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May 15, 2009

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: House Bill 1037

Dear Governor O'Malley:

We have reviewed House Bill 1037, "Prince George's County - Alcoholic Beverages Licenses - Successor Corporations," for constitutionality and legal sufficiency. In our review of the bill, we have considered whether the bill, which affects only Darden Restaurants, is an invalid special law. While the matter is not free from doubt, it is our view that the bill is not clearly unconstitutional. We therefore approve it for your signature.

House Bill 1037 permits the successor corporation of a merger of two separate corporations holding alcoholic beverage licenses in Prince George's County to continue to hold the sum of the licenses held by the two corporations that merged, up to a total of eight licenses. The bill was amended in the course of passage to limit the application of the bill to corporations that merged between September 1, 2007 and June 1, 2008. Even without this amendment, it appears that the bill currently applies only to the merger of Darden Restaurants with RARE Hospitality, Inc. in October of 2007.¹ Darden Restaurants owns and operates Red Lobster Restaurants and Olive Garden Restaurants, while RARE Hospitality, Inc. owned and operated Longhorn Steak Houses. Prior to the merger, Darden Restaurants held five restaurant licenses in the County, while RARE Hospitality, Inc. owned three. The law in effect at the time of the merger in 2007 permitted a single entity to hold no more than six BLX licenses and one regular

¹ IHOP Corp. and Applebee's International, Inc. merged in 2007, but that merger did not result in an entity with more than the permitted number of licenses.

Class B license. As a result, the bill was necessary to prevent the loss of a liquor license by (and probable closing of) an existing restaurant in the County. The bill does not allow Darden Restaurants to acquire additional licenses in the County.

Article III, § 33 of the Maryland Constitution provides, in pertinent part, that “the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law.” It has been said that “the purpose of § 33 is to prevent or restrict the legislature from passing private acts for the benefit of particular persons or individual cases.” *State v. Good Samaritan Hospital*, 299 Md. 310, 329 (1984). To determine whether a statute was enacted “to benefit or burden a particular member or members of a class instead of an entire class,” the courts will look to a number of factors, including whether particular individuals or entities are identified by name, whether an individual or entity “sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation,” whether the public need and the public good are served by the bill, and whether the classifications in the bill are reasonable or arbitrary. *Cities Service Company v. Governor*, 290 Md. 553, 569-570 (1981).

House Bill 1037 does not mention Darden Restaurants by name, nor does it define the coverage of the bill in a way that could only possibly apply to Darden Restaurants – the qualification period stretches eight months past the Darden Restaurant/DARE Hospitality merger. Darden Restaurants did, however, actively seek the change in the law. See Testimony of Darden Restaurant before the House Economic Matters Committee on House Bill 1037 (February 23, 2009). Moreover, as a factual matter, Darden Restaurants is the only entity to whom the bill applies. While the fact that Darden Restaurant is the sole beneficiary supports the conclusion that this is a special law, other factors cut against that conclusion. First, no other businesses are discriminated against. We have not been able to identify any merger taking place outside the dates in which the parties could have benefitted from the provisions of the bill had the dates been expanded.² Moreover, the bill serves the public interest by avoiding a situation where an existing business would be forced to close, or to attempt to survive without a liquor license. Finally, the classifications drawn by the bill are rational. Limiting the distance that the law goes back is rational as any businesses that were affected by the limit when

² As such, the bill can be differentiated from the grandfather clause found invalid in *Legend Night Club v. Prince George's County Bd. of License Com'rs*, 2009 WL 926989 (D.Md. 2009), where the line was drawn to protect a licensee that had been in business for 24 years, one month and sixteen days, while cutting out a licensee that had been in business for four days short of 23 years.

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they merged in the past have presumably already closed or sold the affected restaurants and no longer need the bill. Limiting the time that the provision goes into the future is rational because the Legislature could reasonably fear that corporations who are at the license limit could create straw corporations to purchase additional restaurants then merge with the straw corporations, thus evading the license limitations.

Because Darden Restaurants appears to be the only corporation that could be affected by the provisions of House Bill 1037 even with significantly broader qualification dates, and because the classifications drawn are reasonable and serve the public interest, it is our view that House Bill 1037 is not clearly unconstitutional. Therefore, it is our view that it may be signed into law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas F. Gansler". The signature is written in a cursive, flowing style with a large initial "D".

Douglas F. Gansler
Attorney General

DFG/KMR/mlb

cc: The Honorable Melony G. Griffith
The Honorable John P. McDonough
Joseph Bryce
Karl Aro