

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

**In Re:** :  
    **Joint Application of PITG** :  
    **Gaming, LLC and Holdings** :  
    **Acquisition Co, L.P. for Approval** :  
    **of the Reorganization, Change of** :                   **OHA Docket # 42028**  
    **Control and Recapitalization of** :  
    **PITG Gaming, LLC and Other** :  
    **Relief in Connection Therewith** :

**ADJUDICATION**

**I.     INTRODUCTION**

In July 2004, upon the enactment of the Pennsylvania Race Horse Development and Gaming Act (“Act”), 4 Pa.C.S. §1101, et seq. *as amended*, Pennsylvania embarked on an expansive initiative providing for legalized slot machine gaming at a limited number of licensed facilities within the Commonwealth. The primary expressed objective of the legislation is to protect the public through regulating and policing all activities involving gaming. Other objectives include enhancing live horse racing and breeding programs; entertainment and employment in the Commonwealth; providing a significant source of income to the Commonwealth for tax relief; providing broad economic opportunities to Pennsylvania’s citizens; developing tourism; strictly monitoring the licensing of specified locations, persons, associations, practices, activities, licensees and permittees; considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions; and maintaining the integrity of the regulatory control of all licensed facilities. 4 Pa.C.S. §1102.

As directed by the Act, during 2005 and 2006, the Pennsylvania Gaming Control Board (“Board” or “PGCB”) undertook the effort to award the first slot machine licenses in Pennsylvania. In accordance with the Act, after extensive investigation, public input and

suitability hearings conducted by the Board, and after extensive consideration of the numerous criteria as set forth in the Act, the sole Category 2 license permitted by the Act for the City of Pittsburgh was awarded to PITG Gaming, LLC (“PITG”) during a public meeting and vote on December 20, 2006.

The Board subsequently issued its PITG licensing adjudication on February 1, 2007. In that adjudication, the Board stated that it found that of the three applicants for the Category 2 slot machine license, the PITG project was the best for Pittsburgh and the citizens of the Commonwealth for several key reasons. Specifically, the Board found that the facility design and location of the proposed PITG casino on the North Shore was superior to the designs and locations of the two other proposed projects. In addition, the Board found that the PITG project on the North Shore would be better able to mitigate any traffic concerns since it was not located in an already congested area on the South Side or in the downtown area as were the two other competing projects. Finally, the Board found that the potential for the rebirth of development and the economic stimulus that PITG could provide for the North Shore and the City of Pittsburgh was greater than that of the other two competing projects.

The Adjudication also notes that PITG’s owner and chief executive, Don Barden, and PITG were committed to helping the community. Specifically, Don Barden committed to fund grants for the redevelopment of the Hill District, the Northside Leadership Conference and he new all-purpose arena, as well as traffic mitigation measures in the vicinity of the proposed casino. Finally, the Board found desirable the fact that PITG was a minority owned and operated company, in keeping with the Act’s intent to involve minority participation in the gaming industry in Pennsylvania.

After the February 2007 adjudication was issued, the unsuccessful competing applicants filed appeals of the Board’s decision to award PITG the slot machine license with the

Pennsylvania Supreme Court. In July 2007, the Pennsylvania Supreme Court upheld the Board's decision, holding that there was sufficient evidence in the record before the Board to support the Board's decision to award PITG the slot machine license. Station Square Gaming v. PGCB, 592 Pa. 664, 927 A.2d 232 (7/18/2007). Against this background we now turn to the Joint Application that is the subject of this adjudication.

## **II. JOINT APPLICATION**

On July 9, 2008, PITG and Holdings Acquisition Co, L.P. ("Holdings Acquisition") filed a Joint Application with the Board. The Joint Application sought approval for the financing for the Pittsburgh Category 2 gaming facility, reorganization of PITG and certain modifications to the approved gaming facility. In accordance with the Gaming Act, the Joint Application must be approved by the Board prior to the implementation of any new ownership structure.

A public hearing regarding the Joint Application was commenced on July 10, 2008 and continued to completion on August 14, 2008. From the filing of the Joint Application through the August 14, 2008 public hearing, the Joint Applicants provided numerous documents to the Bureau of Licensing and also submitted Principal License Applications for the entities and individuals involved in the reorganization. The Board's Bureau of Investigations conducted numerous hours of investigation regarding the individuals and entities involved, as well as a financial analysis of the proposed transaction. The Board heard hours of testimony from the parties and members of the public and has received numerous written public comment from state and local officials as well as members of the public.

Each Board member conducted a comprehensive evaluation of all of the information obtained throughout the entire process and contained in the evidentiary record. The Board collectively engaged in quasi-judicial deliberations in an executive session on August 14, 2008, during which it met to fully and frankly discuss the merits of the Joint Application. Ultimately,

the determination to grant any relief requested in the Joint Application is a determination committed to the sound exercise of the Board's discretionary authority, provided that the Board believes that the proposal meets all criteria required by the Act and best serves the Commonwealth's and the public's interests as outlined in the Act.

At the public meeting held by the Board on August 14, 2008, following quasi-judicial deliberations on the matter, the Board voted unanimously and in accordance with the Sunshine Act, 65 Pa. C.S. Chapt. 7, to grant a majority of the relief requested in the Joint Application of PITG and Holdings Acquisition pursuant to the terms and conditions imposed by Board's Order dated August 14, 2008.

The following Findings of Fact and Conclusions of Law set forth the Board's rationale for this determination.

### **III. FINDINGS OF FACT**

#### **A. PITG's Project**

1. On December 5, 2003, PITG was formed as a Pennsylvania limited liability company to be a wholly-owned subsidiary of Barden Development, Inc. ("Barden Development").
2. Barden Development was formed as an Indiana corporation on November 16, 1993 and currently has its principal place of business in Detroit, Michigan.
3. Don Barden is the owner and Chief Executive Officer of Barden Development. Barden Development, through its subsidiary Majestic Star Casino, LLC, owns and operates five casino properties: Majestic Star Casino and Majestic Star Casino II, formerly known as Trump Indiana, both riverboat casinos located in Gary, Indiana; Fitzgeralds Hotel and Casino in Las Vegas, Nevada; and Fitzgeralds Casinos in Black Hawk, Colorado and Tunica, Mississippi. Collectively, the Barden-owned gaming facilities contain

approximately 5,800 slot machines, 165 table games, 21 poker table games and 1,441 hotel rooms.

4. On December 28, 2005, the Board received an application from PITG for the sole Category 2 slot machine license to be awarded for the City of Pittsburgh.
5. On November 21, 2006, during a public suitability hearing, PITG proposed its Category 2 gaming facility to the Board, describing it as a \$450 million, three-phase project.
6. On December 20, 2006, the PGCB approved PITG for the Category 2 slot machine license available for the City of Pittsburgh.
7. PITG's proposed facility would be located on approximately 17 acres of land along the northern shore of the Ohio River referred to both as the North Side and the North Shore.
8. PITG's proposed entertainment complex included nightclubs, lounges, a jazz club, restaurants, a parking garage with approximately 4,100 spaces, unencumbered access to the Ohio River front, an esplanade along the river, sculpture gardens and a 1,000 seat terraced amphitheater.
9. PITG's commitment to the community included a \$1 million contribution per year for three years to a neighborhood redevelopment project in Pittsburgh's Hill District, a \$7.5 million contribution per year for 30 years toward the funding of a new arena in Pittsburgh and a \$1 million per year contribution for three years to the Northside Leadership Conference.
10. During the PITG suitability hearing, a representative of Jefferies & Co. testified before the Board that the company was committed to providing approximately \$450 million in debt financing to PITG for its proposed development in Pittsburgh. Jefferies & Co. is a publicly-traded company listed on the New York Stock Exchange and had a market capitalization in excess of \$3.7 billion at the time of the suitability hearing.

11. On February 1, 2007, the Board issued its Category 2 Slot Machine Licensing Adjudication supporting its December 20, 2006 awarding of the sole Category 2 license for the City of Pittsburgh to PITG. The Board found the PITG project to be the best suited for the City of Pittsburgh. The Board based its decision on a number of factors as outlined in the adjudication including, among other things, the superior facility design, location and ability to mitigate traffic issues, that the location chosen would aid in the rebirth of development and economic stimulus on Pittsburgh's North Shore, the community commitments made by PITG, and that Don Barden, the principal owner of PITG, is a minority.

**B. Ensuing Litigation**

12. On March 2, 2007, Station Square Gaming, LP and Isle of Capri Casinos, Inc. filed appeals with the Pennsylvania Supreme Court, challenging the Board's decision to award the Category 2 Slot Machine License for the City of Pittsburgh to PITG.

13. On July 18, 2007, the Pennsylvania Supreme Court upheld the Board's decision to award the Category 2 Slot Machine License for the City of Pittsburgh to PITG finding that the Board's findings and conclusions supporting the grant of the license to PITG were supported by the evidentiary record.

14. On May 29, 2007, the Pittsburgh City Planning Commission approved PITG's casino master plan. On June 28, 2007, the Pittsburgh Pirates and Steelers filed an appeal of that decision with the Pennsylvania Supreme Court.

15. On January 14, 2008, the Pittsburgh City Planning Commission approved the PITG casino parking garage plan. On February 12, 2008, Riverlife Task Force filed an appeal of that decision with the Pennsylvania Supreme Court.

16. On November 16, 2007, PITG, the Pittsburgh Pirates and the Pittsburgh Steelers entered into a consent agreement to develop a plan to mitigate the impact of casino traffic on the nearby sports venues.

### **C. Building Efforts and Financing Difficulties**

17. PITG signed a Statement of Conditions to the license on April 24, 2007, agreeing, among other things, to the following conditions: (a) to provide a \$1 million annual grant to the Northside Leadership Conference for three (3) consecutive years with the initial grant of \$1 million due at the end of the 10<sup>th</sup> month after opening of the casino; (b) to provide \$1 million per year for three (3) consecutive years for the redevelopment of the Hill Section of the City of Pittsburgh commencing within one year of opening the gaming facility; and (c) to provide a cash contribution of at least \$7.5 million per year for a period of thirty (30) years in support of the development and construction of a multi-purpose arena for the City of Pittsburgh.

18. On November 14, 2007, PITG was issued its Category 2 Slot Machine License and paid the \$50 million Slot Machine License fee to the Commonwealth of Pennsylvania pursuant to Section 1209(a) of the Act.

19. On November 19, 2007, PITG secured a \$200 million loan (“bridge financing”), arranged by Credit Suisse, Cayman Islands Branch (“Credit Suisse”), to commence construction of the gaming facility.<sup>1</sup> The loan was syndicated among various financial institutions (“lenders”).

20. On December 11, 2007, PITG began construction of its Category 2 facility and anticipated its completion in the second quarter of 2009.

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<sup>1</sup> Bridge financing was secured after PITG and Jefferies & Co. failed to reach a definitive agreement regarding financing for the project.

21. There was significant deterioration of the credit markets in the United States from 2006 to 2008.
22. Through the spring of 2008, PITG pursued, unsuccessfully, permanent financing for the project.
23. The bridge financing matured on May 19, 2008. On July 2, 2008, Credit Suisse, the agent of the lenders, served written notice upon PITG that, pursuant to the Uniform Commercial Code, it would sell certain collateral including, without limitation, all the membership interest in PITG on July 24, 2008. The sale of the membership interest in PITG would have had a material, detrimental impact on the development and completion of the PITG project.
24. On April 17, 2008, PITG filed a Petition for Approval of Modifications to its Proposed Permanent Facility Pursuant to 58 Pa. Code § 441a.3(6) and Amendment of the Related Statement of Conditions. On April 23, 2008, an Amended Petition was filed. The Amended Petition sought approval of permanent financing through Key Bank and Credit Suisse. The Amended Petition also sought changes to the development plan and certain relief from the Statement of Conditions.
25. On April 24, 2008, Don Barden appeared before the Board pursuant to PITG's Amended Petition filed on April 23, 2008. Don Barden testified that it was PITG's intention to defer several items included in PITG's initial proposal for its permanent facility, adding that "the first phase of operations will include all of the original Phase I items as presented during (PITG's) suitability hearing, including 3,000 slot machines in the same footprint with the lone exceptions being the deferral of the completion of the outdoor amphitheater as well as a ballroom space. These deferred items are intended to be fully developed and built out during year three of operations."



26. On May 13, 2008, PITG filed a Motion for Postponement of Review of New Credit Facility. On May 14, 2008, representatives of PITG appeared at a public hearing to state the reasons for postponement and the status of the credit facility then being negotiated by PITG. Again, on June 11, 2008, the Board held a public hearing regarding the status of PITG's anticipated financing for its Pittsburgh project.
27. Construction was halted on July 1, 2008, due to non-payment to PITG's contractors, and had not resumed as of the date of the public hearing on August 14, 2008. At the time of construction stoppage, steel had been erected at the gaming facility site and approximately \$107.3 million had been spent in the construction of the gaming facility.

**D. Joint Application Presently Before the Board**

28. On July 9, 2008, PITG and Holdings Acquisition filed the Joint Application requesting approval of the reorganization and recapitalization of the PITG project and other relief in connection therewith.
29. Approximately 2,500 jobs are expected to be created as a result of the construction of the gaming facility. Of the approximately fifty sub-contractors involved in the project, over 85% are Pennsylvania-based companies.
30. At the August 14, 2008 public hearing, the Joint Applicants represented that if the Board approved the transaction, construction of the gaming facility would resume within days and would be completed by August of 2009. On the other hand, representatives from the businesses and associations involved with the construction of the gaming project testified that if the project were abandoned it would have devastating financial consequences for the businesses and families involved in the construction of the PITG gaming facility.
31. The Joint Application seeks approval of, among other relief: (a) the transfer of the license to Holdings Acquisition, (b) an assessment of a change of control slot machine license

fee of no more than \$250,000 and (c) modifications to certain conditions in PITG's Statement of Conditions regarding the phasing of the development of the project.<sup>2</sup>

32. The Board has not received any Petitions to Intervene in the matter from any other entity or individual.
33. The Board conducted open public hearings on the matter on July 10, 2008 and August 14, 2008.
34. The Board permitted public input from state and local officials and members of the general public by way of written comment, which has been entered into the record, and allowed those that had registered the opportunity to address the Board during the August 14, 2008 public hearing.
35. The Board received seventy-nine (79) written comments in the form of letters and e-mails that were entered into the record at the July 10, 2008 and August 14, 2008 public hearings.<sup>3</sup>

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<sup>2</sup>PITG's Petition filed on April 17, 2008 at PGCB Docket #41437 and the Amended Petition filed on April 23, 2008 are now moot in light of the Board's August 14, 2008 ruling on the Joint Application.

<sup>3</sup> At the July 10, 2008 hearing, the following written comments were entered into the record from the following: Elected Officials - April 28, 2008 letter from Senator Ferlo; May 1, 2008 letter from Representative Evans; May 7, 2008 letter from Representative Wheatley; June 11, 2008 letter from Representatives Frankel, Gergely, Wagner, Bennington, Costa, DeLuca, Dermody, Kortz, Kotik, Levdansky, Markosek, Petrone, Preston, Ramaley, Readshaw, Smith, Walko, Wheatley, and White; and June 24, 2008 letter from Senators Fontana and Costa. From the public - July 2, 2008 letter from the Riverlife Task Force and thirteen (13) emails and letters from members of the public.

At the August 14, 2008 hearing, the following written comments were entered into the record from the following: Elected Officials - April 23, 2008 letter from Senators Costa, Ferlo and Fontana; May 7, 2008 letter from Representative Preston; July 2, 2008 letter from Mayor Luke Ravenstahl; July 8, 2008 letter from Senator Orié; July 14, 2008 letter from Representatives Turzai, Clymer, Reichley, Vereb, Schroder; July 14, 2008 letter from Senators Ferlo and Orié; July 16, 2008 letter from Senators Costa and Fontana; July 16, 2008 letter from Representative Preston; July 17, 2008 letter from Senator Scarnati; July 18, 2008 letter from Senators Orié and Ferlo; July 24, 2008 letter from Representative Wheatley.; July 31, 2008 letter from Senators Orié and Ferlo; August 7, 2008 letter from Representative James; August 8, 2008 letter from Senators Orié and Ferlo; August 13, 2008 letter from Representative Wheatley; August 13, 2008 letter from Senator Costa; August 13, 2008 letter from Senator Orié; August 13, 2008 letter from the Pennsylvania Legislative Black Caucus; August 13, 2008 letter from Allegheny County Executive Onorato; and August 13, 2008 letter from the City of Pittsburgh Mayor Ravenstahl. Other written comments were as follows: August 13, 2008 letter from the Pittsburgh Steelers and Pirates; July 21, 2008 letter from the Pittsburgh Sports & Exhibition Authority; July 18, 2008 letter from Lux Capital; August 8, 2008 letter from Casino Free PA; and thirty-six (26) emails were received from the general public.

36. No public officials appeared at the August 14, 2008 public hearing to provide oral testimony to the Board. However, six (6) members of the general public did appear and present oral testimony to the Board.<sup>4</sup>

37. The following is a narrative description of the ownership structure of Holdings Acquisition as proposed by the Joint Applicants: Holdings Acquisition Co, L.P. is owned 99.500% by Holdings Gaming Borrower, L.P. and 0.500% by Holdings Acquisition Co. GP, L.L.C.; Holdings Acquisition Co GP, L.L.C. is owned 100.000% by Holdings Gaming Borrower, L.P.; Holdings Gaming Borrower, L.P. is owned 99.500% by Pittsburgh Gaming Holdings, L.P. and 0.500% by Holdings Gaming Borrower GP, L.L.C.; Holdings Gaming Borrower GP, L.L.C. is owned 100.000% by Pittsburgh Gaming Holdings, L.P.; Pittsburgh Gaming Holdings, L.P. is owned 74.500% by Pittsburgh Gaming Investors, L.P., 20.000% by PITG Entertainment, LLC, 2.500% by GRS PITG Holdings Corp, 2.500% by PFRS PITG Holdings Corp and 0.500% by Pittsburgh Gaming Holdings GP, L.L.C.; Pittsburgh Gaming Holdings GP, L.L.C. is owned 100.000% by Pittsburgh Gaming Investors Intermediate, L.L.C.; Pittsburgh Gaming Investors Intermediate, L.L.C. is owned 100.000% by Pittsburgh Gaming Investors, L.P.; PFRS PITG Holdings Corp is owned 100.000% by Police and Fire Retirement System of City of Detroit; GRS PITG Holdings Corp. is owned 100.000% by General Retirement System of City of Detroit; PITG Entertainment, LLC is owned 81.000% by Jurat Holdings, LLC and 19.000% by PITG Gaming Investor Holdings, LLC; Jurat Holdings, LLC is owned 100.000% by Barden Development Inc.; PITG Gaming Investor Holdings, LLC is owned 88.000% by additional investors (under 1%

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<sup>4</sup> The individuals that provided oral testimony were Gerald Weimann, Paul Boni, Jethro Heiko, Lily Cavanagh and Sharon Capretto. Debbie King also appeared but chose to cede her time to Mr. Boni.

each in Holdings Acquisition Co., LP) and 12.000% by Barden Development Inc.; Barden Development Inc. is owned 100.000% by Don Barden; Pittsburgh Gaming Investors, L.P. is owned 73.771% by Walton Majestic Star Holdings VI, LP, 18.733% by High Pitt Gaming, L.P., warrant to acquire 6.829% by Cira Pittsburgh Gaming Investor, L.P., 0.500% by Pittsburgh Gaming Investors GP, LLC and .167% by HPP, LP; HPP, LP is owned 77.3889% Greg A. Carlin, 16.5833% Tim Drehkoff and 5.5278% Paul Seeman, and .5% by GAC Gaming, L.L.C.; GAC Gaming, LLC is owned 100.00% by Greg A. Carlin; Pittsburgh Gaming Investors GP, L.L.C. is owned 75% by Walton Majestic Star Holdings VI, LP and 25.000% by High Pitt Gaming, L.P.; Cira Pittsburgh Gaming Investor, L.P. is owned 91.29% by Ira Lubert, 8.21% by additional investors (under 1% each in Holdings Acquisition Co., LP) and 0.500% by Cira Pittsburgh Gaming Investor GP, LLC (Ira Lubert); High Pitt Gaming, L.P. is owned 30.8002% by AGB Trust, 30.8002% by LNB Trust, 30.8002% by MAB Trust (collectively the “Bluhm family trusts”)<sup>5</sup>, 6.5188% by Greg A. Carlin, .5806% by Additional Investors (under 1% each in Holdings Acquisition Co., LP) and 0.500% High Pitt Gaming GP, L.L.C.; High Pitt Gaming GP, L.L.C. is owned 30.9549% by AGB Trust; 30.9549% by LNB Trust, 30.9549% by MAB Trust and 7.1353% by Greg A. Carlin; Walton Majestic Star Holdings VI, LP is owned 99.5% by the six Walton Street investment funds<sup>6</sup>, with the remaining interest in Walton Majestic Star Holdings VI, L.P. held by Walton Majestic Star Holdings VI GP, L.L.C.

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<sup>5</sup> The Bluhm family trusts were established by Neil Bluhm’s adult children and consist of the 2002 AGB Family Dynasty Trust, the 2002 LNB Family Dynasty Trust and the Meredith A. Bluhm-Wolf 2006 Family GST Trust.

<sup>6</sup> The six Walton Street investment funds include: Walton Street Real Estate Fund VI-Q, L.P.; Walton Street Real Estate Partners, L.P.; Walton Street Real Estate Fund VI, L.P.; Walton Street Real Estate Fund VI-E, L.P.; WSC Capital Holdings VI, L.P.; and Walton Street Real Estate Investors VI, L.P.

38. On July 7, 2008, Holdings Acquisition was formed, as a Delaware limited partnership, for the purpose of becoming the reorganized and recapitalized Category 2 Slot Machine Licensee that will develop, own and operate the PITG project.
39. PITG will contribute its assets and certain liabilities to the newly formed Holdings Acquisition.
40. In return, PITG Entertainment will acquire a 20% common limited partnership interest in Pittsburgh Gaming Holdings, L.P., which is the 100% indirect owner of Holdings Acquisition. PITG Entertainment is primarily owned by Don Barden.
41. PITG Option Holdco, LLC, which is indirectly owned by Don Barden, has options to purchase common and junior preferred equity interests.
42. The relevant proposed effective common equity ownership interest in Holdings Acquisition at the time the transaction is consummated is as follows: The six Walton Street investment funds will collectively own approximately a 55.32% interest; Don Barden will own approximately a 16.66% interest; the Bluhm family trusts will own, in the aggregate and in equal share, approximately 12.90%; Greg Carlin will own approximately 1.87%; the Police and Fire Retirement System of City of Detroit will own 2.5%; and the General Retirement System of City of Detroit will own 2.5%.
43. The six Walton Street investment funds are indirectly managed by WSC Managers VI, Inc., which manages, but has no ownership interest in, the six Walton Street investment funds. Neil Bluhm is one of five equal shareholders of WSC Managers VI, Inc. The investors in the six Walton Street investment funds are primarily comprised of state and local pension funds, insurance companies, university endowments, and charitable organizations. The Joint Applicants have alleged that the six Walton Street investment

funds are exempt from licensure pursuant to 58 Pa.Code § 433a.4(f), which provides for an exemption for private investment funds that satisfy the criteria therein.

44. Don Barden will remain a Principal licensee as an indirect owner of Holdings Acquisition through his interest as the majority owner of PITG Entertainment.
45. The total project cost for the Pittsburgh project is estimated to be approximately \$800 million and will be financed through a combination of debt and equity.
46. Approximately \$205 million in equity will be contributed by Pittsburgh Gaming Investors, which consists of Walton Majestic Star Holdings VI, L.P., High Pitt Gaming, L.P., HPP, L.P., and Cira Pittsburgh Gaming Investors, L.P.
47. The remaining amount of the project, approximately \$595 million,<sup>7</sup> will be financed through loans arranged by Credit Suisse (\$415 million)<sup>8</sup> and provided by KeyBank (\$150 million).
48. Holdings Gaming Borrower, L.P., the 99.5% limited partner of Holdings Acquisition, will enter into the permanent financing agreement.
49. Initial management and control of Holdings Acquisition will be vested in the management committee of Holdings Gaming Borrower GP, LLC, comprised of Greg Carlin, Neil Bluhm and Don Barden, each of whom is currently licensed by the Board as a Principal. No other individuals will be permitted as members of the management group prior to their licensure by the Board.
50. The following entities already hold licenses issued by the Board: PITG Gaming Investor Holdings, LLC; Jurat Holdings, LLC; Barden Development, Inc.; the AGB Trust; the LNB Trust; and the MAB Trust.

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<sup>7</sup> The \$595 million is inclusive of the contemplated vendor financing.

<sup>8</sup> The \$415 million first lien includes a \$10 million revolving line of credit.

51. The ownership and organizational structure of the Holdings Acquisition includes several individuals and entities affiliated with HSP Gaming, LP (“HSP”), a Category 2 slot machine licensee in Philadelphia, Pennsylvania. The following are the respective ownerships interests of those individuals and entities common to both HSP and Holdings Acquisition following the reorganization:

	<b>HSP Gaming, L.P. (approx.)</b>	<b>Holdings Acq. Co. L.P. (approx.)</b>
Neil Bluhm	0.75%	less than 2%
Andrew Bluhm	0.71%	under 1%
Gregory Carlin	6.63%	less than 2%
LNB, AGB Trusts	14.00%	4.98%
MAB Trust	9.00%	4.98%

52. The Board has received Category 2 Application and Disclosure forms from each of the following entities related to the project: Holdings Acquisition Co, LP; Holdings Acquisition Co GP, LLC; Holdings Gaming Borrower GP, LLC; Holdings Gaming Borrower, LP; Pittsburgh Gaming Holdings, LP; Pittsburgh Gaming Holdings GP, LLC; Pittsburgh Gaming Investors, LP; Pittsburgh Gaming Investors GP, LLC; Pittsburgh Gaming Investors Intermediate, LLC; High Pitt Gaming GP, LLC; High Pitt Gaming, LP; Walton Majestic Star Holdings VI, LP; Walton Majestic Star Holdings VI GP, LLC; Walton Street Managers VI, LP; WSC Managers VI, Inc.; PITG Entertainment, LLC; and PITG Option Holdco, LLC. The Board has received Category 2 Renewal Applications from Barden Development; Jurat Holdings, LLC and PITG Gaming Investor Holdings, LLC.

53. Principal Entity Applications have been received from Cira Pittsburgh Gaming Investor, GP, LLC and Cira Pittsburgh Gaming Investor, LP and Principal Applications were

received from Neil Bluhm, Gregory Carlin, Don Barden, Ira M. Lubert and Jeffrey Quicksilver.

54. PITG and Holdings Acquisition represent that they have submitted true and accurate copies of all documents, contracts and agreements including, but not limited to, all business organization documents and draft financial documents related to the reorganization and recapitalization of PITG.
55. As part of the transaction proposed by PITG and Holdings Acquisition, Holdings Acquisition has represented that it will honor all conditions of licensure imposed on PITG by the Board, including, but not limited to the obligations to citizens of Pittsburgh as outlined in the Statement of Conditions signed by PITG on April 24, 2007, except as modified by this Adjudication and the Board's Order of August 14, 2008.
56. Don Barden represented that a reduction in the number of parking spaces, from approximately 4,100 spaces to a minimum of 3,750 parking spaces, was necessary due to construction issues related to the water table at the site of the proposed parking facility.
57. Holdings Acquisition has represented that it will construct the outdoor amphitheatre in Phase I of the project as originally proposed by PITG.
58. Holdings Acquisition has asserted that it will open the facility with 3,000 slot machines and that it will request to add additional machines if market conditions warrant.
59. The Joint Applicants have requested that the completion of the interior of the ballroom be postponed until Phase III of the project (within two years of commencing operations).
60. At this time, the PGCB Financial Suitability Task Force projects a revenue estimate for the Pittsburgh project of approximately \$611.6 million annually in the stabilized year (year 5 of operation) in 2009 dollars, with a \$335 win per position per day at 5,000 machines.



61. PITG and Holdings Acquisition project a revenue estimate of approximately \$507.4 million annually in the stabilized year (year 5 of operation) in 2009 dollars, with a \$278 win per position per day at 5,000 machines.
62. The PGCB Financial Suitability Task Force has analyzed the revenue projections and has found them to be both reasonable and achievable. In addition, the PGCB Financial Suitability Task Force analyzed the total debt to adjusted EBITDA of the project against the same ratio for approximately twenty-five different gaming enterprises and found that the project's ratio is comparable and consistent with those gaming enterprises analyzed.
63. With respect to the investigations into the Joint Application, the Bureau of Investigations and Enforcement ("BIE") spent over 1,500 hours investigating the proposed transaction. BIE testified that it had sufficient time to conduct independent analysis and investigation and indicated it had no objection to the Board's approval of the transaction.
64. Both the Office of Enforcement Counsel and the Bureau of Licensing have independently reviewed all documents relevant to the proposed transaction and have no objection to the Board's assignment of the Category 2 license to Holdings Acquisition and the licensing as Principals the following entities: Holdings Acquisition Co. GP, LLC, Holdings Gaming Borrower, L.P. and Holdings Gaming Borrower GP, LLC.
65. The Office of Enforcement Counsel believes the approval of the assignment of the Pittsburgh Category 2 license to Holdings Acquisition, as generally contemplated in the Joint Application and in the testimony presented during the July 10, 2008 and August 14, 2008 public hearings, is in the best interest of the Commonwealth, in that the protection of the public interest is not jeopardized by the Board's approval of the transaction, and that to not grant such relief would likely result in protracted litigation to the detriment of the citizens of the Commonwealth.

66. The Joint Applicants have asserted that they will provide the same gaming facility as approved by the Board when it awarded the Category 2 license to PITG in December 2006.

#### **IV. CONCLUSIONS OF LAW AND DISCUSSION**

##### **A. The Board concludes that the transaction presented, and the assignment of the Category 2 license contemplated thereby, is authorized by the Gaming Act.**

###### **1. Section 1327 of the Gaming Act**

Section 1327 of the Gaming Act provides, in pertinent part, that “[e]xcept as permitted by section 1328 (relating to change in ownership or control of a slot machine licensee), a license or permit granted or renewed pursuant to this part shall not be sold, transferred or assigned to any person...”

Section 1327 specifically contemplates that a slot machine license is transferable since Section 1327 contains a specific exception to the general prohibition of non-transferability for those transfers or assignments “permitted by Section 1328.” While Section 1328 does not outline the various methods through which the transfer, sale or assignment of a slot machine license is permissible, it does outline certain transactions involving a slot machine licensee that require Board approval. Therefore, the exception clause in Section 1327 is interpreted to allow the Board to transfer or assign a license in connection with permitting a transaction under Section 1328 of the Gaming Act.

###### **2. Section 1328 of the Gaming Act**

Section 1328(a) of the Gaming Act provides, in part, that notice to the Board and Board approval shall be required prior to any of the following transactions:

- (i) More than 5% of a slot machine licensee’s securities or other ownership interests;

- (ii) More than 5% of the securities or other ownership interests of a corporation or other form of business entity that owns directly or indirectly at least 20% of the voting or other securities or other ownership interests of the licensee;
- (iii) The sale other than in the ordinary course of business of a licensee's assets;
- (iv) Any other transaction or occurrence deemed by the board to be relevant to license qualifications.

Under the terms of the proposed reorganization, PITG, the current slot machine licensee, will contribute certain assets and liabilities to Holdings Acquisition and PITG Entertainment will receive a 20% indirect ownership interest and options to acquire additional ownership interests in an affiliate of Holdings Acquisition.

The transaction does not fit squarely within the first three transactions listed in 4 Pa. C.S. § 1328(a)(i-iii) above since it neither contemplates a “sale” of the facility property nor involves the transfer or sale of the securities or ownership interests of a slot machine licensee or of an entity that is a holding company of a slot machine licensee. However, the transaction does have characteristics of a sale of the facility property, since title to the property and ultimate control over it will reside with a different person other than the original slot machine licensee. Additionally, the proposed transaction has characteristics of a transfer or sale of securities or other ownership interests of a slot machine licensee since Holdings Acquisition will hold the license and only 20% of its indirect ownership interest will be held by the owners of PITG. As such, 80% of the ownership interest of the PITG license following the reorganization will be held by individuals and entities not part of the PITG application at the time of its initial approval. Because the transaction has significant characteristics of both types of transactions enumerated under 4 Pa. C.S. § 1328(a)(i-iii) and is “relevant to license qualifications,” the transaction must be approved by the Board pursuant to 4 Pa. C.S. § 1328(a)(iv).

### 3. License Fee

Holdings Acquisition concedes that the Board is authorized to assess a fee in connection with its approval of the transaction since the reorganization of PITG will involve a change in control of the PITG license, as 80% of the ownership interests of the license will be transferred to a new investor group. Holdings Acquisition contends, however, that a fee in the amount of \$2.5 million, as was assessed as part of the Board's approval of the change in control of Chester Downs & Marina, LLC and Mountainview Thoroughbred Racing Association, is not an appropriate fee for Holdings Acquisition based on the unique circumstances of the PITG reorganization. The Joint Applicants cited several reasons for a \$250,000 fee, namely: (a) that the goal of the proposed transaction is to rescue the PITG project; (b) that the project is not operational and therefore not generating cash flow; (c) that the project is currently subject to default actions from the existing lenders; and (d) that a fee of \$2.5 million would materially impact the economics of the proposed transaction.

After evaluation of the Joint Applicant's request, and considering the evidence, the Board has imposed a \$2.5 million fee, due within twelve (12) months of the commencement of casino operations, as a condition of the approval of the transaction and assignment of the license. In settling upon a fee for the transaction, the Board noted the difficulties PITG traversed in attempting to obtain permanent financing for the gaming facility in an increasingly stingy and nervous credit market, and the subsequent fortune of finding an investor willing to infuse a substantial amount of equity capital into the project. Nevertheless, a \$2.5 million fee is an appropriate fee based upon the facts attendant to the transaction in that the reorganization of the PITG license fell within the specific intent of Section 1328 since it involved a significant change in ownership of the license and the unequivocal transfer of control over the gaming project from PITG to a syndicate led by the management of the six Walton Street investment funds. In

addition, the Board concluded that deferment of the fee is appropriate given that the gaming facility would not be operational until August of 2009.

**B. In accordance with 4 Pa. C.S. § 1330, no licensee, its affiliate, intermediary, subsidiary or holding company in this transaction possess an ownership interest or financial interest greater than 33.3% of another slot machine licensee.**

After analyzing the ownership structure of Holdings Acquisition following the reorganization of PITG, and the ownership structure of other persons issued slot machine licenses by the Board, against the prohibitions outlined in Section 1330, no individual or entity is in violation of Section 1330 following the consummation of the PITG reorganization.

Section 1330 applies to a "...slot machine licensee, its affiliate, intermediary, subsidiary or holding company..." An individual can be subject to the prohibition contained in Section 1330 only if the individual is a slot machine licensee or an affiliate of a slot machine licensee, as an "individual" is specifically excluded from the definition of "intermediary", "subsidiary" or "holding company." 4 Pa. C.S. § 1103. Therefore, for an individual associated with HSP or Holdings Acquisition to be in violation of Section 1330, the individual must be a slot machine licensee or an affiliate of a slot machine licensee and possess an ownership or financial interest that is greater than a 33.3% of another slot machine licensee.<sup>9</sup>

Of the individuals listed in finding of fact fifty-one (51) above, none has been issued a slot machine license by the Board. As a result, an individual will be subject to the prohibition contained in Section 1330 only if he or she is an "affiliate" of a slot machine licensee. The Act defines an "affiliate" as a "person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person." Since individuals

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<sup>9</sup> The prohibition in Section 1330 also extends to greater than 33.3% ownership and financial interest in a "person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company." However, since both licensees are Category 2 licensees, the provision is not relevant to the current analysis and therefore not discussed.

cannot be controlled by or under common control with a slot machine licensee, whether an individual is an “affiliate” of a slot machine license will hinge exclusively on whether such individual “controls” a slot machine licensee.

The individuals that are beneficiaries of the trusts, listed in finding of fact fifty-one (51) above, cannot be deemed affiliates of either slot machine licensee since (a) the beneficiaries of the trusts have no power over the management of the trust’s assets, and (b) the interests held by the trust with respect to each slot machine licensee do not give them the ability to control the slot machine licensee, as their interests were designed to be strictly passive in nature. Since the beneficiaries cannot be deemed “affiliates” of a slot machine licensee, they are not subject to the prohibitions contained in Section 1330.

In contrast, Gregory Carlin, as the Chief Executive Officer of HSP, may be deemed an affiliate of HSP. However, Mr. Carlin owns approximately 2% in Holdings Acquisition, which is far below the prohibited level of 33.3% in Section 1330.

Likewise, Andrew Bluhm may also be deemed an affiliate of HSP based upon the nature of his ownership in HSP; however, Andrew Bluhm’s ownership interest in Holdings Acquisition, of less than 1% following the reorganization, is far less than 33.3%.

Lastly, Neil Bluhm has an indirect ownership interest of less than 1% in HSP, but the nature of his indirect ownership and his role in the management of the slot machine licensee indicates that Neil Bluhm does have significant influence if not control over the slot machine licensee. Based upon his ownership interest and management positions, Neil Bluhm could be found to control HSP, and as a result would be deemed an affiliate of HSP and subject to the prohibition contained in Section 1330. Notwithstanding his “control” over HSP, Neil Bluhm would be in violation of Section 1330 as an affiliate of HSP only if he possesses an ownership or financial interest that is greater than 33.3% of Holdings Acquisition.

Based upon the representations made to the Board during the July 10, 2008 and August 14, 2008 public hearings as well as the documentation provided to the Board relating to the proposed reorganization of PITG, Neil Bluhm does not possess an ownership or financial interest in excess of 33.3% in Holdings Acquisition. Neil Bluhm possesses only an indirect ownership interest of less than 2% in Holdings Acquisition. In addition, even if his interest and the interests of all of his blood relatives in Holdings Acquisition are attributed to him, Neil Bluhm would still not possess an ownership interest in Holdings Acquisition in excess of the Section 1330 prohibition.

With respect to the trusts listed above, it is clear that their interests in HSP and Holdings Acquisition would not constitute a violation of Section 1330. As the trusts' interests in HSP are passive, none of them should be deemed a holding company, intermediary or affiliate of either slot machine licensee as no trust possesses voting securities or control of a slot machine licensee. Regardless, even if the trusts were deemed affiliates, holding companies or intermediaries of one or both of the slot machine licensees, the trusts would not be in violation of Section 1330 since no trust holds an interest in excess of 33.3% in either slot machine licensee.

**C. The Joint Applicants' request for modification to PITG's Statement of Conditions regarding the phasing of development of the project does not adversely impact the quality of the gaming facility.**

The Joint Applicants' requested modifications to the PITG phasing and development plan are hereby approved:

1. Parking Structure

The Board has concluded that reducing the number of spaces by 350 would not adversely impact the quality of the gaming facility or constitute a material deviation from the gaming facility approved by the Board.

## 2. Ballroom Space

The Board has concluded that the minor delay in completion of the interior ballroom space, from Phase I to Phase III, would not adversely impact the quality of the gaming facility or constitute a material deviation from the gaming facility approved by the Board.

## 3. Slot Machines

In 2006, PITG proposed opening with 3,000 machines and adding 1,000 machines after one year and another 1,000 machines after the second year of operations as part of the initial three phases of development of the gaming facility. Although the Board generally conditioned the PITG license upon completion of the three phases of development, the addition of over 3,000 slot machines was not a specific condition because the operation of slot machines requires application to and approval by the Board upon demonstration of need. 4 Pa.C.S. § 1210. As the assignee of the PITG license, Holdings Acquisition is not required to operate more than 3,000 machines at the gaming facility.

### **D. Other Issues Considered by the Board**

During its consideration of the Joint Application, the Board weighed heavily the fact that the individuals and entities that will control Holdings Acquisition, through various entities, are currently licensed by the Board. Although the reorganized licensee involves several newly created entities, the effective owners of the slot machine license fall within one of three groups: (a) individuals and entities that have been licensed as principals by the Board as a result of their association with another slot machine licensee; (b) investment funds primarily comprised of institutional investors that are exempt from licensure pursuant to the Board's regulations<sup>10</sup>; and

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<sup>10</sup> The Board concludes that the six Walton Street investment funds are exempt from licensure pursuant to 58 Pa.Code § 433a.4(f), as each fund has provided evidence that it satisfies the criteria contained therein.



(c) individuals that are exempt from licensure since their ownership interests do not exceed the minimum threshold for licensure under the Board's regulations.

The Bureau of Investigations and Enforcement and the Bureau of Licensing, after thorough review and investigation, had no objection to the assignment of the slot machine license to Holdings Acquisition, or to the licensing of Holdings Acquisition Co. GP. LLC, Holdings Gaming Borrower, L.P. and Holdings Gaming Borrower GP, LLC.

The Board also considered the financial viability of the project following the proposed reorganization of the PITG license. The Board concludes, based upon the testimony of the Joint Applicants and the Board's Financial Task Force, that the revenue projections are reasonable and achievable. Furthermore, Holdings Acquisition's debt ratios compare favorably to other participants in the gaming industry. The Board therefore finds that the Joint Applicants are likely to maintain a successful, viable and efficient gaming operation and will provide significant economic benefit to the citizens of the Commonwealth.

The Board heard testimony from several witnesses concerning the prospective economic impact on the citizens of Pittsburgh and the Commonwealth if the Board denied the relief sought by the Joint Applicants. The Board concludes that a failed PITG project would have devastating consequences to the contractors, their businesses and the lives of the thousands of construction workers and their families in the Pittsburgh area and beyond.

In addition, the Joint Applicants, as the holders of the PITG license, will be bound by all community commitments and monetary pledges made by PITG and Don Barden, including \$3 million to the redevelopment of the Hill District, to contribute \$3 million to the Northside Leadership Conference, and \$7.5 million per year for thirty (30) years to the multi-purpose arena project. The assignment of the PITG license to Holdings Acquisition will ensure that benefits to

the Pittsburgh community as a result of the introduction of gaming to the city would not be delayed or potentially lost.

In light of these facts, the Board concluded that the approval of the Joint Application would permit the continuation of the Pittsburgh project, as previously approved by the Board, and thereby deliver economic benefit to the citizens of Pittsburgh and Pennsylvania in a timely manner and consistent with the goals of the Gaming Act.

The Board acknowledges that it received public input from elected officials as well as members of the general public asserting that the Joint Application was an application for a new slot machine facility, that the Board should revoke PITG's license and reopen licensing process to new applicants. After careful consideration, the Board does not find these arguments persuasive.

Based upon the record before it, the Board concludes that the Joint Application is not an application for a new facility. The Joint Application sought to change the ownership and financing of the project, not the location or the planned gaming facility. The record is clear that apart from the relief granted in the August 14, 2008 Order, Holdings Acquisition will stand in the identical shoes of PITG and Don Barden and will carry forward with the same project and will be bound by all commitments attendant to the PITG license. Moreover, as Joint Applicant, Don Barden, the majority owner of PITG, was a part of the Joint Application, will retain an ownership interest in Holdings Acquisition, and will continue his association with the project.<sup>11</sup>

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<sup>11</sup> The Board also received correspondence from Senator Orié concerning Section 1205 of the Act and the requirement that the Board hold a public input hearing prior to licensing a facility under the Act. Again, after careful consideration, the Board has concluded that the matter before it was not the licensing of a facility, but the assignment of an existing license to a new owner through the reorganization and refinancing of the Pittsburgh project as approved by the Board in December 2006. The purpose of the public input hearings is to gather comments from the public regarding the location and design of the proposed facility, as well as other concerns the public may have about the project location. The Board did conduct extensive public input hearings in 2006 with regard to the PITG project at which time the public was provided the opportunity to comment on the project. Because the location and plans of the PITG project have not changed, the Board concludes that Section 1205 of the Act is not applicable to this matter.

V. CONCLUSION

Therefore, based upon the findings of fact, conclusions of law and discussion set forth above, the Board concludes that the Joint Applicants have established their burden of proving that the granting of a majority of the relief requested in the Joint Application is permitted by the Gaming Act and is in the best interests of the Commonwealth.

The grant of this relief and the assignment of this Category 2 license does not give Holdings Acquisition a property right. The Board may, at its discretion, revoke or suspend the license if the Board finds that Holdings Acquisition, its officers, employees or agents, have not complied with the conditions of the license, the provisions in the Act, or the Board's regulations or if it would be in the best interest of the public to revoke or suspend the slots license.

BY AND ON BEHALF OF THE PENNSYLVANIA  
GAMING CONTROL BOARD:



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MARY DIGIACOMO COLINS  
CHAIRMAN