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OFFICE OF THE CLERK

June 3, 2011

Ms. Alta Drayton-Brown ✓
Clerk of the Board
Hearings and Appeals Office
One Penn Center
2601 N. 3rd St. 5th Floor
Suite 502
Harrisburg, PA 17110

Mr. Robert M. McCord
State Treasurer
PA Treasury Department
129 Finance Building
Harrisburg, Pennsylvania 17120

Re: PGCB Loan Repayment

Dear Treasurer McCord and Ms. Dayton-Brown:

Sands Bethworks Gaming LLC ("Sands") respectfully submits this letter to both the Pennsylvania Gaming Control Board ("Board") and the State Treasurer ("Treasurer") in support of our position relating to the repayment of the PGCB loans.

As previously stated in our last letter to the Board dated April 28, 2011, the total annual repayment amount that each Licensee should be responsible for paying should be determined as the ratio of the *cumulative* gross terminal revenues ("GTR") of each Licensee since their individual opening dates as of each payment date to the total *cumulative* GTR of all Licensees beginning with the opening date of the first casino to each payment date. The first payment would be due one year after the 11th casino license opens. This way each of the 11 licensees would pay towards the first annual loan payment an amount, as provided by the statute, which is proportional to its GTR.

This calculation would be adjusted on each annual payment due date to add to the licensee's cumulative GTR from opening as of the last payment date the GTR earned

during the most recent year. A corresponding addition would be made to the denominator of the proportion to add to the cumulative GTR from opening of all 11 licensees as of the last payment date the GTR earned by all 11 licensees during the most recent year.

Sands believes that this calculation would be an equitable method of repayment for a number of reasons. By using the cumulative GTR from opening of each licensee, the calculation would initially produce a proportion that would be in essence a weighted proportion to take into account the fact that the licensees opening earlier were enjoying GTR while consuming the services provided by the regulatory agencies at a time when the regulatory agencies were not being fully funded. For that reason, an equitable result and the statutory formula require the consideration of that earlier GTR in the mix.

At the same time, the later opening licensees would be sharing from the start of the repayment period part of the unfunded regulatory services provided when they were not open because their GTR would be added in from the time they opened thru the first year of operation of all 11 licensees when the first payment would be made and allocated among the 11 licensees. In addition, the initial effect of a slightly higher proportion on the earlier to open licensees due to considering the GTR of all licensees beginning with their opening dates would be less of a factor each year out throughout the course of the ten year repayment period as the cumulative GTR for all 11 licensees grew year-by-year resulting in a larger denominator each year that would be used to determine the relative proportion of each licensee's cumulative GTR. So considering the cumulative GTR of all the licensees from the time they opened until the date of each payment calculation would fairly distribute the payment obligation among the 11 licensees because it would be based on the relative proportion of each licensee's GTR as required by the statute.

In addition, the later opened licensees would not escape paying for regulatory costs before they opened. The later opening licensees would not be excused from paying any regulatory costs before they were open because each had to pay the regulatory costs of the investigations necessary for their licensing and would have paid those costs directly to the GCB. This is another factor in a mix of factors adding to an overall equitable formula.

We believe that this repayment formula is even handed and fair for all Licensees, as each would be required to bear the burden of the regulatory and oversight costs of their operations during the time period that they were actually operating and generating revenues. The fairness and equity inherent in the formula proposed by Sands highlights the chief inequitable feature of the plan of the Treasurer. The Treasurer's plan would give no consideration in calculating the repayment obligations of each licensee to the GTR enjoyed by the earlier to open licensees. The Treasurer makes this proposal despite the simple truth that a formula that excludes a significant chunk of GTR could not be obedient to the statutory command to determine the repayment obligation of each licensee based on the relative GTR of each licensee. Worse yet, the Treasurer's formula in not considering the GTR beginning with each licensee's opening would convey the greatest benefit on the earliest opened licensee because the earliest to open licensee would have the longest period of earning GTR excluded from the formula.


Not only would the Treasurer's plan benefit the earlier to open licensees and therefore penalize the later to open licensees by not including the GTR of each licensee from opening, but the Treasurer's plan would give a similar free ride component to the last to open licensees. This free ride component on the back end would result from the proposal of the Treasurer that the payback commence now with 10 licensees open rather than with the 11 required by statute. The quantity of licensees shouldering the repayment obligation was already reduced to 11 from 14 as a result of a Legislative determination to begin the repayment period after 11 licensees were open. Reducing the starting point of the repayment to the opening of 10 licensees would exclude the two licensees who have been awarded licenses from any payment obligations at the commencement of the repayment process. Thus, the Treasurer's proposal suffers from handing out an inequitable advantage to both the earlier to open licensees and to the last to open licensees. Conferring this advantage at both the front end and back end of the pack would unfairly squeeze the middle of the pack licensees.

Attached to this letter is the calculation of the Sands of the repayment obligations of each licensee based on actual GTR results to date and projected GTR results over the course of the 10 year payment plan. It is obvious from this chart that the Treasurer's recitation of the expected payment obligations of the licensees under the Sands plan does

not match the payment obligations projected under the Sands plan. For example, according to the Treasurer's Position Statement at page 16, he misstates the repayment obligations of the Sands under the plan initially submitted by the Sands indicating an average payment of \$282,657 a year. However, the correct amount projected under the Sands plan would be an average yearly payment of \$572,479. Just as significant, under the Treasurer's Plan, he estimates that the Sands average yearly payment would be \$709,589. The difference between the projections of the Sands and the projections of the Treasurer are accounted for by the premium imposed on the Sands under the Treasurer's Plan by unfairly conferring a benefit on the earlier to open licensees and the last to open licensees and making the Sands pay for that largesse.

One other thing the Sands wishes to note that is not mentioned in the Treasurer's Position Statement is that the Sands has just learned that there may be an excess balance of approximately \$26,000,000 held in favor of the Department of Revenue as a result of assessments collected from licensee's so-called 1401 accounts that has not been applied to fund the costs of the regulatory agencies. While the Sands understands that the Treasurer was unaware of that significant fund, the Sands believes that those excess funds should be applied in reduction of the loans in question. In closing, one thing is clear and that is that those funds, which were withdrawn from the licensees' 1401 accounts can only be used under 4 Pa. CSA § 1402 to fund costs of the specified regulatory agencies or loans made to fund the specified regulatory agencies and not for any other purposes.

Regards,



Robert J. DeSalvio
President

C: Holly L. Eicher, Esq.
Frederick H. Kraus, Esq.

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HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 15, 2011

Greg Fajt, Chairman
Pennsylvania Gaming Control Board
5th Floor, Strawberry Square
Harrisburg, PA 17101

**RE: Pennsylvania Gaming Control Board
Loan Repayment Terms**

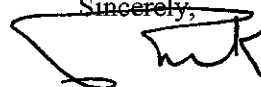
Dear Greg:

The loan repayment schedule recommended by the Gaming Board's Office of Chief Counsel on June 8, 2011 should be rejected by the Board. The Office of Chief Counsel advocates a schedule that calculates each licensee's share of GTR beginning in fiscal year 2011-12 and completely disregards the GTR generated by licensees during the years that the loans were made - FY2007-08, 2008-09 and 2009-10. Such a proposal is contrary to the intent of the 2010 Fiscal Code.

The legislation requires the Board to establish a repayment schedule which "assesses to each slot machine licensee costs for repayment of the loans...in an amount that is proportional to each slot machine licensee's gross terminal revenue." The facilities that were in operation during the years that the subject loans were made generated approximately \$5.3 billion in GTR with Mohegan Sun, Parx and Harrah's Chester benefitting from more than half of that amount. To simply ignore the GTR generated in this period makes no sense.

The proceeds of the loans were utilized to fund Gaming Board administrative and operational expenses. It is readily apparent that the lion's share of these expenses was devoted to the facilities that were in operation at the time, e.g., onsite casino compliance representatives, gaming lab operations. The majority of the Gaming Board expenses devoted to the facilities that either were not opened or opened at the end of fiscal year 2009-10 were billed directly to such facility in the form of investigative fees and pre-opening expenses.

Based on the foregoing, it is respectfully submitted that the \$63.8 million in outstanding loans be allocated based on the pro rata share of GTR generated during the fiscal years in which the loans were made.

Sincerely,


Frank Dermody
33rd Legislative District
Democratic Leader

cc: Commissioner Keith McCall



Senate of Pennsylvania

June 22, 2011

Mr. Greg Fajt, Chairman & Members
PA Gaming Control Board
Strawberry Square, 5th Floor
Harrisburg, PA 17101

Chairman Fajt & Members:

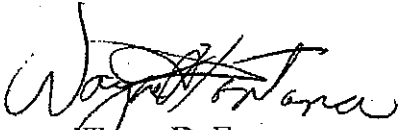
As you are well aware, Act 46 of 2010 amended the Commonwealth's Fiscal Code to require the PGCB to establish a repayment schedule for loans made to the PGCB from the Property Tax Relief Reserve Fund for fiscal years 2007-08, 2008-09, and 2009-10 by June 30, 2011. The Fiscal Code gives the PGCB broad, but not unlimited, discretion in establishing the repayment schedule. After reviewing proposals crafted by the PGCB and the Commonwealth's licensed gaming entities, we write concerning the loan repayment schedule recommended by the PGCB's Office of Chief Counsel on June 8, 2011.

Current law requires loan repayments to begin when 11 venues are operational. The law also requires that the PGCB assess each slot machine licensee's share of the outstanding loans in an amount that is proportional to the licensee's gross terminal revenue. The Fiscal Code was designed to give the PGCB flexibility to establish a repayment schedule that balances the Commonwealth's interest in maximizing revenue through the repayment of the loan with the fiscal realities facing the Commonwealth's licensed gaming entities. However, the law is silent on the method in which the PGCB must calculate proportionality and the time period it must use in creating the calculation.


As the PGCB moves toward establishing the repayment schedule, we respectfully ask that the PGCB create a fair repayment structure that recognizes the realities of the uses of the loans. Clearly, the majority of the loans in each of FY 2007-08, 2008-09 and 2009-10 were used for PGCB oversight of the facilities in operation during those fiscal years. While the law currently requires all facilities to contribute to the repayment when 11 facilities are operational, we believe that fact should be taken into account when developing the repayment schedule and calculating each facility's share in accordance with law.

Thank you for your attention to this matter. If you have any questions, please feel free to contact us at your convenience.

Sincerely,



Wayne D. Fontana
42nd Senatorial District


Jay Costa, Jr.
43rd Senatorial District

Vincent Hughes
7th Senatorial District