

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CD GAMING VENTURES, LLC,

Plaintiff,

v.

CITY OF COLUMBUS, OHIO, et al.,

Defendants.

Case No. 2:11-cv-216

JUDGE GREGORY L. FROST

Magistrate Judge E.A. Preston Deavers

CONSENT ORDER AND SETTLEMENT AGREEMENT

This Consent Order and Settlement Agreement (“Consent Order”) is entered into as of the Effective Date (defined below), by and between CD Gaming Ventures, LLC (“CD Gaming”), Penn National Gaming, Inc. (including its subsidiaries and affiliates, such as Central Ohio Gaming Ventures, LLC) (“Penn National”) on the one hand, and the City of Columbus, Ohio, Michael B. Coleman, Michael Reese, Michael Mentel, Charleta Tavares, Priscilla R. Tyson, A. Troy Miller, Eileen Y. Paley, Hearcel F. Craig, the Franklin County Board of Commissioners, Marilyn Brown, Paula Brooks, and John O’Grady (collectively “Defendants”) on the other hand. CD Gaming, Penn National, and the Defendants are each a “Party” to this Consent Order and are collectively “the Parties” hereto.

RECITALS

WHEREAS, on March 11, 2011, CD Gaming filed a lawsuit against the Defendants in the United States District, Court, Southern District of Ohio, Case No. 2:11-cv-00216-GLF-EPD (the “Action”);

WHEREAS, Defendants deny CD Gaming’s claims in the Action and contend that they have no liability to CD Gaming;

WHEREAS, on May 24, 2011, CD Gaming, Penn National and the Defendants agreed upon proposed settlement terms that expressly contemplate the preparation of a long form settlement incorporating the terms reflected in the settlement term sheet filed with the Court on May 24, 2011 and such other terms and conditions to be mutually agreed by the Parties; and

WHEREAS, subject to the terms of this Consent Order, CD Gaming, Penn National and the Defendants, hereby agree to compromise and release all claims that existed or may have existed in favor of any Party or their affiliates, successors, or assigns, arising from the beginning of time until the Effective Date, whether or not such claims were or could have been asserted in the Action.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CD Gaming and Penn National and the Defendants agree to the following:

DEFINITIONS

1. “CD Gaming” shall mean CD Gaming Ventures, LLC, and all its subsidiaries, affiliates, employees, agents, and attorneys.
2. “Penn” shall mean Penn National Gaming, Inc. and all its subsidiaries, affiliates, employees, agents, and attorneys, including but not limited to CD Gaming and Central Ohio Gaming Ventures, LLC.
3. The “City” shall mean the City of Columbus, Ohio, its elected officials and employees.
4. The “County” shall mean the Board of Commissioners of the County of Franklin, Ohio, its elected officials and employees.
5. The “Property” shall mean the approximately 113 acre tract of land in Franklin Township, Franklin County, Ohio, identified by the Franklin County Auditor, as of January 19, 2010, as tax parcel number 140-003620-00.
6. The “City Council” shall mean the City Council of the City of Columbus, Ohio.
7. “Type 2 Expedited Annexation” shall mean the annexation process established in Ohio Revised Code § 709.023.
8. The “Casino” shall mean the planned Hollywood-themed gaming facility and related complex at the Property.
9. “Phase I Construction” shall mean the Casino facility and related site and infrastructure improvements designated in the plan that has already been submitted, by Penn to agencies or departments of the State of Ohio and Franklin County for approval, attached hereto as Exhibit A.
10. The term “the Court” shall mean the Honorable Judge Gregory L. Frost of United States District Court for the Southern District of Ohio, Eastern Division.

TERMS OF AGREEMENT

1. Effective Date. This Consent Order shall become effective (“Effective Date”) when fully executed by the Parties and upon the Court’s approval and/or entry of a consent order.
2. Satisfaction Date. The Satisfaction Date is when the contingencies set forth in paragraphs 3.1, 3.4, and 15 (and all subparts thereto) hereto have been met to Penn’s satisfaction and Penn has provided the City and the County notice of such satisfaction, or the date Penn provides notice that it is not satisfied and chooses to reinstate the Action. In either case, Penn shall provide said notice to the City and County by no later than July 5, 2011 5:00 p.m. EDT, though any Party may, up to a

maximum of one time each and in its sole discretion, extend the July 5, 2011 deadline by ten business days. If the notice provided is that Penn is not satisfied,

Penn is entitled to reinstate its proceedings in the Action, and Defendants agree that they will support Penn's request for a preliminary injunction hearing in the Action on the Court's earliest available date. If Penn exercises its right to ask the Court to reinstate the proceedings, this entire Consent Order, except for the tolling period in paragraph 7, is null and void.

3. Reimbursement Payment.

3.1 The City agrees to reimburse CD Gaming in the amount of \$15 million for certain documented public purpose expenses including, but not limited to, expenses relating to public roadway improvements in the area of the Property and environmental remediation of the Property, both of which serve a valid public purpose for public expenditures (the "Reimbursement Sum").

3.2 The Reimbursement Sum will be certified by the City Auditor, appropriated and encumbered by the City Council through an emergency ordinance on June 6, 2011.

3.3 The Reimbursement Sum shall be paid to CD Gaming after Franklin County has approved the annexation petition but, as an express precondition to the authority of the City to annex the property, before City Council is permitted to accept the annexation. Payment may be made on the same day the annexation is accepted provided it is before City Council votes on, or the City otherwise accepts or effectuates the annexation ordinance.

3.4 CD Gaming and the City agree that the purpose of the Reimbursement Sum is to reimburse CD Gaming for specific capital projects, such as environmental remediation and public roadway improvement. CD Gaming expects to submit satisfactory documentation of reimbursable expenses by June 13, 2011. Satisfactory documentation shall include, but not be limited to, invoices, or other evidence that payments have been made by CD Gaming. Documentation shall be submitted to the City with an affidavit verifying the payment and the public purpose for which the expense was incurred. The City shall approve or disapprove the expense related supporting documentation in writing prior to the Satisfaction Date.

3.5 If the Reimbursement Sum is not paid to CD Gaming in accordance with this section the parties agree that Penn, in its sole discretion, shall have the option of:

a. filing the appropriate motion with the Court seeking enforcement of the terms of this Consent Order and/or such other relief as the Court deems appropriate (including but not limited to contempt proceedings); and/or

b. pursuing any other remedy or remedies available by law.

- 3.6 The City Auditor certification of funds for the Reimbursement Sum and payments shall be on the authorizing ordinance in accordance with Columbus City Charter.
- 3.7 CD Gaming agrees that if the Casino is not opened to the public for casino gaming by five years from the Satisfaction Date, it shall return the Reimbursement Sum to the City.

4. Annexation.

- 4.1 CD Gaming shall file an application, including applicable application fees not to exceed \$750.00, for Type 2 Expedited Annexation for the Property into the City within two business days of the Satisfaction Date. CD Gaming will not withdraw the annexation petition once filed, and will further take all necessary steps to cooperate and expedite the annexation process.
- 4.2 The City shall accept CD Gaming's application for Type 2 Expedited Annexation as an emergency ordinance.
- 4.3 The Parties agree that if CD Gaming does not file an annexation petition in accordance with paragraph 4.1, or if it subsequently withdraws the petition or otherwise interferes with the annexation process, the City may, at its sole discretion:
 - a. file the appropriate motion with the Court seeking enforcement of the terms of this Consent Order and/or such other relief as the Court deems appropriate (including but not limited to contempt proceedings);
 - b. pursue any other remedy or remedies available by law; and/or
 - c. terminate water and sewer service in accordance with paragraph 7, without any prejudice to Penn's position in the Action.

5. Construction, Development, and Operation.

- 5.1 The Parties agree that pre-opening permits shall not be required from City except as provided herein.
 - a. Penn has begun Phase I Construction of the Casino pursuant to approvals arising from and submissions to the Ohio Department of Commerce and the County. The Parties intend for Phase I Construction to continue without delay and without incremental additional costs. To that end the Parties agree to work cooperatively and in good faith as follows:
 - i. Penn expects to submit its proposed signage application to the County on June 10, 2011, and the County and City agree to take all necessary steps to cooperate and review and indicate in writing whether such signage is acceptable prior to the Satisfaction Date; and

ii. Penn submitted its application for permits and licenses relating to plumbing and kitchen food service to Franklin County Public Health on May 24 and 26, 2011 respectively. The City and the County agree not to illegally interfere with or oppose Penn's pending application to Franklin County Public Health. The City agrees to accept, honor and grandfather these approvals.

b. The City waives all right to oversee, permit, approve, or otherwise regulate the construction of the Casino and related facilities on the Property in Phase I Construction Plan except as provided herein. The City agrees to accept, honor and grandfather all permits and/or approvals obtained by Penn during Phase I Construction as well as all "as built" construction at the time of public opening of the Casino. Once construction of Phase I Construction is completed, subsequent material modifications or additions to the Casino and the Property shall be subject to all applicable City regulations in conformity with Ohio law.

c. Notwithstanding the foregoing subparagraphs and without waiving any constitutional rights, Penn, the City and the County agree that Penn will apply for new permits from the City or other appropriate authority as required, if a part of the Casino complex submitted in the Phase I Construction plans is (i) not actually started or permitted prior to opening of the Casino to the public, or (ii) is started but not completed prior to opening of the Casino to the public and for which the required permits have lapsed.

d. The City further agrees to allow the State of Ohio to regulate and ultimately issue the certificate of occupancy for Phase I Construction. The City also agrees not to contest after the fact the issuance or underlying facts or conclusions in connection with the Phase I permits issued by other bodies.

5.2 Development Cooperation. It is the Parties' intent that Phase I Construction continues without delay and without incremental additional costs. Penn and the City agree to work cooperatively for the successful development and operation of the Casino facility both during and after Phase I Construction, including, expeditiously reviewing and acting on any applications, promptly addressing all issues relating to the development or operation of the Casino and working with third parties (e.g., the Ohio EPA). A non-exhaustive list of items covered by the Parties agreement to work cooperatively follows:

a. Zoning.

i. Notwithstanding section 5.2.a.iii, the City acknowledges and agrees that, consistent with the Ohio Constitution, City zoning, land use laws, subdivision regulations or similar provisions shall not prohibit the development or operation of the casino facility.

ii. The City agrees to honor and accept the Certificate of Zoning Compliance issued by the Franklin County Economic Development and Planning Department on May 17, 2011 for the Phase I Construction which means that the Property is properly zoned for casino gaming and other Phase I Construction uses in the City, and that

annexation of the Property into the City will not in any way limit or restrict casino gaming or other Phase I Construction uses on the Property.

iii. Penn may file a zoning application with the City for a commercial planned district to apply to the Property. Prior to Penn filing its zoning application, the City agrees that its zoning office will review Penn's zoning application and provide Penn with its comments and suggestions no later than the Satisfaction Date. The commercial planned district zoning classification, once approved, shall apply to the Property (including without limitation a hotel) to facilitate non-phase I future development on the Property. City staff further agrees to actively support the council action on this application, in a manner consistent with its prior comments, suggestions and reports. City staff shall prepare legislation to be submitted to City Council seeking Council action on the commercial planned district zoning application within 120 days after Penn submits the application to the City, provided that the application is complete.

b. Traffic. The Franklin County Engineer has already approved a traffic study prepared by EP Ferris & Co. for Penn dated August 13, 2010. The City shall accept and honor this approval for Phase I of the construction and not require any further approvals related to traffic, road improvements or other matters set forth in the traffic study. Specifically, no improvements will be required for the intersection of Georgesville Road and Hall Road.

c. Life Safety. Fire, EMT, and other life safety permits for Phase I Construction will be obtained from the State as required by Ohio law. The respective City agencies and authorities will accept and honor these approvals.

d. Water and Sewer. As set forth in paragraph 7, Penn may apply for water and sewer permits once it has filed its annexation application and the City agrees to provide the Property immediate and unqualified access to water and sewer subject to all routine City applicable permits, fees, plan approvals, and construction inspections for water and sewer service. This includes but is not limited to: tap fees and capacity charges. With regard to the tap fee, Penn is entitled to credit for the taps the property received in the past, calculated pursuant to the Department of Public Utilities normal practice, which total approximately \$481,000 based on the City's estimates to date. Based on the plans the City has seen to date, and the number of taps on those plans, the City estimates that the new capacity and tap charges shall not exceed \$1,500,000 once the tap credits have been applied.

e. Pre-opening Applications for Liquor Permits. The City shall not object to, any pre-opening application submitted by December 1, 2011 for a D-5n or D-5o liquor permit by Penn with the Division of Liquor Control or any successor regulatory authority authorized under Ohio law.

f. The City agrees to cooperate with the County and/or ODOT on any present or future plans to improve or reconstruct Broad Street and the Broad Street exit of I-270.

- 5.3 Retained discretion to obtain any permits from the City. Notwithstanding any provision of this or any subsequent Consent Order or agreement, nothing precludes Penn from seeking any of its required permits from the City instead of the County, State or other authority, and Penn reserves the right to do so in its sole discretion.
- 5.4 Non-Interference Between Parties. The Parties intend to resolve all outstanding issues in this litigation in a global manner between them, resulting in a professional relationship. The Parties therefore agree that not to unreasonably or unlawfully obstruct, delay or interfere with the construction, lawful operation or initiatives of the Casino or pending or future grants relating to the Property either during Phase I Construction or thereafter nor shall any Party object to the reasonable and lawful regulation of the operation or initiatives of the Casino. This paragraph does not preclude the City or the County from reasonably regulating the Casino pursuant to all applicable regulations.
- 5.5 Overlay Districts. The County is considering a County Overlay District and agrees that any such district shall not apply to the improvements which had previously commenced construction pursuant to a lawfully issued permit or any other Phase I Construction elements.
6. Contributions to the Westside Community Fund:
- 6.1 The City and Penn intend to create the Westside Community Fund by March 31, 2012. The City and Penn shall each contribute \$2.5 million (\$5 million total) to the Westside Community Fund in the following increments:
- a. \$1 million in 2012 from both Penn and the City. These funds shall be used for a variety of projects related to the neighborhood(s) immediately surrounding the Property and/or the citizens thereof, including but not limited to job training, minority affairs, economic development and/or capital projects (the "Purposes");
 - b. \$750,000 in 2013 from both Penn and the City. These funds shall be used for the Purposes;
 - c. \$500,000 in 2014 from both Penn and the City. These funds shall be used for the Purposes; and
 - d. \$250,000 in 2015 from both Penn and the City. These funds shall be used for the Purposes.
- 6.2 The City's annual contribution obligations are contingent on annual approval by City Council and certification by the City Auditor in compliance with the Columbus City Charter. The Mayor of Columbus will submit and actively support a request to the City Council for allocation and funding of the City's annual contribution to the Westside Community Fund by December 31st of the calendar year before such funding is scheduled.

- 6.3 Penn's contribution obligations are only triggered once the City has allocated and funded its obligation. Penn and the City agree that the City's funding shall be made no later than March 31st of the calendar year in which the obligation is due, subject to paragraph 6.2, and CD Gaming's funding shall be made within five business days of the City's funding.
 - 6.4 If either party fails to make its contributions as provided in Section 6.1 (whether by reason of City Council action or otherwise), the parties agree that either shall have the option of filing an appropriate motion with the Court seeking enforcement of the contributions described in this section of the Consent Order and/or such other relief as the Court deems appropriate.
 - 6.5 All expenditures from the Westside Community Fund shall require the approval of the City and Penn. Either the City or Penn may submit a proposed expenditure to the other for approval. The City and Penn agree to use good faith efforts to agree on expenditures and approval for the Purposes shall not be unreasonably withheld. However, the agreement or nonagreement by either party is not subject to review by the Court.
7. The City agrees to toll any deadline set forth in the April 21, 2011 letter of Tatyana Arsh to Edwin Hansen and Carl Sottosanti on a day for day basis from May 23, 2011 until 5 business days after the Satisfaction Date. Once CD Gaming has filed a petition for annexation the City further agrees to provide the Property immediate and unqualified access to water and sewer subject to all applicable regulations, permits, fees and so forth. In the event that CD Gaming withdraws its petition for annexation, the City has no obligations pursuant to this paragraph and reserves its rights to terminate service in accordance with Ohio law; CD Gaming reserves its right to contest such termination; and the dismissal in paragraph 10, and releases in paragraph 11, of this Consent Order are null and void.
8. Approval of the Consent Order by the City and County.
 - 8.1 The City shall submit and support this Consent Order to City Council as an emergency ordinance for its consideration, passage and acceptance on an emergency basis at its June 6, 2011 meeting. The ordinance shall outline all the terms and binding commitments under the Consent Order and authorize the Director of the Department of Development to sign said Consent Order if approved by the City Council.
 - 8.2 This Consent Order shall be submitted to the Board of County Commissioners as a resolution for their consideration, passage and acceptance at their June 7, 2011 meeting. The resolution shall outline all the terms and binding commitments under the Consent Order and authorize the Franklin County Administrator to sign said Consent Order if approved by the Board of County Commissioners.

- 8.3 If approved by City Council and the County Commissioners, the Parties shall present this Consent Order to the Court for its approval by June 10, 2011.
9. No Unique Fees or Disparate Application of Existing Fees. Consistent with the Ohio Constitution, neither the City nor the County shall directly or indirectly apply or levy against the Property or the Casino operations any:
 - 9.1 unique new or additional fees, taxes, assessments, costs, charges or the like;
 - 9.2 inordinate, disparate or retaliatory application of existing fees, taxes, assessments, costs, charges or the like;
 - 9.3 Notwithstanding any provision in this Section 9 to the contrary, CD Gaming, the Property and Penn shall be subject to all customary non-discriminatory fees, taxes, assessments, costs and the like that are applied to, levied against, or otherwise imposed generally upon other City and County businesses or properties; or
 - 9.4 After due diligence and review, the City is not aware of anything to date, nor does it foresee anything, to which 3772.26(b) of the Ohio Revised Code applies.
10. Dismissal of the Action.
 - 10.1 Within five business days of the Satisfaction Date, CD Gaming shall dismiss with prejudice the Action against the Defendants in their official and individual capacities. Notwithstanding the foregoing, CD Gaming's obligation to file the dismissal of the Action is expressly conditioned on the satisfaction of the conditions stated in paragraph 15 below.
 - 10.2 The Parties agree that CD Gaming's dismissal of the action shall specifically reference this Consent Order and provide that the Court shall retain limited jurisdiction over the Parties for the purposes of addressing any breach and enforcing any and all obligations imposed by or arising out of this Consent Order, except as otherwise specifically provided herein. This limited jurisdiction shall terminate on December 31, 2018.
11. Releases.
 - 11.1 Release of Defendants by Penn. Except as to the obligations created by this Consent Order, upon the Satisfaction Date, Penn on its own behalf and, as applicable, on behalf of its subsidiaries, affiliates, predecessors, successors, assigns, insurers and licensees, and all of the past and present owners, directors, officers, members, employees, contractors, partners, agents, and attorneys of any of the foregoing and all others claiming by or through any of the foregoing (the "Penn Releasers"), hereby releases and discharges Defendants in their individual and official capacities, and, as applicable, their employees, contractors, authorized representatives, insurers, successors heirs

and assigns, and attorneys of any of the foregoing (the “Defendants Releasees”), from any and all Claims, whether known or unknown, apparent or concealed, suspected or unsuspected, arising in tort, contract or other state or federal law, and whether existing in the past or the present, arising from the beginning of time until the Effective Date, whether or not such claims were or could have been asserted the Action.

11.2 Release of Penn by Defendants. Except as to the obligations created by this Consent Order, upon the Satisfaction Date, Defendants on their own behalf and, as applicable, their employees, contractors, agents, authorized representatives, insurers, successors heirs and assigns, and attorneys of any of the foregoing on behalf of their employees, contractors, agents, authorized representatives, insurers and attorneys of any of the foregoing and all others claiming by or through any of the foregoing (the “Defendants Releasees”), hereby release and fully discharge Penn and, as applicable, its subsidiaries, affiliates, predecessors, successors, assigns, insurers and licensees, and all of the past and present owners, directors, officers, members, employees, contractors, partners, agents, and attorneys of any of the foregoing (the “Penn Releasees”), from any and all Claims, whether known or unknown, apparent or concealed, suspected or unsuspected, arising in tort, contract or other state or federal law, and whether existing in the past or the present, arising from the beginning of time until the Effective Date, whether or not such claims were or could have been asserted in the Action.

11.3 Nothing in this Consent Order is intended to effect, nor shall it constitute a release of any claim that any Party has or may have against any third party, whether known or unknown, apparent, concealed, suspected or unsuspected, arising in tort, contract, or other state or federal law, and whether existing in the past, present, or the future. To the extent that the releases contained in this Consent Order are raised by any third party as a defense to a claim asserted by any Party, the Parties hereto confirm that their claims are not thereby waived provided, however, that nothing shall be impair, rescind, or otherwise waive the effectiveness of the releases contained herein.

11.4 For the avoidance of doubt, if the Defendants ever remove either water or sewer service from the Property after the Satisfaction Date, Penn’s release in paragraph 11.1 above is null and void. This does not apply to any termination that might arise because of nonpayment of water or sewer bills.

12. Non-Interference With Franklin Township’s Application for a Building Department.

12.1 The City and CD Gaming agree not to oppose, object, or otherwise take any adverse action with respect to any Franklin Township application with the State Board of Building Standards for the creation of a certified building department with the understanding that the Property is not now nor will it ever be subject to any oversight by the said building department.

13. Joint Statement. The Parties issued a joint statement on May 24, 2011 (the "Statement") in the form attached hereto as Exhibit B and any further comments by the parties regarding this Consent Order shall be consistent with but not limited to the Statement.

14. Returning Discovery Records.

14.1 The City and County shall destroy or return all documents and discovery produced or generated by any other party to the Action to the extent allowed by Ohio's Public Records law. Penn's obligation to destroy or return the City and County's documents will be equal and reciprocal and no Party shall have any obligation greater than any other Party.

15. Contingent Events. The Parties agree that the foregoing Consent Order is contingent upon the following third party actions:

15.1 Receipt by Penn of a binding offer acceptable to Penn, in its sole discretion, to purchase the Arena District/Jaeger land (all of parcels owned by Penn and/or its subsidiaries and affiliates in the Arena District of the City) for no less than \$11 million in net proceeds.

15.2 A full release and dismissal with prejudice of all claims, cross-claims, counter-claims and/or third party claims in the two cases described below pursuant to a written settlement agreement acceptable to Penn, with each party in those cases to bear their respective costs and fees.

a. Central Ohio Gaming Ventures, LLC v. Strata 33 Investments, LLC, United States District Court for the Southern District of Ohio, Case No. 2:011-cv-00397 (Sargus, J.).

b. Central Ohio Gaming Ventures, LLC v. David Goodman, United States District Court for the Southern District of Ohio, Case No. 2:11-cv-223 AND any State of Ohio court proceeding that may derive from or be related to this case after remand.

15.3 The approval of the final Consent Order between the Parties by the City Council and Board of County Commissioners of Franklin County, Ohio on June 6 and 7, 2011 respectively.

16. Governing Law. This Consent Order shall be governed by and construed in accordance with the laws of the United States of America and the State of Ohio without regard to Ohio's choice of law rules.

17. Enforcement of Consent Order. Any action to enforce the terms of this Consent Order must be initiated in the United States District Court for the Southern District of Ohio, Eastern Division.

18. Representations and Warranties.

18.1 Each of the undersigned Parties represents and warrants that with respect to the respective releases given by the Parties hereto, no portion of any claim, right, demand, action or cause of action released hereunder, and no portion of any recovery or settlement to which any Party might be entitled based upon any such claim, right, demand, action or cause of action, has been assigned or transferred to any other person, firm or corporation, in any manner, including by way of subrogation, operation of law, attorneys' lien, or otherwise. Further, each of the undersigned Parties individually represents and warrants that it/he/she has the right, power and authority to enter into this Consent Order.

18.2 Each of the undersigned Parties represents and warrants that it/he/she has been represented by legal counsel in connection with this Consent Order and the settlement to which it relates and executes it knowingly and voluntarily after receiving such legal advice, and that, in executing this Consent Order, the Parties represent and acknowledge that they have been fully advised by their legal counsel as to their rights and consequences of signing this Consent Order. The Parties further represent and acknowledge that they fully understand and appreciate the meaning of each of the terms of this Consent Order and that they understand that they may be waiving legal rights or claims by signing this Consent Order and that they are voluntarily entering into this Consent Order with a full and complete understanding of its terms and legal effect and with the intent to be legally bound by this Consent Order.

18.3 Each of the undersigned Parties represents and warrants that, in executing this Consent Order, it/he/she has relied solely on the statements expressly set forth herein, and has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity, not expressly set forth herein, or upon the failure of any other Party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The discovery by any Party, subsequent to the execution of this Consent Order, of any facts not heretofore known to that Party, or that the facts or law upon which any Party relied in executing this Consent Order were not as that Party believed it to be, shall not constitute grounds for declaring this Consent Order void, avoidable or otherwise unenforceable. This paragraph is intended by the Parties to preclude any claim that any Party was fraudulently induced to enter this Consent Order, or was induced to enter this Consent Order by a mistake of fact or law.

18.4 Each of the undersigned Parties represents and warrants that it/he/she has made such investigation as it deems necessary or desirable of all matters contained in or related to this Consent Order.

19. Notices. Any notice to be given to a Party under this Consent Order shall be given in writing and shall be effective when sent, provided such notice is sent by mail,

postage prepaid, concurrently with transmission by email or hand delivery, as follows:

If to Penn or any Penn Releasee:

Penn National Gaming, Inc.
Attn: Deputy General Counsel
825 Berkshire Blvd.
Wyomissing, Pennsylvania 19610
Email: carl.sottosanti@pngaming.com

With a copy to:

Christopher Tayback
Quinn Emanuel Urquhart & Sullivan, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Email: christayback@quinnemanuel.com

If to the Defendants related to the City or any Defendants Releasee related to the City:

Chief of Staff
Office of the Mayor
90 W. Broad St.
Columbus, Ohio 43215
Email: mdreese@columbus.gov

With a copy to:

Susan E. Ashbrook
Assistant City Attorney
90 W. Broad St.
Columbus, Ohio 43215
Email: seashbrook@columbus.gov

If to the Defendants related to the County or any Defendants Releasee related to the County:

Don L. Brown
County Administrator
373 South High St., 26th Floor
Columbus, Ohio 43215
Email: dlbrown@franklincountyohio.gov

With a copy to:

Ron O'Brien
Franklin County Prosecuting Attorney
373 South High, 14th Floor
Columbus, Ohio 43215
Email: rjobrien@franklincountyohio.gov

20. General Provisions.

- 20.1 Full Satisfaction. This Consent Order, and the rights and benefits provided by it, are acknowledged by the Parties to be in full and complete settlement and satisfaction of the claims that are released.
- 20.2 No Admissions. The Parties understand and acknowledge that this Consent Order constitutes a compromise and settlement. The fact of this Consent Order, its terms and conditions, and any action taken or statements made by the Parties in connection with this Consent Order shall never, under any circumstances, be deemed or construed to be: (i) an admission of the truth or falsity of the claims asserted in the Action; or (ii) an acknowledgement or admission by any Party of any fault or liability whatsoever.
- 20.3 Costs. The Parties shall bear their own costs and attorneys' fees, and other fees incurred in connection with the Action and the preparation of this Consent Order.
- 20.4 Integration. This Consent Order contains the entire and only understanding between the Parties and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings. The Parties, and each of them, represent and agree that no promise, statement or inducement has been made that caused it/her to sign this Consent Order, other than those expressly set forth in this Consent Order. Any and all representations that any Party considers to be material to its decision to enter into this Consent Order have been included in this Consent Order and each Party agrees that any alleged representation not included in this Consent Order was not material to its decision to enter into this Consent Order. This Consent Order shall be accepted as conclusive proof that any reliance by any Party on any alleged representation not included in this Consent Order shall not be justified. In any action where any Party contends that any other Party has made any representation, or failed to disclose any fact, and such contention is inconsistent with this paragraph, the court shall summarily dismiss any such claim, even if the applicable law would not support such summary dismissal. Drafts of this Consent Order shall not be admissible to aid in the interpretation of this Consent Order and the addition or deletion of any word, phrase or provision shall be inadmissible for any purpose.
- 20.5 Modification. This Consent Order may not be altered, amended, or extinguished except by a writing which expressly refers to this instrument

and is signed subsequent to the date of this instrument by duly authorized representatives of the Parties affected by the amendment.

- 20.6 Successors and Assigns. This Consent Order shall be binding upon and inure to the benefit of the executors, administrators, heirs, agents, successors, and assigns of the Parties.
- 20.7 Counterparts. This Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures by facsimile and scanned signatures shall be of the same force and effect as if in original ink.
- 20.8 Headings. The headings and captions used in this Consent Order are for convenience only and shall not be deemed to affect in any way the language of the provisions to which they refer.
- 20.9 Interpretation. This Consent Order shall be interpreted as if jointly drafted by the Parties, and no provision shall be interpreted against any Party because such provision was drafted by that Party.
- 20.10 Additional Documents. The Parties agree to cooperate in taking whatever actions are reasonably necessary to effectuate the purpose and intent of this Consent Order, including executing additional documentation as may be reasonably required to effectuate the same.
- 20.11 Severability. Should any part of this Consent Order be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Consent Order should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

IT IS SO ORDERED


A handwritten signature in blue ink, appearing to read "G. L. Frost", is written over a horizontal line.

GREGORY L. FROST
UNITED STATES DISTRICT COURT JUDGE

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the Parties have approved and executed this Consent Order on the dates set forth opposite their respective signatures.

DATED: June 9, 2011

PENN NATIONAL GAMING, INC.

By Robert S. Ippolito
Name: Robert S. Ippolito
Title: VP/EC / IT

DATED: _____, 2011

CD GAMING VENTURES, LLC

By _____
Name: _____
Title: _____

DATED: _____, 2011

CITY OF COLUMBUS, OHIO

By _____
Name: _____
Title: _____

DATED: _____, 2011

BOARD OF COMMISSIONERS OF FRANKLIN COUNTY, OHIO

By _____
Name: _____
Title: _____

DATED: _____, 2011

MICHAEL B. COLEMAN

By _____

IN WITNESS WHEREOF, the Parties have approved and executed this Consent Order on the dates set forth opposite their respective signatures.

DATED: , 2011

PENN NATIONAL GAMING, INC.

By _____

Name: _____

Title: _____

DATED: 6/9, 2011

CD GAMING VENTURES, LLC

By _____

Name: _____

Title: _____


John V. Finamore
President

DATED: , 2011

CITY OF COLUMBUS, OHIO

By _____

Name: _____

Title: _____

DATED: , 2011

BOARD OF COMMISSIONERS OF FRANKLIN COUNTY, OHIO

By _____

Name: _____

Title: _____

DATED: , 2011

MICHAEL B. COLEMAN

By _____

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DATED: _____, 2011

PENN NATIONAL GAMING, INC.

By _____

Name:

Title:

DATED: _____, 2011

CD GAMING VENTURES, LLC

By _____

Name:

Title:

DATED: 6/7, 2011

CITY OF COLUMBUS, OHIO

By _____

Name:

Title:

BOYCE STAFFORD III
DIRECTOR OF DEVELOPMENT

DATED: _____, 2011

BOARD OF COMMISSIONERS OF FRANKLIN COUNTY, OHIO

By _____

Name:

Title:

DATED: 6/7, 2011

MICHAEL B. COLEMAN

By _____

MBC

DATED: 6/7, 2011

MICHAEL REESE

By Michael Reese

DATED: , 2011

MICHAEL MENTEL

By _____

DATED: , 2011

CHARLETA TAVARES

By _____

DATED: , 2011

PRISCILLA R. TYSON

By _____

DATED: , 2011

A. TROY MILLER

By _____

DATED: , 2011

EILEEN Y. PALEY

By _____

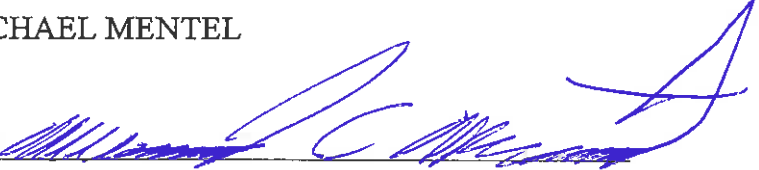
DATED: , 2011

MICHAEL REESE

By _____

DATED: June 8, 2011

MICHAEL MENTEL

By  _____

DATED: , 2011

CHARLETA TAVARES

By _____

DATED: , 2011

PRISCILLA R. TYSON

By _____

DATED: , 2011

A. TROY MILLER

By _____

DATED: , 2011

EILEEN Y. PALEY

By _____

DATED: , 2011

MICHAEL REESE

By _____

DATED: , 2011

MICHAEL MENTEL

By _____

DATED: 6/9 , 2011

CHARLETA TAVARES

By  _____

DATED: , 2011

PRISCILLA R. TYSON

By _____

DATED: , 2011

A. TROY MILLER

By _____

DATED: , 2011

EILEEN Y. PALEY

By _____

DATED: , 2011

MICHAEL REESE

By _____

DATED: , 2011

MICHAEL MENTEL

By _____

DATED: , 2011

CHARLETA TAVARES

By _____

DATED: 6/7, 2011

PRISCILLA R. TYSON

By Priscilla R. Tyson

DATED: , 2011

A. TROY MILLER

By _____

DATED: , 2011

EILEEN Y. PALEY

By _____

DATED: , 2011

MICHAEL REESE

By _____

DATED: , 2011

MICHAEL MENTEL

By _____

DATED: , 2011

CHARLETA TAVARES

By _____

DATED: , 2011

PRISCILLA R. TYSON

By _____

DATED: 6-7-, 2011

A. TROY MILLER

By  _____

DATED: , 2011

EILEEN Y. PALEY

By _____

June 6, 2011 Final City

DATED: , 2011

MICHAEL REESE

By _____

DATED: , 2011

MICHAEL MENTEL

By _____

DATED: , 2011

CHARLETA TAVARES

By _____

DATED: , 2011

PRISCILLA R. TYSON

By _____

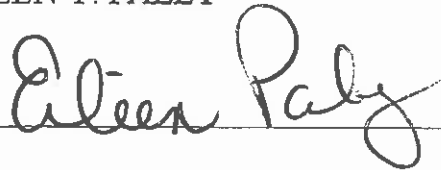
DATED: , 2011

A. TROY MILLER

By _____

DATED: 6/7 , 2011

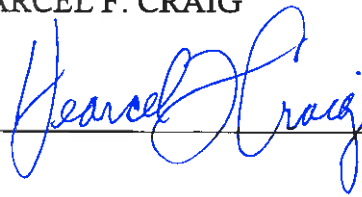
EILEEN Y. PALEY

By  _____

DATED: 6/8/ , 2011

HEARCEL F. CRAIG

By



DATED: , 2011

MARILYN BROWN

By

DATED: , 2011

PAULA BROOKS

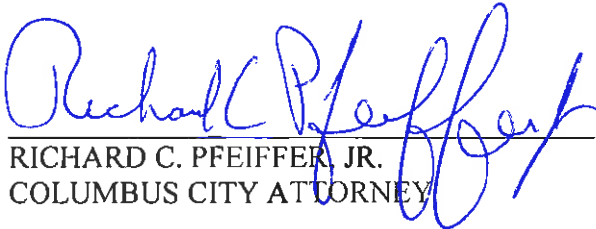
By

DATED: , 2011

JOHN O'GRADY

By

APPROVED AS TO FORM FOR THE CITY


RICHARD C. PFEIFFER, JR.
COLUMBUS CITY ATTORNEY

APPROVED TO FORM FOR THE COUNTY

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PENN NATIONAL GAMING, INC.

By _____
Name:
Title:

DATED: , 2011

CD GAMING VENTURES, LLC

By _____
Name:
Title:

DATED: , 2011

CITY OF COLUMBUS, OHIO

By _____
Name:
Title:

DATED: 6/7, 2011

BOARD OF COMMISSIONERS OF FRANKLIN COUNTY, OHIO

By  _____
Name: DON L. BROWN
Title: COUNTY ADMINISTRATOR

DATED: , 2011

MICHAEL B. COLEMAN

By _____

DATED: , 2011

MICHAEL REESE

By _____

DATED: , 2011

MICHAEL MENTEL

By _____

DATED: , 2011

CHARLETA TAVARES

By _____

DATED: , 2011

PRISCILLA R. TYSON

By _____

DATED: , 2011

A. TROY MILLER

By _____

DATED: , 2011

EILEEN Y. PALEY

By _____

DATED: , 2011

HEARCEL F. CRAIG

By _____

DATED: 6/7, 2011

MARILYN BROWN

By Marilyn Brown

DATED: 6/7, 2011

PAULA BROOKS

By Paula Brooks

DATED: 6/7, 2011

JOHN O'GRADY

By John O'Grady

APPROVED AS TO FORM FOR THE CITY

RICHARD C. PFEIFFER, JR.
COLUMBUS CITY ATTORNEY

APPROVED TO FORM FOR THE COUNTY

Ron O'Brien
RONALD O'BRIEN
FRANKLIN COUNTY PROSECUTING ATTORNEY

7 Jun 11