique circumstances, PEDP respectfully requests the foregoing extension for its compliance with Conditions 4, 5 and 6 of the Extension Order, and that the Sanctions imposed under the February 10, 2010 Order, and continued under the March 3, 2010 Order, be terminated and that no further sanctions be imposed upon PEDP regarding compliance with the Conditions established under the Extension Order pending the establishment of a revised timeline for completion of the project in light of the foregoing changed circumstances.

66. PEDP submits that there were two primary objectives underlying Conditions 4, 5 and 6: (1) building a high-quality slot machine facility and having it operational in the limited time then available under the Gaming Act; and (2) in light of the severe economic downturn that gripped the country, ensuring that PEDP had the means – both financially and otherwise – to build the slot machine facility on time. Given the unilateral termination by Wynn, PEDP believes that, under the circumstances, it is entitled to an extension of time to comply with these conditions – having complied with them once in the past month, and having that compliance abrogated by conditions that were very obviously beyond PEDP's expectation or control – as well as the expectation of both State and local officials, including the Board, among others.

67. As set forth above, prior to the unilateral termination by Wynn, PEDP had complied with the Conditions in the Board's Amended Order that have come due to date, and PEDP continues to satisfy on an ongoing basis all of the Conditions that direct PEDP to submit monthly status updates to the BIE.

68. It is respectfully submitted that when the Board set forth the sequence and progression of the Conditions in its Extension Order at the end of August, 2009, it envisioned that PEDP would first develop the renderings, proposals, opinions, and other documents relating

to the construction of the facility, and the timeline for commencement and completion of all phases of development, prior to finalizing funding for the development.

69. However, factors beyond its reasonable control, including the current and then-current realities of the national credit and financial markets and the unilateral termination by Wynn, have forced PEDP to reorder the priority in which it pursued these development goals and to seek a new investor and financing and funding for the development of its casino project.

70. For the foregoing reasons, among others, it is not possible for PEDP to finalize its development plans and timeline before finalizing how it will fund and finance the development of the project.

71. PEDP is only requesting that the timelines for three of the seven Conditions be extended; having satisfied or fully expecting to satisfy the remaining four of the seven-time related Conditions within the timelines set forth by the Board in its Extension Order.

72. While the requested extension may impact the ultimate deadline of May 29, 2011, it is the intention of PEDP – upon identifying a new investor and source of funding and/or financing – to make application for an extension of time pursuant to Section 1210(a)(2), 4 Pa. C.S. Section 1210(a)(2), as amended, for the completion and opening of its proposed casino as was anticipated under the Purchase Agreement with Wynn that was submitted to the Board and BIE on March 31, 2010 (and then on April 5, 2010, as executed). This was the process that PEDP successfully and in good faith implemented with Wynn, and which result in the execution of the Purchase Agreement and other documents with Wynn

73. Finally, the BIE will be able to continue to closely monitor PEDP's progress towards meeting the Conditions in the Extension Order, and towards ensuring that 1,500 slot machines are available for play by the time period established by the Board – subject to any extension as aforesaid, because PEDP will continue to submit written monthly updates to the BIE concerning its progress.

74. Under the attendant substantially changed circumstances, and based upon PEDP's good faith efforts in this matter, PEDP respectfully requests that, in addition to the extension of the respective timelines for Conditions 4, 5 and 6 of the Extended Order, the Sanctions imposed by the Board's February 10, 2010 Order, as extended by its March 3, 2010 Order, having served their purpose and no longer being needed, be terminated or suspended. If PEDP's efforts to identify a new investor and source of financing and funding, and the negotiation and execution of definitive documents with such parties, do not progress in good faith, the Board may always revisit with PEDP any appropriate sanctions at some future time. However, for now, it is clear that PEDP has made a substantial good faith and diligent effort to comply with the Board's Amended Order, and it should not be punished as the result of the unilateral termination by Wynn of their transaction agreements, without proper justification and without any warning to PEDP, or to the Board or BIE. Moreover, PEDP has, to date, paid all of the fines for which the Board has directed payment as of the date of this Motion.

75. PEDP further respectfully requests that BIE support PEDP's request that (a) the Board terminate the Sanctions imposed under the February 10, 2010 Order, and impose no further sanctions upon PEDP regarding compliance with Conditions 4, 5 and 6 established under the Extension Order, and (b) a revised timeline for the Conditions attendant to the completion of the project be established between BIE and PEDP in light of the foregoing changed

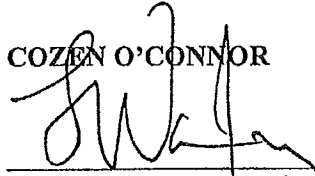


circumstances. In this regard, early in the week immediately following the unilateral termination by Wynn of their agreements with PEDP, counsel for PEDP met with counsel for BIE, and they immediately began to negotiate a mutually acceptable Consent Agreement to submit to the Board for its approval, which was executed on April 28, 2010, but rejected by the Board the following day without substantive comments, opinion or direction.

WHEREFORE, pursuant to 58 Pa. Code § 497a.5, and for good cause shown, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia respectfully requests that the Board grant this Motion and extend by one hundred twenty (120) days from the date of the approval of this Motion by the Board, the time for Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia to submit to the Bureau of Investigations and Enforcement the reports and other documents called for by Conditions 4, 5 and 6 of the Board's September 1, 2009 Order, as modified by the Board's Orders of February 10, 2010 and March 3, 2010, and terminate the

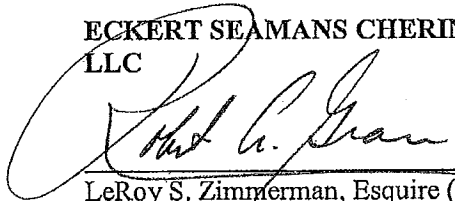
imposition of *per diem* sanctions against PEDP pursuant to the February 10, 2010 Order as modified by the March 3, 2010 effective retroactively to March 3, 2010.

COZEN O'CONNOR



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Dated: 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 Motion to Extend Time 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**

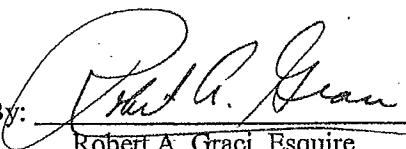
I certify that I am this day serving a complete copy of the foregoing Motion for Extension of Time by E-Mail upon the following:

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By:   
Robert A. Graci, Esquire

Dated: June 1, 2010