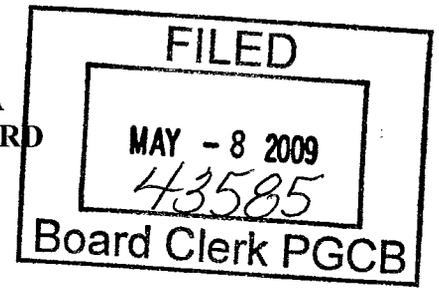


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA GAMING CONTROL BOARD



In Re: Application of Valley Forge Convention :
Center Partners, L.P. :
 :
Application for Category 3 :
Slot Machine License :

ORDER

And now, this 8th day of May 2009, the Pennsylvania Gaming Control Board (Board), having approved a Category 3 slot machine license for Valley Forge Convention Center Partners, L.P. (“Valley Forge”), pursuant to 4 Pa.C.S. §1305 and based on its review of Valley Forge’s application, the applications of its principal individuals and entities and the report of the Bureau of Licensing and the Bureau of Investigations and Enforcement relating thereto, it is hereby ORDERED that:

1. Pursuant to 4 Pa.C.S. §1311.1, the individuals and entities identified in paragraph 2 as principals of Valley Forge satisfy the requirements to be licensed as part of Valley Forge’s Category 3 Slot Machine license.
2. The following principals of Valley Forge submitted applications for licensure in conjunction with Valley Forge’s application along with required application fees:
 - **Valley Forge Convention Center Partners GP, LLC**, General Partner and 1% owner of Valley Forge
 - **Valley Forge Colonial, L.P.**, Title Holder of the Valley Forge Convention Center
 - **VFCC Merger Sub, L.P.**, Subsidiary of Valley Forge
 - **Ira Lubert**, Chairman and 42.71% owner of Valley Forge and 49.38% owner of Valley Forge Convention Partners GP, LLC
 - **Jonathan Lubert**, Vice Chairman and 36.61 % owner of Valley Forge and 43.21% owner of Valley Forge Convention Partners GP, LLC
 - **Kenneth Kochenour**, President, Chief Operating Officer and 6.17% owner of Valley Forge
 - **Michael Heller**, Secretary and 7.33% owner of Valley Forge and 7.41% owner of Valley Forge Convention Partners GP, LLC

- **Barbara Evans**, Treasurer and 6.17% owner of Valley Forge
 - **Cyril Patrick McKoy**, Vice President of Gaming Operations
3. After evaluating the suitability of the individuals and/or entities, the list of principals identified in paragraph 2 have proven that they are of good character, honesty and integrity and are otherwise eligible and suitable to be issued licenses in conjunction with Valley Forge.
 4. The principal licenses issued pursuant to this Order are subject to all conditions, restrictions and requirements of the Pennsylvania Race Horse Development and Gaming Act as amended and all regulations of the Pennsylvania Gaming Control Board. The licenses are subject to annual renewal.
 5. The Board has authority and retains the right to revoke, suspend, condition or deny issuance or renewal of any principal license for any violation of the Act as amended or regulations.
 6. Pursuant to 4 Pa.C.S. § 1202(a), the Board has jurisdiction over every aspect of the authorization and operation of slot machines in this Commonwealth.
 7. The Board issues licenses to the principals identified in paragraph 2 subject to continuing compliance with the Act as amended and the regulations promulgated thereunder, including notice and filing requirements.
 8. The Board delegates the authority to issue principal, key employee, gaming and non-gaming employee licenses, permits and registrations for Valley Forge to the Director of Licensing provided the Bureau of Investigations and Enforcement and the Bureau of Licensing have no objections to the issuance and provided the Director of Licensing presents lists of the issued principal, key employee, gaming and non-

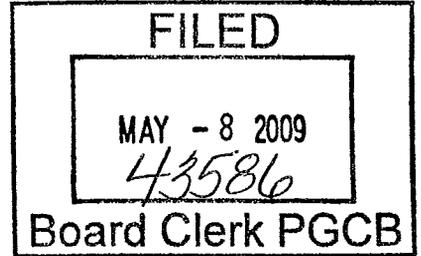
gaming licenses, permits and registrations to the Board for approval at future Board meetings.

BY THE BOARD:


Mary DiGiacomo Collins
Chairman

If you disagree with the Board's Decision and Order you have the right to file an appeal with the Commonwealth Court of Pennsylvania within thirty (30) days of the date the Order. *See* Pennsylvania Rule of Appellate Procedure 1512.

COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD



IN RE:

APPLICATION OF VALLEY FORGE
CONVENTION CENTER
PARTNERS, LP

DOCKET NO. 19421

Application for Category 3
Slot Machine License

ADJUDICATION

This matter is before the Pennsylvania Gaming Control Board (“Board”) pursuant to an application by Valley Forge Convention Center Partners, LP (“Valley Forge”) for a Category 3 slot machine license in accordance with the Pennsylvania Race Horse Development and Gaming Act (“Act”), Act of July 5, 2004, P.L. 572, No. 71, *as amended*, 4 Pa.C.S. §§ 1101-1904.

In July 2004, upon the ratification of the Act, 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 Act is to protect the public through regulating and policing of all activities involving gaming. Other objectives include enhancing live horse racing and breeding programs; increasing entertainment and employment opportunities in the Commonwealth; establishing a significant source of income to the Commonwealth for tax relief; the creation of broad economic opportunities for Pennsylvania’s citizens; and developing tourism. In meeting these objectives, the Board is charged with strictly monitoring the licensing of specified locations, persons, associations, practices and activities while considering the public

interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions. Ultimately, the Board must maintain the integrity of the regulatory control of the industry. 4 Pa.C.S. §1102.

The Act establishes the Board, which is comprised of three (3) gubernatorial and four (4) legislative appointee members. 4 Pa.C.S. §1201(b). The Board is vested with general jurisdiction over all gaming and related activities including, but not limited to, overseeing the acquisition and operation of slot machines and issuing, approving, renewing, revoking, suspending, conditioning and denying slot machine licenses. 4 Pa.C.S. §1202.

Three categories of slot machine licenses are authorized under the Act: Category 1 licenses, permitting up to seven (7) qualifying licensed horse and harness racetracks to operate slot machine facilities; Category 2 licenses, permitting up to five (5) stand-alone locations in metropolitan or other tourism areas to operate slot machine facilities; and Category 3 licenses, permitting up to two (2) resort-hotels to operate slot machine facilities. Category 3 facilities are limited to five hundred (500) slot machines. 4 Pa.C.S. §§1301-1307.

The Act also sets forth essential eligibility criteria for each Category of license. With respect to a Category 3 license, Section 1305 of the Act provides the specific eligibility criteria. These include the following: that the applicant, its affiliate, intermediary, subsidiary or holding company has not applied for or been approved or issued a Category 1 or 2 license; that the applicant seeks to locate the Category 3 licensed facility in a well-established resort hotel having no fewer than two hundred seventy-five (275) guest rooms under common ownership and having substantial year-round

recreational guest amenities; that the applicant for a Category 3 license must be the owner or the wholly owned subsidiary of the owner of the established resort hotel; that a Category 3 license may only be granted upon the express condition that an individual may not enter the gaming area of the licensed facility if the individual is not a registered overnight guest of the established resort hotel or a patron of one or more of the facility's amenities; and that applicant meet the de facto eligibility location criteria that no Category 3 licensed facility shall be located within fifteen (15) linear miles of another licensed facility. 4 Pa.C.S. §1305(a)(a) and (b)(1).

The Act also imposes more general eligibility criteria on applicants for all categories of slot machine licenses, which include the development and implementation of a diversity plan to assure equal opportunity in employment and contracting, as well as a requirement that the applicant be found suitable, consistent with the laws of the Commonwealth, and otherwise qualified for licensure. 4 Pa.C.S. §1325.

Other sections of the Act impose further restrictions on who may be issued a license, including imposing good character, honesty and integrity requirements upon applicants, and requiring letters of reference from law enforcement and other casino jurisdictions where the applicant may be licensed, 4 Pa.C.S. §1310; imposing business restrictions on who may own, control or hold key positions for the applicant, 4 Pa.C.S. §1311; requiring divestiture of interests of non-qualifying persons, 4 Pa.C.S. §1312; and imposing strict financial fitness requirements on the applicants to assure the financial and operational viability of the proposal, 4 Pa.C.S. §1313, among others. In addition to the

eligibility criteria, the Act also provides extensive guidance for the Board's consideration in issuing licenses. 4 Pa.C.S. § 1325(c).¹

Board staff received Valley Forge's application on June 29, 2007 and the Bureau of Licensing ("BOL") and Bureau of Investigations and Enforcement ("BIE") subsequently engaged in an extensive review and investigation of the applicant.² On October 16, 2007, the Board held an Eligibility Hearing for Valley Forge; the Board also held a Public Input Hearing on May 20, 2008 at the Dolce Valley Forge Hotel in King of Prussia, Pennsylvania.³ During the Public Input Hearing, Valley Forge made a presentation and eleven (11) individuals, including members of the community, spoke about the proposed project. In addition, a Public Comment Period was established from May 20, 2008 to July 19, 2008, wherein the Board accepted, and made part of the record, written submissions by anyone who chose to provide same. During the public comment period, the Board received one hundred fourteen (114) written comments with regard to the Valley Forge project. One hundred four (104) comments were opposed to the project, while ten (10) were in favor. The Board placed large amounts of information about the project on its website⁴ and conducted a Suitability Hearing for Valley Forge on October 22, 2008 in Harrisburg, Pennsylvania. Updates from Valley Forge with respect to

1 The Section 1325(c) factors are factors which the Board may take into consideration in determining whether the grant of a license is in the public interest and in accordance with the objectives of the Act.

2 The Board established an initial application period for Category 3 licenses which closed at the end of December, 2005. At that time, two (2) applications for Category 3 licensure had been received: Nemaacolin Woodlands and Seven Springs Resort. Eventually, both of those applicants withdrew their applications. The Board reopened the application period and received four (4) applications, including those of Valley Forge and the Bushkill Group. The other two (2) applicants withdrew their applications prior to the Board entering final deliberation.

3 See <http://www.Board.state.pa.us/?pr=209>

4 See <http://www.Board.state.pa.us/?p=93>

financing commitments were also received by the Board on February 3, 2009 and April 8, 2009. At its April 8, 2009 meeting, the Board voted unanimously to award a Category 3 slot machine license to Valley Forge after hearing evidence that Valley Forge had secured financing commitments for its project.

In addition to the Act's eligibility criteria under Sections 1305 and 1310-1313, factors the Board took into consideration when reviewing this application are also contained in Section 1325 of the Act. The Board fully considered all of these factors to arrive at a decision on licensure based upon all of the evidence that comprises the evidentiary record in this case. The Board has also had numerous opportunities to question the applicant about its proposal.

In addition, throughout the entire licensing and investigative process, BIE reached out to various federal, state and local law enforcement agencies, including the Federal Bureau of Investigation ("FBI"), the Pennsylvania State Police and the Pennsylvania Attorney General, requesting any information in the possession of those agencies related to the suitability of this applicant. These agencies have not provided the Board with any information that would preclude Valley Forge from being found suitable for licensure.

Based upon each Board member's comprehensive evaluation of all information obtained throughout the entire licensing process and contained in the evidentiary record, the Board collectively and repeatedly engaged in quasi-judicial deliberations in executive session, during which it met to fully and frankly discuss the merits of this applicant and its proposed project.

On April 8, 2009, the Board met during an open, public meeting in accordance with the requirements of the Pennsylvania Sunshine Act, 65 Pa.C.S. Chapter 7, and

Section 1206 of the Act, for the purpose of considering and voting on the Category 3 slot machine applications. During the April 8, 2009 public meeting, the Board voted unanimously to approve Valley Forge for a Category 3 license.⁵ The following Findings of Fact and Conclusions of Law set forth the Board's rationale for this determination.

FINDINGS OF FACT

1. On June 29, 2007, Valley Forge submitted an application to the Board for a Category 3 slot machine license.

2. Valley Forge's proposed Category 3 facility is located in King of Prussia, Pennsylvania, approximately 1.6 miles from the King of Prussia Mall and adjacent to the Valley Forge National Park. The property is currently known as the Valley Forge Convention Center.

3. The Valley Forge Convention Center is comprised of two (2) hotel facilities, the Radisson and the Scanticon, and related amenities. The Radisson Hotel has three hundred twenty-eight (328) guest rooms and the Scanticon has one hundred sixty (160) guest rooms for a combined total of four hundred eighty-eight (488) guest rooms.

4. Both the Radisson Hotel and the Scanticon Hotel are operated under license agreements.

5. All hotel rooms, as well as the entire Valley Forge Convention Center, were under common ownership at the time of Valley Forge's application and remain under common ownership.

⁵ During the April 8, 2009 meeting, the Board also considered a second Category 3 license applicant, Bushkill Group, Inc. That applicant has been unable to demonstrate that it has a source of committed financing for its project under Section 1313 of the Act. As a result, the Board voted to continue its consideration of that applicant and to reopen the application period for ninety (90) days to determine if Bushkill or another qualifying applicant can obtain committed financing for a Category 3 licensed entity.

6. The hotel franchisers, Radisson and Scanticon, do not have any ownership interest in Valley Forge.

7. Each hotel is situated at opposing ends of the proposed licensed facility.

8. The Scanticon Hotel is a member of the International Association of Conference Centers and conforms to that organization's requirements for a conference center.

9. The Valley Forge Convention Center features fifty-eight (58) fantasy-themed hotel suites, varying from a Cape May theme to a Caesar's Palace motif.

10. Roughly two hundred twenty (220) rooms feature Jacuzzi-style bathtubs.

11. The complex contains an outdoor swimming pool.

12. The Valley Forge Convention Center features three (3) full service restaurants. Chumley's Steakhouse and Sports Bar is located in the Radisson and can accommodate one hundred twenty (120) guests. The restaurant features steaks and seafood as well as a sports bar. Café Soleil features breakfast and lunch offerings, while the Blue Grotto restaurant, located in the Scanticon Hotel, is utilized for groups in conjunction with the Scanticon conference center.

13. The Valley Forge Convention Center features one hundred eight thousand (108,000) square feet of exhibition and meeting space.

14. The Waterford Ballroom, located within the Valley Forge Convention Center, consists of eight thousand (8,000) square feet of space and is utilized for weddings, corporate meetings, live shows, entertainment and other social events.

15. The Valley Forge Convention Center is the home to the Ice Nightclub.

16. The Valley Forge Convention Center features a three thousand (3,000) square foot fitness facility equipped with treadmills, weights, nautilus equipment, steam rooms, saunas and racquetball courts.

17. The Valley Forge Convention Center facility currently hosts approximately six hundred fifty thousand (650,000) guests per year.

18. The Valley Forge Convention Center's patronage is comprised of approximately one-third business travelers and two-thirds leisure guests.

19. Valley Forge was formed as a Pennsylvania limited partnership on January 5, 2007 by Michael Heller, Barbara Evans, Kenneth Kochenour, Jonathan Lubert, Michael Forman, Joseph Sweeney and Ira Lubert.

20. On September 23, 2008, counsel for Valley Forge filed petitions with the Board seeking to withdraw the applications of Michael Forman and Joseph Sweeney, averring that both individuals no longer have an association with Valley Forge. The withdrawal petitions were granted by the Board on October 14, 2008.

21. On June 27, 2007, Valley Forge entered into an Agreement of Sale with Valley Forge Colonial, L.P. ("VFC") for the purchase of the Valley Forge Convention Center property ("Agreement of Sale").

22. At its October 16, 2007 Eligibility Hearing, counsel for Valley Forge explained to the Board that, when Ira Lubert, the individual holding the largest stake in VFC, decided to seek a Category 3 license for the Valley Forge Convention Center, it was clear that many of the limited partners in VFC did not wish to subject themselves to the Board's rigorous filing requirements. Accordingly, Mr. Lubert created a new entity,

Valley Forge, and an agreement of sale for the Valley Forge Convention Center was entered into between VFC and Valley Forge.

23. Present ownership stakes in VFC are as follows: Ira Lubert, 35.2892%; Ken Kochenour, 14.3030%; Barbara Evans, 1.5502%; the remaining limited partners of VFC have less than a 5% interest and will have no interest, directly or indirectly, in VFC following the consummation of a merger agreement contemplated between VFC and Valley Forge. The general partner of VFC is Valley Forge Hospitality Inc.

24. Present ownership stakes in Valley Forge are as follows: Ira Lubert, 42.7155%; Jonathan Lubert, 36.6056%; Michael Heller, 7.3333%; Ken Kochenour, 6.1728%; Barbara Evans, 6.1728% and Valley Forge Convention Center Partners GP, LLC, 1.0000%.

25. Present ownership stakes in Valley Forge Convention Center Partners GP, LLC are as follows: Ira Lubert, 49.383%; Jonathan Lubert, 43.210%; and Michael Heller, 7.407%.

26. Initially, Valley Forge's Agreement of Sale contained a condition precedent, requiring Valley Forge to be issued a Category 3 license prior to the closure of the transaction.

27. By a written instrument, dated October 15, 2007, Valley Forge waived all provisions in its Agreement of Sale that would explicitly condition the closing of the transaction on Valley Forge being issued a Category 3 license.

28. On October 15, 2007, Valley Forge entered into an Agreement and Plan of Merger with VFC whereby VFC would become a wholly-owned subsidiary of Valley Forge.

29. At the October 16, 2007 Eligibility Hearing, Ira Lubert testified as to the ownership of the Valley Forge Convention Center and stated that, “from an ownership position, as I’ve mentioned earlier and it’s been testified earlier, (the Valley Forge Convention Center has) been under my leadership and control since 1994 when I bought the first property and then proceeded in buying the other two.”

30. On August 31, 2007, Greenwood Gaming and Entertainment, Inc. (“Greenwood”) filed with the Board a Petition to Intervene in the Application of Valley Forge.

31. On October 2, 2007, the Board denied Greenwood’s Petition for Intervention without prejudice.

32. On April 2, 2008, Greenwood filed a Motion for Reconsideration of the Board’s October 2, 2007 Order denying the Petition for Intervention or, in the alternative, the granting of intervention with full party status.

33. On May 29, 2008, the Board granted Greenwood’s intervention and party status pursuant to 58 Pa.Code § 441a.7(y).

34. Additionally, on October 27, 2008, a second possible intervener, Southeastern Pennsylvania Citizens Against Gambling, filed a Petition to Intervene in the matter of the Category 3 slot machine applications of Valley Forge Convention Center Partners, LP, Bushkill Group, Inc., and Vacation Charters, Ltd. as well as a Motion for Leave to File Petition to Intervene Out of Time.⁶

⁶ Vacation Charters Ltd. subsequently withdrew its application for a Category 3 Slot Machine License in October, 2008. The Palace Inn, in Monroeville, PA, also was an applicant. That entity withdrew its application in March, 2008.

35. On January 23, 2009, the Board denied Southeastern Pennsylvania Citizens Against Gambling's Motion for Leave to File Petition to Intervene Out of Time, thereby mooting the underlying Petition.⁷

36. Upon receipt of Valley Forge's application, the Bureau of Licensing conducted a detailed completeness review of the materials received. This process involved scrutinizing each and every question asked and each answer provided to determine if the answers and documentation were fully responsive. Where deficiencies were identified, requests for more information were made of the applicant. As the new information arrived, it was again subjected to the same completeness review process.

37. Once the Bureau of Licensing deemed Valley Forge's application complete, it was forwarded to BIE for character and financial suitability investigations.

38. On June 3, 2008, approximately one (1) year after the original Category 3 applications were submitted, the Board's Bureau of Licensing and Bureau of Investigations and Enforcement sent a joint letter to all three (3) remaining Category 3 applicants establishing a July 15, 2008 deadline for any final changes to applications.

39. BIE reviewed and inspected Valley Forge's application to identify any inconsistencies and to develop a general familiarity with its overall business activity, financial situation and history. BIE then developed an investigative plan utilized to conduct the background investigations of the applicant.

40. Requests for information to numerous organizations and agencies were made by BIE. Criminal history checks on individuals associated with the application were requested through the Pennsylvania State Police, which included queries of the

⁷ At this time Southeastern Pennsylvania Citizens Against Gambling is attempting to appeal this matter to the Supreme Court of Pennsylvania.

FBI's National Crime Information Center databases for criminal history and wanted person information. Further queries into criminal history records were conducted by BIE, utilizing accessible databases and through direct contact and/or correspondence with local law enforcement agencies having jurisdiction over the current and former locations of the businesses associated with Valley Forge and residences of the natural persons included in or related to the application. Additionally, the Pennsylvania Office of Attorney General, Executive Offices of the Pennsylvania State Police, several United States Attorney Offices and FBI Offices were contacted with respect to this applicant in order to ascertain whether any concerns existed regarding its licensure. In addition to the required Pennsylvania state tax clearance review conducted by the Department of Revenue and the Department of Labor and Industry, requests for tax clearance reviews were sent to other applicable federal, state and local jurisdictions. Passport verifications were also made through the United States Department of State and bank accounts, loans, lines of credit, and safe deposit box ownership were verified with financial institutions.

41. BIE also conducted database searches to identify and verify the employment, family, residence and educational histories of each applicant, as well as their non-gaming and professional license status, civil litigation dockets and credit histories. The results and findings of these database checks were then compared to the information contained in the application materials.

42. Extensive personal interviews were conducted by BIE agents with the natural person principals of Valley Forge during which investigators gathered extensive amounts of information concerning these entities and individuals and their businesses and personal histories.

43. An investigation of Valley Forge's finances, in order to assess financial suitability, was conducted by the Financial Suitability Task Force ("Task Force"), a part of the Financial Investigations unit of BIE. The role of the Task Force was to verify data and create a financial fitness report.

44. The Task Force developed a process for the determination of financial suitability of the applicant. The process entailed extensive document review.

45. The Task Force collected extensive information from Valley Forge, including corporate information for the applicant, other related entities, and individual information where applicable.

46. Based on the process designed and the information collected, the Task Force prepared the Financial Suitability Report with supporting documentation consisting of: 1) Corporate Financial Analysis; 2) Corporate Structure Analysis; 3) Debt Structure Recap; 4) Drive Time Market Analysis and 5) Project Financial Overview.

47. The Task Force conducted a drive-time analysis for Valley Forge's proposal to: 1) estimate the gaming revenues of the applicant's proposed facility for a stabilized year of operation (for clarification, the stabilized year takes place once the permanent facility is open and transitioned into a steady state of operation; it also takes into account assumed competition from other relevant gaming facilities); 2) provide a basis for the Board to evaluate the applicant's gaming revenue projections; and 3) analyze the applicant's long-term view of the market.

48. A drive-time analysis is a proven method used extensively over a number of years in major gaming markets to estimate potential gaming revenue of a casino based on a set of assumed conditions. It takes into consideration the expected level of spending

at the proposed facility by adults living in various zones around a proposed site location, with the zones primarily defined in terms of the amount of time it takes to drive to the proposed site and the assumed surrounding competition. The drive-time is based on a typical facility and does not include consideration of the specific site, access, physical characteristics, management, operational or marketing capabilities of the applicant, or any other licensee in Pennsylvania.

49. The drive time analysis was based on win and visitation analysis for the applicant's proposed facility. The visitation analysis was conducted by dividing the surrounding area into various zones and analyzing the following three (3) critical factors for each zone: 1) Adult Gaming Propensity, or the estimate of the likelihood of a resident of an area to visit a particular facility in a given year based upon gaming industry data (the gaming propensity depends upon a number of factors including: access and drive-time, proximity to existing and proposed competitive gaming facilities, availability of other leisure activities and availability and type of transportation to the proposed facility); 2) Annual Frequency of Visits, an estimate of how often a resident of a given area visits a particular facility in a year; and 3) Average Trip Expenditure, or an estimate of the spending propensity of a visitor during a trip to a given facility.

50. In performing the market analysis of the applicant's proposed facility, the Board's Financial Suitability Task Force studied the potential gaming market to understand the project's revenue potential. In 2008 dollars, the Task Force's estimate of win per position is \$340.

51. Valley Forge retained PKF Consulting to conduct a market analysis as well.

52. PKF Consulting is a leading provider of hotel consulting, research, brokerage, appraisal and asset advisory services to the hospitality and real estate industries.

53. PKF Consulting's drive-time analysis projects that Valley Forge's gaming operations will generate stabilized (Year 3) revenues of \$328 per position for a total of approximately \$60 million per year in 2007 dollars.

54. Valley Forge has been investigated for financial fitness and, according to BIE's Financial Suitability Task Force, nothing financially material has been found that would indicate that the applicant or its principals are not financially suitable.

55. Valley Forge has posted a letter of credit or bond in the amount of \$5 million to demonstrate its financial ability to pay the Category 3 slot machine license fee as required by 4 Pa.C.S. § 1305(d).

56. Based upon the representations by Valley Forge and careful investigation by the Board's Financial Suitability Task Force, the Board is not in possession of any information to suggest that Valley Forge will not succeed in maintaining a financially successful, viable and efficient business operation that will maintain a steady level and growth of revenue.

57. On October 16, 2007, the Board held an Eligibility Hearing for Valley Forge, during which Valley Forge made a presentation regarding its eligibility for licensure as a Category 3 slot machine licensee. Additionally, Vacation Charters, Bushkill and Greenwood presented testimony and evidence in opposition to Valley Forge's eligibility for licensure.

58. After notice to the public, a Public Input Hearing for Valley Forge was conducted by the Board on May 20, 2008 at the Dolce Valley Forge Hotel in King of Prussia, Pennsylvania, during which Valley Forge made a public presentation to the Board concerning its application for a slot machine license. All interested groups and individuals wishing to speak at the meeting concerning Valley Forge's application were given the opportunity. Four (4) legislators or government officials and two (2) Community groups spoke in support of the project. Five (5) individuals spoke, with three (3) supporting the project and two (2) opposing the project.

59. In addition, the Board established a Public Comment Period from May 20, 2008 to July 19, 2008, during which the Board received one hundred fourteen (114) written comments from the public with regard to the Valley Forge project. One hundred four (104) written comments were opposed to the Valley Forge project and ten (10) were in favor.

60. The people submitting written comments in support of the licensing of Valley Forge cited reasons such as tax relief for senior citizens, economic growth, and revenue generation for schools, fire and police departments. The one hundred four (104) individuals submitting written comments opposing the licensing of Valley Forge, mostly cited a general philosophical opposition to gambling, an increase in traffic, the close proximity to historical areas, an increase in crime, unsavory clientele and concerns about overdevelopment.

61. On October 22, 2008, the Board conducted a Suitability Hearing for the purpose of receiving additional testimony and evidence concerning the application of Valley Forge for a Category 3 slot machine license and its eligibility and suitability for

licensure pursuant to the Act. The evidence received included information on potential revenue generation; effects on other slot machine licensees; traffic and tourism; the Valley Forge Convention Center's amenities; and all other aspects related to Valley Forge's suitability.

62. In addition to statements made by the applicant's counsel, those testifying at the October 22, 2008, hearing were Ira Lubert (Chairman of Valley Forge), Peter Tyson (Vice President of PKF Consulting), Stephen Mullin (Principal and Senior Vice President of Econsult Corporation), Ken Kochenour (Chief Executive Officer of GF Management, operator of the Valley Forge Convention Center), Edward McBride (Township Supervisor of Upper Merion Township), C. Patrick McCoy (Real McCoy Gaming and proposed Vice President of Slot Operations at Valley Forge) and Kenneth O'Brien (Senior Project Manager of McMahon Associates).

63. Given the change in the national and international credit markets, on January 21, 2009, the Board voted to reopen the record in the matter of the Category 3 slot machine license applicants for the purpose of receiving additional information from the applicants regarding the firmness of their financial commitments with respect to their proposed licensed facilities.

64. On February 3, 2009, during its public meeting, the Board heard additional testimony from the Category 3 slot machine license applicants regarding their financing commitments. However, the Board left the record open at the close of the proceedings for the receipt of further evidence on the matter.

65. On April 8, 2009, the Board again heard testimony and received evidence from the Category 3 slot machine license applicants regarding their financing commitments.

66. At the April 8, 2009 meeting, Valley Forge presented information on financing \$107 million for the proposed project as follows:

a. The General Electric Capital Corporation will provide twenty-eight million dollars (\$28,000,000) in debt financing through an existing mortgage and loan agreement that will be assumed by Valley Forge.

b. The Delaware Valley Real Estate Investment Fund, L.P. (“DVREIF”) has provided a commitment letter, dated March 16, 2009, indicating it will grant twenty-five million dollars (\$25,000,000) in unsecured debt financing. Closing of this loan is conditioned on (a) granting of a Category 3 slot machine license with the right to operate five hundred (500) slot machines, and (b) an executed Doubletree Hotel franchise agreement. However, the commitment letter was amended on April 1, 2009 to read “...that DVREIF will consider the Doubletree Condition satisfied upon Valley Forge’s submission of a franchise application to the Doubletree brand owner, Hilton Hotels Corporation.” Both letters are signed by DVREIF’s Managing Director, Paul Gilbert.

c. Ira Lubert signed a letter written to the Board, dated March 26, 2009, in which he guarantees an equity contribution, stating “on behalf of the entire Valley Forge partnership, I commit to provide the remaining fifty-four million dollars (\$54,000,000) million necessary to proceed with and complete the Project.”

67. On April 8, 2009, after hearing additional evidence on financial commitments, the Board recessed for quasi-judicial deliberations before voting unanimously to approve a Category 3 slot machine license for Valley Forge.

68. The following principals of Valley Forge have consented to and undergone required background checks: Valley Forge Convention Center Partners GP, LLC, Valley Forge Colonial, L.P., VFCC Merger Sub, LP, Ira Lubert, Jonathan Lubert, Kenneth Kochenour, Michael Heller, Barbara Evans and Cyril Patrick McKoy.

69. Ira Lubert holds indirectly a warrant to purchase a 6.2683% interest in Pittsburgh Gaming Investors, LP ("PGILP"). PGILP indirectly owns, through various intermediaries, a 75% Common Limited Partner interest and a 100% Preferred Limited Partner interest in Holdings Acquisition Co., LP, the Category 2 licensee for the City of Pittsburgh.

70. No individuals associated with Valley Forge have requested waivers of their obligation to be licensed.

71. Valley Forge and its principals have nearly thirty (30) years of experience in the hotel, real estate and casino gaming industries.

72. Ira Lubert, chairman of Valley Forge, has more than thirty (30) years of experience in real estate and investment management, controlling a family of private equity firms with over \$7 billion under management.

73. Kenneth Kochenour, President and Chief Executive Officer of Valley Forge, has twenty (20) years of experience in hotel management, operating more than thirty-five (35) properties in over twenty (20) states.

74. C. Patrick McCoy, Vice President of Gaming Operations, has more than twenty-five (25) years of experience in the gaming industry, holding executive level positions with organizations including Caesar's, Bally's and Hilton.

75. Neither Valley Forge nor any person affiliated with Valley Forge is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board.

76. Neither Valley Forge nor any affiliate, intermediary, subsidiary or holding company thereof has ever applied for or been issued a Category 1 or Category 2 slot machine license in Pennsylvania.

77. Neither Valley Forge, nor its affiliates, intermediaries, subsidiaries or holding companies hold any interest in a supplier or manufacturer's license.

78. Neither Valley Forge nor any person affiliated with Valley Forge have served as a public official or executive level public official during the one (1) year period prior to the filing of Valley Forge's Category 3 application.

79. Valley Forge has satisfied all local, state and federal tax obligations.

80. Neither Valley Forge nor any of its Principals has been convicted of a felony or gambling offense that would prohibit the Board from issuing a license.

81. BIE's investigation has not revealed any information that would indicate that Valley Forge or any of its affiliates, directors, owners or principals is of unsuitable character.

82. The investigation of Valley Forge and its principals has not revealed any information concerning bankruptcies, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealings or any other

information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of Valley Forge or its principals.

83. The evidence indicates that Valley Forge and its affiliates have favorable records of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational, environmental health and safety, and labor relations and employment laws, and favorable records in dealing with employees and their representatives.

84. Valley Forge is prepared to renovate existing space on the concourse level of the convention center to create an eighteen thousand (18,000) square foot gaming floor with five hundred (500) slot machines. These renovations are expected to be completed within six (6) to twelve (12) months of Valley Forge's receipt of a non-appealable Category 3 license at a construction cost of approximately one hundred seven million dollars (\$107,000,000), the financing of which will be provided by the Delaware Valley Real Estate Investment Fund, L.P., General Electric Capital Corporation and Ira Lubert (as noted *supra*).

85. Valley Forge has a Diversity Plan in place which assures equality of opportunity in employment and contracting, diversity in groups providing goods and services to Valley Forge and a plan to recruit, train and update diversity in all employment classifications at its facility.

86. Valley Forge has a responsible gaming plan in place with a self-exclusion/self-reporting component.

87. Valley Forge plans to limit gaming area access to registered hotel guests and/or patrons of hotel amenities by developing an integrated, computerized system

involving access passes and turnstile access points. All access passes would include an expiration date which would generally be the date of check out for hotel guests and a period of twenty-four (24) hours for patrons of the amenities.

88. McTish, Kunkle & Associates is a professional engineering, surveying, and construction management consulting firm contracted by the Board to measure the straight line distances between Valley Forge's proposed licensed facility and the approved sites of other slot machine licensees in the Commonwealth.

89. Ricky Moyer of McTish, Kunkle & Associates testified that, using straight line measurements from the Pennsylvania state plan coordinate system, the Valley Forge Convention Center exceeds the fifteen (15) mile distance requirement from all other facilities currently approved for licensure by the Board. The Valley Forge Convention Center is more than fifteen (15) miles away from any other licensed facility when measured by: 1) two (2) closest points on property boundaries; 2) front entrance to front entrance; 3) two (2) closest points on the gaming floor; 4) two (2) closes points on buildings outside the gaming floor; and 5) primary roadway entrance to primary roadway entrance.

90. From the Valley Forge Convention Center to the Foxwoods Casino Philadelphia site, the distances are, 18.3 miles, 18.6 miles, 18.5 miles, 18.4 miles, and 18.6 miles respectively.

91. From the Valley Forge Convention Center to the Sugarhouse Casino site, the distances are, 17.3 miles, 17.6 miles, 17.6 miles, 17.5 miles, and 17.6 miles respectively.

92. From the Valley Forge Convention Center to Harrah's Chester Casino and Racetrack, the distances are, 17.1 miles, 17.4 miles, 17.3 miles, 17.2 miles, and 17.2 miles respectively.

93. The Valley Forge Convention Center is also more than fifteen (15) miles from Philadelphia Park Casino & Racetrack, Greenwood's licensed facility.

94. Using straight line measurements from the Pennsylvania state plan coordinate system, Valley Forge exceeds the fifteen (15) mile distance from the sites approved for licensure in the Commonwealth under any distance scenario.

95. Valley Forge's planned project will provide potential for new jobs with quality living wages and for economic development in the surrounding area as the project will create over five hundred (500) new jobs, including one hundred fifty (150) permanent positions in its entertainment center alone.

96. Valley Forge's proposed facility will be situated in a highly visibility location with ample road and transit access, sufficient parking and centrality to its market service area.

97. Valley Forge retained McMahon Associates ("McMahon") to study the impact that the proposed facility will have on traffic and parking in the area. Based upon its analysis of existing traffic conditions and its projections of future conditions in and around the licensed facility, McMahon concluded that five hundred (500) slot machines at Valley Forge would result in relatively low new traffic generation and have no more than a minimal impact on the operation of roadways and intersections in the vicinity of the Valley Forge Convention Center Complex.

98. McMahon has recommended the following mitigation measures for traffic surrounding the Valley Forge Convention Center based on evaluations performed by PennDOT, Montgomery County and the local municipalities: a widening of Route 422 in the immediate vicinity of the Valley Forge Convention Center from Trooper Road to Route 202; a widening of Gulph Road and Valley Forge Road in the immediate vicinity of the licensed facility; and improvements to several interchanges with 422, including the interchange immediately adjacent to the Valley Forge Convention Center at First Avenue and the two (2) interchanges further to the west at Valley Forge Road and Trooper Road. Lastly, the project includes the replacement of the Betzwood Bridge, which runs parallel to the Route 422 bridge, improving access across the Schuylkill River for local traffic.

99. This traffic study was reviewed by Stephen Cunningham of Jacobs Engineering, a traffic consultant retained by the Board to review Valley Forge's traffic study.

100. When Jacobs Engineering reviewed the traffic study they considered the completeness in meeting standards set forth by PennDOT and the Institute of Transportation Engineers, as well as the completeness and reasonableness of the assumptions, calculations, findings and conclusions of the traffic study.

101. There were no findings or conclusions in the Jacobs Engineering report concerning Valley Forge's traffic improvements and mitigation measures that would suggest that such measures did not sufficiently address the traffic issues which would result from the operation of Valley Forge's facility.

102. Valley Forge's proposed licensed facility is located within Upper Merion Township. Valley Forge has independently agreed with Upper Merion Township to

contribute four hundred fifteen thousand dollars (\$415,000) toward area traffic improvements in order to ensure the minimization of any adverse effect upon local traffic.

103. Valley Forge has agreed to support Upper Merion Township's efforts to improve Route 422 and roadways in the surrounding area. Valley Forge will also participate in the Township's "Operations Group" and support the Township's efforts to obtain approval, financing and construction of these roadway improvements.

CONCLUSIONS OF LAW AND DISCUSSION

The intent of the Act encompasses many stated objectives. Several of those objectives are to positively assist the Commonwealth's horse racing industry, enhance live horse racing and breeding programs and improve the living and working conditions of personnel who work and reside in and around the stables and backsides of area racetracks. 4 Pa.C.S. §§ 1102(2) and (4). Other objectives are to stimulate employment opportunities in the Commonwealth, provide a significant source of new revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development and employment opportunities, and to enhance the further development of the tourism market throughout the Commonwealth. 4 Pa.C.S. §§ 1102(2), (3), (5) and (6). In addition, the General Assembly specifically indicated its intent and goal that the Board promote and ensure diversity in all aspects of the gaming activities authorized under the Act. 4 Pa.C.S. §1212(a).

Section 1325 of the Act also provides that the Board may consider a variety of factors indicating suitability of an applicant for a slot machine license including the following:

- the location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area, Section 1325 (c)(1);
- the potential for new job creation and economic development which will result from granting a license to an applicant, Section 1325 (c)(2);
- the applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility, Section 1325 (c)(3);
- the applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant, Section 1325 (c)(4);
- the applicant's good-faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly, Section 1325 (c)(5);
- the history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant, Section 1325 (c)(6);
- the degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular, Section 1325 (c)(7);
- the record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations, Section 1325 (c)(8);
- the degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated, Section 1325 (c)(9);
- the record of the applicant and its developer regarding compliance with Federal, State and local discrimination, wage and hour, disability and occupational and

environmental health and safety laws; and State and local labor relations and employment laws, Section 1325 (c)(10); and

- the applicant's record in dealing with its employees and their representatives at other locations, Section 1325 (c)(11).

With these objectives, intentions and criteria in mind, the Board has reviewed the entire evidentiary record for Valley Forge, and based upon the following, the Board concludes that Valley Forge is eligible and suitable for a Category 3 slot machine license and it would be in the best interest of the Commonwealth and its citizens to award such a license to Valley Forge.

I. Eligibility

First, Valley Forge is an eligible candidate for a Category 3 license under the Act. With respect to a Category 3 license, Section 1305 of the Act provides the eligibility criteria, including:

(1) that the applicant, its affiliate, intermediary, subsidiary or holding company has not applied for or been approved or issued a Category 1 or 2 license;

(2) that the applicant seeks to locate a gaming facility in a well-established resort hotel;

(3) that the hotel has no fewer than two hundred seventy-five (275) guest rooms under common ownership and substantial year-round recreational guest amenities; and

(4) that the applicant shall be the owner or a wholly owned subsidiary of the owner of the hotel. 4 Pa.C.S. §1305(a)(1).

Finally, the Act also imposes location criteria providing that no Category 3 licensed facility shall be located within fifteen (15) linear miles of another licensed facility. 4 Pa.C.S. §1305(b)(1).⁸

Neither Valley Forge Nor Any Affiliate Has Ever Applied For Or Obtained A Slot Machine License

Pursuant to the Act, “a person is eligible to apply for a Category 3 license if the applicant, its affiliate, intermediary, subsidiary or holding company has not applied for or been approved or issued a Category 1 or 2 license.” 4 Pa.C.S. §1305(a)(1).

A Category 1 or 2 license is a license which permits the person holding same to place and operate slot machines at a licensed facility. 4 Pa.C.S. §1301. It is distinguishable from a “principal” license, which is the method by which the Act formally authorizes a person to act as an officer, director, owner, shareholder, lender or in some similar capacity. 4 Pa.C.S. §1311.1 and 1103.

Under the facts before the Board, there is no evidence that Valley Forge or any affiliate, intermediary, subsidiary or holding company has applied for or been granted a slot machine license. As a result, this eligibility requirement has been met.

⁸ The “eligibility” provisions of the Act also require that a Category 3 license may only be granted upon the express condition that an individual may not enter the gaming area of the licensed facility if the individual is not an overnight guest or patron of the facility’s amenities. Valley Forge has submitted such a plan. Specifically, it plans to limit gaming area access to registered hotel guests and/or patrons of hotel amenities by developing an integrated, computerized system involving access passes and turnstile access points. All access passes would include an expiration date which would generally be the date of check out for hotel guests and a period of twenty-four (24) hours for most other patrons.

Applicant's Status as a well-established resort hotel

The second eligibility criterion is that the applicant be a “well established resort hotel.” That term is defined, by the Board’s regulations, as “a resort hotel having at least 275 guest rooms under common ownership at the time of application for a Category 3 slot machine license and having substantial year-round recreational guest amenities.” 58 Pa Code §441a.1. This definition incorporates the Act’s third eligibility requirement, above (275 rooms under common ownership and substantial year-round recreational guest amenities).⁹ As a result, the Board will address those requirements together.

275 Guest Rooms Under Common Ownership

The facts before the Board clearly show that the Valley Forge Convention Center, which consists of two (2) hotels, branded as a Radisson Hotel and a Scanticon Hotel, meet the requisite room number with three hundred twenty-eight (328) rooms falling under the Radisson brand and one hundred and sixty (160) rooms falling under the Scanticon brand, for a total of four hundred eighty-eight (488) guest rooms. Both the Radisson and Scanticon are operated pursuant to franchise agreements. Neither of the companies operating those hotel chains have any ownership interest in the Valley Forge Convention Center. All rooms, and the entire Valley Forge Convention Center, were under common ownership at the time of application, and remain under common ownership today.

⁹ Greenwood contends that the facilities that are the subject of Valley Forge’s application are primarily convention and business facilities and do not constitute a resort hotel. Vacation Charters also objected to Valley Forge’s application, arguing that Valley Forge operates a convention center, targeting primarily business clientele, and not a resort hotel. Bushkill has reiterated many of the same arguments proffered by Vacation Charters, namely that Valley Forge operates a convention center facility and not a resort.

Substantial Year-Round Recreational Guest Amenities

Substantial year-round recreational guest amenities are defined as ancillary activities, services or facilities in which a registered guest or the transient public, in return for non-de minimis consideration, may participate at a resort hotel. See 58 Pa. Code §441a.23(a). To qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the hotel must offer a complement of amenities characteristic of a well-established resort hotel, including, but not limited to, the following:

- (1) Sports and recreational activities and facilities such as a golf course or golf driving range;
- (2) Tennis courts;
- (3) Swimming pools or a water park;
- (4) A health spa;
- (5) Meeting and banquet facilities;
- (6) Entertainment facilities;
- (7) Restaurant facilities;
- (8) Downhill or cross-country skiing facilities;
- (9) Bowling lanes; and
- (10) Movie theaters. Id.

The record indicates that Valley Forge operates a well-established resort hotel with substantial year-round guest amenities. At its eligibility hearing, Peter Tyson, the Vice-President of PKF Consulting, presented expert testimony on Valley Forge Convention Center's status as a resort hotel. Mr. Tyson, who has over thirty-five (35)

years of experience in the Pennsylvania hospitality industry and is a consultant for the Greater Philadelphia Tourism and Marketing Corporation as well as the Philadelphia Convention and Visitors Bureau and has extensive experience in market evaluations and property positioning, testified that the facilities and amenities at the Valley Forge Convention Center are quite appropriate to a resort-type property and are unique to a degree for hotels in the Philadelphia area. Specifically, there exists within the facility, fifty-eight (58) fantasy and theme rooms very rarely found in commercial or more traditionally orientated hotels. Such rooms are geared to escape weekends, special events, holidays, birthdays, anniversaries and related events. Additionally, two hundred twenty (220) of the rooms in the complex have Jacuzzi bathtubs, which are also not a feature found in most commercial hotels or standard hotels. The property also features one hundred eight thousand (108,000) square feet of exhibit space and thirty-seven thousand (37,000) square feet of meeting, banquet and convention space, making the Valley Forge Convention Center larger in terms of meeting and convention space than any other hotel property in the Philadelphia area. Additionally, the facility also includes a number of restaurants, a night club, showroom, ballroom, pool and fitness center typical of resort properties. According to Mr. Tyson's testimony, the facilities and amenities offered by the Valley Forge Convention Center conform to those mentioned in the Board's regulations.

Additionally, the Board believes the complex falls under the definition of a resort as published in PKF Consulting's *Trends in the Hotel Industry* report ("Trend Report"), a leading trade publication. PKF Consulting's Trend Report defines a resort as a hotel, usually in a suburban or isolated rural location, with special recreational amenities.

Furthermore, the market mix for the Valley Forge Convention Center supports a resort classification, as the majority of its customers, approximately 65 percent, are leisure guests. Most of the hotels in the Philadelphia area host around 40 percent of their guests in a leisure capacity. Activities typically hosted by the Valley Forge Convention Center, such as weddings, reunions and bar mitzvahs, are typically hosted at resort facilities.

Greenwood contends that the Valley Forge Convention Center constitutes a convention center and not a resort hotel, arguing that the facility is devoid of year round recreational guest amenities that would attract guests and keep them on property. However, the Board disagrees with Greenwood's contention, as the record in this matter simply does not support such a conclusion.

Therefore, based on the above, the Board finds that the Valley Forge Convention center offers many amenities typical of a resort hotel that can be used on a year-round basis, including restaurants, swimming pool, gym and fitness facilities, banquet facilities, showroom, meeting and convention space, themed suites and a nightclub. Accordingly, the Board believes the Valley Forge Convention Center is a well-established resort hotel as defined in the Act and the Board's regulations.

Ownership Requirement

Section 1305 of the Act requires an applicant for a Category 3 slot machine license to be "the owner or be a wholly-owned subsidiary of the owner of the established resort hotel." 4 Pa.C.S. § 1305(a)(1). The Act does not define the term "owner." As such, the Board is required to construe the word in accordance with its common and

approved usage. 1 Pa.C.S.A. § 1921 *et. seq.* In doing so, however, it is noteworthy that several legal authorities, including *Corpus Juris Secundum*, have commented on the uncertainty of the meaning of the term. For example, *Corpus Juris Secundum* states that “[a]lthough it has been said that the term “owner” has a definite meaning, and that the definition of “owner” is a matter of law, generally, the term has no definite legal meaning, and is not a legal term.” 73 *C.J.S. Property* § 40.

Indeed, the Board has been unable to locate any reported Pennsylvania case outlining the “common and approved usage” of the word “owner” in the Commonwealth. Notwithstanding that fact, there are several secondary sources that are instructive in this matter. For example, *Summary of Pennsylvania Jurisprudence* defines the “owner” of property as one who has “total dominion” over the owned property. 6 *Summ. Pa. Jur. 2d Property* §1:2. Additionally, *American Jurisprudence*, provides the following:

“The meaning of the term ‘owner’ is varied and depends in a great measure on the manner of its use. In common speech it is most often used to designate the person in whom the legal or equitable title rests, as distinguished from a mere occupant or tenant.” (emphasis added) 63 *C Am. Jur. 2d Property* § 26.

Although the precise meaning of “owner” in Pennsylvania law cannot readily be identified through statutory or case law, it is clear that Pennsylvania follows the *American Jurisprudence* model and that any definition of “owner” would include a person who possesses legal title to property, as well as a person holding equitable ownership. See Pittsburgh vs. Pivirotto, 515 Pa. 246, 528 A.2d 125 (1987). “Equitable owner” is generally recognized as “one who is recognized in equity as owner of the property, because real and beneficial use and title belong to him, even though bare legal

title is invested in another.” *Black’s law Dictionary*, 6th Edition (1990), citing Levin v. Carney, 161 Ohio St. 513, 120 N.E.2d 92.

At the time of application, the titleholder (owner as per the deed filed with the Montgomery County Recorder of Deeds) was VFC.¹⁰ Just prior to application, on June 27, 2007, Valley Forge entered into an Agreement of Sale with VFC for the purchase of the Valley Forge Convention Center property (“Agreement of Sale”). Initially, Valley Forge’s Agreement of Sale contained a condition precedent, requiring Valley Forge to be issued a Category 3 license prior to the closure of the transaction. However, by written instrument, dated October 15, 2007, the parties to the Agreement of Sale waived all provisions in the Agreement of Sale that would explicitly condition the closing of the transaction on Valley Forge being issued a Category 3 license.

Valley Forge argues that, by waiving the provisions in its Agreement of Sale that would explicitly condition the closing of the transaction on Valley Forge being issued a Category 3 license, it has agreed to purchase the Valley Forge Convention Center free from any conditions precedent. As such, Valley Forge argues that, under Pennsylvania law, it, as the purchaser, is deemed to hold equitable ownership. Finally, Valley Forge argues that removal of the condition precedent would make equitable ownership effective from the inception of the option contract and not the date that it was exercised.

Greenwood, however, argues that under Pennsylvania case law, Valley Forge is not the equitable owner of the proposed facility since the Agreement of Sale initially contained a condition precedent which required Valley Forge to be issued a Category 3

¹⁰ Greenwood avers that Valley Forge does not own the facility in question, as Valley Forge simply entered into an agreement of sale with Valley Forge Colonial, L.P. (“VFC”), subject to a condition precedent (receipt of a Category 3 slot machine license from the Board) before consummation of the transaction. Additionally, Bushkill also argues that Valley Forge is not the owner or the wholly-owned subsidiary of the owner of the Valley Forge Convention Center, but rather, the equitable owner.

license prior to the consummation of the transaction. In addition, Greenwood claims that Valley Forge's waiver of the provisions of the Agreement of Sale which condition the consummation of the transaction on Valley Forge being issued a Category 3 license is illusory since the Agreement of Sale still provides that the closing date of the transaction will occur following Valley Forge's receipt of a Category 3 license from the Board. Greenwood's argument, however, disregards the fact that the Agreement of Sale provides for a \$1,375,000 penalty should Valley Forge fail to close on the transaction prior to December 31, 2010. Since the Agreement of Sale includes a firm "drop dead date" for closing on the transaction, and significant penalties for the purchaser's failing to do same, it can hardly be said that closure of the transaction after the awarding of a Category 3 license is a *de facto* condition precedent. Indeed, by the terms of the contract, the transaction must close by December 31, 2010, with or without a Category 3 license.

Pennsylvania courts have consistently held that when an Agreement of Sale is entered into for the sale and purchase of real estate, the purchaser is considered in equity the owner of the land. Sitler, James & Co.'s Appeal, 26 Pa. 178 (1856); Bauer v. Hill, 267 Pa. 559 (1920); Stroud v. Harper, 66 Montg. 313 (Pa. Com. Pl. 1950). However, Pennsylvania courts have also made clear that for a purchaser to become the equitable or beneficial owner through the doctrine of equitable conversion, the agreement for the sale of land must be unconditional. Byrne v. King, 231 Pa. Super. Ct. 531, 535 (1974). As such, for a purchaser to acquire equitable ownership there must be a valid offer and an unconditional acceptance. Syne's Appeal, 401 Pa. 387 (Pa. 1960). With respect to this line of Pennsylvania cases requiring the agreement of sale to be unconditional for the purchaser to be considered the equitable owner, the Court in Re Condemnation By

Central Bucks School District, 2 Pa. D. & C.3d 696, 701 (Pa. Com. Pl. 1977) stated: “[i]mplicit in these holdings is the converse; that is to say, where the agreement is a conditional one, to become binding and enforceable by specific performance only upon the happening of an event not within the control of the parties, there can be no equitable conversion.” Id.

The original Agreement of Sale between VFC and Valley Forge contained a condition precedent since closure on the transaction was originally conditioned upon Valley Forge being granted a Category 3 slot machine license by the Board. It appears clear that the Agreement of Sale, with that provision, did not vest equitable ownership in Valley Forge pursuant to the doctrine of equitable conversion. Removal of that provision by the parties on October 15, 2007, however, did convey equitable ownership upon Valley Forge through equitable conversion.

As to the issue of whether Valley Forge’s equitable ownership through equitable conversion should be applied retroactive to the June 27, 2007 application date, the Board is inclined to act in a manner consistent with its past practice of allowing applicants in this nascent industry in the Commonwealth to amend their application when deficiencies, including eligibility deficiencies, are noted. See, for example, *Board Order: In Re: Trum Construction Submission (February 2, 2006)*; *Board Order: In Re North Shore Gaming, LP Submission (February 2, 2006)*; *Board Order: In Re Pennsylvania Gaming Group, LLP Submission (February 2, 2006)*.¹¹

¹¹ In each of these matters, the Board afforded the applicants an opportunity to cure their deficiencies. During the initial application deadline for slot machine licenses, these Category 2 applicants failed to satisfy the statutory requirement of submitting a bond or letter of credit in the amount of \$50,000,000 before the December 28, 2005 Category 2 application deadline had passed. The Board, through the Bureau of Licensing, subsequently afforded each non-compliant applicant a cure period in which to post the required bond or letter of credit. Indeed. As noted in the record for this matter, all Category 3 applicants

Separate and apart from the principle of equitable conversion, the record is clear that Ira Lubert, in particular, and certainly in conjunction with some of his partners, has exercised control over the Valley Forge Convention Center, through VFC, for many years. Moreover, these same persons control Valley Forge and will, therefore, control the convention center, for years to come.

Mr. Lubert originally purchased the Valley Forge Convention Center by forming VFC, a partnership he clearly controlled and continues to control. In fact, the evidence presented to the Board indicates that only one (1) other person besides Mr. Lubert (who owns over 35% of VFC) has an ownership interest in VFC of greater than 5% (Ken Kochenour, who maintains a 14.303% interest).

The record also is clear that when Mr. Lubert and some of his partners in the Valley Forge Convention Center decided to seek a Category 3 license, many of the limited partners of VFC, each holding a relatively de minimis interest, did not wish to be involved in such an undertaking. Accordingly, a new entity, Valley Forge, was created whereby Mr. Lubert and the partners interested in securing a casino license could pursue same. The controlling interest for both entities, however, remains the same; primarily lying with Mr. Lubert¹² and, to a lesser degree, Ken Kochenour¹³ and Barbara Evans.¹⁴

were given until July 15, 2008, almost thirteen (13) months after the application deadline, to amend their applications.

12 Mr. Lubert maintains a 35.2892% interest in VFC and a 42.7155% interest in Valley Forge.

13 Mr. Kochenour maintains a 14.303% interest in VFC and a 6.1728% interest in Valley Forge.

14 Ms. Evans maintains a 1.5502% interest in VFC and a 6.1728% interest in Valley Forge.

Based on these facts, the Board believes that Valley Forge is the owner of the Valley Forge Convention Center and that the record is clear that control of the facility will remain constant.¹⁵

Additionally, given the ambiguity of the meaning of “owner” in the Act, and the lack of legislative history regarding same, the Board may attempt to infer from the text of Section 1305 the intent of the General Assembly.

An obvious rationale of requiring an applicant to be the “owner” of the proposed facility is to ensure that the Board would only accept applications from individuals or entities that have the legal authority to establish a gaming facility at a well established resort hotel. In short, the legislature clearly did not want the Board to consider applicants that did not have the ability to engage in the activity for which they were seeking licensure. Moreover, it is likely that the General Assembly sought to prevent persons from acquiring control of a well established resort hotel for the sole purpose of obtaining a Category 3 license. Rather than seeking applicants who desired, first and foremost, to run a casino, Category 3 licenses, for only 500 machines, clearly were established to create an amenity for the resorts winning licenses, thereby increasing tourism flowing into the Commonwealth.

Based on the facts as presented, it is clear that Valley Forge maintains equitable ownership of the Valley Forge Convention Center. It is also clear that, even before equitable ownership, that the controlling principles of the buyer and seller to the Agreement of Sale were the same: primarily Ira Lubert.

¹⁵ To put in context, the Board thinks a comparison can be made to a publicly traded company, whose ownership changes by the minute. In such a situation, it is the controlling interests in the company that are of importance, not ownership of small percentages of shares.

In sum, control of the Valley Forge Convention Center has remained constant since 1994 and will remain the same upon closure on the Agreement of Sale. As a result, the Board finds that Valley Forge is the owner of the Valley Forge Convention Center.

Distance from other Licensed Facilities and Other Eligibility Matters

Using straight line measurements from the Pennsylvania state plan coordinate system, Valley Forge exceeds the fifteen (15) mile distance requirement from the sites of licensed facilities for all other Pennsylvania slot machine licensees. Valley Forge is more than fifteen (15) miles away from any other licensed facility when measured by 1) two (2) closest points on property boundaries, 2) front entrance to front entrance, 3) two (2) closest points on the gaming floor, 4) two (2) closest points on buildings outside the gaming floor, and 5) primary roadway entrance to primary roadway entrance.

II. Suitability

Location

Valley Forge's proposed facility, the Valley Forge Convention Center, is located in King of Prussia, Upper Merion Township, Montgomery County, Pennsylvania and is situated in a highly visible area. It is located less than two (2) miles from the King of Prussia Mall, adjacent to the Valley Forge National Park and it is centrally located to its market area. There is also ample road and transit access to the site, providing for ease of ingress and egress. Based upon these factors, the Board concludes Valley Forge's location to be suitable for a Category 3 slot machine facility.

Traffic

Road and transit access, also referred to simply as traffic, is a factor which the Board may take into account when considering an applicant for licensure. 4 Pa.C.S. §1325(c)(1). While traffic has not been identified during the Valley Forge evidentiary hearings to be of the magnitude encountered in cities such as Pittsburgh and Philadelphia, traffic is a legitimate concern of the Board in Valley Forge's suburban location. This concern is premised upon two (2) things: first, the undeniable position that traffic congestion is detrimental to a proposed casino since patrons may not be attracted to a casino if access is difficult or results in substantial delays in arriving at the casino; second, significant additional traffic congestion does not serve the public interest of those living in surrounding communities who use the road network for daily non-gaming purposes.

The engineering firm engaged by the Board, Jacobs Engineering, undertook a review of Valley Forge's traffic impact study, conducted by McMahon Associates. There were no findings or conclusions in the Jacobs Engineering report that would suggest that the traffic improvements and mitigation measures outlined by McMahon Associates in the traffic study would not sufficiently address any traffic issues which would result from the operation of Valley Forge's facility. Additionally, Valley Forge has independently agreed with Upper Merion Township to contribute \$415,000.00 towards area traffic improvements in order to ensure the minimization of any adverse effect upon local traffic.

The Board acknowledges that this project will likely increase traffic in the vicinity the Valley Forge Convention Center, as traffic is a natural by-product of any patron-

driven business, including a casino. However, the Board concludes that, based upon all of the evidence in the record, no insurmountable traffic mitigation barriers have been identified for the Valley Forge project. Valley Forge will operate only five hundred (500) slot machines and access to the machines will also be limited to overnight hotel guests or patrons of the amenities. These facts lead the Board to conclude that the overall increase in traffic in the area will be negligible considering that Valley Forge already operates a large resort. The Board finds that the mitigation measures planned, including roadway modifications, stoplight timing and intersection modifications, are adequate to address traffic concerns at the present time.

Quality of the Facility

Valley Forge plans to open its gaming facility within six (6) to twelve (12) months after having been issued a Category 3 license by the Board. The facility will house five hundred (500) slot machines, a central bar, lounge and related amenities. Valley Forge's facility already includes a convention center, extensive meeting and banquet facilities, a ballroom, three (3) restaurants, a nightclub, a swimming pool, fitness center, racquetball courts, four hundred eighty-eight (488) hotel rooms and fifty-eight (58) themed suites.

The "quality of the facility" factor is difficult to quantify in any objective way; nevertheless, the Board has reviewed all aspects of Valley Forge's architectural presentations, plans and other evidence and, after careful evaluation, has, in its discretion, determined that Valley Forge's current and future facility is appropriate for

gaming and will serve as a high quality conduit to deliver the benefits of gaming to the Commonwealth.

Potential for New Job Creation and Economic Development

Job creation and economic development opportunities to the Commonwealth are yet another criteria that the Board may consider when determining suitability. 4 Pa.C.S. §1102(3) and §1325(C)(2).

Valley Forge estimates that its project will create approximately five hundred (500) quality, living wage jobs in the surrounding area. One hundred fifty (150) of these jobs will be permanent positions within the licensed facility while three hundred fifty (350) will be related to construction of the facility itself. In addition, testimony provided during the February 3, 2009 hearing indicates the intention of the financial backer, DVREIF, to have the construction jobs be filled by union workers. The Board concludes that the creation of these positions at the facility constitutes a significant boost to employment in the area, especially in the current economic climate. These new jobs for the area residents will provide steady incomes and benefits which will enhance the entire area.

The Board also concludes that the evidence indicates that Valley Forge's facility will generate spin-off jobs based upon the need to provide ancillary goods and services to those in the construction and casino trades in and around its facility and to the facility itself after construction. Thus, economic development both at the casino site and in the nearby communities will be enhanced by granting Valley Forge a Category 3 License.

Revenue generation

The record establishes that Valley Forge and its principals are likely to maintain a financially successful, viable and efficient operation. The Board's Financial Suitability Task Force has conservatively estimated Valley Forge's revenues in a stabilized year of operation in 2008 dollars to be three hundred forty dollars (\$340) win per position per day. Valley Forge, through its consultant PKF Consulting, has estimated its revenue to be three hundred twenty-eight dollars (\$328) per position per day, for a total of approximately sixty million dollars (\$60,000,000) in 2007 dollars.

Revenue generation is of critical concern, as the success of the applicant in generating revenue is directly related to the economic benefit to the Commonwealth through the receipt of tax revenues for the benefit of Pennsylvania citizens. Based upon both the Board's Financial Task Force careful investigation and credible calculations, and the credible calculations made by PKF Consulting on behalf of Valley Forge, the Board is satisfied that Valley Forge is likely to maintain a financially successful, viable and efficient business operation and will maintain a steady level and growth of revenue.

Diversity Plan

As part of its application, Valley Forge has presented a good faith plan to recruit, train and upgrade diversity in all employment classifications. Valley Forge Convention Center's current workforce, which will be retained, is comprised of 53% minority employees. Clearly, the evidence presented strongly suggests that Valley Forge supports diversity.

Developing Tourism Facilities Ancillary to Gaming

While Valley Forge's proposed facility represents its first foray into gaming *per se*, its Principals have nearly three (3) decades of experience in the development of commercial real estate projects and hotel properties in over twenty (20) states. Furthermore, C. Patrick McCoy, the proposed Vice President of Gaming Operations for Valley Forge, has more than twenty-five (25) years of gaming experience and has managed Atlantic City Casinos such as Caesar's, Bally's, and the Hilton. The Board finds that the success of these individuals in the real estate, travel, tourism, and gaming industries bodes well as an indicator of their potential for success as operators in Pennsylvania.

Record of Applicant in Meeting Community Commitments

Valley Forge and its principals' records of meeting community commitments to local agencies, community-based organizations and employees in other locations is a factor which the Board may consider in assessing and evaluating its application. 4 Pa. C.S. § 1325(c)(2)(8)(9). Valley Forge asserts that the expansion of gaming is expected to augment tourism in the region and plans to work with various local agencies to increase the number of visitors to the area. The Valley Forge Convention and Visitors Bureau, as well as the Valley Forge Hotel and Management Company, both strongly support the Valley Forge project.

Additionally, Valley Forge, in return for the Township's support of its application, has made the following commitment to Upper Merion Township:

- to make improvements to the Valley Forge Convention Center parking lot;

- to provide for additional emergency training for Valley Forge personnel;
- to install booster equipment at the Valley Forge Convention Center to improve police radio and cell phone reception; and
- to provide for an annual community benefit contribution of seventy-five thousand dollars (\$75,000) to the Township.

Accordingly, the Board concludes that Valley Forge's commitments and the support of local business groups are of the sort that can be expected to provide a substantial benefit to citizens residing in the area surrounding Valley Forge's facility.

Record of Applicant in Complying With Employment and Wage Laws

The Board concludes, based on the record before it, that Valley Forge and its principals have favorable records of compliance with Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; State and local labor relations and employment laws, as well as a favorable record of dealing with its employees and their representatives. *See* 4 Pa.C.S. §1325(10)(11). There has been no evidence presented to cause the Board to conclude that Valley Forge will not conduct itself in a similar manner at its proposed facility.

Potential Adverse Effects

Minor traffic concerns comprise the primary adverse effect identified for the Valley Forge project. While some increase in traffic around Valley Forge's facility is inevitable, its impact will be mitigated through roadway, stoplight timing and

intersection modifications, toward which Valley Forge has pledged four hundred fifteen thousand dollars (\$415,000).

The Board also recognizes the potential adverse effects of gaming in terms of gambling addictions. This is an issue which will arise no matter who the licensee is or where the project is located. Therefore, the Board believes the most appropriate way to deal with this potential effect is through the strong enforcement and monitoring of Valley Forge's compulsive and responsible gaming plan to assure compliance with the Act and accompanying regulations.

Finally, while the Board recognizes that potential adverse effects may exist at any facility, the Board finds that Valley Forge's facility will provide substantial benefits to surrounding communities in terms of job creation, infrastructure improvements and infusion of monies for social needs. In sum, the Board believes, based upon the evidence presented by Valley Forge, that a balance can be achieved in which the benefits to the public reaped via the gaming industry will offset and compensate for any negative effects the Valley Forge facility may have on the southeastern Pennsylvania area.

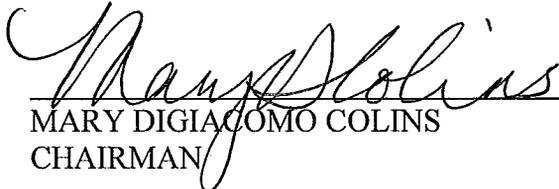
CONCLUSION

Based upon the findings of fact, conclusions of law and discussion set forth above, which are supported by the evidentiary record, the Board finds that Valley Forge has satisfied the eligibility requirements of 4 Pa.C.S. § 1305 for a Category 3 license; is suitable to receive a license; and that it is in the best interest of the public and the Commonwealth that Valley Forge be granted a Category 3 slot machine license. In addition, the Board has considered the additional factors set forth in Section 1325 of the Act and finds that, pursuant to same, Valley Forge is appropriate for licensure.

The grant and issuance of a Category 3 license does not give Valley Forge a property right and the Board may, at its discretion, revoke or suspend the license of Valley Forge if the Board finds that Valley Forge, its officers, employees or agents have not complied with the conditions of the license, the provisions in the Act, the Board's regulations and that it would be in the best interest of the public to revoke or suspend its license.

BY AND ON BEHALF OF THE
PENNSYLVANIA GAMING CONTROL
BOARD:

DATE: 5/8/09



MARY DIGIACOMO COLINS
CHAIRMAN