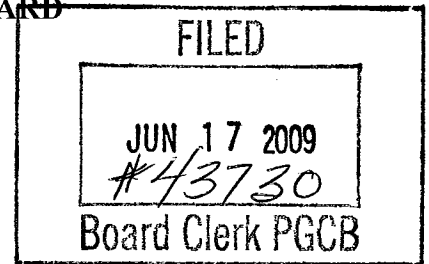


**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

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

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: : Docket No. 1367
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PETITION TO INTERVENE

Keystone Redevelopment Partners, LLC, (“Keystone”) petitions to intervene in the above-captioned proceeding to oppose a petition filed by Philadelphia Entertainment and Development Partners, LP (“PEDP”) by which PEDP requests an extension of time to make slot machines available to play. In support, Keystone states:

1. Keystone is entitled to intervene pursuant to 58 Pa. Code § 493a.12(c) or, to the extent applicable, 58 Pa. Code § 441a.7(y)(2). Keystone has an interest in this proceeding which is substantial, direct and immediate and its interest is not adequately represented. *See Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *see also Man O’ War Racing Association, Inc. v. State Horse Racing Commission*, 433 Pa. 432, 250 A.2d 172 (1969). Furthermore, Keystone may be bound by the action of the Gaming Control Board in this proceeding.

Keystone’s Interest is Substantial, Direct and Immediate

2. For the reasons set forth below, Keystone satisfies the requirement that it have an interest in this proceeding that is substantial, direct and immediate. Keystone’s interest is “substantial” in that there is a threat of “some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *Wm. Penn*

Parking Garage, 464 Pa. at 195, 346 A.2d at 282. Keystone’s interest is “direct” because there is “causation of the harm to [its] interest by the matter of which [it] complains.” *Id.* at 195, 346 A.2d at 282. And, Keystone’s interest is “immediate” because there is a “sufficiently close causal connection between the challenged action and the asserted injury,” *id.* at 202, 346 A.2d at 286, “and the harm to . . . [Keystone’s] interest is not a remote consequence of the judgment.” *Id.* at 197, 346 A.2d at 283.

3. In or about December 2005, five entities submitted timely applications to the Board for the two then-available Category 2 slot machine licenses for casinos to be operated in the City of Philadelphia. The applicants were Keystone; PEDP; HSP Gaming LP (“HSP”); Riverwalk Casino, LP (“Riverwalk”); and Pinnacle Entertainment, Inc./PNK (PA), LLC (“Pinnacle”).

4. Keystone proposed to locate its casino in North Philadelphia at a location referred to as “TrumpStreet.” HSP, Riverwalk and Pinnacle proposed to locate their casinos in an area of the City of Philadelphia referred to by the Board as “North Delaware Avenue.” PEDP proposed to locate its casino along the Delaware River at a location referred to by the Board as “Foxwoods.” Adjudication of the Pennsylvania Gaming Control Board in the Matters of the Applications for Category 2 Slot Machine Licenses in the City of the First Class, Philadelphia (“Decision”) at 82.

5. Keystone, by its application, “presented the Board with a solid, competent proposal for the construction and operation of a first-class casino in Philadelphia.” *Id.* at 7.

6. Keystone’s application, as updated and supplemented by subsequent submissions to the Board and determined by the Board to be complete and otherwise acceptable, is incorporated herein by reference.

7. The Board, upon consideration of Keystone’s application and following investigation and inquiry mandated by statute and regulation, found that Keystone is “eligible and suitable for licensure under the terms of the [Gaming Act].” *Id.*

8. The Board further found that Keystone is “likely to maintain a financially successful, viable and efficient business operation” with “a steady level of growth and revenue.” *Id.* at 50, ¶ 204.

9. The Board, when reviewing all five applications, considered site-specific factors including “the location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area,” *id.* at 79, and “the degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated.” *Id.* at 80.

10. Key among the Board’s considerations was the precise location of the casino proposed by each applicant for a slot machine license in Philadelphia. *Id.* at 82.

11. The Board, exercising agency discretion, determined that it would approve one, but only one, of the three applications proposing casinos to be located in the North Delaware Avenue area. *Id.* at 83. The Board thereafter approved HSP’s application. *Id.* at 7.

12. The Board, by deciding to approve an application for one of three casinos to be located in the North Delaware Avenue area, effectively determined that it would approve one of the two remaining applications – Keystone’s application for the TrumpStreet location or PEDP’s application for the Foxwoods riverfront location.

13. The Board, relying on PEDP's representations and submissions regarding its proposed riverfront location, awarded a license to PEDP and, as a result, denied Keystone's application.

14. PEDP, without legitimate justification, has failed to develop a casino in the manner, and pursuant to the schedule, approved by the Board. PEDP, when it filed its application, was aware of the many problems and potential issues associated with its riverfront location. PEDP, nevertheless, persuaded the Board to issue a license for a casino to be developed at that location. PEDP, with full knowledge of the risks and potential for delay about which it now complains, committed to the Board and the citizens of Pennsylvania that it would develop its casino in a timely manner. PEDP, as a result, should not now be permitted to rely on easily foreseen delay as "good cause" for an extension of time.

15. On January 15, 2009, Keystone filed a Petition to Re-Open and for Related Relief ("Petition to Re-Open"), pursuant to which Keystone requests, among other things, that the Board declare that PEDP has abandoned or forfeited its license and that the Board award the available license to Keystone. Keystone's Petition to Re-Open is incorporated herein by reference.

16. Keystone's Petition to Re-Open and PEDP's petition for an extension of time present common issues of fact and law including, for example, whether PEDP by its conduct, including its failure to develop its riverfront location and its announced plans to seek a license for a different location, has abandoned or forfeited its license.

17. Should the Board improperly approve PEDP's petition for an extension of time, the Board's action would improperly delay and harm Keystone's ability to secure a Category 2 license in the City of Philadelphia.

18. Keystone, in light of its Petition to Re-Open and as an eligible, qualified and otherwise suitable applicant for a Category 2 slots machine license for the City of Philadelphia, which has invested more than \$10.5 million in an effort to secure such a license, has an interest in this proceeding that is far greater than the general public. Keystone's interest is substantial, direct and immediate.

Keystone's Interest is Not Adequately Represented in the Proceeding

19. No current party to this proceeding will adequately represent Keystone's unique interests as one of five original applicants for a Category 2 slots machine license for the City of Philadelphia.

20. Keystone, to the best of its knowledge, is the only person with the current intent and capability to develop a gaming facility in Philadelphia that has appeared before this Board and sought to re-open licensing proceedings in response to PEDP's failure to develop its riverfront location in a timely manner.

21. Keystone is uniquely situated, and its interest in this proceeding is also unique, in that Keystone is actively seeking a Category 2 slots machine license for the City of Philadelphia.

22. Keystone's interests in this proceeding are not shared, or represented, by any other party. For example, Keystone, alone, has asserted that PEDP has abandoned or forfeited its license.

23. To the extent that the Board's bureaus are deemed to be parties to this proceeding, they will not be able to represent Keystone's interest as a competitor for the Category 2 slot machine license.

Keystone May Be Bound by the Action of the Board in this Proceeding

24. Keystone may be bound by the action of the Board in this proceeding in that, among other things, the Board may expressly or implicitly rule on the question of whether PEDP has abandoned or forfeited its license.

25. Moreover, the Board, in connection with its disposition of PEDP's motion, may reach legal issues, or address factual questions, related to PEDP's proposed "relocation" of its facility from the riverfront location examined and approved by the Board as part of a competitive, open licensing proceeding to an entirely new location in Center City Philadelphia.

26. To the extent the Board reaches factual and legal issues arising in connection with PEDP's attempted bait-and-switch, Keystone's interest in securing a Category 2 slots machine license for the City of Philadelphia is likely to be impacted and Keystone may be bound by the Board's decision.

27. If permitted to intervene, Keystone intends to file its Answer and New Matter to Foxwoods Casino Philadelphia's Petition to Extend the Time to Make Slot Machines Available, attached at Tab A.

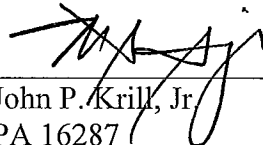
WHEREFORE, for the reasons set forth above, Keystone Redevelopment Partners, LLC requests that the Pennsylvania Gaming Control Board:

- (1) Grant Keystone Redevelopment Partners, LLC's petition to intervene in this proceeding;
- (2) Schedule such further proceedings, including evidentiary hearings and associated discovery, as the Board deems necessary to resolve factual disputes, if any, material to the disposition of this motion and to develop a comprehensive evidentiary record;

- (3) Deny Foxwoods Casino Philadelphia's Petition to Extend the Time to Make Slot Machines Available; and
- (8) Grant such further relief and take such further action as is necessary and just.

Respectfully submitted,


June 16, 2009



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VERIFICATION

I, Robert M. Pickus, Esquire, am Chief Administrative Officer and General Counsel for Trump Entertainment Resorts, Inc. and am authorized to make this verification on behalf of Keystone Redevelopment Partners, LLC. I hereby verify that the facts set forth above 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 falsifications to authorities).



Robert M. Pickus

Dated: Jan 16, 2019