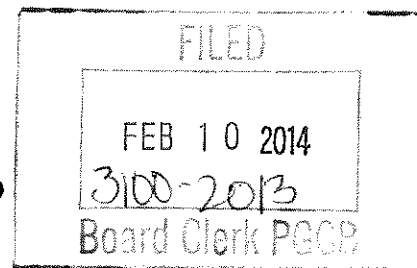


BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD



IN RE: :
:
CATEGORY 2 PHILADELPHIA : BOL DOCKET NOS.: 3097-2013, 3098-
LICENSING HEARINGS : 2013, 3099-2013, 3100-2013, 3101-2013
:
APPLICATION OF STADIUM CASINO : OHA DOCKET NO. 3100-2013
LLC FOR CATEGORY 2 SLOT :
MACHINE LICENSE :

STADIUM CASINO LLC'S BRIEF IN SUPPORT OF APPLICATION
FOR A CATEGORY 2 SLOT MACHINE LICENSE

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Stadium Casino LLC ("Stadium Casino") respectfully submits this Brief in Support of its Application for a Category 2 Slot Machine License. As detailed below, Stadium Casino's Application has proven that it is the best project in this competition. It not only satisfies all of the applicable statutory requirements of the Pennsylvania Race Horse Development and Gaming Act ("Gaming Act"), 4 Pa. C.S. § 1101 *et seq.*, but provides a level of quality, stability, dependability, and reliability that sets itself apart from the pack. Accordingly, the Board should select Stadium Casino and grant its Application.

I. INTRODUCTION AND SUMMARY

After over a year of this Board receiving huge volumes of documents and information, it is time for the Board to separate fantasy from reality in making a final selection. The Board has heard before exaggerated and unrealistic claims such as projected capital expenditures and annual gross gaming revenues exceeding a half billion dollars. While such claims sound good, they depart from what the underlying market can justify or produce. The Board has also had the experience of hearing claims of financial stability and available financing, which turned out to be nothing more than wishful thinking. Because of these experiences, 10 years after passage of the Gaming Act, the second Philadelphia license required by the Gaming Act sits vacant, and anticipated tax revenues remain uncollected.

Given these circumstances, the Board simply cannot afford another Barden or Foxwoods. Instead, the Board should be adamant that the project it selects is absolutely certain to be completed and has no risk of serious problems or failure. While the glitter of a downtown casino with huge, and still understated, projected capital expenditures and eye-opening gross gaming revenue projections may be attractive, the extremely risky nature of these projects, given the Board's current circumstances, provides the serious danger of a Foxwoods or Barden repeat performance. Now is not the time for the Board to select a risky project, like the two downtown projects. Instead, the Board should turn to a project which it is clear will be of the highest quality, from two of the strongest owner-operators of gaming entertainment destinations in the country, easily financed, and delivered on schedule without drama or theatrics.

Viewed in this proper context, Stadium Casino distances itself from the other four applicants and becomes the obvious choice for the Board. "Quality, Stability, Dependability and Reliability"

exemplifies the Stadium Casino project. Stadium Casino is a partnership between The Cordish Companies ("Cordish") and Greenwood Racing, Inc. ("GRI"), the two most successful gaming companies in the region, which have constructed and/or operated some of the highest quality, most successful commercial casinos in the Nation. GRI is well known to the Board and is subject to its daily regulation through its ownership and operation of Parx Casino, the most successful casino in Pennsylvania, while The Cordish Companies own and operate Maryland Live!, the most successful casino in Maryland and the Middle Atlantic region.

The financial strength of the GRI/Cordish duo is beyond dispute, and although it was economically beneficial to include bank financing in the financing package for Stadium Casino,¹ as confirmed by BIE witness O'Neil at the licensing hearing, either company could self-fund the project if circumstances so dictated.² This means that because the Stadium Casino project is not dependent on third party financing, the financing for the project will be there regardless of the state of the general economy, the Wall Street financing environment or trends in interest rates or other commercial lending terms.

Compare this with the two downtown projects which are completely dependent on a variety of a third party financing, are highly leveraged and at the whim of their lenders in that the shareholders or

¹ Under the current financing package, over 50% of the \$425 million capital budget is funded by equity and the remainder through a syndicated bank financing vehicle led by Bank of America. However, if circumstances dictated, the bank financing could be expeditiously replaced with owner equity, resulting in the entire project being self-funded through cash on hand. Frankly, it is impossible to create a more stable and reliable financing scenario.

² This was confirmed by Richard O'Neil, the Director of BIE's Financial Investigations Unit, in the following exchange with Commissioner Fajt at the licensing hearings:

MR. FAJT: One quick question for Mr. O'Neil. I heard your comments about their financial suitability. I didn't hear you say, and could you confirm for the record that, as stated by the Cordish and Greenwood Gaming Companies today, that they have the ability to in essence self-finance this \$425 million project. Do you agree with that statement?

MR. O'NEIL: [Responding without hesitation]

Yes, I do. (St. C. Tr. 119).

LLC members are dedicating little of their own money or equity.³ The Board has been burned by this exact type of overleveraged financing in the past and should not take the risk of such failure again.

Both Cordish and GRI have previously delivered projects to their respective regulators, in GRI's case this Board, as promised, and on time and have in each case matched or exceeded their projected gross gaming revenues and gaming tax payments. Their reliability is supported by an existing regulatory record rather than uncorroborated promises and claims. Unlike any of the other applicants, Cordish/GRI's majority owners will also be the operators of the proposed facility, adding further dependability to the project, as there is no management agreement under which an independent manager takes money off the top to operate the facility.⁴

Finally, GRI has extensive experience in operating in the Philadelphia market, a unique and challenging market, and has done so in either the racing capacity and/or gaming capacity for over 25 years. Likewise, Cordish operates a highly successful dining and entertainment complex, Xfinity Live!, right in the Stadium District and in close proximity to the proposed Stadium Casino site. No other proposed casino operator has one iota of experience in the Philadelphia market. The GRI/Cordish management team knows the Philadelphia market inside and out and that experience brings a realism and understanding as to what location is best, what level of investment is supportable and what level of revenue can be delivered.

It is this far-reaching operational experience in the Philadelphia market, not shared by any other applicant, which leads the GRI/Cordish executives to state with an extremely high degree of confidence that, regardless of the projections of a multitude of consultants relying on theoretical gravity models, Stadium Casino will out produce a downtown project because of its location, operational experience and

³ The Provence project has a capital budget of \$700 million, which includes \$600 million (or 85% of the total project budget) in third party financing, and can claim only the previous cost of acquiring access to the site as an equity contribution to the project. The Market 8 project has a capital budget of approximately \$500 million with only a \$135 million equity contribution from its principals and will rely on \$375 million in third party debt. Mar. 8 Tr. 66-67.

⁴ In the case of the Market 8 and Hollywood projects, the manager of the project is also a minority shareholder. Tow. Tr. 65. In the case of the Provence and Procacci projects, the operator of the project is completely independent from the ownership.

quality of facility — a conclusion shared by the financial projections of Stadium Casino's outside expert. Furthermore, taking full advantage of the virtually unlimited potential to attract patronage from the 8 million annual Stadium District visitors, and maximizing that potential with the synergies of Xfinity Live! and the stadiums/arenas, Stadium Casino will produce the most new incremental revenue of any of the applicants, and the least cannibalization impact on SugarHouse and other Philadelphia area casinos.⁵

There is no need to conduct a bold experiment with, in the downtown applicants' own words, the total uniqueness of the downtown projects, which conceptually have never been tried anywhere else before. Now is not the time for such risk. The Stadium Casino Application offers the most stable, dependable and reliable option that fits the bill for the Board and will generate the greatest net tax revenue for the Commonwealth.

None of this is to say that the Board needs to sacrifice quality for reliability. Cordish and GRI have proven track records of building and operating best-in-class, award-winning casino entertainment destinations and resorts that maximize revenues and guest experiences. The proposed Stadium Casino gaming facility is a \$425 million project with an ideal location in the Stadium District on the site of an already existing hotel. The location is superior with unparalleled access, and designed to take full advantage of the 8 million visitors who come to the Stadium District for events every year. Its location also provides a virtually unlimited opportunity to integrate with Xfinity Live! and the three stadiums, which will be an additional entertainment amenity of the casino which no other applicant can match.⁶

⁵ As GRI Chairman Bob Green testified at the licensing hearings:

What I'd like to do today is to translate my time here in terms of the knowledge and experience of this market . . . I can tell you unequivocally, quite unequivocally, that either one of those [downtown] sites would be an absolute disaster. Neither of them are capable of producing any significant incremental revenue. And the bulk of their floor game and the bulk of their table drop will come from and at the expense of SugarHouse. And what that will do is put both SugarHouse and any downtown facility in financial jeopardy from day one . . . I would just say that, in my mind, there is absolutely no doubt that the south Philadelphia site will substantially outperform either one of the downtown sites and cause the least cannibalization damage to SugarHouse business, a business, by the way, which I believe is in everyone's interest to see not [only] to survive but to thrive. (St. C. Tr. 22; Tr. 23; Tr. 25-26).

⁶ As Cordish President Joe Weinberg testified at the licensing hearings:

And the Stadium District itself we've looked and understand because of our background and projects we've done and proven success, when you are able to combine the gaming entertainment (Cont'd)

The \$425 million hotel and casino complex will be world class, and worthy of any gaming market anywhere, with a 2,600 space parking garage, a ground level gaming floor with 2,000 slots and 125 tables, five restaurants and bars, a live entertainment venue, and a 200 plus key luxury hotel, spa and conference center. It will have a vibrant urban streetscape design which fronts Tenth Street, the key avenue integrating the Stadium District. The quality of design and finishes for the casino and hotel are of the same high quality for which Parx and Maryland Live! casinos are renowned. The casino will employ approximately 1,225 full time equivalent employees, and will pay very competitive wages and benefits. The plans for the facility are well advanced and are ready to be submitted for zoning and local approvals as soon as they can be accepted for submission, providing for a 15 month construction schedule from the time of finalization of the license award.

Both Stadium Casino executives and its independent expert project that the casino will produce \$295.5 million in gross gaming revenue in Year 1, increasing to \$344 million a year in Year 5. From an economic development perspective, project construction is projected to produce 3,000 direct and indirect jobs, \$157 million in new personal earnings and \$398 million in gross county product. Once operational, the project is projected to produce \$422 million in annual local spend, \$87 million in new state personal earnings, and 2,118 direct and indirect jobs.

Given the existence of a roadwork network designed to handle tens of thousands of visitors at sports and concert events, any additional traffic created by the casino during peak periods will be immaterial. In fact, Xfinity Live! currently helps with peak period traffic by attracting thousands of

with other existing attractions, one plus one truly equals three. Today, there's more than 8 million visitors to the stadium district, attending more than 400 events on more than 300 days a year. And 40 percent of these visitors are coming from outside the Commonwealth. And it's not just athletic events, although those are very important events held in the stadium district, they're concerts from international touring artists . . . As an example, at our Xfinity Live! project, which the Cordish Companies owns, I can give you a sense of what happens during events right now. We have a capacity of just about a little over 3,000 at full capacity within Xfinity Live!. On a typical Eagles game, we'll have 6,600 patrons in our facility, with a period of two hours before and two hours after a game. A Phillies game, 6,500 patrons. Flyers games, 4,700 patrons. 76er's games, 2,500 patrons . . . during the December 29th Eagles game away at Dallas, we drew 10,000 people to Xfinity Live! . . . this ability to understand how to draw people to the Stadium District and take advantage of people who are already there through our event marketing experience will carry over to the casino . . . (St. C. Tr. 23-25, 36-38, 39).

visitors to that entertainment complex in the hours before and after an event. The casino will expand on this effect. The 2,600 car garage will provide ample parking and exceeds the City of Philadelphia's parking ratio for parking spaces to gaming units. Compare this to the center city projects which, by their own traffic studies, will add hundreds of cars on the road during already congested rush hours,⁷ have not provided for parking capacity which comes close to meeting the City's spaces to gaming units ratio. Furthermore, they are dependent on independent private parking facilities, some of which do not yet exist or are likely to be redeveloped before the new casino opens, and all of which are outside the casino's security perimeter.

Overall, the combination of the location and quality of the proposed facility are further reasons why the Stadium Casino project should be selected. Taken together with the owner/operators track record of quality, stability, dependability, and reliability makes Stadium Casino an easy choice for the Board.

Finally, the Board should not give in to the demands of the SugarHouse intervention that the Board pull the plug on the licensing process or freeze the proceedings until SugarHouse is ready for additional competition. The Gaming Act requires two Category 2 gaming licenses and associated casinos in the City of Philadelphia. This is not news to SugarHouse as they knew full well at all times that there had to be a second casino in Philadelphia as they proceeded from application to construction to operation and now to expansion of the SugarHouse project. The fact that SugarHouse must complete a \$150 million expansion to meet its original commitments to the Board does not rewrite the Gaming Act to permit it to be the only casino within the City limits.

The five applicants have poured millions of dollars into the pursuit of the second Philadelphia license, and have materially relied on the administrative process being conducted fairly to its intended

⁷ As GRI Chairman Green testified:

At a simple operational level --- and I've heard the [traffic] experts, by the way --- at a simple operational and a firsthand knowledge, I know that just adding a couple of hundred cars into that section proposed and that section of the market will cause absolute chaos. There will be gridlock every day. I repeat, we are the only applicants who know and understand and operate in this market . . . this is not Biloxi. This is not Nemaquin. This is Philly. . . . this is not the woods of Connecticut or the streets of Wilkes Barre, Scranton. This is Philadelphia. (St. C. Tr. 23).

outcome. Giving in to SugarHouse's demands would be grossly inequitable and would place a demerit of unfairness on the Board that the gaming industry would never forget.

Common sense and the record of these proceedings leave no doubt that due to further distance from existing casinos in the Philadelphia area, including SugarHouse, and the ability to attract incremental revenue from Stadium District visitors, that the three Stadium District projects will have the least cannibalization impact on SugarHouse and that, while unavoidably there will be some cannibalization, it will be at levels that will not cause SugarHouse financial distress, which should have been anticipated by SugarHouse from day one, and will be offset by market growth over time.

The Commission should also take note that GRI, which operates another successful property in the Philadelphia market, would not be an applicant for this additional license if it believed there was not sufficient, untapped demand in the Stadium District to support the license without unacceptably adversely impacting its existing business. At the end of the day, the Stadium Casino Application provides the Board with the best mix of quality reliability, location, and incremental revenue potential of any other applicant. For these reasons, and as more specifically detailed below, the Board should award the second Philadelphia Category 2 license to Stadium Casino.

II. ARGUMENT

A. The GRI/Cordish Partnership is a Powerful Combination that Provides the Board with a Risk Free Alternative.

Given the history of the original second Philadelphia gaming license, the Board should carefully consider the certainty and risk associated with the various projects that are before it. And there is simply no other project which can bring the certainty and lack of risk that the GRI/Cordish team delivers. Indeed, the combination of two of the most successful gaming companies in the region emanates "Quality, Stability, Dependability, and Reliability" – characteristics which are worth their weight in gold given the sordid record of this license since the Gaming Act was enacted.

1. *The GRI/Cordish Project is Unique by Combining Two Highly Successful Companies.*

As Cordish President Weinberg explained to the Board at the recent licensing hearings, "And the fact is that there's no company in the world that has [the GRI/Cordish] track record collectively of building and operating a best-in-class, highest-grossing destination casino and resort properties."⁸ The two companies have collectively built from the ground up six casino properties over the last ten years, which is more than almost any other company in the world. As Mr. Weinberg summarized, "... those who have done it, done it time and time again and have done it successfully should be a key litmus test" for the selection process in these proceedings.⁹

As the Board is well aware, GRI owns Parx which is the most successful casino and racetrack in the Commonwealth.¹⁰ Cordish has built two of the five largest casinos in the country, and owns and operates Maryland Live!, the most successful casino in Maryland and the largest commercial casino in the United States.¹¹ Together the GRI/Cordish combination owns and operates two of the three highest revenue generating casinos in the Mid-Atlantic Region.

The Parx and Live! brands are both renowned for the quality and excellence of their properties, their customer service, and their customer satisfaction and loyalty.¹² The awards provided to both companies for their performance and quality of their facilities and amenities are in the record, but are too numerous to repeat here. In fact, the joining of two companies of this quality for a single project is completely unique in the gaming industry.

2. *The GRI/Cordish Combination Brings Unparalleled Financial Resources, Stability and Suitability to the Board.*

The financial strength of the GRI/Cordish combination is of a magnitude this Board has simply not experienced previously. As Cordish President Weinberg summed it up:

⁸ St. C. Tr. 28.

⁹ St. C. Tr. 28.

¹⁰ St. C. Tr. 30.

¹¹ St. C. Tr. 33-35; St. C. PowerPoint Slides 16 and 17.

¹² St. C. Tr. 34; St. C. PowerPoint Slides 9, 19-21.

And our financial strength is equal to our experience. We are not dependent on anyone else's money, whether public or private. It is all our own equity, all our own investments. Nor are we dependent on anyone else's experience. We are owner/operators. And this is a key key point. The people who are putting up the money are the ones who are laying awake at night thinking about what they have to do every day to make this project a success. And it's not only having the right location and building the right world-class facility, but this is a day-to-day operation that has to be focused on in order to maximize its returns. St. C. Tr. 28-29.¹³

Indeed, both companies are highly respected in the financial community, and have balance sheets among the best in the gaming industry.¹⁴

The Board has a well-rounded understanding of the importance of this kind of financial strength and has encountered bumps on the road with licensees with lesser resources at their disposal. The end result is that Stadium Casino's financial strength will essentially eliminate the risk that the project promised will not be delivered on time. Other applicants with lesser resources at their disposal cannot reliably make such a claim, and this factor should be assigned great weight in the selection process.

3. *Stadium Casino is the Only Applicant Whose Owners and Operators Have Experience in the Philadelphia Market*

The Philadelphia entertainment and gaming market is like no other entertainment and gaming market in the world. Combining one of the largest metropolitan areas and center cities in the country with a gaming market that includes 17 casinos within a 75 mile radius, creates an environment in which only an operator with experience in the Philadelphia area can understand the market in a manner which will lead to success.

The operators of Parx and Xfinity Live! bring this far reaching Philadelphia entertainment and gaming market operator experience to the table. This is in stark contrast to the other owners and operators in this proceeding with absolutely no experience in the market.¹⁵ The GRI/Cordish combination understands the Philadelphia gaming and entertainment market from real life operational experience, not

¹³ Although Stadium Casino plans to utilize outside financing to fund less than half of the project, it is doing so only because the available financing terms are economically advantageous and as Board Staff has confirmed, either company has the financial strength to self-fund this project.

¹⁴ St. C. Tr. 32.

¹⁵ St. C. Tr. 22-23, 31.

from gravity models or consultant reports. This factor sets Stadium Casino apart from the other Applicants and the Board should assign this issue substantial weight in making its decision.

B. The Stadium Casino Project is Right Sized and in the Right Location

With their extensive knowledge of the Philadelphia gaming and entertainment markets guiding them, the Stadium Casino principals have proposed a project which is the right size and in the right location for this market. The proposed project is not an overbuild like the center city projects, and is located on the ideal site to attract new incremental revenue.

As to location, as was explained at the licensing hearings, the Stadium Casino principals had the opportunity to acquire either of the other two applicant sites in the Stadium District and settled on the site at Packer and Darien, because they were convinced it was the best site for the project in the City. GRI/Cordish had no interest in a center city location, because of logistical challenges, and because the center city market isn't large enough to support two casinos. The new casino and SugarHouse "would simply slug it out over the same market¹⁶ and in effect you'd have two unprofitable facilities."¹⁷

Among the Stadium District sites, the Stadium Casino Site is superior, because it has an existing hotel that can be renovated into a luxury facility. Furthermore, it fronts Tenth Street, which is the primary street to create pedestrian flow through the Stadium District and runs right into the centerfield of Citizens Bank Park.¹⁸ This enables a full build out in which the Stadium District becomes a single attraction and the stadium/arenas and Xfinity Live! become amenities of the casino. Such a scenario sets up the ideal situation to cross market between the various facilities in the Stadium District.¹⁹ These cross marketing

¹⁶ St. C. Tr. 48. The superiority of the Stadium District over center city is demonstrated by the fact that GRI's Stadium District turf club has outperformed its center city turf club by 100% from the first day it opened. St. C. Tr. 25.

¹⁷ For this reason, the Stadium District sites are far superior because they provide the opportunity to create new incremental revenue from Stadium District visitors.

¹⁸ Furthermore, the site has great highway access. As explained by Mr. Weinberg, "... the site has tremendous highway access from all of the major highways. Seventy-six (76) comes right into the porte-cochere of our facility and having access off 95, as well as down Broad Street in the City of Philadelphia." St. C. Tr. 36.

¹⁹ St. C. Tr. 26-27; St. C. Tr. 48-49; St. C. Tr. 41; St. C. Tr. 81-82.

plans will also include Parx and Maryland Live! through integrated reward cards, as the two combined companies have a database of a 1.5 million people – and all of them are in Pennsylvania or the region.²⁰

The \$425 million project proposed by Stadium Casino fits the market perfectly it does not overbuild the market demand. The result adds to the stability of the Stadium Casino project, since all investment is justified by the market and will lead to a financially healthy operation – the end result being that Stadium Casino Site is the best site for the second Philadelphia casino in the City of Philadelphia.

C. The Proposed Casino is World Class.

From the renovated luxury 200 new room hotel²¹ to the 2,600 car parking structure,²² to the ground level gaming floor with 2,000 slot machines and 125 table games²³ to the fine restaurants and bars²⁴ to the live entertainment venue, Live! is a world class facility..The fact of the matter is that words cannot do the facility justice. As Mr. Ricci observed during the hearings as the renderings, photos and fly over of the facility were presented, “As you can see, it’s a beautiful property. It’s one that is consistent with what Greenwood and Cordish are known for, and we’re very excited about it.”²⁵

D. The Revenue Projections of Live! Casino Are Realistic and Unlike the Center City Projects, Will Be Met Or Exceeded.

Stadium Casino is projected to produce \$295.5 million dollars in annual gross gaming revenues in Year 1, which will escalate to \$330.3 million in Year 3 and \$344 million in Year 5.²⁶ These revenue

²⁰ St. C. Tr. 68.

²¹ The hotel will have nine floors of rooms, including a full complement of suites and the hotel rooms, which are pictured in the PowerPoint presentation, will be stylish and luxurious. St. C. Tr. 42; St. C. PowerPoint Presentation, Slides 36, 42, 46.

²² The garage will have a speed ramp design in recognition of the fact that any research of a regional gaming facility shows that casino customers’ No. 1 request is convenient parking. The garage is designed to minimize distance from spaces into the casino and the speed ramp enables customers to get to the top of the garage in the same amount of time one would take to get to the second or third floor of most Philadelphia garages. St. C. Tr. 42-43.

²³ The casino floor itself will have very upscale finishes, similar to the finishes at Parx and Maryland Live! The floor itself will be akin to any newer property built in Las Vegas or Macau. St. C. Tr. 43.

²⁴ There will be fine dining restaurants, as well as a multi-station Live! market restaurant that has the feel of a market, with freshly-prepared foods and quick service. There will also be a high-energy bar in the center of the gaming floor to create excitement. St. C. Tr. 44.

²⁵ St. C. Tr. 45.

²⁶ St. C. Tr. 50; St. C. PowerPoint Slide 62.

projections were developed by its expert witness through the use of a gravity model.²⁷ That same gravity model, with the same assumptions, projects a normalized annual gross gaming revenue of \$311.8 million for a center city location, \$10 million dollars less than a Stadium Casino normalized year.²⁸

However, producing the gravity model projections was the start, not the finish, of the Stadium Casino projection process. As Mr. Ricci explained:

... [Y]ou now have to apply real-world sanity checks to the data that comes out because, left unchecked, you could see some of the numbers that you've seen from some of the other applicants, such as a win-per-units that are 40 to 50 percent beyond what the market is currently experiencing. We feel very fortunate that we have a distinct advantage, and Bob referred to it in his conversation, that we are the only applicant that actually operates in this market. We've operated extensively on the racing side since 1990 and in the gaming side very successfully since 2006. So, unlike the other applicants who are projecting and estimating and, to some extent, guessing, we know. And we then, having our own internal data that we could draw from and also some of the other available data that's external, we developed a set of projections. St. C. Tr. 47-48.

The wild and exaggerated revenue numbers presented by the center city applicants show a desire to model inflated numbers to impress the Board, and a very serious misunderstanding of the Philadelphia gaming market. They are simply wrong. They are fantasy not reality.

E. The Stadium Casino Site Has Superior Access, Traffic Flow, Parking, Casino Design, and Zoning/Local Approval Scenarios Compared with the Center City Sites.

As explained previously, one of the key advantages of Stadium Casino's project is that it provides the Board with reliability and certainty, the result being a project with virtually no risk of failing, not being completed or underperforming. In contrast, the center city sites suffer from a myriad of issues, each providing significant risk of a serious negative impact to the respective project.

I. There is Exceptional Access to the Stadium Casino Site as Compared to the Center City Locations.

As indicated previously, the Stadium Casino site has "tremendous highway access from all the major highways" and Route 76 literally comes right into the porte cochere.²⁹ In contrast, the center city sites suffer from a variety of access problems. For example, Market 8 relies on 8th Street, coming off the

²⁷ St. C. Tr. 46; St. C. PowerPoint Slides 59-60.

²⁸ St. C. Tr. 53; St. C. PowerPoint Slide 64-66.

²⁹ St. C. Tr. 86.

Vine Street Expressway as the primary route for driving to the casino, which Market 8's traffic expert claims take less than three minutes during peak time.³⁰ Commissioner McCall questioned the reasonableness of this time period³¹ and many in the audience who have frequently driven across town off the Vine Street Expressway, at times waiting 15-20 minutes in traffic, were contemplating whether they had ever made that drive in less than three minutes. Furthermore, both center city locations rely heavily on public transit access, in the face of opinions from virtually every expert in these proceedings, that casino patrons rarely use public transit access to visit a casino anywhere in the country.³²

Certainly, it is difficult to tell at this point, how long it will take to cross town from the Vine Street Expressway to 8th and Market, or how many center city casino customers will use public transit to visit a center city site. The point is that the center city projects are very dependent on these and other highly speculative and risky issues for reasonable access to their sites, and without good and convenient access, no casino can be successful.

2. *The Stadium Casino Site Will Have An Immaterial Impact on Traffic in the Stadium District While the Center City Sites Have the Potential to Create Traffic Chaos.*

Stadium Casino's Traffic Study, prepared by Stantec Consulting and approved by Orth-Rogers, analyzed traffic around the Stadium District at various times with particular focus on peak periods before and after Stadium District events. The Report concluded that, because freeway conditions were designed to accommodate large volumes of traffic from stadium events, there is ample capacity and adding

³⁰ Mar. 8 Tr. 38-39.

³¹ Mar. 8 Tr. 81.

³² For example, Tower Entertainment's expert has projected that 31% of its patrons would come by public transit, despite the fact that many of these potential customers would have to walk 4/10 of a mile from Suburban Station. To make matters worse, upon questioning from Commissioner McCall, it became clear that another of Tower's experts opined that in its experience, "we do not perceive public transportation to be a significant means of access for casino gamblers." Tow. Tr. 98-103.

Stadium Casino “would result in only minor intersection-specific impacts, which would be mitigated by low-cost improvements . . .”³³

The center city applicants’ traffic scenario is far more uncertain and complicated. For example, up until a couple of days before its licensing hearing, the traffic study endorsed by Market 8 was based on completely erroneous trip calculation rates. This error was discovered by Stadium Casino consultant Stantec through the comparative process, resulting in Market 8 submitting a completely revised traffic study at the last minute. In some cases, the revised study increased the number of vehicles on the streets during peak periods by hundreds of vehicles.³⁴ Furthermore, as indicated previously unrealistic reliance on public transit will cause even more traffic in the area than the Market 8 study projects.³⁵

3. *Stadium Casino has Adequate Parking; the Center City Applicants Do Not.*

As indicated previously, the Stadium Casino project includes a 2,600 car, state-of-the-art garage with speed ramps and expert design. Ample parking is provided which meets the City’s standard – 4 parking spots for every 5 gaming positions, along with employee parking.

In marked contrast, both center city locations have cobbled together parking arrangements and remain nowhere close to meeting the City standard. Market 8, in particular, is completely reliant on private garages with high Philadelphia parking rates to serve the needs of their patrons. In fact, relying on expensive, private parking was compared by Commissioner Fajt to a Category 3 type of situation.³⁶

Again, given the fact that casino patrons consider convenient parking to be their No. 1 issue in visiting a casino, the complicated parking mish-mash of the center city applicants, at a minimum, presents

³³ St. C. Tr. 56.

³⁴ St. C. Tr. 58, St. C. PowerPoint Slide 76. Another equally serious error in the Market 8 traffic study discovered by Stantec has not been fixed and would significantly increase the casino impact on traffic projections for the area. St. C. Tr. 58-60.

³⁵ Again, the point is that while the center city applicants continue to claim that all traffic issues have been or will be adequately mitigated, some of their conclusions do not pass the “real life” test. Many or most of us have spent enough time in the areas of the City where these casinos are to be built, and it would seem remarkable that adding hundreds of vehicles on the streets, particularly during rush hours, would not cause complete traffic chaos. At a minimum, there is certainly significant risk of traffic chaos which should give the Commission pause.

³⁶ Mar. 8 Tr. 144-147.

a significant risk of serious problems or outright failure. The Board should again consider whether such risk is worth taking in making their selection.

4. *Stadium Casino Includes a Traditional Single, First Level, Gaming Floor, While Market 8 is Proposing its Casino on the Second and Third Floors of the Facility.*

Even a cursory review of gaming literature would lead one to question the reasonableness of a multilevel gaming floor off the first floor of a gaming facility. However, that is exactly what Market 8 is proposing. The problems with a multilevel gaming floor include a lack of direct and convenient access to the gaming floor, difficulty with security, service and flexibility, difficulty with patron navigation, and reduced synergies with non-gaming amenities.³⁷ All of these factors negatively impact the patron experience. Philadelphia Local Gaming witness Morowitz opined "that multilevel casinos typically perform poorly due to patron flow issues and cost of operations."³⁸

If nothing else, a multilevel casino in the competitive market of center city Philadelphia represents a risky experiment. The Board should also consider this issue in making its selection.

5. *Stadium Casino is Perfectly Positioned to Receive All Necessary City Zoning and Local Approvals; The Center City Applicants Are Not and May Encounter Long Delays.*

As Mr. Weinberg testified, Stadium Casino has already prepared the site plans to be submitted to the City for approval as soon as the City will accept them. Furthermore, Stadium Casino designed the project so that all City planning requirements are met and no variances are required.³⁹ Again, the project presents little risk of unforeseen local delays.⁴⁰

This is simply not the case for the center city applicants, which, as indicated previously do not comply with the City's required parking ratio, among numerous other issues. For example, counsel for

³⁷ St. C. PowerPoint Slide 78.

³⁸ Phil. L.G. Tr. 55-56. Mr. Morowitz also indicated "that the mantra among gaming executives is to avoid multilevel casinos if possible". In his expert report on Market 8 he identified many multilevel casinos which had failed or underperformed including Clardige and Playboy in Atlantic City, Golf Stream Casino in Florida and Rhythm City in Iowa.

³⁹ St. C. Tr. 41-42.

⁴⁰ St. C. Tr. 57.

Market 8 provided a confusing explanation of how Market 8 would attempt to deal with the lack of compliance with the City's required parking ratio and still maintain a nine month permit approval process. The gist of this discussion was that Market 8 had little idea where this process would lead, and what appears to be its primary strategy of getting the City to waive its required parking ratio, appears to have a very low likelihood of success.⁴¹

Again, the point is that the record reflects the very high risk that the permitting process with the City for the center city applicants will likely lead to significant problems which could cause months or years of unforeseen delay. All of these risks can be avoided by selecting Stadium Casino for the award of the Philadelphia Category 2 license.

F. The Board Should Not Terminate or Freeze These Proceedings as Requested by SugarHouse.

SugarHouse has been permitted to intervene in the proceedings and attempt to make its case at the licensing hearings for relief in the form of either (a) terminating the application proceeding without granting an application or issuing a license; or (b) freezing the proceedings at least until such time as SugarHouse has completed its pending expansion and has some period of time to evaluate the market after the expanded casino is operational. Summarily, the basis for SugarHouse's requested relief is that the Philadelphia gaming market is saturated or soon to be saturated and that opening a second casino in Philadelphia cannot be supported by the market and will cause SugarHouse financial distress. The Board should not give in to SugarHouse's demands for the reasons set forth below:

1. *The Gaming Act Requires the Board to Issue a Second Category 2 License in Philadelphia*

Contrary to the claims of SugarHouse, the Board does not have unfettered discretion to decline to issue (or effectively do so by freezing the proceedings) the second Category 2 license for Philadelphia. Indeed, the Gaming Act clearly requires a second Category 2 casino to be licensed and located in Philadelphia. The valid licensure and ongoing operation of the remaining four Category 2 casinos in the

⁴¹ Mar. 8 Tr. 89-92.

Commonwealth is predicated on the Board issuing the second Philadelphia Category 2 license. The Board's discretion lies in selecting the applicant among those deemed qualified, and in determining whether, based on the substantial evidence of record, each of the applicants satisfies the criteria for licensure. Since Stadium Casino clearly satisfies and exceeds all licensure requirements, there can be no question that at least one applicant is qualified for licensure and that a license must issue consistent with the Gaming Act.

The rules of statutory construction dictate that when the words of a statute are clear and free from ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. 1 Pa. C.S. § 1921(b).⁴² Here, SugarHouse can rely on neither the text nor the spirit of the Gaming Act as both require, with crystal clear clarity, that two Category 2 licenses be located in Philadelphia. Section 1304 of the Gaming Act unequivocally directs that "[t]wo Category 2 licensed facilities and no more *shall be located by the board* within a city of the first class." 4 Pa.C.S. § 1304(b)(1) (emphasis added). The meaning of the term "shall" is well-established; it is mandatory and unequivocal.⁴³ In fact, the Board itself, through its Chief Counsel, has interpreted the Gaming Act this same way, describing the license at issue in this proceeding as being for "the *statutorily mandated* second Philadelphia Category 2 facility."⁴⁴

As the Board's Chief Counsel advised the Commonwealth Court in the related SugarHouse litigation, "The Act has always specifically contemplated the award of two (2) Category 2 licenses to be issued and to operate in Philadelphia."⁴⁵ After considerable study, the General Assembly concluded that siting two Category 2 facilities in Philadelphia was the best way to produce the various objectives fostered by the Gaming Act. To that end, the General Assembly reduced the distance location restrictions

⁴² *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 32 (Pa. 2012); *Common Cause Pennsylvania v. ITKIN*, 635 A.2d 1113, 1116 (Pa.Cmwlth. 1993).

⁴³ *Riddle v. WCAB (Allegheny City Elec., Inc.)*, 981 A.2d 1288, 1291 (Pa. 2009) ("In its common usage as well as legal parlance, the phrase 'shall' is mandatory"); *Coretsky v. Board of Commissioners of Butler Township*, 555 A.2d 72, 74 (Pa. 1989) ("By definition, 'shall' is mandatory").

⁴⁴ *RPRS Gaming, L.P., v. Pennsylvania Gaming Control Board*, Commonwealth Court of Pennsylvania, Docket No. 377 MD 2013, Brief in Support of the PGCB's Preliminary Objections at 16 (emphasis added).

⁴⁵ *RPRS Gaming* Brief at 15.

imposed on a Category 2 facility located in Philadelphia in relation to a Category 1 facility and imposed no distance restriction between the two Philadelphia Category 2 facilities.

For the Board to refrain from issuing the statutorily mandated second Philadelphia license, it must find specific, substantial evidence disqualifying each applicant for licensure. As detailed herein, Stadium Casino clearly satisfies all of the Act's licensing requirements and, thus, refraining from issuing a license is not a legal option for the Board.

2. *It Would be Grossly Inequitable to the Other Applicants to Terminate or Freeze These Proceedings Without Awarding a License.*

Beyond the legal requirement to license a second Category 2 facility in Philadelphia, the relief requested by SugarHouse would be grossly inequitable and unfair to all of the current applicants. SugarHouse has always had full notice that two Category 2 casinos would be located in Philadelphia and it suffers no cognizable harm from the same. No one has changed the rules of the game on SugarHouse. SugarHouse had full knowledge of the requirement of a second Category 2 facility in Philadelphia from the very moment the Gaming Act was enacted. It had this knowledge when it applied for a license. It had this knowledge when it was granted a license, and at each step along the way toward developing and then operating its casino. Applying the law as it has existed from the beginning is not inequitable to SugarHouse. If anything, Sugarhouse has unexpectedly benefited through over five years of operations without competition from a second Philadelphia casino.

The applicants, on the other hand, would suffer substantial harm should the Board suspend these proceedings or abandon them without awarding a license. Each applicant has invested millions of dollars in pursuit of their application. Funds have been spent, plans of have been made and opportunities have been foregone by the applicants all in reliance on the Gaming Act's second Philadelphia license requirement. Equity dictates that the Board should reject the relief request by SugarHouse.

3. *The Stadium District Projects Will Not Cannibalize SugarHouse Revenues at a Level That Will Cause SugarHouse Financial Distress.*

SugarHouse would have this Board believe that the Philadelphia gaming market is saturated or is soon to be saturated, and that, while there may be a small amount of annual market growth to be squeezed

out of the market, a new Philadelphia casino would not be able to attract very substantial incremental revenue, and would largely rely on cannibalization of SugarHouse revenues.⁴⁶ However, it is noteworthy that unlike the five applicants, each of which retained a qualified consulting firm to conduct a cannibalization analysis, SugarHouse, despite having a premier consulting firm under retention, chose not to conduct a cannibalization study and could only anecdotally speculate as to what SugarHouse cannibalization levels might be under various scenarios.⁴⁷ Such anecdotal speculation is not reliable evidence and should be given no weight by the Board.

From Stadium Casino's perspective, it is noteworthy that GRI which operates Parx in the Philadelphia market would not be applying for this license if it did not believe there was very significant untapped or incremental revenue to be garnered at the Stadium District location. When asked by Commissioner McNulty to comment on this issue, Mr. Weinberg explained:

I don't look at it as cannibalization. So, for instance, from Maryland Live! we have customers that want to attend events, and in Philadelphia we have people who come up for concerts and sporting events all the time. Parx, as well, has, you know, customers who are attending events at the stadium district. And Parx today is a big sponsor of the teams that --- in the stadium district. So, it gives us an opportunity to enhance our customer's experience by being able to offer these opportunities. So, we view it as, you know, completely complimentary and additive. St. C. Tr. 69.

Mr. Ricci built off of Mr. Weinberg's testimony by focusing on the opportunity for Stadium Casino to attract large amounts of incremental revenue from the untapped South Jersey market:

You know, I'd just add to that that this represents a unique opportunity to attack a market that we're not serving today. We know customers that we have in our database do share their wallet with the Atlantic City casinos. They did before we opened, and they continue to do so on a less frequent basis. We feel that, this location, given its proximity to the stadium district, enables us to steal some trips, really, from Atlantic City much more than us. We're getting more of the convenience trip, where if a customer doesn't come to us, he's going for something we don't offer today. With the amenities in the stadium district now, and we're thrilled to see Xfinity expand because that is complimentary amenities that we could use to really market that whole area, along with the events that occur on a

⁴⁶ Sug. Tr. 60-64. Expert witness Rittvo testified that in his opinion a fully developed market would occur when SugarHouse's expansion was completed.

⁴⁷ Sug. Tr. 57-58. SugarHouse primary principal Bluhm, when asked by Commissioner Woods for an expected cannibalization rate for SugarHouse testified, "We really don't know. We know there's going to be very serious cannibalization." Mr. Bluhm went on to comment on the cannibalization rates projected by the various applicant experts.

regular basis, we feel we have a good chance to steal even more trips from Atlantic City from our existing database. St. C. Tr. 69-70.⁴⁸

As indicated previously, Stadium Casino also presented the results of an incremental revenue/cannibalization analysis through expert witness Ernie D'Ambrosia. The results show that in a normalized year, the Live! Casino is projected to generate approximately \$321.8 million in gross gaming revenue. Of this amount, \$233.1 million or over 72% will be new, incremental revenue and only \$88.6 million, or less than 28%, will come from cannibalization of any Pennsylvania casinos. This new incremental revenue will grow the Philadelphia gaming market by 19.6%.⁴⁹

Compare this to the results for a center city location, which is projected to produce \$311.8 million in gross gaming revenue, \$10 million less than Live!. Of this gross gaming revenue, almost 120 million will be generated from cannibalization of other Pennsylvania casinos, or more than 38%.⁵⁰ Finally, the Stadium Casino location would provide in excess of \$40 million per year more in new gaming revenue as compared to a center city location.⁵¹

Taking one back to the SugarHouse testimony, Mr. Bluhm testified that SugarHouse may be able to absorb \$30 million in cannibalization, \$50 million would be very difficult, and as it goes up from there it would become impossible.⁵² Because of its projected levels of new incremental revenues from the Live! Casino location, and the synergies with the stadium/arenas and their events, Stadium Casino's

⁴⁸ It is noteworthy that towards the close of the licensing hearing, Commissioner Fajt complimented Stadium Casino on this testimony and its cannibalization presentation in general. ("Okay. I also want to thank you for your explanation on the saturation and cannibalization. I thought, you know, you did a pretty good job on allaying some of our fears and issues and setting that forth in your presentation. So, thank you for that.") St. C. Tr. 83-84.

⁴⁹ St. C. Tr. 53; St. C. PowerPoint presentation, slide no. 64.

⁵⁰ St. C. Tr. 53; St. C. PowerPoint presentation, slide no. 65. Obviously, the Commonwealth does not generate any additional gaming tax from gaming revenues resulting from cannibalization of other Pennsylvania casinos. However, the new incremental revenue projected for Stadium Casino would provide approximately \$100 million in new gaming taxes each year (based on \$233.1 million in incremental gaming revenue). St. C. PowerPoint Slide No. 66.

⁵¹ This \$40 million will generate over \$17 million in additional gaming taxes for the Commonwealth.

⁵² Sug. Tr. 57.

cannibalization level of SugarHouse revenues is projected to be in the \$36 million range.⁵³ This cannibalization level in the \$30 million range which, by SugarHouse's own admission, should not cause SugarHouse financial distress. Indeed, such a cannibalization level is not really cannibalization at all, but is more accurately described as healthy competition. And Stadium Casino fully expects that SugarHouse will respond aggressively to that competition and will make every effort to reduce expected cannibalization, possibly successfully, to levels well below those projected.

Of course, all of this makes complete sense. The center city locations are much closer to SugarHouse than the Stadium District locations, and being in the middle of SugarHouse core market will split a minimally elastic market with the center city location.⁵⁴ The Stadium District, within a completely different and remote part of the City, with 8 million annual outside visitors, presents a much different scenario.⁵⁵ While the center city expert cannibalization studies make an attempt to refute the obvious, it defies logic and common sense to suggest anything other than the obvious – the Stadium District location will have a much lesser cannibalization effect on SugarHouse than the center city locations.⁵⁶

Finally, as expressly recognized by Commissioner Fajt at SugarHouse's hearing, a second Philadelphia casino would not be competing with SugarHouse for 2½ years and probably longer, since inevitable appeals will have to clear before construction even begins.⁵⁷ Accordingly, the Board should summarily reject SugarHouse's request to freeze the proceedings until the SugarHouse expansion is

⁵³ Phl. L. G. Tr. 105. This projection resulted from a cannibalization study sponsored by Philadelphia Local Gaming, included in the record of these proceedings, which compared cannibalization between a center city site and a South Philadelphia site.

⁵⁴ St. C. Tr. 22.

⁵⁵ While SugarHouse witness Bluhm indicated that SugarHouse draws good gamblers and significant revenue from South Philadelphia (Sug. Tr. 60), this is not evidence and certainly it cannot be expected or projected that these South Philadelphia gamblers produce anywhere near the gross gaming revenue as the gamblers in SugarHouse's immediate vicinity.

⁵⁶ The cannibalization study conducted by Philadelphia Local Gaming also strongly supports the conclusion that the center city location would have a much greater cannibalization impact on SugarHouse than the Stadium District location. The results of that study concludes that a South Philadelphia casino would cannibalize Southeast Pennsylvania casinos by \$103 million annually, while a center city casino would cannibalize Southeast Pennsylvania casinos by approximately \$170 million or \$67 million more than a South Philadelphia site. Phl. L.G. Tr. 55.

⁵⁷ Sug. Tr. 75.

completed.⁵⁸ SugarHouse will have ample time to complete its construction and the luxury of a couple of years of expanded operations before the second casino opens its doors. SugarHouse has already had five years of operations without expected competition from a second Philadelphia casino, and further delay will do nothing more than infuse additional and unnecessary ongoing costs on the other applicants.

Overall, the Board should proceed with the award of the second Philadelphia Category 2 license. Not to do so would not only violate the Gaming Act and cost the state more than \$100 million per year in new tax revenue, but would also be grossly inequitable to the competing applicants.

G. Stadium Casino is Eligible to be Awarded the Philadelphia Category 2 Slot Machine License.

The eligibility criteria for a Category 2 slot machine license are established by Section 1304(a) of the Gaming Act. The only eligibility criterion applicable to Stadium Casino is addressed in Section 1304(a)(1). Summarily, Section 1304(a)(1) conveys eligibility only on applicants (or their affiliates) who are "...not otherwise eligible to apply for a Category 1 license..."

Neither Stadium Casino nor GRI are currently eligible to apply for a Category 1 license (since there are none available to be eligible for), and therefore neither are eligible to apply for a Category 2 license under Section 1304(a)(1).⁵⁹ In this regard, Stadium Casino strongly endorses the 1304 analysis included in Stadium Casino's Suitability Report.⁶⁰ That analysis is conclusive that Section 1304(a)(1) is a non-issue and that Stadium Casino is eligible to apply for the Category 2 license.

H. Stadium Casino Principal Manoukian is Compliant with Section 1330, and No Condition on Licensure is Appropriate.

Section 1330 of the Gaming Act is commonly known as the "one and one-third rule" in that it precludes a slot machine licensee (or its affiliates) from owning or having an economic interest of more

⁵⁸ Mr. Bluhm indicated the expansion would be completed by the fall of 2015. Sug. Tr. 53.

⁵⁹ It is also noteworthy that because Section 1304 only applies to applicants and not to licensees. In reliance upon this distinction, Stadium Casino added "belt and suspenders" to assure Section 1304(a)(1) compliance by structuring its application so that GRI does not accrue an equity position in Stadium Casino until after the application is granted at the time of actual licensure. While such an approach may have been unnecessary, it should remove any remaining doubt regarding this issue.

⁶⁰ Stadium Casino Stipulation dated 1/24/14 at Exhibit 2.

than 33.3% of another licensee. The stated purpose of Section 1330 of the Gaming Act is to prevent possible monopolization by establishing reasonable restrictions on the control of multiple licensed gaming facilities in the Commonwealth.”⁶¹

First, there is no Section 1330 compliance issue pertaining to GRI. GRI has a post-licensure equity or economic interest of 33%, which will never exceed 33.3%. As to GRI’s majority shareholder, Watche Manoukian, any Section 1330 compliance issue has been eliminated since the Stadium Casino licensing hearing.⁶² At the time of licensure, Mr. Manoukian will hold a 28.32% equity or economic interest in Stadium Casino through his equity interest in GRI.⁶³ While for the reasons explained below, no Section 1330 ownership/economic interest in Stadium Casino should be attributed to Mr. Manoukian as a result of his role in relation to the Trustee of the Sterling Investors Trust, Sterling Fiduciary Services, Inc. (“SFS”), even if one erroneously attributes such an interest to Mr. Manoukian’s total ownership/economic interest in Stadium Casino, his ownership/economic interest remains below 33.3% and in full compliance with Section 1330 (28.327% resulting from his equity interest in GRI and 4.76% resulting from his equity interest in SFS yielding a total ownership/economic interest of 33.087% in Stadium Casino).⁶⁴

⁶¹ 4 Pa. C.S. § 1102(5). The referenced “reasonable restrictions” are established through Section 1330, which is entitled “Multiple Slot Machine License Prohibition.”

⁶² After the licensing hearing, and in conjunction with discussions with the Office of Enforcement Counsel, the Trustee for the Sterling Investors Trust, Sterling Fiduciary Services, Inc. (“SFS”) was restructured. Prior to restructuring, Mr. Manoukian was one of two directors, the sole officer and 100% shareholder of SFS. After restructuring, Mr. Manoukian is no longer a director or officer of SFS and Mr. Manoukian’s ownership of SFS has been reduced to 20% of the shares – the remaining 72% split evenly among Mr. Manoukian’s three sons, Yegiche, Aram and Karnig. The three sons remain the beneficiaries of the Sterling Investors Trust and in that capacity are Stadium Casino principals who have been subject to a suitability investigation. The restructuring has been completed from a transaction perspective. Because with minor exception the Stadium Casino record is closed, on February 4, 2014, Stadium Casino filed a Motion to Reopen the Record for Limited Purpose to have Director Lloyd or the Board accept the SFS restructuring documents into the record. Those documents are attached to the Reopen Motion and are in the Board’s possession.

⁶³ See Stadium Casino Application, Appendix 45.

⁶⁴ The Sterling Investors Trust will be the beneficial holder of 17% of Stadium Casino’s equity post-licensure. Stadium Casino Application, Appendix 45. If one takes the view, albeit legally erroneously, that the Trustee, not the Trust beneficiaries, has the ownership/economic interest in Stadium Casino, Mr. Manoukian’s 28% ownership/economic interest in the Sterling Investors Trust and a resulting 4.76% ownership/economic interest in Stadium Casino resulting from his interest in SFS.

While SFS has been restructured to remove any doubt regarding Section 1330 compliance, from a legal perspective, no ownership/economic interest should be attributed to Mr. Manoukian resulting from his current or previous role in relation to the Trustee. First, the Board has determined that a principal's equity/ownership interest in a trustee of a trust that holds casino equity (or in this case, the principal was the trustee) should not be attributed an ownership interest as a result of an interest in the trustee for Section 1330 purposes.⁶⁵ Equally important, since the Board's *PITG* decision, the Pennsylvania Supreme Court has upheld the Board's view that the term "ownership in Section 1305 of the Gaming Act only applies to equitable, not legal ownership."⁶⁶ Pennsylvania's rules of statutory construction clearly provide that when a term has acquired a meaning in one section of an Act, the term must be construed according to that meaning throughout the Act, unless the context clearly indicates otherwise.⁶⁷

Here, it is well settled and beyond dispute that while a trustee holds legal title to trust property, it is only the beneficiaries which hold equitable title to that property.⁶⁸ Furthermore, it is only the beneficiaries that hold an economic or property interest.⁶⁹

Accordingly, because only the Beneficiaries, not the Trustee, of the Sterling Investors Trust have an ownership or economic interest in Stadium Casino, no ownership or economic interest in SFS, the Trustee, can be attributed to Mr. Manoukian's ownership/economic interest in Stadium Casino. However, even if one erroneously attributes Mr. Manoukian's ownership/economic interest in the Trustee to his

⁶⁵ *In re: Joint Application of PITG Gaming, LLC*, OHA Docket No. 42028 (Board Adjudication, August 29, 2008) at pp. 21-23.

⁶⁶ *Greenwood Gaming and Entertainment, Inc. v. PGCB*, 15 A.3d 884, 889-890 (Pa. 2011).

⁶⁷ 1 Pa.C.S. s 1903 (words or phrases which have acquired peculiar and appropriate meaning shall be construed according to that meaning); *see also Commonwealth v. Hicks*, 74 A.2d 178 (Pa. 1950) ("For it is axiomatic that words having a precise and well-settled legal meaning must be given that meaning when they appear in statutes unless there is a clear expression of legislative intent to the contrary.").

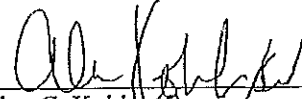
⁶⁸ *Reincke v. Smith*, 209 U.S. 172, 53 S. Ct. 570, 77 L.Ed. 1109; *Milton Hershey School, Appeal of Milton Hershey School Alumni Assn.*, 87 A.2d 674, 682 (Cmwlth. Ct. 2005) (*reversed on other grounds*).

⁶⁹ *Jones v. Jones*, 25 A.2d 327, 329 (Pa. 1942); *Reincke* at 686.

ownership/economic interest in Stadium Casino, given the restructuring of SFS, his ownership/economic interest remains below 33.3% in full compliance with Section 1330.⁷⁰

Finally, Stadium Casino is confident that the Section 1330 issue is now resolved. Nevertheless, it is important to understand that under the clear language of the statutory provision, Section 1330 is not an eligibility criterion and Stadium Casino remains eligible to be awarded the Philadelphia Category 2 license under Section 1304(a)(1). Indeed, Section 1330 is a condition of licensure, and Stadium Casino and Mr. Manoukian have a statutory right to cure any violation.⁷¹ Accordingly, the Board should find full compliance with Section 1330, but under no scenario should the provision impact the potential award of the license to Stadium Casino.

Respectfully submitted,



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Date: February 10, 2014

⁷⁰ Some have argued in the past that Section 1330 should be read backwards so that if a slot machine licensee owned more than one third interest in one license, but was an affiliate of an applicant that was awarded a second license, it would be required to divest its interest in the original slot machine license so that it only owned a less than one third interest. The absurdity of such a reading of the provision demonstrates why one should never read a law backwards. In addition, such an interpretation is directly rejected by Board regulations at 58 Pa. Code §441a.17(g) which expressly states that nothing prevents a slot machine licensee from holding a one third interest in multiple slot machine licensees, and by Section 1330, itself, which only requires divestiture from the second, or "another," license as a condition of licensure and not from both or all licenses where the ownership interest exceeds 33.3%.

⁷¹ As Section 1330 states "No such slot machine licensee applicant shall be issued a slot machine license until the applicant has completely divested its ownership or financial interest that is in excess of 33.3% of another slot machine licensee . . . The Board shall approve the terms and conditions of any divestiture under this section." This language is clear and unambiguous that an applicant which the Board finds in violation of Section 1330 may have its application granted by the Board, conditional on divesting the interest that exceeds 33.3%. *See also* 58 Pa. Code §441a.17(h).

CERTIFICATE OF SERVICE

The undersigned counsel for Stadium Casino, LLC, hereby certifies that a true and correct copy of the foregoing document was served this date via email and first class mail, addressed as follows:

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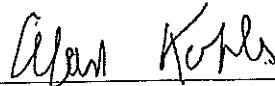
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