

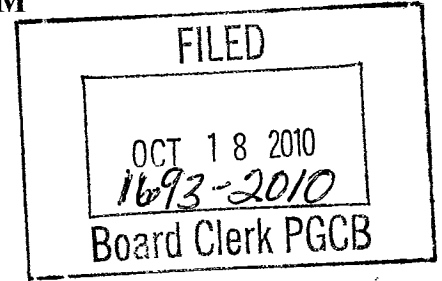
1366

**PENNSYLVANIA GAMING CONTROL BOARD
PGCB REGULATION 441a.7(i) MEMORANDUM**

IN RE: WOODLANDS FAYETTE, LLC

FILED BY: Adrian R. King, Jr., Esquire
Ballard Spahr, LLP

Tami Bogutz Steinberg, Esquire
Flaster/Greenberg P.C.



CATEGORY: CATEGORY 3 **DOCKET NUMBER:** 1366-2

DATE FILED: October 18, 2010

DATE OF LICENSING: November 16-17, 2010
HEARING

COUNSEL OF RECORD:

Adrian R. King, Jr., Esquire
Michael D. Fabius, Esquire
PA ID Nos. 69315 and 206393
BALLARD SPAHR, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 665-8500

Tami Bogutz Steinberg, Esquire
Sara H. Furman, Esquire
PA ID Nos. 56943 and 206757
Flaster/Greenberg P.C.
1810 Chapel Avenue West
Cherry Hill, NJ 08002
(856) 661-1900

I. Introduction

Pursuant to Section 441a.7(i) of the Rules and Regulations (the "Regulations") of the Pennsylvania Gaming Control Board (the "Board"), Woodlands Fayette, LLC ("Applicant") respectfully submits this Memorandum in support of its Application and Disclosure Form for a Category 3 License, Docket Number 1366-2, filed with the Board on January 13, 2010 and supplemented from time to time thereafter (the "Application"), pursuant to the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. § 1101 et seq. (the "Act").

Applicant respectfully requests that, to the extent that any evidence referenced under a particular category of this Memorandum is also relevant to other categories, such evidence be deemed to have been referenced with respect to such other categories without further action by Applicant. In addition, Applicant respectfully requests that, to the extent that any evidence provided in Applicant's Application, Applicant's Affiliated Entity Applications (as defined below), Applicant's MDPHDs and PA Supplements, or supplements to any of the foregoing is not specifically referenced under a particular category of this Memorandum but is responsive and relevant to such category, such evidence be deemed to have been referenced with respect to such category without further action by Applicant. Applicant respectfully reserves the right to supplement this Memorandum in advance of Applicant's licensing hearing scheduled for November 16-17, 2010 (the "Hearing").

It is Applicant's understanding that the Hearing will pertain to Applicant's eligibility and suitability for licensure under the Act. Applicant respectfully incorporates herein by reference the testimonial, documentary and other evidence concerning the public impact of its proposed Category 3 licensed facility at Nemaocolin Woodlands Resort (the "Facility") previously presented by Applicant to the Board at and/or in connection with Applicant's public input hearing on September 8, 2010, which Applicant understands is part of the record upon which the Board will be making its decision with respect to the Application.

II. Oral Testimony

In accordance with Section 441a.7(i)(3)-(4) of the Regulations, Applicant identifies the following witnesses who may be called upon to provide oral testimony at the Hearing:

- A. Margaret H. Magerko
President
Nemaocolin Woodlands Resort
Woodlands Fayette, LLC
1001 Lafayette Drive
Farmington, PA 15437
(724) 329-8555

Joseph A. Hardy, III
300 Hardy Boulevard
Farmington, PA 15437

If called, Ms. Magerko and/or Mr. Hardy is expected to provide an opening and closing statement summarizing the history of Nemacolin Woodlands Resort and the Applicant and the benefits to the Commonwealth of granting the Application.

- B. Christopher Plummer
General Manager
Nemacolin Woodlands Resort
1001 Lafayette Drive
Farmington, PA 15437
(724) 329-8555

If called, Mr. Plummer is expected to provide testimony relating to the Nemacolin Woodlands Resort's national and international profile, its breadth of amenities, its visitors, its history and commitment to its community, the support of the local community and legislators for the proposed facility, the well-established resort hotel criteria in Section 1305 of the Act and plans for the location of the proposed facility.

- C. Jeffrey Nobers
Vice President Marketing & Public Relations
1001 Lafayette Drive
Farmington, PA 15437
(724) 329-8555

If called, Mr. Nobers is expected to provide testimony relating to Nemacolin Woodlands Resort's national and international profile, the history of Nemacolin Woodlands Resort and the Applicant, the commitment of Nemacolin Woodlands Resort to its community, the benefits to the Commonwealth of granting the Application, the marketing efforts of Nemacolin Woodlands Resort, as well as the well-established resort criteria in Section 1305 of the Act.

- D. Paul Keller
Senior Vice President and Chief Development Officer
Isle of Capri Casinos
600 Emerson Road, Suite 300
St. Louis, Missouri 63141
(314) 813-9200

If called, Mr. Keller is expected to provide testimony relating to the Applicant's satisfaction of the elements for licensure under Section 441a.7(d)-(f) of the Board's regulations. Mr. Keller will also provide testimony relating to the design plans, construction plans and access plans of the proposed facility, the location and quality of the proposed facility, the expected timeline for the opening of the proposed facility, the potential for job creation in connection with the proposed facility, and the operational viability of the proposed facility.

- E. Virginia M. McDowell
President and Chief Operating Officer
Isle of Capri Casinos
600 Emerson Road, Suite 300
St. Louis, Missouri 63141
(314) 813-9200

If called, Ms. McDowell is expected to provide testimony relating to operational viability, financial fitness, hiring and treatment of employees, marketing and the diversity, mitigation and experience criteria of Section 1325(c) of the Act. The substance of her testimony will concern her role with Applicant, her gaming experience and the implementation of practices and procedures designed to fulfill Applicant's commitment to diversity, equality of opportunity, enhancing and supporting its local community, and responsible gaming.

- F. James B. Perry
Chairman and Chief Executive Officer
Isle of Capri Casinos
600 Emerson Road, Suite 300
St. Louis, Missouri 63141
(314) 813-9200

If called, Mr. Perry is expected to provide testimony relating to operational viability, financial fitness and the diversity, mitigation and experience criteria of Section 1325(c) of the Act. The substance of his testimony will concern his role with Applicant, his gaming experience and the implementation of practices and procedures designed to fulfill Applicant's commitment to diversity, equality of opportunity and responsible gaming.

- G. Ron Burgess
Senior Vice President, Human Resources
Isle of Capri Casinos
600 Emerson Road, Suite 300
St. Louis, Missouri 63141
(314) 813-9200

Lynne Banks
Senior Director of Human Resources
Isle of Capri Casinos
600 Emerson Road, Suite 300
St. Louis, Missouri 63141
(314) 813-9200

If called, Mr. Burgess or Ms. Banks is expected to provide testimony relating to commitments to diversity, equality of opportunity, and community commitments criteria of Section 1325(c) of the Act. The substance of his or her testimony will concern his or her role with Applicant and in enhancing and supporting diversity,

equality of opportunity and the local community at other properties managed by Applicant's gaming management company, as well as the implementation of practices and procedures at Applicant's proposed facility relating to hiring practices and the treatment of its employees.

H. Anthony J. Mumphrey, Jr., Ph.D., P.E.
President
TMG Consulting Group
One Canal Place, Suite 1170
365 Canal Street
New Orleans, LA 70130
(504) 569-9239

Suzanne Leckert
Senior Associate
TMG Consulting Group
One Canal Place, Suite 1170
365 Canal Street
New Orleans, LA 70130
(504) 569-9239

If called, Mr. Mumphrey or Ms. Leckert is expected to provide expert testimony relating to operational viability and the market area and tourism criteria of Section 1325(c) of the Act. The substance of his or her expert testimony will concern TMG Consulting Group's market assessment and revenue projections for Applicant's proposed facility, socioeconomic impacts of Applicant's proposed facility, and the fact that the gaming market in Southwestern Pennsylvania has sufficient capacity for the proposed facility at Nemaquin Woodlands Resort.

In accordance with Section 441a.7(i)(4), Mr. Mumphrey's and Ms. Leckert's qualifications are attached hereto as Exhibit A. Applicant has submitted to the Board TMG Consulting Group's (i) Gaming, Resort, and Tourism Market Assessments, updated August 2010 (see Exhibit B), (ii) Socioeconomic Impact Assessment dated October 2010 (see Exhibit C), and (iii) Tri-State and Western Maryland Assessment dated October 2010 (see Exhibit D).

I. George G. Fenich, Ph.D.
Principal
Fenich & Associates LLC
238 Windsor Road
Greenville, NC 27858
(252) 561-5329

Kathryn Hashimoto, Ph.D.
Research Analyst
Fenich & Associates LLC

238 Windsor Road
Greenville, NC 27858
(252) 561-5329

If called, Mr. Fenich or Ms. Hashimoto is expected to provide expert testimony relating to operational viability and the market area and tourism criteria of Section 1325(c) of the Act. The substance of his or her expert testimony will concern Fenich & Associates LLC's assessment of the Pennsylvania and national tourism markets, impact of the Applicant's proposed facility on existing gaming operations in the Commonwealth and how the Applicant's proposed facility best satisfies the criteria of Section 1305 of the Act.

In accordance with Section 441a.7(i)(4), Mr. Fenich's and Ms. Hashimoto's qualifications are attached hereto as Exhibit E. Applicant has submitted the October 13, 2010 Assessment of Tourism, Pennsylvania and Nemaquin Woodlands Resort, prepared by Fenich & Associates LLC (see Exhibit F).

Additional Witnesses

In addition to the foregoing witnesses, Applicant expects to have at the Hearing one or more of the following individuals to respond to any questions from the Board:

1. Executive Chef Brent E. Wertz, CEC, AAC, Vice President of Food & Beverage, Nemaquin Woodlands Resort. Mr. Wertz's qualifications are attached hereto as Exhibit G.
 - a. Nemaquin Woodlands Resort, 1001 Lafayette Drive, Farmington, PA 15437, (724) 329-8555.
2. Dennis Noonan, Vice President of Sales & Marketing, Nemaquin Woodlands Resort.
 - a. Nemaquin Woodlands Resort, 1001 Lafayette Drive, Farmington, PA 15437, (724) 329-8555.
3. Paul Christman, CPA, CHAE, Director of Financial Accounting, Nemaquin Woodlands Resort.
 - a. Nemaquin Woodlands Resort, 1001 Lafayette Drive, Farmington, PA 15437, (724) 329-8555.
4. Stephanie Miller, Director of Human Resources, Nemaquin Woodlands Resort.
 - a. Nemaquin Woodlands Resort, 1001 Lafayette Drive, Farmington, PA 15437, (724) 329-8555.

5. Dale Black, Senior Vice President of Finance and Chief Financial Officer, Isle of Capri Casinos, Inc.
 - a. Isle of Capri Casinos, Inc., 600 Emerson Road, Suite 300, St. Louis, Missouri 63141, (314) 813-9200.

6. Eric Hausler, Senior Vice President of Strategic Initiatives, Isle of Capri Casinos, Inc.
 - a. Isle of Capri Casinos, Inc., 600 Emerson Road, Suite 300, St. Louis, Missouri 63141, (314) 813-9200.

7. Terry E. McMillen, McMillen Engineering and Tammy Stenson, McMillan Engineering. In accordance with Section 441a.7(i)(4), Mr. McMillen's and Ms. Stenson's qualifications are attached hereto as Exhibit H. Applicant has previously submitted its Local Impact Report and the December 2005 Traffic Assessment, as amended and updated November 2006 and January 2010, prepared by McMillan Engineering. Both the Local Impact Report and the Traffic Assessment are a part of the public record and available from the Board's website.
 - a. 115 Wayland Smith Drive, Uniontown, PA 15401, (724) 439-8110.

Finally, Applicant expects to have at the Hearing one or more members of its legal team, including Adrian R. King, Jr., Raymond A. Quaglia and Michael D. Fabius of Ballard Spahr, LLP, Counsel for Woodlands Fayette, LLC and Nemaocolin Woodlands Resort, and Tami Bogutz Steinberg and Sara H. Furman of Flaster/Greenberg P.C., Counsel for IOC-PA, L.L.C. and Isle of Capri Casinos, Inc.

III. Evidence Demonstrating Eligibility Pursuant to Section 441a.7(d) and (e) of the Regulations

In addition to the foregoing oral testimony, and subject to the qualification set forth in Section I, *supra*, Applicant, through its undersigned counsel, relies upon the documentary evidence identified below to demonstrate its eligibility in accordance with Section 441a.7(d) and (e)(1-4), as required by Section 441a.7(i)(2). Applicant respectfully reserves its right to supplement this documentary evidence with such additional documentation and oral testimony as may be necessary to respond to inquiries by the Board, if any, at the Hearing. Each item of evidence deemed "confidential" in connection with any submission with respect to the Application is deemed confidential for purposes of this Memorandum.

- A. Compliance with the eligibility, location and additional requirements for Category 3 applicants set forth in Sections 1305 of the Act as required by Section 441a.7(e)(1) of the Regulations.

1. With respect to the location requirements of Section 1305(b)(1) that prohibit a Category 3 licensed facility from being located within 15 linear miles of another licensed facility:
 - Application, Appendix 29.
 - Application of IOC-PA, L.L.C., Appendix 29.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.
 2. With respect to the ownership requirements of Section 1305(a)(1) that the Applicant is the owner or the wholly owned subsidiary of the owner of a Well-Established Resort Hotel.
 - Application, Appendix 29, 31, 36, and 40.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.
- B. Applicant respectfully requests a stipulation from the Board that, subject to any deficiencies identified by the Board in advance of the Hearing, Applicant has complied in all material respects with Section 441a.3 of the Regulations ("Slot machine license application") as required by Section 441a.7(e)(2). Absent such stipulation, Applicant expects to rely upon the following documentary evidence to establish its compliance with Section 441a.3:
1. With respect to the requirement of Section 441a.3(a)(1) to submit an original and three copies of the Category 3 Application and Disclosure Information Form:
 - The original Application, one hard copy of the Application and three CDs containing the Application which were submitted to the Board on January 13, 2010 and supplemented thereafter from time to time.
 - Category 3 Application and Disclosure Information Forms for Affiliated Entities of Applicant, specifically Nemaocolin Woodlands, Inc., IOC-PA, L.L.C. and Isle of Capri Casinos, Inc. were submitted on April 7, 2010 (hereinafter collectively referred to as Applicant's "Affiliated Entity Applications") and supplemented thereafter from time to time.
 - Principal Entity Forms were filed for Principal Entities of Applicant or Applicant's gaming management company, specifically, the 2001 Irrevocable Trust for Margaret H. Magerko, B.I. Isle Partnership, L.P., and Goldstein Group, Inc., were submitted on April 7, 2010 (hereinafter collectively

referred to as Applicant's "Principal Entity Applications") and supplemented thereafter from time to time.

- A Category 3 Application and Disclosure Information Form for the 2001 Irrevocable Trust for Margaret H. Magerko was subsequently submitted on September 9, 2010 at the request of the Bureau of Licensing.
2. With respect to the requirement in Section 441a.3(a)(2) to submit the nonrefundable application fee posted on the Board's website:
- The nonrefundable fee of \$5,000 for the Application was submitted to the Board on January 13, 2010.
 - Fees were not required for the Affiliated Entity Applications.
 - Nonrefundable fees were submitted for each principal and principal entity at the time of each submission.
3. With respect to the requirement in Section 441a.3(a)(3) to submit a license or waiver application for each principal and key employee, including an original and three copies of the Multi Jurisdictional Personal History Disclosure Form ("MJPHD"), the Pennsylvania Supplement ("PA Supplement") and a nonrefundable background investigation deposit to be set by the Board:
- MJPHDs and PA Supplements were filed for the principals and key employees of the Applicant and the Applicant's gaming management company, IOC-PA, L.L.C. on the dates listed below (as supplemented thereafter from time to time), along with related fees:
 - April 7, 2010: Margaret H. Magerko.
 - April 7, 2010: Peter J. Magerko.
 - April 7, 2010: Cheri L Bomar.
 - April 7, 2010: Randy Baker.
 - April 7, 2010: Dale Black.
 - April 7, 2010: Roger Deaton.
 - April 7, 2010: Alan Glazer.
 - April 7, 2010: Jeffrey D. Goldstein.

- April 7, 2010: Richard A. Goldstein.
 - April 7, 2010: Robert S. Goldstein.
 - April 7, 2010: Shaun Hayes.
 - April 7, 2010: Timothy Ilsley.
 - April 7, 2010: Virginia McDowell.
 - April 7, 2010: James B. Perry.
 - April 7, 2010: Edmund Quatmann, Jr.
 - April 7, 2010: Elizabeth Tranchina – subsequently withdrawn.
 - April 7, 2010: Lee Wielansky.
 - July 15, 2010: Joseph A. Hardy, III.
 - Hereinafter collectively referred to as Applicant’s “MJDs and PA Supplements.”
- Principal/Key Employee Waiver Form were filed for (i) Patricia Mendoza, (ii) Robert Ellis, and (iii) Richard Coonrod; all principals of Goldstein Group, Inc.
4. With respect to the requirement in Section 441a.3(a)(4) to submit fingerprints for each principal and key employee:
- Fingerprint cards were received on various dates by the Applicant’s principals. Such persons were fingerprinted by local law enforcement and fingerprint cards were submitted to the Board directly through the local law enforcement agencies.
5. With respect to the requirement in Section 441a.3(a)(5) to submit a diversity plan as set forth in section 1325(b) of the Act:
- Application, Appendix 45, Diversity Plan.
 - Application of IOC-PA, L.L.C., Appendix 45, Diversity Plan.
 - Revised Diversity Plan submitted to Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board on October 8, 2010.

- Telephone conversations with Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board regarding the Diversity Plan.
- 6. With respect to the requirements in Section 441a.3(a)(6) relating to transition from a temporary to a permanent facility
 - Does not apply; Applicant will not have a temporary facility.
- 7. With respect to the requirement in Section 441a.3(a)(7) to submit a sworn or affirmed statement that the Applicant has developed and implemented internal safeguards and policies to prevent a violation of section 1513 of the act (relating to political influence):
 - Application, Annual Certification to Prevent Violations of Section 1513 Form.
 - Applicant's Affiliated Entity Applications, Annual Certification to Prevent Violations of Section 1513 Form.
- 8. With respect to the requirement in Section 441a.3(a)(8) to submit a statement demonstrating compliance with the geographical requirements of section 1305 of the Act:
 - Application, Appendix 29.
 - Application of IOC-PA, L.L.C., Appendix 29.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.
- 9. With respect to the requirement of Section 441a.3(c)(1) that the applicant promptly provide information requested by the Board relating to its application, financial fitness, character, honesty, and integrity, or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions:
 - Various responses to requests for information to Jane Grove, Bureau of Licensing from Adrian R. King, Jr. Michael D. Fabius, Tami Bogutz Steinberg and Sara H. Furman.
 - Various Responses to Bureau of Investigations and Enforcement ("BIE") requests following principal interviews, contained in e-mail and written communications from Cheri L. Bomar, Michelle Lee, Margo Marcotte, Carolyn Ittner, Tricia Mendoza, Chris Wiedenhoeft, Adrian R. King, Jr., Michael D. Fabius, Tami Bogutz Steinberg, and Sara H. Furman to BIE

agents Charles Kelley, Lee Torbin, David Smith, David Bryga, Stephen Tedrick and Richard O'Neill.

10. With respect to the requirement of Section 441a.3(c)(2) that the applicant comply with the general application requirements in Chapters 421a and 423a (relating to general provisions; and applications):
 - All application materials and supplemental materials filed to date.
 11. With respect to the requirement of Section 441a.3(d) that the applicant provide a copy of the local impact report to the political subdivision in which the licensed facility will be located:
 - Application, Appendix 41 (Certificate of Service dated March 31, 2010 that March 30, 2010 Local Impact Report was provided to host community).
 - Application of IOC-PA, L.L.C., Appendix 41 (Certificate of Service dated March 31, 2010 that March 30, 2010 Local Impact Report was provided to host community).
 12. With respect to the requirement in Section 441a.3(e) that the applicant reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation:
 - Does not apply at this time; Applicant will reimburse the Board at the conclusion of the licensing process.
 13. Applicant respectfully requests a stipulation from the Board that, subject to any deficiencies identified by the Board in advance of the Hearing, Applicant has complied with respect to the requirement of Section 441a.3(e) that the applicant will reimburse the Board for any additional costs, based on actual expenses incurred by the Board, in conducting the background investigation.
- C. Compliance with the license fee payment bond or letter of credit requirements in Section 441a.5, as required by Section 441a.7(e)(3):
- Application, Appendix 50.
 - Application of IOC-PA, L.L.C., Appendix 50.
- D. Compliance with the diversity requirements in Chapter 481a of the regulations and Section 1325(b) of the Act, as required by Section 441a.7(e)(4):
- Application, Appendix 45, Diversity Plan.

- Application of IOC-PA, L.L.C., Appendix 45, Diversity Plan.
- Revised Diversity Plan submitted to Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board on October 8, 2010.
- Telephone conversations with Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board regarding the Diversity Plan.
- Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.

IV. Evidence Demonstrating Suitability Pursuant to Section 441a.7(d) and (f)

In addition to the foregoing oral testimony and documentary evidence, Applicant will present to the Board the documentary evidence identified below to demonstrate its suitability in accordance with Sections 441a.7(d) and (f)(1)-(3) of the Regulations, as required by Section 441.7(i)(2). Applicant respectfully reserves its right to supplement this documentary evidence with such additional documentation and oral testimony as may be necessary to respond to inquiries by the Board, if any, at the Hearing. Each item of evidence deemed "confidential" in connection with any submission with respect to the Application is deemed confidential for purposes of this Memorandum.

- A. Showing of good character, honesty and integrity in compliance with Section 1310 of the Act, as required by Section 441a.7(f)(1):
 1. With respect to Section 1310(a)'s requirement that the applicant provide information, documentation and assurances pertaining to family and personal background, habits, character, reputation, business activities, financial affairs and business, professional and personal associates for the 10 years immediately preceding the filing date of the application:
 - Application.
 - Applicant's MJPHD and PA Supplement Forms.
 - Applicant's Affiliated Entity Applications.
 - Applicant's Principal Entity Applications.
 - Information provided for BIE interviews with the Applicant's principals, the principals for the Applicant's gaming management company, IOC-PA, L.L.C., the Applicant and the Applicant's Affiliated Entities.
 2. With respect to Section 1310(b)'s requirement that the Applicant notify the Board of any civil judgments obtained against the Applicant pertaining

to antitrust or securities laws of the Federal government, the Commonwealth or other state, jurisdiction, province or country:

- Does not apply, as neither Applicant nor its management company, IOC-PA, L.L.C., has not been subject to any such civil judgments.
3. With respect to Section 1310(b)'s requirement that the applicant provide a letter of reference from law enforcement agencies having jurisdiction in the applicant's place or residence or principal place of business, indicating that the agency does not have any pertinent information relating to the applicant or, if no letters are received within 30 days of the request, that the applicant provide a sworn statement under oath that the applicant is in good standing with the agency:
- Application, Appendix 48.
 - Applicant's Affiliated Entity Applications, Appendix 48.
4. With respect to Section 1310(c)'s requirement that, if the applicant has held a gaming license in any other jurisdiction, the applicant provide a letter of reference from the gaming or casino enforcement or regulatory agency in the other jurisdiction or, if no letters are received within 30 days of the request, that the applicant provide a sworn statement under oath that the applicant is in good standing with the agency:
- Section 1310(c) is not applicable to the Applicant itself, as it has not held a gaming license in any other jurisdiction.
 - With respect to Applicant's gaming management company, Applicant's Affiliated Entity Applications, Appendix 49.
5. With respect to Section 1310(d)'s requirement that each applicant for a slot machine license, principal license or key employee license apply to each federal agency deemed appropriate by the Board for agency records and provide the Board with the complete record received from the federal agency:
- Applicant, Applicant's Affiliated Entities and Applicant's principals and key employees have signed and submitted Requests for Transcript of Tax Return forms, Applications for Pennsylvania Tax Clearance Review, and other forms requested by the BIE in connection with its interviews of Applicant, Applicant's Affiliated Entities and Applicant's principals and key employees.

B. Showing of financial fitness in compliance with Section 1313 of the Act, as required by Section 441a.7(f)(2):

1. With respect to Section 1313(a)'s requirement that the applicant provide information to establish the financial stability, integrity and responsibility of the applicant, its affiliate, intermediary, subsidiary or holding company, including bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers:
 - Application, Appendices 1, 4, 8, 9, 12, 20, 45, 46, 47.
 - Applicant's Affiliated Entity Applications, Appendices 1, 4, 8, 9, 11, 12, 13, 14, 15, 16, 20, 21, 45, 46, 47.
 - Applicant's MJPHDs and PA Supplements.
 - Information provided for BIE interviews with the Applicant's principals and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.

2. With respect to Section 1313(a)'s requirement that the applicant provide an executed authorization for the Board to examine all bank accounts and records as necessary:
 - Application, Release Authorization.
 - Applicant's Affiliated Entity Applications, Release Authorizations.
 - Applicant's Principal Entity Applications, Release Authorizations.

3. With respect to Section 1313(b)'s requirement that the applicant provide information to establish the integrity of financial backers, investors, mortgagees, bondholders and holders of indentures, notes or other evidences of indebtedness:
 - Application, Schedule 12, 13, 14 15 and Appendix 4 and 5.
 - Applicant's Affiliated Entity Applications, Schedule 12, 13, 14 15 and Appendix 4 and 5.
 - Information provided for BIE interviews with the Applicant's principals and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.

4. With respect to Section 1313(c)'s requirement that the applicant post a letter of credit in the amount of \$5 million in order to demonstrate financial capability to pay the license fee:

- Application, Appendix 50.
 - Application of IOC-PA, L.L.C., Appendix 50.
5. With respect to Section 1313(d)'s requirement that the applicant provide information to establish that the applicant has sufficient business ability and experience to create and maintain a successful, efficient operation.
- Application, Appendix 27.
 - Applicant's Affiliated Entity Applications, Appendix 27.
 - Applicant's MJPHDs and PA Supplements.
 - Information provided for BIE interviews with the Applicant's principals and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.
6. With respect to Section 1313(d)'s requirement that applicants produce the names of all proposed key employees and a description of their respective or proposed responsibilities as they become known:
- Does not apply at this time, Applicant will produce the names of all proposed key employees and a description of their respective or proposed responsibilities as they become known after the issuance of the Category 3 license.
7. With respect to Section 1313(f)(1)'s requirement that the applicant provide the organization, financial structure and nature of all businesses operated by the person, including any affiliate, intermediary, subsidiary or holding companies, the names and personal employment and criminal histories of all officers, directors and key employees of the corporation; the names of all holding, intermediary, affiliate and subsidiary companies of the corporation; and the organization, financial structure and nature of all businesses operated by such holding, intermediary and subsidiary companies as the board may require, including names and personal employment and criminal histories of such officers, directors and principal employees of such corporations and companies:
- Application , Schedule 5 and Appendix 1, 8, 9, 18 and 19.
 - Applicant's Affiliated Entity Applications, Schedule 5 and Appendix 1, 8, 9, 11, 18 and 19.
 - Applicant's MJPHDs and PA Supplements.

- Information provided for BIE interviews with the Applicant's principals and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.
 - 8. With respect to Section 1313(f)(2)'s requirement that the applicant provide the extent of securities held in the corporation by all officers, directors and underwriters and their remuneration in the form of salary, wages, fees or otherwise:
 - Application, Schedule 5, 7, 10, 11, 16, 17 and Appendix 18.
 - Applicant's Principal Entity Applications, Schedule 5, 7, 10, 11, 16, 17 and Appendix 18.
 - Applicant's MJPHDs and PA Supplements.
 - Information provided for BIE interviews with the Applicant's principals and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.
 - 9. With respect to Section 1313(f)(3)'s requirement that the applicant provide copies of all management and services contracts:
 - Application, Appendix 27.
- C. Showing of operational viability as required by Section 441a.7(f)(3):
1. With respect to the requirement of Section 441a.7(f)(3)(i) for a showing of the quality of the proposed licensed facility, including the number of slot machines proposed and the ability of the proposed licensed facility to comply with statutory, regulatory and technical standards applicable to the design of the proposed licensed facility and the conduct of slot machine operations therein:
 - Application, Appendices 1, 28, 29, 31, 32, 33, 34, 35, 36, 38, 39.
 - Applicant's Affiliated Entity Applications, Appendices 1, 28, 29, 31, 32, 33, 34, 35, 36, 38, 39.
 2. With respect to the requirement of Section 441a.7(f)(3)(ii) for a showing of the projected date of the start of operations of the proposed licensed facility and any accessory uses such as hotel, convention, retail and restaurant space proposed in conjunction therewith:
 - Application, Appendices 32, 33, 36, 40.

- Applicant's Affiliated Entity Applications, Appendices 32, 33, 36, 40.
 - Information provided for BIE interviews with the Applicant's principals and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.
3. With respect to the requirement of Section 441a.7(f)(3)(iii) for a showing of the ability of the applicant's proposed licensed facility to generate and sustain an acceptable level of growth of revenue:
- Application, Appendix 41 and 47.
 - December 2005 Traffic Assessment, as amended and updated November 2006 and January 2010, prepared by McMillan Engineering.
 - (i) August 2010 Update to the Gaming, Resort and Tourism Market Assessments, (ii) October 2010 Socioeconomic Impact Assessment, and (iii) October 2010 Tri-State and Western Maryland Assessment prepared by TMG Consulting Group.
 - October 13, 2010 Assessment of Tourism, Pennsylvania and Nemaquin Woodlands Resort, prepared by Fenich & Associates LLC.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.

V. Evidence Demonstrating How Applicant Addresses the Criteria Identified in Section 1325(c) of the Act, as required by Section 441a.7(d) and (g) of the Regulations

In addition to the foregoing oral testimony and documentary evidence, Applicant will present to the Board the documentary evidence identified below to demonstrate how it addresses the criteria identified in Section 1325(c) of the Act in accordance with Sections 441a.7(d) and (g)(1)-(14), as required by Section 441a.7(i)(2) of the Regulations. Applicant respectfully reserves its right to supplement this documentary evidence with such additional documentation and oral testimony as may be necessary to respond to inquiries by the Board, if any, at the Hearing. Each item of evidence deemed "confidential" in connection with any submission with respect to the Application is deemed confidential for purposes of this Evidentiary Memorandum.

- A. Compliance with Section 441a.7(d) of the Regulations, relating to compliance with 1325(c) of the Act:

1. Location and quality of proposed facility:
 - Application, Appendices 1, 28, 29, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 45.
 - Applicant's Affiliated Entity Applications, Appendices 1, 28, 29, 31, 32, 33, 34, 35, 36, 38, 39, 40, 45.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.
2. Potential for new job creation and economic development:
 - Application, Appendix 41, 45 and 47.
 - December 2005 Traffic Assessment, as amended and updated November 2006 and January 2010, prepared by McMillan Engineering.
 - (i) August 2010 Update to the Gaming, Resort and Tourism Market Assessments and (ii) October 2010 Socioeconomic Impact Assessment prepared by TMG Consulting Group.
 - October 13, 2010 Assessment of Tourism, Pennsylvania and Nemaquin Woodlands Resort, prepared by Fenich & Associates LLC.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.
3. Applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility:
 - Application, Appendix 45, Diversity Plan.
 - Applicant's Affiliated Entity Applications, Appendix 45, Diversity Plan.
 - Revised Diversity Plan submitted to Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board on October 8, 2010.
 - Telephone conversations with Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board regarding the Diversity Plan.
4. 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:

- Application, Appendix 45, Diversity Plan.
 - Applicant's Affiliated Entity Applications, Appendix 45, Diversity Plan.
 - Revised Diversity Plan submitted to Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board on October 8, 2010.
 - Telephone conversations with Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board regarding the Diversity Plan.
5. 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:
- Application, Appendix 45, Diversity Plan.
 - Applicant's Affiliated Entity Applications, Appendix 45, Diversity Plan.
 - Revised Diversity Plan submitted to Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board on October 8, 2010.
 - Telephone conversations with Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board regarding the Diversity Plan.
6. The potential for enhancing tourism which is expected to result from granting a license to the applicant:
- Application, Appendix 41.
 - Applicant's Affiliated Entity Applications, Appendix 41.
 - (i) August 2010 Update to the Gaming, Resort and Tourism Market Assessments and (ii) October 2010 Tri-State and Western Maryland Assessment prepared by TMG Consulting Group.

- October 13, 2010 Assessment of Tourism, Pennsylvania and Nemacolin Woodlands Resort, prepared by Fenich & Associates LLC.

- 7. The history and success of the applicant in developing tourism facilities ancillary to gaming development in other locations if applicable to the applicant:
 - Applicant's Affiliated Entity Applications, Appendix 45.
 - Information provided for BIE interviews with the Applicant's Affiliated Entities and the principals for the Applicant's gaming management company, IOC-PA, L.L.C.

- 8. 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:
 - Application, Appendix 45.
 - Applicant's Affiliated Entity Applications, Appendix 45.
 - October 2010 Socioeconomic Impact Assessment prepared by TMG Consulting Group.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.

- 9. The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations:
 - Application, Appendix 45, Diversity Plan.
 - Applicant's Affiliated Entity Applications, Appendix 45, Diversity Plan.
 - Revised Diversity Plan submitted to Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board on October 8, 2010.
 - Telephone conversations with Mozelle Daniels, Director of Diversity & Special Counsel to the Executive Director of the Board regarding the Diversity Plan.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.

10. The degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care and treatment of problem gamblers and their families, child care, public transportation, affordable housing and social services, will be mitigated:
 - Application, Appendix 41 and 45, Compulsive and Problem Gambling Plan.
 - Applicant's Affiliated Entity Applications, Appendix 45, Compulsive and Problem Gambling Plan.
 - Addendum to the Compulsive and Problem Gambling Plan submitted to Elizabeth Lanza, Acting Director of the Office of Compulsive and Problem Gambling of the Board on October 7, 2010.
 - Transcript of testimony and exhibits presented at Applicant's Public Input Hearing.

11. The record of the applicant and its developer regarding compliance with:
 - a. Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws.
 - Application, Appendix 45.
 - Applicant's Affiliated Entity Applications, Appendix 45.
 - b. State and local labor relations and employment laws.
 - Application, Appendix 45.
 - Applicant's Affiliated Entity Applications, Appendix 45.

12. The record of the applicant in dealing with its employees and their representatives at other locations.
 - Application, Appendix 45.
 - Applicant's Affiliated Entity Applications, Appendix 45.

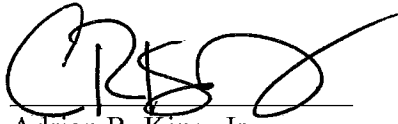
VI. Public Input Hearing Evidence

In addition to the foregoing oral testimony and documentary evidence, Applicant respectfully reserves its right to present to the Board testimonial transcripts, exhibits and/or other evidence from Applicant's Public Input Hearing relating to various criteria set forth in the Act and the Regulations.

VII. Conclusion

Applicant respectfully submits that the aforementioned evidence to be presented to the Board through Applicant's counsel will satisfy Applicant's burden to establish and demonstrate, by clear and convincing evidence, its eligibility and suitability for licensure under Section 1305 of the Act, and to address the criteria identified in Section 1325(c) of the Act, as required by Section 441a.7(d) of the Regulations.

Respectfully submitted,



Adrian R. King, Jr.
PA ID No. 69315
BALLARD SPAHR, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Tami Bogutz Steinberg
PA ID No. 56943
FLASTER/GREENBERG P.C.
1810 Chapel Avenue West
Cherry Hill, NJ 08002