

**COMMONWEALTH OF PENNSYLVANIA  
GAMING CONTROL BOARD**

IN RE:	:	
	:	
APPLICATION OF <b>IOC PITTSBURGH, INC.</b>	:	<b>DOCKET NO. 1357</b>
	:	
APPLICATION OF <b>PITG GAMING, LLC</b>	:	<b>DOCKET NO. 1361</b>
	:	
APPLICATION OF <b>STATION SQUARE GAMING, LP</b>	:	<b>DOCKET NO. 1363</b>
	:	
Applications for Category 2	:	
Slot Machine License in Pittsburgh, PA	:	
A City of the Second Class	:	

**ORDER**

AND NOW this 1<sup>st</sup> day of February, 2007, based upon the full and careful consideration of the record evidence before it, the provisions of the Pennsylvania Race Horse Development and Gaming Act (“Act”) (4 Pa.C.S. §§ 1101 – 1904, as amended) and the Act’s accompanying regulations, the Pennsylvania Gaming Control Board (PGCB) issues the following:

**IT IS ORDERED THAT**, the application for licensure as a Category 2 licensee in the City of Pittsburgh of **PITG Gaming, LLC** is **GRANTED** and the license is approved for the reasons set forth in the Gaming Control Board’s Adjudication of the Applications for Category 2 Slot Machine Licenses in Pittsburgh, PA, a City of the Second Class, issued this date, and subject to satisfaction of the following conditions prior to the issuance of the Category 2 license:

1. The expiration of the thirty (30) day appeal period permitted by the Pennsylvania Rules of Appellate Procedure;

2. The payment of any outstanding fees, other than the \$50 million licensing fee, as determined by the PGCB pursuant to 4 Pa.C.S. § 1208;

3. The agreement to the Statement of Conditions of licensure to be imposed and issued by the Gaming Control Board, as evidenced by the signing of the agreement by PITG Gaming, LLC's executive officer or designee within five business days of the receipt of the Statement of Conditions from the PGCB; and

4. The payment of the one time \$50,000,000 slot machine license fee required pursuant to 4 Pa.C.S. § 1209, made by the latter of four months from the date of this Order or ten (10) calendar days following the conclusions of any appeals to the grant of this license pursuant to 4 Pa.C.S. §1204 (if any), and no less than ten (10) business days prior to the beginning of the test period necessary to commence slot machine operations under 58 Pa. Code § 467.2(a)(9).

**IT IS ORDERED THAT** the applications for licensure as a Category 2 licensee in the City of Pittsburgh of **IOC Pittsburgh, Inc.** and **Station Square Gaming, LP**, are **DENIED** for the reasons set forth in the Gaming Control Board's Adjudication of the Applications for Category 2 Slot Machine Licenses in Pittsburgh, PA, a City of the Second Class issued this date.

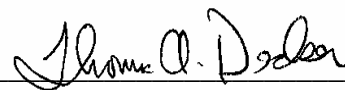
**IT IS FURTHER ORDERED THAT** the PGCB delegates to a designated Board member, in consultation with the Executive Director, authorization to permit PITG Gaming, LLC to commence a test period pursuant to 58 Pa. Code § 467.2(a)(9), which test period shall commence on such date and time and shall continue for such duration as shall be determined by a designated Board member, in consultation with the Executive Director. A designated Board member, in consultation with the Executive Director, shall

be authorized to establish, terminate, restrict, limit, extend or otherwise modify the test period or the hours thereof. The authority delegated shall include the right to order PITG Gaming, LLC to take whatever actions are necessary to preserve the policies of the Act, the regulations and any technical standards adopted by the PGCB and/or to assure an effective evaluation during the test period including permitting, limiting, restricting or prohibiting PITG Gaming, LLC from conducting slot operations.

**IT IS FURTHER ORDERED THAT** the PGCB delegates to a designated Board member, in consultation with the Executive Director, the ability to determine the successful completion of the test period and to authorize the effective date and time at which slot operations may commence pursuant to 58 Pa. Code § 467.2(b), such authorization to include a specific number of slot machines and gaming floor square footage. The authority delegated shall include the right to restrict, limit, condition or abrogate any authority to conduct slot operations and the authority to subsequently amend, modify or remove any restriction, limitation, condition or prohibition imposed pursuant to any authority granted hereunder;

that the delegation of authority to a designated Board member shall expire as determined by the PGCB; and

that in the event that a designated Board member cannot perform the delegated duties, the Chairman shall have the authority to select an alternate PGCB member to fulfill these duties.



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**Thomas A. Decker, Chairman**  
**Pennsylvania Gaming Control Board**

In accordance with 4 Pa.C.S. § 1204, the Supreme Court has been vested with exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of all licensed entity applications. Pa.R.A.P. provides for any Petition for Review to a PGCB decision to be filed within thirty (30) days after the entry of the order.

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**ADJUDICATION**

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

maintaining the integrity of the regulatory control of the facilities' slots. 4 Pa.C.S. §1102.

The Act establishes the Pennsylvania Gaming Control Board (“the Board” or “PGCB”) which is comprised of three gubernatorial and four legislative appointee members. 4 Pa.C.S. §1201(b). The Board is provided general jurisdiction over all gaming and related activities, including but not limited to overseeing 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 qualifying licensed horse racetracks to maintain slot machine facilities; Category 2 licenses permitting up to five stand-alone slot machine locations in metropolitan or other tourism areas; and Category 3 licenses permitting up to two hotel-resort slot machine facilities. 4 Pa.C.S. §§1301-1307.

The Act sets forth essential eligibility criteria for each Category of license which any license applicant must satisfy simply to proceed to consideration of its application. With respect to Category 2 licenses, which are the subject of this adjudication, Section 1304 of the Act provides the eligibility criteria including that the applicant may not be eligible for a Category 1 license and that the locations for the Category 2 facilities include two facilities in a city of the first class, one facility in a city of the second class and the remaining two facilities in a revenue or tourism-enhanced location. Further, for each of these facilities, the Act sets specific distance requirements with respect to Category 1 and other Category 2 facilities. 4 Pa.C.S. §1304. The Act also imposes eligibility criteria on all applicants for all Categories, 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 or may not be issued licenses 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 on 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 provides extensive guidance for the Board's consideration in issuing licenses. Section 1325(c)<sup>1</sup> - Additional requirements, provides:

In addition to the eligibility requirements otherwise provided in this part, the board may also take into account the following factors when considering an application for a slot machine license:

- (1) The location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area.
- (2) The potential for new job creation and economic development which will result from granting a license to an applicant.
- (3) The applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility.

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<sup>1</sup> 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 or otherwise in accordance with the objectives of the Act. In addition, and more important to the Category 2 licenses where competition exists, the 1325(c) factors permit a basis for comparison of applicants to determine, in the Board's discretion, which applicants' projects are best-suited for the licenses.

(4) 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.

(5) 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.

(6) The history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant.

(7) 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.

(8) The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations.

(9) 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.

(10) The record of the applicant and its developer regarding compliance with:

(i) Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and

(ii) State and local labor relations and employment laws.

(11) The applicant's record in dealing with its employees and their representatives at other locations.

In light of the comprehensive nature of the General Assembly's directed regulation, the Board set a deadline of December 28, 2005, for applications for all three



categories of licenses.<sup>2</sup> By this deadline, the Board received four applications for the one available Category 2 license in Pittsburgh (the city of the second class). One applicant subsequently did not fulfill the application requirements, leaving the three applicants currently before the Board.

With respect to these three Category 2 applications, the Board engaged in extensive review and investigation. The Board conducted 3 days of public input hearings on April 18, 2006, April 19, 2006 and May 10, 2006<sup>3</sup> during which each of the three applicants made presentations and during which over 200 individuals, including members of the community, spoke either in favor of or in opposition to gaming and the proposed projects. In addition, during the public comment period, the Board received a combined 468 written comments, a petition signed by 749 individuals and 341 postcards relating to the proposals from the public.<sup>4</sup> The Board placed large amounts of information about the projects on its website<sup>5</sup>, and conducted final hearings on November 20-21, 2006 for the Pittsburgh applicants.<sup>6</sup>

The applicants before the Board for the available Category 2 license in Pittsburgh are 1) IOC Pittsburgh, Inc., 2) PITG Gaming, LLC and 3) Station Square Gaming, LP. The authority for these licenses arises under Section 1304 of the Act. Because the Act only permits one license to be awarded in Pittsburgh and there are three applicants, there is competition among the applicants for the one available license. Because of this

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2 See [www.pgcb.state.pa.us/press/pr\\_112805.htm](http://www.pgcb.state.pa.us/press/pr_112805.htm)

3 See [www.pgcb.state.pa.us/hearing\\_sch.htm](http://www.pgcb.state.pa.us/hearing_sch.htm)

4 See [www.pgcb.state.pa.us/hearing\\_comments.htm](http://www.pgcb.state.pa.us/hearing_comments.htm)

5 See [www.pgcb.state.pa.us/impact.htm](http://www.pgcb.state.pa.us/impact.htm)

6 See [www.pgcb.state.pa.us/press/pr\\_101106.htm](http://www.pgcb.state.pa.us/press/pr_101106.htm)

competitive factor, the three applicants not only have been tasked to satisfy the Board that they are eligible and suitable for a Category 2 license, but they also have been required to convince the Board that their respective project should be chosen as the one which best serves the Commonwealth's and the public's interests in that location. Ultimately this is a determination committed to the sound exercise of the Board's discretionary authority to select the applicant which the Board believes will best serve the Commonwealth's and the public's interests as outlined in the Act.

On December 20, 2006, the Board met during an open, public meeting in accordance with the requirements of the Sunshine Law, 65 Pa.C.S. Chapter 7, and Section 1206 of the Act for the purpose of voting upon all pending applications and awarding all Category 1 and 2 licenses after consideration of all of the applications, collectively and together in a comprehensive, Statewide manner.

In addition to the Act's eligibility criteria under Sections 1304 and 1310-1313, factors which the Board took into consideration when reviewing these applications are those defined in Section 1325 of the Act as listed above. The Board fully considered these factors to arrive at a decision on licensure based upon all of the evidence in the record before the Board. The Board considered all of the evidence which makes up the evidentiary record in this case, received briefs supporting the applications, heard oral argument where presented and has had the opportunity to question applicants about their proposals.

In addition, throughout the entire licensing and investigative process, the Board reached out to various federal, state and local law enforcement agencies, including the FBI and the Pennsylvania State Police, requesting any information in the possession of

those agencies related to the suitability of the applicants in order to assure that the Board had obtained all information relevant to each applicant's suitability for licensing. Those agencies have not provided the Board with information which would preclude the applicants from being considered for a license.

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

Much to the credit of the Category 2 Pittsburgh applicants, the Board has been presented with three very competent proposals, all of which are eligible and suitable for licensure under the terms of the Act. Unfortunately, the Board is constrained by the Act only to issue one license in Pittsburgh. Those applicants not awarded a license have, under the mandates of the Act, been denied a license. The Board emphasizes the point that the denials of two applicants are not because the unsuccessful applicants were found unsuitable, but because the Board had the difficult task of choosing among three suitable candidates and proposals, each of which possessed various positive attributes. Simply stated, the successful applicant was the applicant which possessed the project which the Board evaluated, in its discretion, to be the best project for licensure under the criteria of the Act.

During the December 20, 2006 public meeting of the Board, the Board voted to approve for a Category 2 license in Pittsburgh, **PITG Gaming, LLC**, pursuant to the terms and conditions to be imposed by the Board. Concurrently, the Board voted that the

remaining two applications for a Category 2 license in Pittsburgh, those being **IOC Pittsburgh, Inc.** and **Station Square Gaming, LP**, be denied as not having achieved a qualified majority of support for licensure as defined in the Act and because the City of Pittsburgh is limited to only 1 Category 2 license. *See* Sections 1301 and 1304 of the Act.

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

**GENERAL FINDINGS APPLICABLE TO ALL PITTSBURGH APPLICANTS**

1. All three applicants have applied for a slot machine license to operate a slots casino in the City of Pittsburgh, a city of the second class.
2. The initial applications from the Pittsburgh applicants seeking a Category 2 slot machine license were received by the Board on December 28, 2005.
3. The Bureau of Licensing then put each application package through a detailed completeness review. 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 detected, requests for more information, documentation and additional applications were made of the applicant. As the new information and applications arrived, they were again put through the completeness review process and deficiencies identified.
4. This gathering of information and documentation was ongoing throughout the ten months prior to the applicants' suitability hearings.
5. Once the Bureau of Licensing determined it was sufficiently satisfied with the core contents of the initial applications, the applications were given to the Bureau of

Investigations and Enforcement (“BIE”) and the Bureau of Corporate Compliance and Internal Controls for the character and financial suitability investigations.

6. BIE reviewed and inspected the applications to identify any inconsistencies and to develop a general familiarity with the overall business activity, financial situation and history of the applicant, developed investigative plans that would be utilized to conduct the background investigations of each applicant and put those plans into action.

7. Requests for information to numerous organizations and agencies were made. Criminal history checks were requested through the Pennsylvania State Police which included queries of the Federal Bureau of Investigation’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 the applicant 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 Federal Bureau of Investigation Offices were contacted with respect to each applicant in order to ascertain whether any concerns existed as to the licensure of any particular applicant. 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. Additional verifications were made as well such as passports being verified through the

United States Department of State and bank accounts, loans, lines of credit, safe deposit box ownership, etc. verified with financial institutions.

8. BIE also conducted database searches, utilizing, among others, commercial databases such as Screening Network, Accurint/Relavint, Lexis/Nexis, Choicepoint Comprehensive Report, and Auto Track XP 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 against each other and to the information contained in the application materials.

9. Contact was made with other gaming regulators concerning the applicants and the natural persons associated with the applicant in order to verify gaming licensure and licensure status.

10. Extensive personal interviews were conducted by BIE agents with applicants and their natural person qualifiers during which investigators gathered extensive amounts of information concerning these entities and individuals and their businesses and personal histories.

11. Investigation of each applicants' finances in order to assess financial suitability was conducted jointly by BIE and the Bureau of Corporate Compliance and Internal Controls. The role of BIE was to verify the data upon which these reports were based. The Bureau of Corporate Compliance and Internal Controls personnel created the financial fitness report.

12. A Financial Suitability Task Force was established with professional members from the Bureau of Corporate Compliance and Internal Controls, as well as

professional consultants retained as part of that Task Force. The Task Force developed the process for the determination of financial suitability of the applicants. The process entailed extensive document review.

13. The Financial Suitability Task Force established the following criteria in order to determine Financial Suitability for each applicant. Criteria 1 being an applicant's financial track record examining past financial performance and financial risk profile; Criteria 2 being an Individual Analysis; and Criteria 3 being the financial wherewithal of an applicant, which included project funding and each applicant's ability to grow and maintain revenue.

14. The Bureau of Corporate Compliance and Internal Controls collected extensive information from each applicant which included corporate information for the applicant and any other related entities and individual information where applicable.

15. 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.

16. A drive-time analysis was conducted for each applicant. A drive-time analysis is a proven method which has been used extensively over a number of years in the major gaming markets to estimate potential gaming revenues. The drive-time analysis is used to estimate the potential gaming revenue of a gaming facility on the basis of 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, or management, operational or marketing capabilities of the applicant or any other applicant in Pennsylvania.

17. The Task Force conducted a drive-time analysis for each applicant's proposed facility to: 1) estimate the gaming revenues of the applicant's proposed facility for a stabilized year of operation, which was used because of added comparability, (for clarification, the stabilized year takes place once the permanent facility is open and has ramped up and is moving into a steady state of operation, and 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.

18. The drive-time analyses were based on win and visitation analyses for each applicant's proposed facility. The visitation analyses were conducted by dividing the surrounding area into various zones and analyzing the following three critical factors for each zone: 1) Adult Gaming Propensity, which is an 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, which is an estimate of how often a resident of a given area visits a particular facility in a year; (3) Average Trip Expenditure, which is an estimate of the spending propensity of a visitor during a trip to a given facility.



19. Public Input Hearings were conducted by the Board on April 18, 19 and May 10, 2006 at the Omni William Penn Hotel in Pittsburgh, Pennsylvania. Numerous representatives of all three applicants testified at the hearing on behalf of their respective proposals. All interested groups and individuals wishing to speak at the meeting concerning the three proposals were given the opportunity.

20. The Board also provided a written public comment period that closed on June 2, 2006.

21. 58 Pa. Code 441.19(y) provides a procedure for a person to intervene in the licensing hearing of an applicant if that person has an interest in the proceeding which is substantial, direct and immediate and if the interest is not adequately represented in the hearing.

22. No petitions to intervene were filed with the Board by any person or entity with respect to any of the Category 2, Pittsburgh applications.

23. Final suitability hearings, pursuant to 58 Pa.Code 441.19, were held for the Category 2 Pittsburgh applicants on November 20, 21, and December 13, 2006.

24. Each applicant was provided the opportunity to provide a written brief to the Board by December 12, 2006, after the completion of the suitability hearings for all three applicants. The Board received a brief from each applicant.

25. On December 19, 2006, the Board provided the three applicants the opportunity to provide oral argument before the Board. IOC Pittsburgh, Inc. and PITG Gaming, LP availed themselves of the opportunity. Station Square Gaming, LLC did not participate in the oral arguments.

26. Each applicant, as part of its application, submitted a traffic study prepared by a professional firm retained by the applicant for the purpose of analyzing traffic issues associated with the proposed project and proposing traffic and roadway modifications to alleviate traffic problems association with increases in traffic which the proposed casino would create.

27. Pursuant to an interagency agreement with PennDOT which had an existing contract for traffic engineering services with the engineering and planning firm of McCormick Taylor, the Board engaged McCormick Taylor to review traffic study plans submitted by each Category 2 applicant in Pittsburgh and to provide a responsive independent report concerning the traffic studies and proposed mitigation measures and modifications to address increased traffic concerns.

28. The McCormick Taylor reports were provided to each respective applicant for review and further comment and discussion.

29. Each applicant had the opportunity to submit additional materials, supplementations and proposals to address concerns raised by McCormick Taylor concerning traffic issues.

30. McCormick Taylor prepared a final report again analyzing the applicants' proposals which were provided to the applicants prior to the final hearings and to which the applicants were permitted to respond during their final hearings.

31. The McCormick Taylor reports and the applicants' responses were submitted and admitted as exhibits in the respective applicants' final hearings.

32. The Act permits the Board to issue only one license in a city of the second class, *i.e.* Pittsburgh.

33. Because there is only one license in Pittsburgh, there will be no competition between competing facilities in Pittsburgh.

34. All applicants were provided final hearings during which they were permitted to present witnesses to provide sworn testimony and documentary and demonstrative evidence as each applicant deemed appropriate to attempt to convince the Board that it should be awarded the Category 2 license in Pittsburgh. PGCB Regulation 441.19, Licensing hearings for slot machine licenses, provided the procedural framework for those hearings. 58 Pa. Code §441.19.

35. Pursuant to PGCB regulation 441.19(o), 58 Pa. Code §441.19(o), applicants were provided the opportunity to also present evidence during their own hearing to and concerning their competitors in order to demonstrate that their own project should be selected rather than the project of a competing applicant. All applicants who desired to present comparative evidence were required to notify the other applicants of that intent and provide notice of the evidence to be presented in order to permit all applicants with an opportunity to respond to any comparative evidence.

36. No applicant filed any written objection to the Board's docket, or raised any objection orally or in writing to the Board during the course of its hearing, relating to the procedure utilized by the Board for the conduct of the hearing process generally or to any particular allegation of error.

37. On December 20, 2006, during a public meeting, the Board voted unanimously to award PITG Gaming, LLC the available license in Pittsburgh, a city of the second class, thereby denying the applications of IOC Pittsburgh, Inc. and Station Square Gaming, LP.

**PITG GAMING, LLC (“PITG GAMING”)**

38. PITG Gaming’s proposal is to be located on approximately 17 acres of land along the northern shore of the Ohio River referred to both as the North Side and the North Shore.

39. PITG Gaming’s proposed entertainment complex valued at approximately \$435 million, includes nightclubs, lounges, a jazz club, restaurants, a parking garage with 4,100 spaces, unencumbered access to the Ohio River front, an esplanade along the river, sculpture gardens and a 100 seat terraced amphitheater. PITG Gaming’s plan did not include a temporary slots facility.

40. PITG’s proposed expanded plan includes additional dining, nightclubs, a buffet and a multi-purpose room that can house an event with over 2,500 people. In addition, if market conditions allow, a 300 room hotel is possible.

41. At the Public Input Hearing twenty-nine (29) individuals spoke, including one (1) state legislator, four (4) local elected official, nineteen (19) representatives of community groups and fifteen (15) individuals. Of the twenty-nine (29) speakers, four (4) were supportive of the PITG Gaming project, four (4) were opposed and twenty-one (21) were neutral but expressed ideas or had questions.

42. By the June 2, 2006 deadline established by the PGCB for the receipt of written public comment, the PGCB also received three written comments, three hundred forty-one postcards and a petition with 749 signatures in support of PITG Gaming and four comments in opposition to the PITG Gaming project.

43. On November 21, 2006, the PGCB conducted a public suitability hearing for the purpose of hearing additional testimony and evidence from PITG Gaming

concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act.

44. In addition to the public hearings, the PGCB's Bureau of Licensing expended 434 hours processing and reviewing PITG Gaming's application, the Bureau of Investigations and Enforcement expended 1,329 hours of investigation time into PITG Gaming, its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Controls, along with the Financial Suitability Task Force, expended 167 hours investigating the financial suitability of PITG Gaming.

45. The application for a Category 2 slot machine license filed by PITG Gaming is complete, all fees and costs which have been billed to PITG Gaming have been paid as required, all required bonds and/or letters of credit were posted and PITG Gaming and its affiliated parties consented to and have undergone background investigations as required by the Act.

46. On December 5, 2003, PITG Gaming was formed as a Pennsylvania limited liability company.

47. PITG Gaming is a wholly-owned subsidiary of Barden Development, Inc. ("Barden Development"). Barden Development was formed as an Indiana corporation on November 16, 1993 and currently has its principal place of business in Detroit, Michigan.

48. Don H. Barden, an African American, is the owner and Chief Executive Officer of Barden Development. Barden Development is a holding company that owns and manages entities engaged in gaming, real estate, investment and parking businesses. Barden Development, through its subsidiary the Majestic Star Casino, LLC, owns and operates five casino properties: the Majestic Star Casino and the Majestic Star Casino II,

formerly know as Trump Indiana, both riverboat casinos located in Gary, Indiana; Fitzgeralds Hotel and Casino in Las Vegas, Nevada; and the Fitzgeralds Casinos in Black Hawk, Colorado and Tunica, Mississippi. Collectively, the Barden-owned gaming facilities contain approximately 5,800 slot machines, 165 table games, 21 poker table games and 1,441 hotel rooms. Barden Development has approximately eleven years experience in the gaming industry.

49. Don H. Barden has over 25 years of business experience and has been involved in the gaming industry since 1995.

50. PITG Gaming is a 100% minority owned enterprise. If all options in PITG Gaming Investor Holdings, LLC are exercised, PITG Gaming's minority ownership will remain at a level exceeding 95%.

51. Barden Development has been licensed in numerous gaming jurisdictions by virtue of its subsidiaries that hold gaming operator licenses in Nevada, Colorado, Mississippi and Indiana. Don Barden, the sole shareholder of Barden Development, has also been licensed in Michigan.

52. Although Barden Development is licensed in good standing in other jurisdictions, the PGCB did not utilize alternative licensing standards during the course of its investigation of PITG Gaming's application.

53. The following key employee qualifiers of PITG Gaming consented to and were subject to required background investigations: Barden Development, Jurat Holdings, LLC, PITG Gaming Investor Holdings, LLC, Don H. Barden and Michelle R. Sherman.

54. The following individuals, all of whom have filed key employee qualifier applications in support of PITG Gaming's Category 2 slot machine license application, hold options to acquire membership interests of 5% or more in PITG Gaming Investor Holdings, LLC: William Watson, James Baker, Lawrence C. McCrae, William Robinson, Jr., Gladys E. Bettis, and Johnnie Bettis<sup>7</sup>.

55. Jefferies and Co., as an underwriter and provider of committed financing for the project, has requested a waiver of its obligations to be licensed as a key employee qualifier of PITG Gaming.

56. Neither PITG Gaming, nor any person affiliated with PITG Gaming, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the PGCB or the Thoroughbred or Harness Racing Commissions.

57. PITG Gaming does not possess any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

58. Neither PITG Gaming, nor any of its affiliates, subsidiaries, intermediaries or holding companies hold any interest in a supplier or manufacturer license.

59. No public official is a key employee/qualifier or has any prohibited financial interest in, or is employed by PITG Gaming or any related entity.

60. Neither PITG Gaming, nor any of its affiliates or key employee/qualifiers, made any political contributions of any kind in violation of the Act.

61. PITG Gaming satisfied all local, state and federal tax obligations.

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<sup>7</sup> Key employee qualifier Johnnie Bettis died on November 28, 2006. Mr. Bettis held a 5.26% ownership interest in PITG Gaming Investor Holdings, LLC.

62. Investigation did not reveal that PITG Gaming or any of its affiliates, directors, owners or key employee/qualifiers have been convicted of a felony or a gambling offense in violation of the Act.

63. Investigation did not reveal any information that would indicate that PITG Gaming or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

64. Information gathered during the course of BIE's investigation concerning PITG Gaming and its key employee/qualifiers did not reveal any information concerning bankruptcies, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealing or any other information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of PITG Gaming or its key employee/qualifiers.

65. Because PITG Gaming is a newly-formed entity with no financial history, the PGCB Financial Suitability Task Force analyzed the past financial performance of the Majestic Star Casino, LLC, a wholly-owned subsidiary of Barden Development, and did not find anything financially material that would preclude PITG Gaming from obtaining a Category 2 slot machine license.

66. The Majestic Star Casino, LLC has a diverse base of gaming and entertainment operations throughout the United States and approximately 91% of the revenues of the Majestic Star Casino, LLC are from gaming activities. By successfully accessing the capital markets and the bank market the Majestic Star Casino, LLC has demonstrated that the capital markets are comfortable with its financial profile.



67. Jefferies & Co. has provided over \$450 million in firmly-committed financing for PITG Gaming's proposed development in Pittsburgh. Jefferies & Co. is a publicly-traded company listed on the New York Stock Exchange with a market capitalization in excess of \$3.7 billion.

68. The PGCB Financial Suitability Task Force projected a revenue estimate for PITG Gaming of approximately \$482.8 million annually in a stabilized year in 2005 dollars, with a \$265 win per position per day at 5,000 machines.

69. PITG Gaming projected its revenue estimate at \$452.2 million annually in a stabilized year in 2005 dollars with a \$248 win per position per day at 5,000 machines.

70. PITG Gaming's estimate was 6.3% less than the estimate of the PGCB Financial Suitability Task Force.

71. PITG Gaming indicated and investigation revealed that it has the ability to pay the \$50 million licensing fee and to post the \$1 million bond required upon issuance of a Category 2 slot machine license.

72. Based upon representations by PITG Gaming and analysis by the PGCB Financial Suitability Task Force, PITG Gaming is likely to maintain a financially successful, viable and efficient business operation, which would maintain a steady level and growth of revenue

73. PITG Gaming has a good faith diversity plan in place. PITG Gaming's diversity statement indicates that the company is committed to providing equal opportunity in employment for all people and to prohibiting discrimination in employment on the basis of race, color, religion, sex, national origin, age, sexual

orientation, marital status, AIDS or HIV status, non job-related disability or veterans status.

74. Barden Development has a history of promoting diversity and PITG Gaming has hired a Business Development Manager to develop, implement and monitor an action plan aimed at increasing business activity with certified Minority and Women Business Enterprises (“MBE/WBE”) located in Pittsburgh and Allegheny County.

75. PITG Gaming has developed flexible payment terms in order to improve working capital for MBE/WBE vendors, has assisted these vendors with manufacturers to increase their profit margins and to find new business opportunities both locally and nationally, as well as other assistance.

76. PITG Gaming submitted a Compulsive Gaming Plan with its application, but the plan requires amendment as it does not fully address all the criteria for development, employee training items, self-execution training and underage gambling. However, the plan does express PITG Gaming’s intent to comply with the Act’s signage requirements.

77. PITG Gaming’s planned casino project will be located along the northern shore of the Ohio River to the east of the West End Bridge and to the west of the Carnegie Science Center and Heinz Field, close to PNC Park and less than one-half mile from Pittsburgh’s Point State Park and downtown area across the river. The proposed site is bordered by Reedsdale Street to the north, North Shore Drive to the east, and North Point Drive and Belmont Street to the west. Existing connections from Interstates 279 and 379 and Pennsylvania State Routes 65 and 51 surround the site.

78. The site of PITG Gaming's proposed facility currently contains a parking lot and a few industrial buildings.

79. The PITG facility will provide a year-round entertainment venue on Pittsburgh's North shore and provide a new use for previously underdeveloped property.

80. PITG Gaming has submitted an accelerated construction plan that calls for the completion of the permanent facility by March 2008.

81. PITG Gaming's facility will operate as the "Majestic Star Casino" and upon its March 2008 opening, the casino will have 3,000 slot machines ready for use. By September 2008, PITG Gaming will request to increase the number of slot machines to 3,500. By September 2009, PITG projects the casino's gaming floor will be sufficient to house a total of 5,000 slot machines if approved by the PGCB.

82. PITG Gaming's development plans do not include the construction of a temporary facility. PITG provided testimony that by accelerating construction for its permanent facility, it can achieve its permanent facility with a full complement of permitted slot machines in a time frame which will maximize revenues to the Commonwealth as soon as March 2008, and sooner than if a temporary facility is built.

83. The main façade of the two story structure proposed facility will be constructed of glass walls overlooking the Ohio River front and will provide unencumbered access to the Ohio River front, with an esplanade, sculptural gardens, terraced dining and a 100-seat terraced amphitheater. The design also incorporates the riverfront trail.

84. PITG Gaming’s proposed entertainment complex includes a multistory parking garage with approximately 4,100 spaces, nightclubs, lounges, jazz clubs and restaurants. PITG Gaming is committed to the construction and financing of this phase.

85. PITG Gaming’s second phase plan contains additional dining, nightclubs, buffet and a multi-purpose room that can house an event with over 2,500 people, along with an additional 1,000 parking spaces to be added. PITG is also committed to this phase.

86. If market conditions dictate, PITG Gaming will have the space to construct a 300-room hotel.

87. PITG projects that excess parking in its facility will be available to provide additional parking for events at Heinz Field and PNC Park.

88. PITG Gaming’s facility will be the “flagship” casino property of owner Don Barden.

89. PITG Gaming plans to enter into a management contract with Majestic Star Casino, LLC for the purpose of managing the gaming operations.

90. PITG Gaming’s site is located in the Pittsburgh’s Downtown Riverfront Zoning District. Gaming is a permitted land use in this zoning district.

91. The location of the facility is largely separated and isolated from the adjacent residential neighborhoods by highway Route 65, thus limiting potential impacts of the project to the surrounding neighborhoods.

92. PITG Gaming’s casino and other amenities will create approximately 1,220 casino jobs with an additional 275 food and beverage positions for a total of about 1,495 jobs intended to be full-time living wage positions.

93. PITG Gaming's project will create approximately 4,000 construction jobs.

94. The record indicates that PITG and its parent company, Barden Development, 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 dealing with employees and their representatives.

95. As part of its application, PITG Gaming submitted a traffic study. The study indicated that peak weekday traffic in the area of the casino to be between 7 and 9 a.m. with a smaller peak at about 12:00 noon and 4 to 6 p.m.. Weekend traffic peaks appear significantly smaller than weekday and typically occur from late morning through the evening hours.

96. It is contemplated that the traffic to the facility will be primarily from Route 65 or the West End Bridge.

97. McCormick Taylor expressed concerns regarding some aspects of the PITG traffic study and recommended the following mitigation measures be taken by PITG Gaming to address the project impacts: working with the City of Pittsburgh and the Pennsylvania Department of Transportation to develop alternatives to the proposed non-traditional intersection configurations, including the intersections at Reedsdale Street and Fontella Street; assessing appropriate mitigation of impacts on pedestrian traffic associated with Allegheny County Community College; developing a plan to provide access during periods impacted by traffic generated by adjacent events, including the ten (10) Pittsburgh Steelers home games at Heinz Field; developing a regional plan for wayfinding signage compatible with the existing regional routes and nearby destinations;

coordinating with utility providers to assess potential relocation impacts associated with roadway improvements; and coordinating with transit service providers to ensure integrated service to the proposed facility is consistent with the anticipated hours of operation.

98. McCormick Taylor asserts that with certain exceptions and subject to the improvements proposed by PITG Gaming and the recommendations of McCormack Taylor, the proposed improvements appear to adequately mitigate the project impacts.

99. PITG Gaming's proposed traffic improvements include significant reconstruction and reconfiguration of the existing local roads and interchange ramps and PITG Gaming has committed to these traffic mitigation measures in order to ease traffic congestion and aid in ingress and egress of vehicles.

100. PITG also committed to fund road improvements across the river at the south end of the West End Bridge to facilitate better traffic movement crossing the Ohio River.

101. The road improvements proposed by PITG Majestic Star will be used by other commuters, thereby providing benefits outside of the casino business.

102. PITG's facility is also accessible by water taxi, nearby bus stops and a walking trail adjacent to the property. Discussion have taken place with the Pittsburgh Area Transit regarding extending bus transit access, as well as completing a light rail extension with a stop near the facility.

103. Since 2004, Mr. Barden has donated approximately \$100,000 to community-based organizations. Mr. Barden's companies have donated approximately \$41,000 to assorted charities.

104. PITG Gaming has pledged to lead a \$350 million neighborhood redevelopment project in Pittsburgh's Hill District with a \$1 million per year contribution to the project for the first three years.

105. PITG Gaming has committed \$7.5 million per year for 30 years towards the funding of a new arena in Pittsburgh as proposed by Governor Edward G. Rendell in the "Plan B" proposal.

106. PITG Gaming has committed \$1 million per year for three years to the Northside Leadership Conference.

107. PITG Gaming will pursue an agreement with its neighbors to allow its parking resources to be used to mitigate other parking demands in Pittsburgh's North Shore section, including Pittsburgh Steelers home football games at Heinz Field which occur primarily on weekends from late August through December.

108. Barden Development's other casino properties regularly hold various entertainment events for the public as well as patrons and tourists.

**IOC PITTSBURGH, INC. ("IOC")**

109. IOC's proposed plan included development of a temporary gaming facility, with a permanent gaming facility to follow, in the Lower Hill District on the eastern edge of downtown Pittsburgh.

110. The temporary site was to be situated on the parcel known as the "Melody Tent" site adjacent to the existing Mellon Arena and was to be a removable bi-colored sprung tent style structure with a luminous canopy. The temporary phase plans also included two restaurants. The temporary structure would then be donated to the City of

Pittsburgh after construction of the permanent casino structure was completed and open for operation.

111. The permanent facility was to be constructed adjacent and attached to a new multi-purpose arena, which would replace the existing Mellon Arena, via a pedestrian concourse comprised of a series of steel and glass cascading canopies. The permanent casino design featured a warped steel and glass four story canopy to be constructed from stone, metal, brick and colored glass, which would be accessed via Fifth Avenue and would be visible to much of downtown Pittsburgh.

112. The permanent facility plan also included five restaurants, two lounges, a jazz club, a lobby bar, retail space and a parking garage with 2,900 spaces, as well as an urban design plan which included improved streetscapes, lighting and gardens.

113. At the Public Input Hearing seventy-nine (79) individuals spoke in relation to the IOC project, including two (2) state and six (6) local elected officials, nineteen (19) representatives of community groups and fifty-two (52) individuals. Of the seventy-nine (79) speakers, fifty-four (54) were supportive of the IOC project, three (3) were opposed and twenty-two (22) were neutral as to the IOC project specifically, but had concerns of a more general nature including concerns about gaming in general.

114. By the June 2, 2006 deadline established by the PGCB for the receipt of written public comment, the Board received four-hundred thirty eight (438) written comments specific to the IOC project. Two-hundred fifty eight (258) were opposed to the project, while one-hundred eighty (180) supported the project. Additionally, a petition with approximately three-thousand eight hundred seventy eight (3,878) signatures in support of IOC was received.



115. On November 20, 2006, the Board conducted a public suitability hearing for the purpose of hearing additional testimony and evidence from IOC concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act. The November 20, 2006 hearing was continued in order to take further testimony and was reconvened and concluded on December 13, 2006.

116. In addition to the public hearings, the PGCB's Bureau of Licensing expended 657 hours processing and reviewing IOC's application, the Bureau of Investigations and Enforcement expended 2,146.15 hours of investigation time into IOC, its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Internal Controls, along with the Financial Suitability Task Force, expended 259.55 hours investigating the financial suitability of IOC.

117. The application for a Category 2 license filed by IOC is complete, all fees and costs which have been billed to IOC have been paid as required, all required bonds and/or letters of credit were posted and IOC and its affiliated parties consented to and have undergone background investigations as required by the Act.

118. IOC is a Pennsylvania corporation that registered with the Pennsylvania Department of State on November 29, 2005.

119. IOC is a wholly-owned subsidiary of Isle of Capri Casinos, Inc. ("Isle of Capri"), a publicly traded company which was formed in 1992.

120. Isle of Capri is substantially controlled by the Goldstein family, which owns, directly or indirectly, a controlling interest of the company's stock.

121. IOC, as a wholly owned subsidiary of Isle of Capri, does not demonstrate diversity of ownership beyond the ownership interests of Isle of Capri, the parent.

122. Isle of Capri, through its subsidiaries, owns and operates 13 casinos in 12 locations in the United States and the Bahamas. Additionally, Isle of Capri holds a two-thirds ownership interest in casinos in Dudley and Wolverhampton, England, and owns and operates Pompano Park Harness Racing Track in Pompano Beach, Florida.

123. IOC, a new corporation formed exclusively for Pennsylvania gaming, has not been previously licensed in any other gaming jurisdiction. However, IOC's parent company, Isle of Capri, has been found suitable and is licensed in good standing in several gaming jurisdictions including: Colorado, Florida, Iowa, Louisiana, Mississippi, Missouri, Nevada, Great Britain and the Commonwealth of the Bahamas.

124. Although its parent company Isle of Capri is licensed in good standing in other jurisdictions, IOC did not request that the PGCB utilize alternative licensing standards and the PGCB did not utilize alternative licensing standards during the course of its investigation of IOC's application.

125. The following key employee/qualifiers of IOC consented to and were subject to required background investigations: Isle of Capri Casinos, Inc., B.I.J.R.R. Isle, Inc., B.I. Isle Partnership, L.P., Goldstein Group, Inc., Alter Company, Bernard Goldstein, Robert Scott Goldstein, William Randolph Baker, Emanuel Crystal, Alan Joel Glazer, Shaun Regan Hayes, Jeffrey David Goldstein, Timothy Michael Hinkley, Allan Bernard Solomon, Gregory David Guida, Robert Farrell Griffin, Donn Roland Mitchell II, Himbert Jayson Sinopoli, Robert Jeffery Norton, Timothy Alan Ilsley, Lester James McMackin, Amanda Moss Totaro, Darrel Ray Kammeyer, Francis P. Ciuffetelli, Irene Selma Goldstein, Kathy Ellen Goldstein and Richard Alter Goldstein.

126. The following individuals associated with IOC requested waivers of their obligation to be licensed: Frederick Edwin John George Brackenbury, Richard Louis Meister, Andrew James Economon, Richard A. Coonrod, Robert Gray Ellis, Patricia Mendoza, Roger Winfred Deaton, Nancy A. Donovan, Duncan Michael McKenzie, Becky Alice Mumma, Robert F. Boone, Richard Louis Meister and Richard French Stewart.

127. Neither IOC, nor any person affiliated with IOC, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board or the Thoroughbred or Harness Racing Commissions.

128. IOC does not possess any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

129. Neither IOC, nor any of its affiliates, subsidiaries, intermediaries or holding companies, hold any interest in a supplier or manufacturer license.

130. No public official is a key employee/qualifier or has any prohibited financial interest in, or is employed by IOC or any related entity.

131. Neither IOC, nor any of its affiliates or key employee/qualifiers, made any political contributions of any kind in violation of the Act.

132. IOC satisfied all local, state and federal tax obligations.

133. Investigation did not reveal that IOC or any of its affiliates, directors, owners or key employee/qualifiers have been convicted of a felony or gambling offense in violation of the Act.

134. Investigation did not reveal any information that would indicate that IOC or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

135. Information gathered during the course of BIE's investigation concerning IOC and its key employee/qualifiers did not reveal 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 IOC or its key employee/qualifiers.

136. The PGCB Financial Suitability Task Force performed an evaluation of IOC and Isle of Capri's financial fitness and suitability by analyzing the entities' financial histories and data and did not find anything material that would preclude IOC from obtaining a Category 2 slot machine license.

137. While IOC was a newly formed company for the purpose of applying for a slots license in Pennsylvania, its parent company, Isle of Capri, had previous yearly revenues exceeding \$1.25 billion, had grown to be one of the 10 largest publicly traded gaming companies in the United States and had demonstrated strong financial performance during the fiscal years ending April 30, 2001, through and including April 30, 2006.

138. The PGCB Financial Suitability Task Force projected a revenue estimate for IOC of approximately \$482.8 million annually in a stabilized year in 2005 dollars, with a \$265 win per position per day at 5,000 machines.

139. IOC projected its revenue estimate at \$410 million annually in a stabilized year in 2005 dollars, with a \$225 win per position per day at 5,000 machines.

140. IOC's estimate was 15.1% less than the estimate of the PGCB Financial Suitability Task Force.

141. IOC indicated and investigation revealed that it had the ability to pay the \$50 million licensing fee and to post the \$1 million bond required if a Category 2 slot machine license had been issued to IOC.

142. Based upon the representations by IOC and analysis by the PGCB Financial Suitability Task Force, IOC was likely to maintain a financially successful, viable and efficient business operation which would maintain a steady level and growth of revenue.

143. IOC had a good faith diversity plan in place. IOC's Equal Employment Opportunity and Diversity statements provided for equal employment opportunity for all persons without regard to race, creed, color, religion, gender, age, sex, sexual orientation, AIDS or HIV status, national origin, veteran status, marital status, disability related to childbirth or pregnancy, non job-related disability, citizenship status or status with regard to public assistance. This policy applied to, but was not limited to, recruitment, recruitment advertising, hiring, job assignment, promotion, compensation, benefits, training, transfer, layoff, return from layoff, reclassification, termination, demotion and company sponsored education, social and recreational programs.

144. IOC had entered into contracts with local diversity consultants Gil Beary and Associates and Integrated Contractor Suppliers and Consultants and had developed a comprehensive plan designed to achieve the maximum possible diversity in workforce

composition and Minority/Women/Local Small Businesses vendor/contractor participation.

145. IOC submitted a Compulsive and Problem Gaming Plan with its application, but the plan required amendment as it did not fully address all the criteria for development, employee training items, self-exclusion training and underage gambling. However, the plan did express IOC's intent to comply with the Act's signage requirements.

146. IOC's planned casino project was to be located in the Lower Hill District of the City of Pittsburgh, on the eastern edge of the downtown between Centre Avenue and Fifth Avenue immediately adjacent to the existing Mellon Arena site. The site is within walking distance of the downtown Pittsburgh area, and was bordered to the North and East by more residential areas.

147. This area begins a transition area between the downtown and a largely residential African-American section of Pittsburgh which approximately fifty (50) years ago had a portion of its buildings razed to allow for the construction of the Mellon Arena.

148. IOC's plan included three phases. A temporary casino phase and two additional phases.

149. The temporary casino facility was planned to be approximately 73,000 square feet, but was increased to 80,550 sq ft under a 11/3/06 redesigned plan, and housed a gaming floor with a minimum of 1,370 slot machines, two restaurants and patron and back-of-house support facilities. If awarded a license, IOC expected to be prepared to begin construction in early March of 2007 and open the temporary casino by early September 2007. IOC was committed financially to this phase of the project.

150. The first permanent phase was planned to include 90,000 square feet of gaming space with 3,000 slot machines, five dining venues, two lounges, a jazz club, a lobby bar and retail space. An eight story on-site parking garage was to be constructed to accommodate approximately 2,900 parking spaces. IOC projected having its permanent casino ready for opening in April of 2009. IOC was committed financially to this phase of the project.

151. Phase two of the plan provided for the expansion of the facility to 5,000 slot machines, a 400 room hotel, entertainment space, additional retail space and a European spa and pool, as well as additional parking spaces. This phase was not committed to by IOC and was dependent upon market demand and the economy.

152. In addition to a gaming facility and other amenities listed above, IOC joined with the Lemieux Group, L.P., Nationwide Realty Investors Ltd. and numerous neighborhood residents and community stakeholders under the umbrella coalition banner of “Pittsburgh First.”

153. IOC pledged to commit \$1 million annually to the Pittsburgh First Foundation, a newly created not-for-profit foundation to be used for economic development. In addition, IOC committed to contribute all of its profits from the development of the 28 acre Mellon arena site to the Pittsburgh First Foundation.

154. The Master Plan proposed by the Pittsburgh First Foundation included construction of an 18,000 seat multipurpose arena and a \$350 million redevelopment of approximately 28 acres of the existing Mellon Arena and an adjacent parking area into mixed-use housing, office and retail space.

155. IOC had a binding commitment in place for the private funding of a new arena by way of a \$290 million contribution paid by Isle of Capri and IOC within 90 days of the issuance of a Category 2 Slot Machine License to IOC. The arena was to be owned by the Sports & Exhibition Authority. IOC also committed to contribute a portion of a hospital property to the Sports & Exhibition Authority

156. IOC entered into an agreement with the Pittsburgh Penguins hockey franchise committing the team to remain in Pittsburgh for twenty (20) years, contingent on the construction of the new arena.

157. IOC maintained that the entire project (i.e. casino, multipurpose arena and the redevelopment of the 28 acre Mellon Arena site) represented more than a \$1 billion investment into the Pittsburgh economy.

158. The Zoning Code of the City of Pittsburgh was amended by Pittsburgh City Council on December 19, 2005. Amendments included creating the definition of a “Gaming Enterprise” as a permitted use in certain zoning districts; the expansion of certain zoning districts; and the broadening of city review of planning for a Gaming Enterprise.

159. IOC’s proposed casino was a Gaming Enterprise, as defined under the Zoning Code of the City of Pittsburgh and was located within the area of the city zoned for gaming activity.

160. IOC’s Master Development Plan was approved by the Pittsburgh Planning Commission on September 24, 2006.

161. The total IOC project would have encompassed approximately 46.5 acres which included 9.4 acres for the primary casino and hotel complex, an adjacent 2.0 acre



parcel for a casino Phase 2 location, 6.2 acres for an arena and 28.9 acres which included the current Mellon Arena to be dedicated to the community redevelopment efforts.

162. IOC submitted an Economic Impact Analysis prepared by The Innovation Group in connection with the proposed project which indicated that the temporary gaming facility could be expected to create approximately 1,000 jobs with an average annual salary of approximately \$26,000 and that the permanent gaming facility would employ approximately 2,000 people in full time equivalent jobs.

163. IOC estimated that the construction of the temporary casino would create 564 construction jobs with an additional 979 jobs during the construction of the permanent casino.

164. IOC estimated that the construction of the arena would generate 3,500 construction jobs.

165. IOC anticipated hiring approximately 90% of its team members from the Pittsburgh region.

166. The record indicates that IOC and its parent company Isle of Capri 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 record in dealing with employees and their representatives.

167. As part of IOC's application, Trans Associates, Inc. submitted a traffic study entitled *Pittsburgh First Master Plan Traffic and Parking Study* dated December 13, 2005. Supplements to the Trans Associates, Inc. traffic study were prepared during

March 2006. McCormick and Taylor reviewed these traffic studies and provided comments.

168. McCormick and Taylor initially concluded that the traffic study incorrectly estimated peak traffic for the gaming facility at 3,800 to 3,900 vehicles per hour. McCormick and Taylor, taking into account the proposed hotel development, residential units and office/retail space, estimated the peak traffic flow to be approximately 4,600 vehicles per hour.

169. McCormick and Taylor also expressed concerns about how access to the gaming facility would be integrated with the remainder of the Master Plan. Trans Associates, Inc. indicated that they would look into the issue as the project moved forward. As of November 8, 2006, McCormick Taylor indicated that with some exceptions, specifically including seven surrounding intersections, it appeared that IOC's proposed improvements adequately mitigated the project impacts and concluded that there were still issues that had not been addressed.

170. The City of Pittsburgh, Department of City Planning also reviewed the IOC project and opined that the site has good regional access but local street traffic issues remain troublesome. It further noted that its review did not consider the impact of Phase 2 development, expressed concerns that the loading area access on Fifth Avenue is problematic and that the impact of traffic on local neighborhoods and Duquesne University are concerns.

171. Traffic access to the IOC project would have been served in large part by urban streets some of which are often used for residential access. This urban street grid includes Centre Avenue, Fifth Avenue, Bedford Avenue and Forbes Avenue.

172. The project site is within walking distance to the downtown area, has road access via Route 579 and is served by subway and bus lines.

173. The IOC site is within walking distance of approximately 3,100 existing hotel rooms, the Hill District and Uptown businesses as well as approximately 7,000 existing parking spaces not including Arena parking. The walk to the site is through an urban streetscape.

174. IOC is a new company and does not have any history. However, IOC's parent company, Isle of Capri, had past experience developing tourism attractions ancillary to gaming. In addition to operating hotels and restaurants at its other properties, it hosted concerts and other entertainment including B.B King's 80<sup>th</sup> Birthday Benefit Concert in Biloxi, Mississippi. This concert attracted more than 9,000 fans and raised over \$250,000 for the B.B. King Museum and Delta Interpretive Center. Isle of Capri has also hosted the Mississippi Gulf Coast Billfish Classic Tournament, the Great Mississippi River Balloon Race and the Quad City Air Show, among other events.

175. IOC's parent company, Isle of Capri, has also undertaken a number of programs to help communities where it conducts business including a scholarship program it has established which provides up to \$20,000 over four years to motivated high school graduates seeking higher education and planning on entering the hospitality field. Isle of Capri also responded to Hurricanes Katrina, Rita and Wilma, which ravaged the Gulf Coast, by establishing the "Isle of Capri Relief Fund" with an initial company donation of \$500,000, and which has surpassed \$1,000,000. This fund has been used to provide services and assistance to more than 500 Isle of Capri staff members. In

addition, in the aftermath of Hurricane Katrina, Isle of Capri continued to pay its affected employees for fixed periods.

176. Since its formation, the Isle of Capri has donated more than \$42 million to non-profit organizations, charities, educational institutions, civic groups and assistance programs.

### **STATION SQUARE GAMING, LP**

177. Station Square Gaming's original project, to be located on the south side of the Monongahela River, included a stand alone gaming facility to accommodate up to 4,000 slot machines, restaurants, retail space and 3,100 parking spaces in an area already known as Station Square.

178. The proposal was intended to compliment and enhance the existing attractions in the immediate area surrounding the Station Square site which included a 400 room hotel and conference center, restaurants, entertainment venues, service and retail space among multiple buildings, office space among multiple buildings, 90,000 square feet of Amphitheatre space and support facilities and 3,785 parking spaces in surface lots and multi-level parking garages.

179. At the Public Input Hearing, forty-nine (49) individuals testified including one (1) legislator testified in support of the project and four (4) representatives of local government units who testified with three supporting the proposal while the other neither supported nor opposed Station Square Gaming. Sixteen (16) representatives of Community Groups testified with eight (8) the Groups supporting the proposal, while the other eight (8) did not take a position for or against. In addition, twenty-eight (28)

individuals spoke regarding Station Square with thirteen (13) spoke in support, two (2) were opposed, and thirteen (13) did not take a position for or against the project.

180. By the June 2, 2006 deadline established by the PGCB for the receipt of written public comment, the PGCB received twenty-three (23) written comments specific to the Station Square Gaming project with seventeen (17) supporting the project and six (6) opposing the project.

181. On November 20, 2006, the PGCB conducted a public suitability hearing for the purpose of hearing additional testimony and evidence from Station Square Gaming concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act. The November 20, 2006 hearing was continued and then reconvened on December 4, 2006, following which the hearing was closed.

182. In addition to the public hearings, the PGCB's Bureau of Licensing expended 1,218 hours processing and reviewing Station Square Gaming's application, the Bureau of Investigations and Enforcement expended 2,106.07 hours of investigation time into Station Square Gaming, its affiliates and key employee qualifiers and the Bureau of Corporate Compliance and Internal Controls, along with the Financial Suitability Task Force, expended 365.55 hours investigating the financial suitability of Station Square Gaming.

183. The application for a Category 2 license filed by Station Square Gaming is complete, all fees and costs which have been billed to Station Square Gaming have been paid as required, all required bonds and/or letters of credit were posted and Station Square Gaming and its affiliated parties consented to and have undergone background investigations as required by the Act.

184. Station Square Gaming was formed for the limited purpose of obtaining a Category 2 Slot Machine License.

185. Forest City Enterprises is the principal owner of Station Square Gaming, owning 75% of Station Square Gaming.

186. Forest City Enterprises is an \$8 billion publicly traded company, founded in 1921 by the Ratner family and is principally engaged in the ownership, development, management and acquisition of commercial and residential real estate and land in 25 states and the District of Columbia. Forest City Enterprises has offices in Boston, Chicago, Denver, Los Angeles, New York City, San Francisco and Washington, D.C. with its headquarters in Cleveland, Ohio. Forest City Enterprises has more than 4,000 employees and has been a family-owned business for 85 years, but has no gaming related experience. Forest City Enterprises is currently working on large scale redevelopment projects in the Stapleton area of Denver, Colorado and University Park at MIT.

187. The remaining 25% of Station Square Gaming's ownership is comprised of the cumulative ownership percentages of the following individuals: William K. Lieberman (9%), Charles R. Zappala (9%), Franco Harris (4%), Glen Mahone (2%) and Yvone Cook (1%).

188. Station Square Gaming's diversity of ownership is limited because of the 75% stake owned by Forest City Enterprises and the remaining 25% owned by 5 persons.

189. The following key employee/qualifiers of Station Square Gaming have consented to and were subject to required background investigations: Forest City Station Square, Inc., Pittsburgh Casino, Inc., Forest City Commercial Group, Inc., Pittsburgh Casino, Inc., Forest City Rental Properties Corporation, Forest City Enterprises, Inc.,

RMS, Ltd., FCE Management, L.P., Harrah's Pittsburgh Management Company, Harrah's Operating Company, Inc., Harrah's Entertainment, Inc., Goldman Sachs Asset Management, LP, Capital Research & Management Co., Janus Capital Management, LLC, Private Capital Management, LP, Third Avenue Management, LLC, William K. Lieberman, Franco Harris, Glenn R. Mahone, Yvonne Cook, Brian J. Ratner, James A. Ratner and Ronald A. Ratner.

190. Neither Station Square Gaming, nor any person affiliated with Station Square Gaming, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board or the Thoroughbred or Harness Racing Commissions.

191. Station Square Gaming does not possess any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

192. Neither Station Square Gaming, nor its affiliates, intermediaries, subsidiaries and holding companies, hold any interest in a supplier or manufacturer license.

193. No public official is a key employee/qualifier or has any prohibited financial interest in, or has been employed by Station Square Gaming or any related entity.

194. Neither Station Square Gaming, nor any of its affiliates or key employee/qualifiers, made any political contributions of any kind in violation of the Act.

195. Station Square Gaming satisfied all local, state and federal tax obligations.

196. Investigation did not reveal that Station Square Gaming or any of its affiliates, directors, owners or key employee/qualifiers have been convicted of a felony or a gambling offense in violation of the Act.

197. Investigation did not reveal any information that would indicate that Station Square Gaming, or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

198. Information gathered during the course of BIE's investigation concerning Station Square Gaming and its key employee/qualifiers did not reveal 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 Station Square Gaming or its key employee/qualifiers.

199. The PGCB Financial Suitability Task Force performed an evaluation of Station Square Gaming's financial fitness and suitability and did not find anything financially material that would preclude Station Square Gaming from obtaining a Category 2 slot machine license.

200. The PGCB Financial Suitability Task Force projected a revenue estimate for Station Square Gaming of \$426.3 million annually in a stabilized year in 2005 dollars, with a \$292 win per position per day at 4,000 machines.

201. Station Square Gaming projected its revenue estimate at \$535.6 million annually in a stabilized year in 2005 dollars, with a \$367 win per position at 4,000 machines.



202. Station Square Gaming's estimate was 25.6% greater than the estimate of the PGCB Financial Suitability Task Force.

203. Station Square Gaming contends its higher revenue estimate is due to the ability of Harrah's Management Company, Station Square's intended management company, to generate greater business due in great part to its marketing and player's Rewards Program.

204. Station Square Gaming indicated and investigation revealed that it had the ability to pay the \$50 million licensing fee and to post the \$1 million bond required if a Category 2 slot machine license was issued to Station Square Gaming.

205. Based upon the representations by Station Square Gaming and analysis by the PGCB Financial Suitability Task Force, Station Square Gaming was likely to maintain a financially successful, viable and efficient business operation which would have maintained a steady level growth of revenue.

206. Station Square Gaming had a good faith diversity plan in place indicating its commitment to providing equal opportunity in employment for all people and prohibiting discrimination in employment on the basis of race, color, religion, sex, national origin, age, sexual orientation, marital status, AIDS and HIV status, non-job related disability and veteran's status.

207. Station Square Gaming's parent Forest City has a history of promoting diversity in its work force and in the procurement of goods, products and services and a plan to continue this effort in diversity.

208. Station Square Gaming submitted a Compulsive and Problem Gaming Plan with its application, but the plan required amendment as it did not fully address all

the criteria for development, employee training items, self-exclusion training and underage gambling. The plan did express Station Square's intent to comply with the Act's signage requirements.

209. The Station Square Gaming facility was to be located on the south side of Pittsburgh between Carson Street and the Monongahela River in the current Station Square entertainment complex. The site and the area immediately surrounding it is developed and currently serves as a tourist and entertainment center for the City of Pittsburgh with various retail, restaurant, nightclub and entertainment venues complimented by access to downtown parking and the Sheraton Station Square Hotel. Immediately between the Station Square building complex and the river are railroad tracks. To the South-side of Carson Street is a hillside which cannot be developed.

210. During the November 20, 2006 suitability hearing, Station Square Gaming indicated that the original plans submitted to the PGCB had changed and that the new plans included a temporary gaming facility to be built in an existing warehouse on the property that would be renovated to include 1,500 slot machines at a cost of \$82 million. The temporary facility would utilize existing parking in the area.

211. Station Square Gaming stated the temporary facility could be scheduled to open by the end of 2007, operate until April 2009 and then close in anticipation of the opening of the permanent facility in May of 2009.

212. Station Square Gaming's permanent facility, accommodating up to 4,000 slot machines, restaurants, retail space, 3,100 parking spaces and multi-purpose space for concerts, sporting events or other entertainment was planned to open in May of 2009.

213. The total estimated cost of both the temporary and permanent facilities was approximately \$655 million and Station Square Gaming was committed to financing and constructing these phases.

214. In addition, a 250 room hotel was planned to be added to the permanent facility at a cost of \$62.5 million.

215. Station Square Gaming also planned a phase of the project which included building condos and rental units on the site. There was no firm commitment to this phase which Station Square stated would be determined by market demand.

216. The Station Square Gaming project would have resulted in the elimination of an existing amphitheater and the elimination of night clubs and restaurants which currently exist on portions of the site. In addition, a parking area which is currently used for commuter parking would have been eliminated.

217. Harrah's Pittsburgh Management Company (Harrah's), which is a wholly owned subsidiary of Harrah's Operating Company, was designated as the management company for Station Square Gaming and was the only entity associated with Station Square with a history of gaming experience. Harrah's Entertainment, the parent, is a publicly traded gaming company that has operated 44 casinos in 12 jurisdictions in the United States and abroad. It also employs approximately 85,000 people and is the one of the largest gaming companies in the world.

218. Harrah's Entertainment is a fifty percent (50%) owner in Chester Downs and Marina, a Category 1 slot machine licensee located in Chester, Pennsylvania, just south-west of Philadelphia, Pennsylvania.

219. Harrah's does not possess any ownership interest in Station Square Gaming.

220. Harrah's, as a management company for Station Square Gaming, would have utilized its Harrah's Rewards program to entice repeat customer business. This rewards program has an estimated 40 million members to whom Harrah's Entertainment markets to gain cross market visitation. Harrah's estimated that approximately 400,000 of these members live within a 50 mile radius of Pittsburgh with 1.3 million members living within 250 miles of Pittsburgh.

221. Station Square Gaming estimated that its proposal would create 1,800 casino jobs, as well as 250 hotel jobs intended to be full-time living wage positions.

222. Both Station Square Gaming parent company Forest City and its proposed operating company, Harrah's, 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 record in dealing with employees and their representatives.

223. Station Square Gaming's proposed site is accessible via Interstate 376 which connects with Interstate 76 in the east; Interstate 279, which connects to Interstate 79 both to the north and to the west; Route 28, a four lane roadway serving northeastern Allegheny County and Armstrong County; Pa 65, which connects Beaver County and northwestern Allegheny County with Interstate 279, and Pa 51, which connects southwestern Westmoreland County with Interstate 279. These roadways connect to the proposed Station Square site via Interstate 279 at West Carson Street, to Interstate 376 via Smithfield Street Bridge and Fort Pitt Boulevard to Pa 51 through Pittsburgh's

Liberty tunnels and Arlington Avenue. However, the direct access points to the project were from Carson Street.

224. The Station Square Gaming site is also accessible by three modes of public transportation including two incline railroads, three light rail transit routes which connect Station Square Gaming with the Pittsburgh central business district and Pittsburgh neighborhoods and suburbs to the south and fifteen public bus routes with most of the buses stopping in the Station Square area.

225. The Station Square Gaming site is also accessible by water transportation. The Gateway Clipper Fleet, which is used for touring and shuttle service, docks at Station Square and public docks and a marina at Station Square provide for service to recreational watercraft and water taxi service.

226. Station Square Gaming submitted a traffic study along with its application. McCormick Taylor submitted to the PGCB three reviews of the traffic impact study submitted for the Station Square Gaming project one in September and two in November 2006 in response to subsequent and revised Station Square Gaming traffic studies submitted to the PGCB.

227. Based on an evaluation of the information from this initial traffic impact report, McCormick Taylor determined that Station Square Gaming's report was too limited in scope in that it only examined three intersections that did not serve as access to the Station Square site. In addition, the only traffic periods that the Station Square traffic study evaluated were weekend and weekday evening times.

228. McCormick Taylor stated that Station Square Gaming's examination of trip generation, the estimate of how much traffic would be entering and exiting the site,

was provided by Station Square's traffic engineer and McCormick Taylor determined this information did include a fair assumption for the use of mass transit and the interaction of the existing uses for Station Square.

229. Based on its review, McCormick Taylor concluded that the proposed improvements by Station Square Gaming to mitigate the traffic impact of their project were somewhat limited based on the traffic study area examined. In addition to the study area, McCormick Taylor determined that the Station Square traffic study had some technical concerns as well. McCormick Taylor opined that the site itself had limited access routes primarily because of the proximity of Carson Street on one side of the site and the Monongahela River on the other and also determined that the traffic improvements proposed by Station Square Gaming were also going to be difficult to complete based on the project's close proximity to a bridge and existing buildings. Station Square Gaming's initial study also did not take into account the traffic impact of Pittsburgh Steelers Games and other events in the area.

230. Based on the conclusions set forth by McCormick Taylor from Station Square Gaming's November 20, 2006 Licensing hearing, McCormick Taylor stated that Station Square Gaming needed to expand its traffic study area, consider additional evaluative criteria such as spikes in traffic flow and address how it was going to implement traffic mitigation measures in light of the physical constraints of the subject area such as the bridge and buildings nearby.

231. Based on Station Square Gaming's initial traffic study, McCormick Taylor's conclusion at Station Square's November 20, 2006 Licensing hearing was that the proposed location of the Station Square project would have made it difficult to

significantly mitigate the traffic issues that would have been created as a result of the Station Square Gaming project.

232. Following Station Square Gaming's November 20, 2006 licensing hearing, McCormick Taylor evaluated Station Square Gaming's updated traffic studies and all addendums to its updated report, and submitted its finding to the PGCB in writing and at the continuation of Station Square Gaming's Licensing hearing on December 4, 2006. In its final examination of Station Square Gaming's traffic information, McCormick Taylor concluded: Station Square's amended traffic report still did not address the impact of the initial use of the warehouse on its site that was slated to serve as a temporary gaming facility and the elimination of public parking for commuters on the site; the trip generations for Station Square were still significantly lower than the other Pittsburgh gaming sites; and that Station Square incorrectly calculated peak hour factors for the analysis of several intersections in its study.

233. During the final hearing of IOC and as part of its comparative evidence presentation, IOC presented the Board with several photographs relative to traffic in the vicinity of the Station Square site to illustrate the already-existing traffic congestion in that locale. In addition, IOC produced photographs of river conditions during the winter which would negate river traffic as an available means of transit at that time of the year.

234. Forest City Enterprises has a history of commitment to community-based organizations in the cities where it has a presence. Forest City Enterprises has made contributions to community-based organizations totaling \$4,669,524 in the last six years.

235. In addition, the Ratner family, through Forest City Enterprises, has contributed in excess of \$29 million to over 800 charitable organizations throughout the United States over the past three (3) years.

236. Station Square, if awarded a license, committed \$7.5 million per year for 30 years towards the funding of a new arena proposed by Governor Edward Rendell in the “Plan B” proposal.

237. If it had been awarded the license, Station Square also committed to providing \$25 million to the Pittsburgh History and Landmarks Foundation and stated it would create a Community Foundation and donate more than \$1 million, with at least half of the funds to be used in the neighborhoods nearby.

### **CONCLUSIONS OF LAW AND COMPARATIVE DISCUSSION**

The decision as to which one of the three eligible and suitable proposals would receive the award of the Category 2 slot machine operator license in Pittsburgh was indeed a difficult one calling for the Board to weigh three competitive, yet very different proposals to determine which one the Board, in its sole discretion, believed to be the best fit for the Commonwealth and the public in light of the various factors which may be taken into consideration under the Act. For instance, if the Board’s decision was a one dimensional one, for example based only on the revenue to the Commonwealth to support property tax relief, the analysis of the Board in reaching its decision would be much more simplistic. But that is not the case under the Act which embodies multiple objectives to be considered by the Board including the protection of the public through regulating and policing all activities involving gaming, enhancing entertainment and employment in the Commonwealth, providing a significant source of income to the Commonwealth for tax



relief, providing broad economic opportunities to Pennsylvania's citizens, developing tourism, strictly monitoring licensing of specified locations, persons, associations, practices, activities, licensees and permittees, considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions and maintaining the integrity of the regulatory control of facilities. 4 Pa.C.S. §1102.

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). The Board also believes this to be an important goal to be implemented and encouraged in the gaming industry for the benefit of all citizens and fully intends to assure that diversity of representation is enhanced in accordance with the Act. Accordingly, the Board also looks to the factors of the representation of diverse groups in the ownership, participation and operation of an applicant for a license as provided for in Sections 1212, 1325(b) and 1325(c)(3) of the Act when evaluating the applicants for licensure.

As we have set forth above, in weighing the evidence presented to the PGCB with respect to these objectives and to determine which applicant should be approved for licensure, Section 1325 of the Act provides that the PGCB may consider factors including:

- 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).

After reviewing the entire evidentiary record for each of the three applicants, the Board has determined that PITG Gaming, Majestic Star, represents the best fit, in the Board's view, for a Category 2 license in the City of Pittsburgh. In reaching this conclusion, the Board has examined and weighed the various factors cited above.

The Board has evaluated the evidence presented by each of the applicants and many of the factors in the Act to which that evidence relates. The Board's determination that PITG should receive the available license is based upon the findings by the Board and as discussed below that PITG, overall, had a facility design, location on the North Shore and ability to mitigate traffic concerns that the Board found to be of superior quality for the Pittsburgh region. The Board finds that PITG's facility design was, in the Board's opinion, better than IOC's facility, that PITG's North Shore location boasts great potential for the rebirth of development and economic stimulus in that area and that PITG's ability to manage traffic was much better than that of Station Square Gaming.

Additionally, the Board gives great credibility in its decision to the testimony of Don Barden who steadfastly demonstrated not only his financial commitment but also his personal commitment to the project, the integration of diverse representation in the gaming industry in Pittsburgh, in terms of ownership, contracting and employment, as well as his commitment to the Pittsburgh community. Based upon all of these reasons, the Board finds that Don Barden and the PITG project represents the best overall project for Pittsburgh and for the Commonwealth.

**A. Location and Traffic**

The Board has taken into consideration when evaluating the applicants' proposals the location and quality of the proposed facility, including but not limited to, road and transit access, parking and centrality to market service areas as permitted under 4 Pa.C.S. §1325(c)(1).

The Pittsburgh projects present three distinct locations within a short distance from each other: IOC with more of an urban setting in a transitional area between the

downtown business district and residential Hill District; the PITG site in an under-developed area on the North Shore, along the riverfront and just West of existing sports complexes; and the Station Square site, already the home of a busy entertainment and dining destination along the river in South Pittsburgh. Each location brings with it perceived advantages and disadvantages as testified to at length by each of the applicants during the final licensing hearings. Each location, given their proximity, also serves the same relative market area. The Board has considered the location not as dispositive but as one of the many factors in its review of the projects along with how that location may affect other criteria examined and considered.

The Board finds, based upon the record evidence, that traffic is a concern at all three properties. Traffic congestion is detrimental to a proposed casino since patrons may not attend the casino if access is difficult or results in substantial delays in arriving at the casino. Likewise, significant additional traffic congestion does not serve the public interest of those living in surrounding neighborhoods and commuters who use the surrounding road network for daily non-gaming uses.

The Board finds credible the evidence and concerns of severe traffic congestion at the Station Square location given the limited access into that site along with evidence of already-existing severe congestion in that area. While Station Square Gaming has promoted several roadway improvements in the area to compliment the substantial public transportation available to the site, the Board is unconvinced that the remedies proposed will be sufficient to offset the additional traffic which will occur in that area and the resulting increased congestion. The Board's finding in this regard is supported by the testimony of McCormick Taylor traffic consultant Al Federico, who testified that Station

Square Gaming used smaller traffic volume estimates in its modeling than the other two applicants and that, if the higher traffic volume was assumed, he believed that mitigation of traffic concerns at the Station Square location would be “challenging” and that “additional improvements beyond what has already been proposed would be difficult to implement.”

Further, evidence presented by Station Square Gaming competitor IOC clearly demonstrates to the Board’s satisfaction that traffic in the Station Square area already approaches severe levels. To add large volumes of traffic to that situation without assurances to the satisfaction and comfort of the Board that the traffic can adequately be handled without worsening the situation would not be in the public’s interest. Through the hearing process, the Board simply had not obtained evidence it finds credible and which provides it with the degree of comfort it requires to establish that traffic can adequately be managed at that site.

IOC’s location bordering a residential neighborhood raises other traffic issues of concern to the Board. While IOC does have walking access from the downtown area, public transportation access and access from other points including local expressways, the Board is concerned about the effect traffic will have on the bordering residential neighborhood areas including further traffic congestion through a number of local intersections surrounding the proposed facility. The Board finds credible evidence that neighborhood streets will be used to traverse the Hill District and determines that the increase in traffic from a casino in conjunction with a new, expanded arena next door, would likely cause detrimental affects to the surrounding neighborhood.

PITG Gaming's location on Pittsburgh's North Shore has, in the Board's judgment, an advantage over the other two sites in terms of traffic issues. First, residential areas do not border the PITG site and, therefore, traffic entering or exiting the PITG Casino will not be traveling residential streets to nearly as large an extent as would occur with the IOC site. Further, access to the PITG site will be immediately off the West End Bridge and Route 65 and Reedsdale Street. The Board finds credible the evidence that PITG's proposed improvements for traffic flows will assist in easing congestion which may occur from increased casino traffic.

Further, the Board acknowledges that the PITG site is located just West of the Heinz Field location which experiences influxes of sports fans for football games primarily on weekends during the Fall of each year. The Board finds based upon the evidence, that the traffic for those sporting events is largely confined to a defined period immediately before or after the game while the casino traffic typically would be spread out over a much longer period of time throughout the day. Further, PITG has stated that its parking facilities will be available to assist with Heinz Field parking. Thus, while traffic in the area of the PITG and Heinz Field location will increase over what is currently there on game days, the Board does not find that the additional traffic associated with the Casino will unduly burden patrons of those other facilities.

The Board received written comments from both the Pittsburgh Steelers (dated May 25, 2006) and Pittsburgh Pirates (dated June 2, 2006) in opposition to the PITG proposal. Neither the Steelers nor the Pirates sought to intervene in the PITG license application to the Board as they could have pursuant to Board Regulation at 58 Pa.Code Section 441.19(y) if they had a protected right to assert or protect. In their written public

comments, the Steelers asserted opposition for three primary reasons: 1) because it would conflict with the North Shore master development plan which had been developed by the Steelers, the Pirates, the University of Pittsburgh Athletic Department and Continental Real Estate Company concerning future development of the North Shore area; 2) the PITG project would place a burden on the parking and traffic infrastructure for the North Shore; and 3) because of a long-standing policy of the National Football League to restrict involvement of NFL teams with Gaming facilitators and operators. The Pirates voiced similar opposition but also included their position that slot machines are not compatible with the family-oriented environment which the Pirates seek to promote at PNC Park.

While the Board is mindful of these concerns, the Board does not find that these concerns outweigh the benefits which the PTIG proposal will bring to the North Shore. First, the Board finds the parking concerns to be overstated. PITG is providing a self-contained parking structure on the PITG site which will not only accommodate its own patrons, but also provide for extra parking on the North Shore. Thus, rather than placing a strain on parking, the PITG proposal would lessen whatever strain already exists.

Second, the Board is convinced by the testimony presented at the public input hearings and final licensing hearings that traffic in and around the PITG site can be managed. Moreover, the Board finds persuasive the testimony of the PITG traffic consultant, Stuart Anderson, at the November 21, 2006 hearing where he stated, "The existing transportation network with traffic management measures in place allows 65 to 70,000 people to exit Heinz Field in approximately one and one half hours. As a comparison, the proposed casino would be expected to attract approximately 30,000

people over a 24 hour period. .... With the proximity of the proposed parking structures to the Heinz Field within a five-minute walk, significant opportunity exists for Steelers fans to use the Majestic Star parking. ... With regard to the 10 Steelers home games, the Majestic Star Casino will improve traffic and parking conditions for two key reasons; one, the casino will increase the number of parking spaces available to Steelers fans within a five-minute walk of the stadium; and two, the addition of the casino with its dining and entertainment facilities will attract some fans, who otherwise just jump in their car and leave immediately following the game. This will result in a reduction in congestion immediately following the game.”

Next, that the Steelers or Pirates may have engaged in discussions or planning for development of the North Shore in a way inconsistent with the PITG project is not in any way binding on the Board. As stated herein, the Board finds that the PITG site is a permissible site for the commercial gaming establishment, and that it would bring economic development to that location.

Finally, the Board does not find the argument concerning the NFL or the family oriented nature of PNC Park to be persuasive here. The licensing of PITG Majestic Star does not require the establishment of any business relationship or association between the Steelers and a gaming operator. Nor has any evidence been presented to support a contention that having a casino several hundred yards away from a NFL stadium will cause any adverse effects to the Steelers from the NFL. Additionally, the PNC Park stadium is even more removed from the casino site. The Board simply does not believe based upon the evidence presented that the existence of a casino at the PNC Park site will have any adverse effect on families who desire a family outing at a baseball game.



In sum, while every project would increase traffic in the vicinity of the casino as a natural by-product of the patron-driven business, the Board finds based upon all of the evidence that the impact can best be managed and mitigated at the PITG site and that, given its location, the adverse effects of traffic will not result in significant negative effects for residential users, or create over-burdensome effects upon nearby commercial neighbors.

**B. Quality of the Facility**

The Board recognizes that all three proposals include state-of-the-art architectural designs, all of which have their own unique nuances. The Board credits PITG with having a design of the facility which is most appealing for the Pittsburgh area and which can be built as a permanent facility in an accelerated construction schedule to possibly be opened by March 2008. The location along the river front with a Southern exposure overlooking the river and the West End Bridge encompassed within a two story building which maintains the character of the surrounding area is, in the Board's opinion, a factor weighing in favor of PITG. PITG's glass walls and outdoor dining and amphitheatre areas providing panoramic views of the river and sunsets compliment the upscale design of a modern gaming facility – all while being careful not to overshadow the skyline or other area architecture. In short, the Board believes the PITG design works for Pittsburgh and that location.<sup>8</sup>

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<sup>8</sup> The Board notes that during the final hearing, IOC devoted a substantial amount of time concentrating on the issue of the Pittsburgh Penguins and the proposed arena which the Board believes detracted from what should have been the primary focus of the casino project and gaming. As addressed below in Section C relating to economic development, the Penguins and the arena were but one of many factors in the Board's consideration and not afforded special weight under the provisions of the Act. As a result, the Board finds that IOC did not fulfill its burden to the Board's satisfaction of establishing by clear and convincing evidence that it had the best quality gaming facility in this competitive slot machine licensing environment.

**C. Potential for New Job Creation and Economic Development**

One of the objectives of the Act is to provide a significant new source of revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives. 4 Pa.C.S. §1102(3). The Act also provides that the Board may consider the potential for new job creation and economic development which result from granting a license to an applicant. 4 Pa.C.S. §1325(C)(2).

**i. Revenue generation**

Evidence produced during the hearing process demonstrated to the Board's satisfaction that the three proposals were similar in terms of the amount of revenue which would be realized once the casinos were developed and operating at capacity in a stabilized year. The amount of revenue is of concern to the Board because the success of the applicant in generating revenues is directly related to the economic benefit to the Commonwealth through the receipt of tax revenues for the benefit of Pennsylvania citizens. The Financial Suitability Task Force projected IOC and PITG each to have estimated annual revenues of \$482.2 million in a stabilized year based upon those applicants proposed 5,000 slot machines. Station Square Gaming, which proposes 4,000 machines had Task Force estimated annual revenues of \$426.3 million based upon the lower number of anticipated machines. IOC's own projections at 5,000 machines were \$410 million annual revenue and PITG's projections at 5,000 machines were \$452.2 million annual revenue, both in a stabilized year. Station Square Gaming, on the other hand projected that with 4,000 machines, it would realize income of \$535.6 million in that same year. Station Square Gaming defended this higher projection based upon the

effect and incentive the Harrah's Rewards program has on its customers which they contended, generates larger revenues than their competitors. While the Board does find based upon evidence presented that the Harrah's Rewards program does assist in boosting revenues of its properties, the Board has not been convinced that the effect of the Harrah's Reward's program would be as significant in Pittsburgh as set forth by Station Square Gaming to support its projections in this case.

During its hearing, Station Square Gaming presented evidence concerning Harrah's casino earnings compared to those of IOC and PITG where those properties had casinos in the same markets as Harrah's in an attempt to demonstrate that the Harrah's properties outperform properties of IOC and PITG. Unfortunately, the information provided was insufficient in the Board's view to permit such a conclusion which is meaningful with respect to the Pittsburgh license at issue here. There is no doubt that Harrah's is recognized as a strong and successful marketing company and a leader in the gaming industry. Some of Harrah's comparisons, however, as was pointed out in testimony by IOC, were based on properties only owned by Harrah's for one month of the year used for comparison, were not developed by Harrah's but were market leaders prior to Harrah's purchase, were of a different scope than the properties compared to, and in at least one instance was thirty miles away from the property compared to. Of the most significance to the Board on this point, however is the fact that Harrah's was comparing its revenue generation to IOC and PITG in markets where those companies compete directly against each other for the same business. In Pittsburgh, because only one license can be issued, there will be no competition among these applicants. Therefore, the Board does not find Harrah's evidence of greater revenue generation to be

persuasive in the context of granting a Category 2 license for Pittsburgh where there will be no competition in the City.

**ii. Creation of jobs**

The Board finds credible evidence that each of the proposed projects would create new jobs and economic development. Of course, the extent of the new jobs or economic development is also related to the size and scope of the project and the amenities provided. Whether the scope and use of those amenities are fully realized leading to the fulfillment of the projected job numbers is speculative based upon the development of subsequent phases of the properties and the success of the facility and amenities. Of concern to the PGCB is the plan of Station Square Gaming to actually eliminate current entertainment and restaurant venues from the property which in turn would eliminate jobs and economic opportunities already present on that site. Thus the number of jobs actually created by Station Square Gaming would be offset to some extent by those eliminated. This is a factor not of prominence in the other two proposals.

Likewise, each applicant represents that they are firmly committed to hiring a substantial percentage of their employees from the local employment markets. The Board does not find any credible evidence that there appears to be any appreciable difference between the applicants in this regard. Further, given the proximity of the proposals to each other, the Board finds it a reasonable conclusion that the three applicants would be pulling employees from a substantially similar labor pool. Therefore, a license to any one applicant does not cause great disadvantage to a group of prospective workers in another locale.

### **iii. Economic development**

The Board also finds that the PITG Gaming project will bring economic development to the North Shore area. That location is currently an under-developed area with potential for other nearby commercial development. The PITG project located West of Heinz field has the potential to spur other commercial development in that area to make it a year-round tourist destination rather than its current seasonal nature depending in large part on sports venues. In addition, PITG has committed to providing funds toward development efforts in the Hill District and has pledge to lead a redevelopment drive of that area for the betterment of the resident there.

Station Square Gaming, being limited geographically by a hillside, railroad tracks and the river, provides limited opportunity for additional economic development in nearby areas beyond those being proposed by Station Square Gaming itself. In addition, Station Square already is an entertainment venue in the Pittsburgh area, drawing tourists and local residents to the nightclubs, bars and restaurants which already exist at that location. In this respect, the grant of a slot machine license to Station Square Gaming may not create as broad an economic increase to the area as the grant to another location which would complement the Station Square venue already present and which will continue to exist, thereby creating two tourist attractions in the area on both sides of the river.

IOC, by virtue of its location and proposal, proposes a very substantial investment in rebuilding the Hill District bordering the casino site which, by all accounts of the testimony, is largely a run-down area including residential and abandoned properties. Undoubtedly the IOC proposal would inject much needed funding into the redevelopment

of the Hill District in terms of a large urban renewal effort and through the Pittsburgh First Foundation. However, as stated previously, PITG also proposes redevelopment in this area.

Finally, the Board addresses the issue of arena financing which has found its way into the Pittsburgh licensing decision. If awarded a license, IOC committed \$290 million to fund a new arena in the Hill District which would be home to the Pittsburgh Penguins NHL hockey team and available for other events. That plan was represented as providing assurance that the Penguins would remain in Pittsburgh. Station Square and PITG Gaming, on the other hand, have committed to what has been referred to as “Plan B”, in which the licensee would provide \$7.5 million per year for 30 years toward the arena financing. The remainder of the arena funding would come from contributions by the Penguins themselves, governmental grants and other sources of financing.

While the issue of the arena and the Penguins remaining in Pittsburgh reflect on economic development and tourism and are an issue considered by the Board, the Board is not swayed that the Penguins are or should be an overriding factor in the Board’s decision. The evidence presented to the Board demonstrated to the Board’s satisfaction that a new multipurpose arena will be built in Pittsburgh without respect to who is awarded the license. The difference will be whether a casino operator pays for the arena or whether payment is spread out over multiple sources including the NHL team which stands to benefit from the arena. To this extent, the Board finds that the commitments of PITG and Station Square to “Plan B” provided some degree of neutralization to IOC’s arena building commitment. Therefore, the Board does not ascribe as much weight to the

IOC arena proposal in terms of economic development as it might if the other commitments were not presented.

Finally, IOC presented evidence concerning an agreement between IOC and the Penguin's owner relative to the arena and a purported assurance that the Penguins would remain in Pittsburgh if IOC obtained the license. During the hearing, the Board questioned IOC witnesses concerning the agreement. However, the responses received did not provide the Board with the degree of confidence it desired to trust that the contractual relationship would provide the promised benefit for the Pittsburgh region. In addition, IOC presented the testimony of Jim Balsillie who reportedly was in the process of purchasing the Penguins and testified that the Penguins would remain in Pittsburgh if IOC received the license. On December 19, 2006, during final oral argument, however, it was represented by counsel for IOC that the Balsillie deal to purchase the Penguins had fallen apart and Balsillie would not purchase the Penguins. This last minute change of events provided further uncertainty as to IOC's impact on the future of the Penguins.

The responsibility for keeping the Penguins in Pittsburgh does not fall upon the Board under the Act. The Act, which the Board believes bears repeating in light of the emphasis placed on arena funding, has a **primary objective of protecting the public through the regulation of gaming.** See 4 Pa.C.S. §1102(1). While the Board is not unsympathetic to Pittsburgh's hockey fans who fear the Penguins moving to another locale or to the local businesses which benefit from the Penguin's presence, the Board is not beholden to award a license upon that basis if the Board believes, in its sole discretion, that another project is better for gaming, the Commonwealth and the public based upon all of the factors considered under the Act. Such is the case here in which the

Board does not weigh the evidence of economic development associated with the IOC proposal to be of such magnitude that it outweighs the benefits associated with PITG Gaming's project.

**D. Diversity Plans and Commitments**

Each of the applicants has presented a good faith plan to recruit, train and upgrade diversity in all employment classifications. No evidence has been presented to suggest that any applicant does not have the required, good-faith diversity plan or that it has failed to support diversity in other business endeavors.

**E. History of Developing Tourism Facilities Ancillary to Gaming**

The three applicants each have varying degrees of success in developing tourism facilities ancillary to gaming. PITG has developed other gaming facilities but has not had broad involvement in developing tourism attractions outside of that arena. IOC, likewise, has devoted significant attention to the development of its gaming facilities including the construction of hotel rooms and restaurant facilities. Station Square's parent company Forest City Enterprises is a leading commercial real estate developer. While Forest City Enterprises has undoubtedly undertaken significant development efforts including the creation of tourism facilities, none of them were ancillary to gaming development as Forest City Enterprises has not previously been in the gaming business.<sup>9</sup> Therefore, the Board finds that none of the applicants have engaged in the development

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<sup>9</sup> The Board acknowledges the tremendous success that Harrah's Entertainment has had in developing tourist facilities on its own behalf. Harrah's Entertainment is the management company with which Forest City Enterprises has contracted to manage the Station Square project. Harrah's Entertainment is not the "applicant" for this license nor does it have an ownership interest in Station Square Gaming. Therefore, the success of Harrah's Entertainment as a contractor are not a factor to be considered under Section 1325(c)(6).



of tourism facilities ancillary to gaming development which the Board finds so significant as to weigh in any applicant's favor.

**F. Record of Applicant in Meeting Community Commitments**

The record of the applicant in 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 the applicants. 4 Pa. C.S. §1325 (c)(8).

IOC has provided evidence of substantial commitments to the communities it serves including the establishment of scholarship programs, hurricane relief for the Gulf Coast, the donation of \$42,000,000 to non-profit organizations, charities, educational institutions, civic groups and assistance programs.

PITG, a much smaller operator, has provided evidence of donation of approximately \$141,000 from 2004 through 2006 to various educational, civic and charitable organizations, primarily from Don Barden himself.

Station Square Gaming, owned by Forest City Enterprises, is a new gaming business which has no history of community commitments in the context of being a gaming company. Forest City Enterprises has reported contributions to community based organizations totaling over \$4.6 million during the last six years as well as efforts to engage in redevelopment projects to promote affordable housing initiatives and educational development projects at MIT.

Each of these companies is praised for their efforts at assisting local communities. IOC's efforts in this regard are impressive and are to be commended. There is no doubt, based upon the prior history of community commitments and the

proposal for Hill redevelopment in Pittsburgh, that IOC represents itself as a good neighbor. Likewise, Forest City and PITG have each demonstrated an ongoing commitment to community commitments which cannot be ignored. While the Board notes that IOC and Forest City's contributions to the community may be influenced by the greater capitalization of those entities as compared to PITG, the Board finds that IOC's contributions to the communities it serves are of a degree and magnitude above the other applicants.

Each applicant or their parent company or primary owner has a positive history of making significant contributions to their respective communities, and each has committed to substantial funding should they be awarded a license.

**G. Potential Adverse Effects**

As stated above, traffic concerns are the primary identified adverse affect that each project will bring to Pittsburgh. While increases in traffic cannot be avoided, their impact can be limited through roadway and intersection modifications. Such modifications will be addressed and mandated through conditions of the license.

The Board also recognizes potential adverse effects of gaming in terms of gambling addictions. This is an issue which will arise no matter who the licensee is. Therefore, the Board believes the most appropriate way to deal with this potential effect is through the strong enforcement of a compulsive gambling plan to be established and monitored by the Board through conditions of licensure.

Finally, in terms of potential adverse effects, the Board notes the nature and amount of public comment in support and in opposition to the proposed projects. PITG and Station Square generated very little public opposition. Written comments received

by the Board relating to PITG numbered just 7 comments (4 opposing and 3 supporting) along with a petition with 749 signatures and 341 postcards in support of PITG. Station Square had 6 written comments opposing the project and 17 comments in support. By far and away the project that spawned the greatest public comment was IOC which generated 258 comments in opposition and 180 comments in support. The degree of public response opposing IOC compared to the other projects is a factor that cannot be ignored by the Board as weighing against IOC in the Board's opinion.

#### **H. Record of Applicant in Complying with Employment and Wage Laws**

The Board has not been presented with any evidence demonstrating any significant difference among the applicants with respect to the applicants' records regarding 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, or the applicants' records in dealing with its employees and their representatives at other locations. *See* 4 Pa.C.S. §1325(10)(11). There being no evidence of record sufficient to establish that any one applicant is appreciably better as to this factor, the Board does not give an edge to any applicant in its consideration for licensing under this factor.

#### **I. Other Matters**

In addition, the Board notes that the personal commitment of Mr. Barden to the PITG – Majestic Star project was evident at every step of the licensing proceedings. The Board notes Mr. Barden's personal presence at all proceedings and his unwavering commitment to PITG Gaming's project as his "flagship" property. The calm intensity which Mr. Barden brought to this project and his undeniable dedication to make this

project a success for all of Pennsylvania speaks volumes of his character and suitability for this license.

### **CONCLUSION**

As stated, the decision to award the Category 2 license in Pittsburgh was a difficult one. The decision was complicated by the fact that three applicants presented three good, solid proposals for licensure under the Act. The Board commends each applicant for presenting a proposal for consideration in a thorough and professional manner. Each applicant was found to be eligible and suitable under the guidelines of the Act. This meant that the Board was required to, and did, consider a multitude of factors related to the applicants and had to arrive at a decision in the exercise of its discretion as to which one of the three suitable applicants should receive the license.

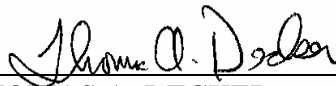
Based upon the findings of fact, conclusions of law and discussions set forth above, which are supported by the evidentiary record, the Board finds that PITG Gaming, LLC has satisfied the requirements of 4 Pa.C.S. § Category 2 license, is eligible and suitable to receive a license and that it is in the best interest of the public and the Commonwealth that PITG Gaming, LLC be granted the one available Category 2 slot machine license allocated by the Legislature to Pittsburgh, Pennsylvania, a city of the second class subject to the terms and conditions placed on the license by the PGCB.

The grant and issuance of this Category 2 license does not give PITG Gaming, LLC a property right and the Board may, at its discretion, revoke or suspend the license of PITG Gaming, LLC if the Board finds that PITG Gaming, LLC, 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 the slots license.

In light of the Board's decision to grant PITG Gaming, LLC the one (1) Category 2 license allocated to Pittsburgh, Pennsylvania, a City of the Second Class, the applications for a Category 2 slot machine license by IOC Pittsburgh, Inc. and Station Square Gaming, LP are hereby DENIED.

BY AND ON BEHALF OF THE PENNSYLVANIA  
GAMING CONTROL BOARD:



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THOMAS A. DECKER  
CHAIRMAN