

**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

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**No. 207 E.M. 2007**

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**SENATOR VINCENT J. FUMO, et al.,  
Petitioners**

**vs.**

**THE CITY OF PHILADELPHIA  
Respondents**

**and**

**HSP GAMING, L.P.,  
Respondent-Intervenor**

**RECEIVED**  
MAR 28 2008  
SUPREME COURT  
EASTERN DISTRICT

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**BRIEF OF THE PHILADELPHIA WATERFRONT  
STATE LEGISLATORS IN OPPOSITION TO APPLICATION  
OF HSP GAMING, LP FOR SPECIAL ARGUMENT SESSION  
OR ADVANCEMENT OF ORAL ARGUMENT**

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Catherine M. Recker  
Attorney No. 56813  
Robert E. Welsh, Jr.  
Attorney No. 28143  
Welsh & Recker, P.C.  
2000 Market Street, Suite 2903  
Philadelphia, Pennsylvania 19103  
215.972.6430  
[cmrecker@welshrecker.com](mailto:cmrecker@welshrecker.com)

Christopher B. Craig  
Attorney No. 65203  
Counsel, Senate Democratic Appropriations  
Committee  
Room 545, Main Capitol Building  
Harrisburg, Pennsylvania 17120  
717.787.5662  
[ccraig@fumo.com](mailto:ccraig@fumo.com)

*Counsels for Philadelphia Waterfront State Legislators*

## I. INTRODUCTION

As directed by this Court, Senator Vincent J. Fumo, Representative Michael H. O' Brien, Representative William F. Keller, Senator Michael J. Stack, Representative John J. Taylor, Representative Michael P. McGeehan, and Representative Robert C. Donatucci (hereinafter, the "Philadelphia waterfront state legislators"), by and through their undersigned counsel, hereby file this Brief in Opposition to the Application of HSP Gaming, LP ("HSP") for Special Argument Session or for Advancement of Oral Argument. With this filing, HSP is attempting to manipulate the Court's consideration and careful deliberation of this matter, despite the clear and direct admonition by the Office of the Prothonotary, that "...requests for scheduling changes cannot be entertained." (Emphasis added). *See*, Letter of March 20, 2008.

Though the state legislators are prepared to present oral argument in support of their Appeal at such time that this Court may direct, HSP failed to identify unusual or exigent circumstances that would justify an extraordinary change in this Court's established schedule.<sup>1</sup> The incontrovertible fact remains – this appeal is the direct consequence of HSP's attempt to construct a casino complex upon land it neither owns nor controls. HSP selected and agreed to purchase real property that it represented to the PGCB was sufficient to build the particular casino project it proposed. HSP anticipated the project would be built on additional land owned by the Commonwealth but maintained throughout the licensing process that it could implement the project without the use of the Commonwealth's submerged land. Although it had sufficient time, it chose to bypass the well-established state legislative process for conveying a lease

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<sup>1</sup> This matter has been pending before the Court for only 3 months, it cannot be reasonably suggested that this appeal has imposed an unusual or burdensome delay.

interest in the Commonwealth's submerged lands and take a short-cut by seeking a municipal license to use those lands. Careful and considerate examination of the legality of that short-cut is necessary as the license granted to HSP presents significant issues regarding the disposition of land held in trust by Commonwealth of Pennsylvania for its residents. The Philadelphia waterfront state legislators respectfully assert that the Court's schedule should not be manipulated to help HSP fulfill its contractual obligations to purchase land that until now they have maintained they own. HSP's "exigent circumstance" constitutes a \$70 million payment coming due for land that it contracted to buy independent of legitimately securing the right to use submerged land belonging to the Commonwealth. Accordingly, it is disingenuous for HSP to now cite delay and increase costs resulting from its own actions as justification for its request that this Court grant the extraordinary relief of changing its argument schedule to satisfy the convenience of HSP.<sup>2</sup>

## II. ARGUMENT

### A. **HSP's own conduct, not exigent or unusual circumstances, has caused delay of its development project.**

Neither the City of Philadelphia nor the Pennsylvania Gaming Control Board (hereinafter the "PGCB") selected the parcel of property HSP is seeking to develop. Rather, HSP selected this site with the full knowledge that if it were to be developed as originally proposed to the PGCB, HSP would need to acquire a property interest in the submerged lands of the Delaware

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<sup>2</sup> Advancement of oral argument is extraordinary and may only be provided under exigent or unusual circumstances. Pa.R.A.P. 2313. "Counsel should be aware that the three appellate courts have been successful in reducing case backlogs that have existed in the past. Accordingly, except in unusual cases, advancement of argument likely will be unnecessary." *Darlington, et al.*,

River. Prior to HSP's application to the PGCB for a gaming license in December of 2005, HSP began negotiations for three potential casino sites within the City of Philadelphia – the Sysco Foods warehouse near the stadium complex, the Ameristar site along north Delaware Avenue, and the former Jack Frost Sugar Refinery location it eventually chose. *Category 2 Background Investigation and Suitability Report of HSP Gaming, LP*, PGCB Dkt. 1356 (November 9, 2006) at 7; Attachment "A." Eventually, HSP permitted an option to purchase the Sysco location to expire, in favor of the former Jack Frost Sugar Refinery site as the location for its proposed casino complex. *Id.*, at 7-8. Thus, HSP voluntarily rejected the development site that did not require an interest in Commonwealth submerged lands (the Sysco warehouse location) and voluntarily chose the river-front site that would (Jack Frost Sugar Refinery).

As for the delay HSP complains of, it chose to bypass the well-established state legislative process for conveying a lease interest in the Commonwealth's land although it had sufficient time to engage in that process. As early as November 15, 2007, both HSP and the City of Philadelphia were given notice that any attempt by the City to issue a "submerged lands license" permitting HSP to develop Commonwealth submerged lands without specific authorization from the General Assembly would likely result in "more litigation and more delay." *See*, Philadelphia Commerce Department Hearing Transcript at 61-62 (November 17, 2007) (Petition for Review, Attachment "E") (Senator Fumo testified that because of its unprecedented nature and ephemeral legal authority, the City's action will likely result in further litigation). In fact, Senator Fumo, Representative O'Brien and Representative Keller each individually wrote and/or testified before the City Commerce Department of the unlawful nature

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*Pennsylvania Appellate Practice 2<sup>nd</sup>* § 2313:1 (Lawyers Cooperative 1996).

of the City's proposed licensing action. *Id.* at 45-64.

HSP voluntarily assumed the risks associated with choosing such an unprecedented course in order to obtain a property interest in Commonwealth submerged lands fully aware that there is no record of the Commerce Department having issued any similar license during the past 30 years (since the enactment of the Dam Safety and Encroachment Act in 1978). As such, delays or increased costs are foreseeable consequences resulting from the pursuit of a legally risky and unprecedented strategy.

Remarkably, HSP invokes the interests of Pennsylvania taxpayers in seeking to change the Court's schedule asserting that any delay will "adversely affect Pennsylvania taxpayers." Application of HSP at 3, ¶ 7; at 5, ¶ 16. At the same time HSP asks this Court to uphold the grant of a City license which authorized private development upon public lands – without any payment to the Commonwealth. HSP's stated concern for the public interest is one of convenience, not conviction.

**B. HSP's Real Property Purchase Agreement is not contingent upon the outcome of this litigation.**

Though HSP suggests that refusing to expedite the final disposition of this appeal may adversely impact its effort to obtain the land for its proposed casino complex under the Real Property Purchase Agreement, such an assertion is without merit. On December 26, 2005, HSP entered into a Real Property Purchase Agreement with LHTW Corporation and 1001 Christopher Columbus Boulevard, LLP, for the purchase of its development site (the "Agreement").

*Category 2 Background Investigation and Suitability Report of HSP Gaming, LP, PGCB Dkt.*

1356 (November 9, 2006) at 18; Attachment “A.”<sup>3</sup> According to the PGCB Suitability Report, the terms of the Agreement provide that HSP shall make non-refundable monthly payments in the amount of \$32,416.67 until such time as the PGCB awards the category 2 slot licenses. *Id.* If HSP is “awarded” a slots license, the entire balance of the \$70 million is due 120 days from HSP’s receipt of the license. *Id.* HSP was approved for a slots license on February 1, 2007, and it received its license from the PGCB on January 11, 2008. Accordingly, HSP became legally obligated to pay the balance of the \$70 million by May 10, 2008 (2 days prior to the currently scheduled argument date of May 12, 2008). HSP has not paid the balance due on the property, and therefore cannot begin development because they do not own any of the land on which they wish to build. The scheduling date for oral argument, therefore, has no legal impact on or relevance to HSP’s obligations under the Agreement.

HSP’s legal obligations relative to the Real Property Purchase Agreement are not conditioned upon a resolution of the issues involved in this appeal. Though resolution of this Appeal may adversely impact HSP’s proposed use or cost of the property, HSP voluntarily negotiated and agreed to the terms of the Real Property Purchase Agreement in 2005. At that time HSP was aware of the need to acquire a property interest in the contiguous Commonwealth submerged lands if it were to develop the property as originally proposed to the PGCB. As a consequence, the outcome of this Appeal is neither an exigent nor an unusual circumstance that

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<sup>3</sup> Although HSP references the Real Property Purchase Agreement in support of its Application, HSP has contrived to keep its contents confidential by attaching a mere two paragraph “Memorandum of Agreement” in place of the actual agreement as an exhibit to its submerged lands license application. *See* Petition for Review, Attachment “G.” While it appears that HSP shared some details of the Agreement with the PGCB which it disclosed in the Suitability Report, HSP has not disclosed the contents of this Agreement to the waterfront state legislators, the City of Philadelphia or this Court.

justifies the extraordinary rescheduling of oral argument.

**C. HSP's development plans are not contingent upon acquiring the submerged lands of the Commonwealth.**

Recognizing the risks of granting a casino license to an applicant who did not own or control the land it was proposing to develop, the PGCB expressed its concern to HSP's Chairman during the Suitability Hearing. In response, the Chairman of HSP stated that incorporating the submerged land would make his a better project but he reassured the PGCB that *the project was not dependent on acquiring an interest in the Delaware riverbed*. PGCB Suitability Hearing, In Re Sugarhosue Casino, (November 13, 2006) at 97, Attachment "B." Now, not only is HSP asserting that acquiring the submerged lands is crucial, it is implying that even the purchase of the dry land next to the submerged land is dependent upon the outcome of this litigation matter. Application of HSP at 5, ¶ 15. Certainly, the PGCB would have seen the licensing decision differently had the ownership and development plans been described as they stand today rather than as HSP represented them in November 2006.

**D. HSP has not obtained permits or licenses necessary to begin construction.**

Even if this litigation were to be immediately concluded, HSP could not begin construction of its proposed casino complex because it has not yet applied for nor obtained all of the required permits and licenses. For example, HSP is required to obtain a permit from the Department of the Army pursuant to Section 10 of the federal Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344). Though HSP has

applied for these permits, the application review process is still underway and is not expected to conclude prior to a final resolution of this matter. Furthermore, HSP is required to obtain a Water Quality Certificate, pursuant to Section 10 of the Rivers and Harbors Act, and a Water Obstruction Permit, pursuant to Section 6 of the Dam Safety and Encroachments Act (32 P.S. § 693.6), both from the Pennsylvania Department of Environmental Protection. HSP has not obtained either of these permits. Finally, HSP has not received the necessary City licenses or permits, such as a building construction permit, a water permit, a sewage module permit and an electrical permit. Accordingly, HSP's inability to begin construction is more related to the delay it has encountered in obtaining the required permits than this Court's oral argument schedule.

### **III. CONCLUSION**

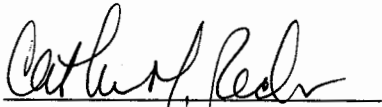
The Philadelphia waterfront state legislators agree that this Appeal implicates matters of significant public importance – in particular, the authority of members of the General Assembly to exercise their constitutional and statutory mandate to make basic public policy decisions concerning the disposition of Commonwealth lands, such as the submerged lands of the Delaware river, without interference from the City of Philadelphia. HSP's attempted end-run around the well-established legislative conveyance process represents a direct assault upon the authority of the legislative branch of government and deprives the taxpayers of the Commonwealth of an important and substantial source of revenue. As has been their practice throughout this appeals process, the state legislators are prepared to comply with any timetable set by this Court. However, the state legislators take exception with HSP characterization of its self-imposed delays and setbacks as being either “exigent” or “unusual.”



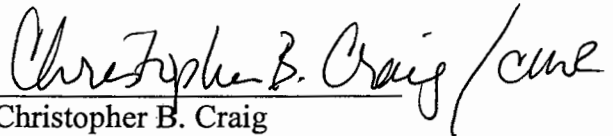
It is acknowledged that HSP now finds itself in a dilemma in which it is obligated to purchase land for which it agreed to pay \$70 million two and a half years ago, without any regard for the matter before the Court. Unfortunately, HSP's dilemma is entirely of its own creation – the end result of its pursuit of a novel and unprecedented licensing process with the City of Philadelphia and its unwillingness to obtain specific state legislative conveyance of riparian interests.

WHEREFORE, for the foregoing reasons, the state legislators respectfully request this Court to decline granting any relief to HSP premised upon its claims of otherwise avoidable delay and cost.

Respectfully Submitted,



Catherine M. Recker  
Attorney No. 56813  
Robert E. Welsh, Jr.  
Attorney No. 28143  
Welsh & Recker, P.C.  
2000 Market Street, Suite 2903  
Philadelphia, Pennsylvania 19103  
215.972.6430  
[cmrecker@welshrecker.com](mailto:cmrecker@welshrecker.com)



Christopher B. Craig  
Attorney No. 65203  
Counsel, Senate Democratic Appropriations  
Committee  
Room 545, Main Capitol Building  
Harrisburg, Pennsylvania 17120  
717.787.5662  
[ccraig@fumo.com](mailto:ccraig@fumo.com)

*Counsels for Philadelphia Waterfront State Legislators*

March 28, 2008

**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

|  |   |                    |
|--|---|--------------------|
| <b>SENATOR VINCENT J. FUMO,</b>                                  | : |                    |
| <b>REPRESENTATIVE MICHAEL H. O'BRIEN,</b>                        | : |                    |
| <b>REPRESENTATIVE WILLIAM F. KELLER,</b>                         | : |                    |
| <b>SENATOR MICHAEL J. STACK,</b>                                 | : |                    |
| <b>REPRESENTATIVE JOHN J. TAYLOR,</b>                            | : | <b>207 EM 2007</b> |
| <b>REPRESENTATIVE MICHAEL P. McGEEHAN, AND</b>                   | : |                    |
| <b>REPRESENTATIVE ROBERT C. DONATUCCI, each</b>                  | : |                    |
| <b>in their official capacity as members of the Pennsylvania</b> | : |                    |
| <b>General Assembly, and individually as resident taxpayers,</b> | : |                    |
|  | : |                    |
| <b>Petitioners,</b>  | : |                    |
|  | : |                    |
| <b>v.</b>  | : |                    |
|  | : |                    |
| <b>CITY OF PHILADELPHIA,</b>                                     | : |                    |
|  | : |                    |
|  | : |                    |
| <b>Respondent.</b>   | : |                    |

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**CERTIFICATION OF SERVICE**

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I, Christopher B. Craig, attorney for the Philadelphia waterfront state legislators, hereby certify that two copies of the attached document were served by e-mail and first class mail to the addresses indicated below. I further certify that the manner of service satisfies the requirements of Pa. R.A.P. 121, and 2187(a).

Stephen A. Cozen, Esquire  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103  
215. 665. 2020  
[scozen@cozen.com](mailto:scozen@cozen.com)  
*Counsel for HSP Gaming LP*

Richard Sprague, Esquire  
Sprague & Sprague  
135 S. 19<sup>th</sup> Street, Suite 400  
The Wellington Building  
Philadelphia, PA 19103  
215. 561. 7681  
[RASprague@SpragueandSprague.com](mailto:RASprague@SpragueandSprague.com)  
*Counsel for HSP Gaming LP*

William Lamb, Esquire  
Lamb McErlane, PC  
24 East Market Street  
P.O. Box 565  
West Chester, PA 19381-0565  
610.430.8000  
[wlamb@chescolaw.com](mailto:wlamb@chescolaw.com)  
*Counsel for HSP Gaming LP*

Shelley R. Smith, Esquire  
City Solicitor  
Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
215. 683.5036  
[shelley.smith@phila.gov](mailto:shelley.smith@phila.gov)  
*Counsel for City of Philadelphia*

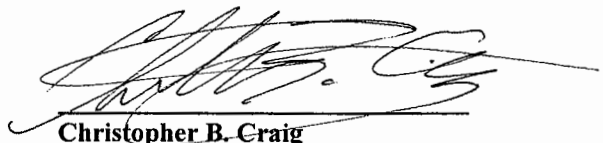
Amy B. Ginensky, Esquire  
Pepper Hamilton  
3000 Two Logan Square  
18<sup>th</sup> and Arch Streets  
Philadelphia, Pennsylvania 19103  
215.994.2935  
[ginenskya@pepperlaw.com](mailto:ginenskya@pepperlaw.com)  
*Counsel for the City of Philadelphia*

James Christie, Esquire  
Christie, Pabarue, Mortensen and Young  
1880 John F. Kennedy Boulevard, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
215. 587.1600  
[jwchristie@cpmy.com](mailto:jwchristie@cpmy.com)  
*Counsel for Philadelphia City Council for the City of Philadelphia*

John Donnelly, Esquire  
Levine, Staller, Sklar, Chan, Brown & Donnelly  
3030 Atlantic Avenue  
Atlantic City, New Jersey, 08401  
609.347.1199  
[jdonnelly@levinestaller.com](mailto:jdonnelly@levinestaller.com)  
*Counsel for HSP Gaming, LP*

Susan Shinkman, Esquire  
Chief Counsel  
Pennsylvania Dept. of Environmental Protection  
Rachel Carson Office Building, 16<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17105  
717.787.7060

*Counsel for Amicus Curiae, Pa DEP*



**Christopher B. Craig**  
Attorney No. 65203  
Counsel, Senate Democratic Appropriations Committee  
Room 545, Main Capitol Building  
Harrisburg, Pennsylvania 17120  
(717) 787-5662  
[ccraig@fumo.com](mailto:ccraig@fumo.com)  
*Counsel for Philadelphia waterfront state legislators*

# **EXHIBIT A**



# Pennsylvania Gaming Control Board

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**CATEGORY 2 BACKGROUND  
INVESTIGATION AND SUITABILITY  
REPORT OF**

**HSP Gaming, LP**

**Docket #: 1356**

*Pennsylvania Gaming Control Board  
Bureau of Licensing  
November 9, 2006*

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CONFIDENTIAL COMMUNICATION SUBJECT TO PARAGRAPH 10 OF THE PGCB CODE OF ETHICS WHICH STATES THAT WITH RESPECT TO ANY MATTER INVOLVING THE DISCRETIONARY ISSUANCE, APPROVAL, RENEWAL, CONDITIONING, REVOCATION, SUSPENSION, OR DENIAL OF ANY LICENSE OR PERMIT, NO BOARD MEMBER SHALL ENGAGE IN *EX PARTE* COMMUNICATIONS WITH ANY INTERESTED PARTY.

## INTRODUCTION

HSP Gaming, LP ("HSP") is an applicant for a Category 2 slot machine operator's license pursuant to 4 Pa.C.S. §§ 1101-1904 (the "Act"). HSP is a limited partnership created for the purpose of obtaining a Category 2 gaming license in the city of Philadelphia. Collectively, the partners involved in this project come from diverse backgrounds and have developed, constructed and operated casinos, luxury hotels and other hospitality businesses around the world including Niagara Fallsview Casino Resort, the Pennsylvania Convention Center, Water Tower Place in Chicago and Hyatt Regency Philadelphia at Penn's Landing.

HSP was formed in December 2005 in order to apply for one of the two Category 2 gaming licenses to be awarded in the City of Philadelphia. Although HSP is not presently an active business, it is in the advanced stages of developing plans to build its proposed facility. Several owners of HSP have developed and operated casinos, gaming facilities, hotels and other hospitality related businesses.

The project site encompasses 22 acres along the Delaware River. The look of the permanent casino structure has been designed as a two-story podium structure. Planned as a phased gaming facility, HSP does not propose a temporary facility, but instead has dubbed their initial construction as an "interim facility." HSP designates this facility as such because its interim facility will in fact be the core section of its Phase I facility. The interim facility is projected to open within 12 months of licensure and house 1,500 slot machines, related gaming support and regulatory spaces, a food court, and a ten-level self park facility with 2,404 spaces located at the north end of the site. HSP plans to add on to this core structure to reach completion of its first phase, which will be named Sugar House, to accommodate up to 3,000 slot machines, additional restaurants, and a 6,000 square-foot multi-use event center with related support areas. Phase I is slated to encompass 1,500,000 square feet of new construction, with 84,600 square feet of net gaming space. Future phases of this project complete an expansion of the complex to ultimately accommodate the statutory limit of 5,000 slot machines, a 500 room hotel tower, expanded dining facilities, a spa and expanded garage parking. Should all phases be completed, HSP's facility would exceed 3,000,000 square feet of new construction.

From a capital investment standpoint, HSP asserts it has access to capital markets and has submitted financing letters from the Deutsch Bank, Merrill Lynch, Barclays Capital and CIBC Oppenheimer.

### **a. Eligibility of Applicant**

HSP is an eligible applicant for licensure as a Category 2 slot machine operator, pursuant to 4 Pa.C.S. § 1304 and 58 Pa. Code § 443.4 because the applicant, its affiliate, intermediary, subsidiary or holding company is not otherwise eligible to apply for a Category 1 slot machine



license. Additionally, pursuant to 4 Pa.C.S. § 1304, HSP is an applicant that is seeking to locate a licensed facility in Philadelphia, a city of the first class.

Pursuant to 4 Pa.C.S. § 1304(b), two Category 2 licensed facilities and no more shall be located by the board within a city of the first class. No Category 2 licensed facility located by the board within a city of the first class shall be within ten linear miles of a Category 1 licensed facility regardless of the municipality where the Category 1 licensed facility is located. Investigation has disclosed that the proposed HSP site is at least twelve (12) miles apart from Philadelphia Park (Greenwood Gaming) and Chester Downs (Harrah's).

**b. Purpose of Investigation**

The Bureau of Investigations and Enforcement ("BIE") conducted an extensive investigation into the background and suitability of the Category 2 applicants, their key employee qualifiers and, where identified, their key employees. BIE worked closely with the Bureau of Licensing to communicate with the applicants and to address outstanding issues related to the filing of the applications. BIE conducted financial suitability investigations jointly with the Bureau of Corporate Compliance and Internal Controls. BIE worked cooperatively with the Pennsylvania State Police Gaming Enforcement Office and other law enforcement agencies to ascertain whether any applicants were involved in illegal activities and to conduct investigation into arrests, convictions, warrants, etc.

BIE investigators conducted investigations regarding the business backgrounds of the entities and the personal backgrounds of the individuals. Business background investigations included verification of the type of entity, the date of formation of the entity, the entity's history, where the entity is licensed to conduct business, and the entity's relationship to the applicant. The BIE investigation also verified that the applicant possesses proper site control of the land upon which the facility is to be located. Individual personal history backgrounds consisted of investigating employment history, family history, residence history, educational history, dependency issues, non-gaming licenses, professional licenses, passport history and references. Additionally, BIE verified that the filing status of each individual and entity was correct.

The applicants' gaming license status in other jurisdictions was investigated by BIE. Investigators traveled to numerous states to gather information on the regulatory histories of both the individual applicants and the entity applicants. The Board entered into four formal memorandums of understanding agreements with other states and has developed information sharing relationships with other gaming jurisdictions as well. Information regarding the applicants' current gaming license status and their gaming license history was investigated and reported.

BIE's investigation included checking the criminal histories of the applicants. The Pennsylvania State Police were responsible for checking the National Crime Information Center databases for criminal history and wanted person information. BIE conducted its own criminal history checks by utilizing several databases. Additionally the Office of Pennsylvania Attorney General, several United States Attorney Offices and Federal Bureau of Investigation Offices were contacted with respect to these applicants.

BIE investigated civil litigation, both past and present, for both the entities and the individuals. BIE verified civil litigation by checking several databases, reviewing the application, conducting personal interviews, scrutinizing financial reports and examining company litigation files. Investigators made special note of litigation trends, litigation not covered by insurance, and lawsuits which could have a significant impact on company earnings.

BIE investigated whether the applicant made any political contributions to Pennsylvania candidates after the date of application, or in cases where the applicant is licensed in other jurisdictions, after the date of the Act. Investigators reviewed on-line databases from the Pennsylvania Department of State's Bureau of Commissions, Elections and Legislation as well as the Federal Election Commission.

BIE, along with the Bureau of Corporate Compliance and Internal Controls, investigated the applicants' finances. Several BIE agents were temporarily assigned to the Bureau of Corporate Compliance and Internal Controls to assist with the individual and entity financial analyses. The Bureau of Corporate Compliance and Internal Controls personnel created the financial fitness reports. BIE investigators verified the numbers upon which these reports were based. Investigators verified bank accounts, notes receivable, securities, real estate interests, pension funds, vehicles, life insurance policies, notes payable, loans, taxes payable, mortgages, contingent liabilities, other indebtedness, and bankruptcies. This verification process consisted of applicant interviews, extensive reviews of financial documents, and numerous database searches.

Working with the Bureau of Licensing and the Bureau of Corporate Compliance and Internal Controls, BIE verified that no public official has ownership exceeding one percent of the licensed gaming entity. This joint effort included personal interviews and a coordinated review of financial documents to determine ownership. Additionally, BIE, the Bureau of Licensing and the Bureau of Corporate Compliance and Internal Controls worked together to verify that no entities or individuals hold any ownership interest in a supplier licensee.

As of October 27, 2006, BIE has expended 1,278.50 hours investigating the applicant and its Key Employee/Qualifiers; the Bureau of Corporate Compliance and Internal Controls' Financial Suitability Task Force has expended 105.25 hours conducting a financial analysis of this applicant and evaluating its financial suitability for licensure, and the Bureau of Licensing has expended 1,484 hours processing the application.

Suitability investigations of all applicants and licensees will be ongoing.

The purpose of this report is to provide a comprehensive view of the information and documents obtained by the PGCB regarding HSP seeking a Category 2 slot machine operator's license pursuant to the Act. This report is designed to ensure an objective presentation of the facts. The report contains a summary of the work product of the Bureau of Licensing, BIE and Bureau of Corporate Compliance and Internal Controls.

### **c. Application History**

Pursuant to 58 Pa. Code § 441.4, a slot machine license applicant is required to file application forms for its affiliates, intermediaries, subsidiaries, holding companies, and key employee

qualifiers (together, "Qualifiers") and key employees (together, with Qualifiers, "Key Employee/Qualifiers"). On December 28, 2005, the PGCB received the Category 2 Application and Disclosure Information Form ("C2") for HSP. PGCB has also received application forms for HSP's Key Employee/Qualifiers.

By submitting its C2 and other application forms, HSP and its Key Employee/Qualifiers have submitted applications under the Act, which constitute the seeking of a privilege pursuant to 4 Pa.C.S. § 1102(7). Pursuant to 58 Pa. Code § 421.1(b), the burden of proving qualification is on HSP. Pursuant to 58 Pa. Code § 421.1(c), HSP's application for licensure and the applications of its Key Employee/Qualifiers seeking licensing approval from the PGCB constitute a request to the PGCB for a decision on HSP and its Key Employee/Qualifiers' general suitability, financial suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in this Commonwealth. Pursuant to 58 Pa. Code § 421.1(c), by filing an application with the PGCB, HSP and its Key Employee/Qualifiers specifically consented to investigation to the extent deemed appropriate by the PGCB.

By applying for a license from the PGCB, HSP and its Key Employee/Qualifiers agreed and continue to agree to:

1. Abide by all provisions of the Act and any rules, regulations, technical standards or orders promulgated thereunder.
2. Waive liability as to the PGCB, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during a background investigation of HSP and its Key Employee/Qualifiers.
3. Promptly provide updated and supplemental information to comply with the current and ongoing suitability requirements.

### **Qualifiers**

Pursuant to the Act and 58 Pa. Code § 435.2, HSP was required to have applications submitted by its Qualifiers. The Qualifiers that submitted applications with the HSP application package are as follows:

**Sugarhouse HSP Gaming, LLC** Affiliate of HSP  
**High Penn Gaming, LP**, Affiliate of HSP  
**HP Gaming Partners, LP**, Affiliate of HSP  
**RPRS Gaming, LP**, Affiliate of HSP  
**High Penn Gaming, LLC**, Affiliate of HSP  
**RPRS Gaming, LLC**, Affiliate of HSP  
**RMP Gaming, LP**, Affiliate of HSP  
**RMP Gaming, LLC**, Affiliate of HSP  
**2005 AAA Trust**, Affiliate of HSP  
**Neil G. Bluhm Family Descendants Trust**, Affiliate of HSP  
**2002 LNB Family Dynasty Trust**, Affiliate of HSP  
**Meredith A. Bluhm-Wolf 2006 Family GST Trust**, Affiliate of HSP  
**2002 AGB Family Dynasty Trust**, Affiliate of HSP

**Pattison Packer HSP Gaming, LLC**, Affiliate of HSP  
**Lamb Partners**, Entity Qualifier  
**LAMB Company, LLC**, Entity Qualifier

The following are Natural Person Qualifiers for HSP and its Qualifiers:

**Neil G. Bluhm**, (a) 1% limited partner interest and 0.06% indirect interest in High Penn Gaming LP.; (b) a 60% membership interest in High Penn Gaming LLC; (c) a Manager of High Penn Gaming, L.P. through his membership in High Penn Gaming LLC, which has a 47.94% indirect interest in HP Gaming Partners, LP; (d) a 0.75% indirect interest in HSP Gaming, LP; (e) the settlor of the Neil G. Bluhm Family Descendants Trust; and (f) a member of the HSP Management Committee

**Andrew G. Bluhm**, (a) 1% limited partner interest and 0.03% indirect interest in High Penn Gaming LP; (b) a 30% membership interest in High Penn Gaming LLC; (c) a 23.97% indirect interest in HP Gaming Partners, LP; (d) a 0.71% indirect interest in HSP Gaming, LP; (e) the settlor of the 2002 AGB Family Dynasty Trust; (f) the Trustee of the 2002 AGB Family Dynasty Trust; and (g) Trustee of the Neil G. Bluhm Family Descendants Trust

**Leslie N. Bluhm**, (a) 1% limited partnership interest in High Penn Gaming, LP; (b) a 0.001% indirect interest in HP Gaming Partners, LP; (c) a 0.66% indirect interest in HSP Gaming, LP; (e) the settlor of the 2002 LNB Family Dynasty Trust; (d) a Trustee of the 2002 LNB Family Dynasty Trust, and (e) a Trustee of the Neil G. Bluhm Family Descendants Trust

**Gregory Carlin**, (a) CEO of HSP (b) 9.99% limited partnership interest and 0.01% indirect interest in High Penn Gaming LP; (c) a 10% membership interest High Penn Gaming LLC; (d) a 7.99% indirect interest in HP Gaming Partners, LP; and (e) a 6.63% indirect interest in HSP

**William H. Lamb**, (a) 8.502% limited partnership interest in RPRS Gaming LP, and (b) a 2.86% indirect interest in HSP Gaming, LP

**Richard A. Sprague**, (a) 0.5% limited partnership interest and 0.5% indirect general partnership interest in RPRS Gaming, LP; (b) a 50% membership interest in RPRS Gaming, LLC; (c) a 0.34% indirect interest in HSP Gaming, L.P; and (d) a Member of the HSP Management Committee

**Daniel J. Keating III**, (a) 9.446% limited partnership interest in RPRS Gaming LP, and (b) a 3.18% indirect interest in HSP Gaming, LP

**Robert Potamkin**, Robert M. Potamkin has: (a) a 50% membership interest in RPRS Gaming, LLC; (b) a 100% membership interest in RMP Gaming, LLC; (c) a 49.5% limited partnership interest and 1% indirect general partnership interest in RMP Gaming, LP; and a (d) a 19.83% indirect interest in RPRS Gaming, LP; and (e) a 6.67% indirect interest in HSP Gaming, L.P; (f) Trustee, 2005 AAA Trust

**Meredith Bluhm-Wolf**, (a) a 1% limited partnership interest in High Penn Gaming, L.P, (b) a 0.001% indirect interest in HP Gaming Partners, L.P, and (c) a .066% indirect interest in HSP Gaming, LP

**Jerry Johnson**, (a) a 20% limited partnership interest in HP Gaming Partners, LP, (b) a .054% limited partnership interest in RPRS Gaming LP, and (c) a 0.20% indirect interest in HSP Gaming, LP

**Thomas Sprague**, (a) 18.89% limited partnership interest in RPRS Gaming L.P, and (b) a 6.26% indirect interest in USP Gaming, LP

**Barbara A. Sprague**, 18.89% limited partnership interest in RPRS Gaming LP, and **(b)** a 6.36% indirect interest in HSP Gaming, LP  
**Peter D. DePaul**, **(a)** 3% limited partnership interest in RPRS Gaming, LP, and **(b)** a 1.01% indirect interest in HSP Gaming, LP  
**Lexie Brockway Potamkin**, Settlor, 2005 AAA Trust  
**Ayla Potamkin**, Minor Child Beneficiary  
**Alura Potamkin**, Minor Child Beneficiary  
**Alexander Potamkin**, Minor Child Beneficiary  
**James Morris Wolf**, Minor Child Beneficiary  
**Anna Bea Wolf**, Minor Child Beneficiary,  
**Emmet Gordon Bluhm**, Minor Child Beneficiary  
**Cooper Benjamin Bluhm**, Minor Child Beneficiary  
**Hudson Jonah Bluhm**, Minor Child Beneficiary  
**William Gordon Helfand**, Minor Child Beneficiary  
**Nicholas Bluhm Helfand**, Minor Child Beneficiary

### **Qualifier Waivers**

Pursuant to the Act and 58 Pa. Code §§ 435.2(g)(1)-(4) and 435.3(f), certain individuals and entities who are Key Employee/Qualifiers may request in writing that the PGCB waive their obligation to be licensed as a Key Employee/Qualifier as part of a Category 2 slot machine license issuance. None of HSP's Qualifiers have requested to waive their obligation to be licensed under the Act or regulations.

### **Institutional Investors**

58 Pa. Code § 401.4 defines institutional investor as a "retirement fund administered by a public agency for the exclusive benefit of Federal, State or local public employees, investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1 – 80a-64), collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed end investment trust, chartered or licensed life insurance company or property and casualty insurance company, banking and other chartered or licensed lending institution, investment advisor registered under The Investment Advisors Act of 1940 (15 U.S.C.A. §§ 80b-1 – 80b-21), and other persons as the Board may determine consistent with this part. HSP has no institutional investors.

### **Key Employees**

Pursuant to the Act and 58 Pa. Code §§ 401.4 and 435.3, HSP is required to have applications submitted by its Key Employees. However, such applications are not required for purposes of this report since key employees typically would be hired after licensing. Robert Sheldon, President and Chief Operating Officer of HSP, is the only person who has so far submitted a Key Employee application.

### **Request for Withdrawal**

Pursuant to 58 Pa. Code § 423.5, an applicant may petition for the withdrawal of its application or an application submitted by one of its affiliates or persons or entities required to be qualified, or both. Pattison Packer HSP Gaming, LLC (Pattison), a wholly-owned subsidiary of HSP, filed as a Qualifier on December 28, 2005. Pattison was created solely as a vehicle to acquire real property to be used as a potential gaming site by HSP. Following Pattison's filing, HSP determined the land Pattison was created to acquire, was no longer a viable option for it and the agreement between the owner of this property and petitioner was terminated. Based on the foregoing, Pattison filed a petition to withdraw with the PGCB on May 31, 2006, which was granted on June 28, 2006. There have not been any other petitions to withdraw filed in connection with the HSP application.

#### **d. Project History**

HSP a Pennsylvania limited partnership was formed on December 1, 2005. It was formed solely for the purpose of pursuing and obtaining a Category 2 Slot Machine License in the City of Philadelphia. The two (2) limited partners of HSP are RPRS Gaming, LP ("RPRS"), controlled by Richard Sprague and Robert Potamkin and High Penn Gaming, LP ("High Penn") controlled by Neil Bluhm. Neil Bluhm also controls HP Gaming Partners, LP, the general partner of HSP.

Soon after passage of the Gaming Act, Sprague partnered with Potamkin, Dan Keating and other local investors to pursue one of the Category 2 licenses to be issued in the City of Philadelphia. RPRS soon began searching for a casino partner to join their group. During their search for a casino partner, they met with Steve Wynn, Foxwoods, an entity affiliated with Starwood Capital and Atlantis Resorts, and Bluhm. Bluhm, through Walton Street Capital and Greg Carlin, had prior business discussions with Keating in connection with Keating's Hyatt hotel project at Penn's Landing. After meeting with Bluhm and Carlin, some of the RPRS partners visited the Fallsview Casino Resort. The RPRS partners were impressed with Bluhm and the Niagara Falls operations and the two groups agreed to join forces to pursue a Philadelphia Category 2 License.

Prior to partnering with Bluhm, RPRS investigated over a dozen potential Philadelphia Casino sites, including sites now controlled by the other Philadelphia Cat 2 applicants. When RPRS and High Penn formed their group, they again reviewed all of the potential sites. Prior to the application submission on December 28, 2005, HSP was in negotiations to purchase three sites: the Ameristar site, the Sysco Foods warehouse near the stadium complex and the Jack Frost Sugar Refinery site on Delaware Avenue. HSP's first choice was the Jack Frost Sugar Refinery Site.

Just prior to the December 28, 2005 Category 2 filing date, HSP decided not to pursue the site commonly known as Ameristar site and terminated discussions with its owners. Pinnacle subsequently filed for a Category 2 license in connection with that site. As negotiations for the Jack Frost site were not finalized as of the filing deadline, HSP filed Category 2 applications for both the Jack Frost site and the Sysco site.

Subsequently, HSP negotiated a final agreement to purchase the Jack Frost property and therefore allowed its option on the Sysco site to expire. HSP then moved to withdraw the

application for the Sysco site (Pattison Packer HSP Gaming, LLC), which application the Board granted by Order dated June 28, 2006.

## HISTORY OF APPLICANT

### a. History in Other Jurisdictions

HSP has not been issued a casino license in any other gaming jurisdiction.

## OWNERSHIP STRUCTURE

### a. No Interest in Supplier Applicant or Licensee

In accordance with 4 Pa.C.S. § 1317(a) and 58 Pa. Code § 441.4(a)(11)(relating to slot machine license application), neither an applicant for or the holder of a manufacturer license or slot machine license nor any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, is eligible to apply for or hold a supplier license.

As required pursuant to 58 Pa. Code § 441.4(a)(11), Gregory Carlin, CEO and former President of HSP, signed a Category 2 Affidavit on December 27, 2005 affirming that neither HSP nor any of its affiliates, subsidiaries, intermediaries or holding companies, holds any direct or indirect ownership interest in any applicant for or holder of a Pennsylvania supplier license, or employs, directly or indirectly, any person who satisfies the definition of a key employee qualifier or key employee of a Pennsylvania supplier licensee. HSP does not hold any interest in a supplier licensee.

### b. Ownership of Multiple Slot Machine Licenses

Pursuant to 4 Pa.C.S. § 1330 (relating to multiple slot machine license prohibition) and 58 Pa. Code § 441.18, no slot machine licensee, its affiliate, intermediary, subsidiary or holding company may possess an ownership or financial interest that is greater than 33.3% of another slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company. This prohibition does not prevent a slot machine licensee from possessing ownership or financial interests of 33.3% or less, in multiple slot machine licensees or in persons eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies. If a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies has an ownership or financial interest in another slot machine licensee that violates the multiple slot machine license prohibition, the licensee will be required to divest that interest, which is in excess of 33.3% in compliance with 4 Pa.C.S. § 1330

Applicant states and investigation has confirmed that HSP does not possess any ownership or financial interest of another slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

### **Project Revenue Potential**

**The Task Force analyzed HSP Gaming's projections to determine the revenue potential of the SugarHouse Casino project.** In performing the market analysis of the Applicant's proposed facility, the Task Force studied the potential gaming market to estimate project revenue potential.

*While the result of the Task Force analysis for project revenue potential is 3.0% less than that of HSP Gaming, it appears that the proposed project has the ability to maintain a steady level and growth of revenue to the Commonwealth.*

HSP Gaming's estimate of slot revenue at a stabilized year of operation is 3.0% greater than the Task Force's estimate. The stabilized year is the fifth full year of operation.

The Task Force estimates that the proposed SugarHouse Casino gaming market may generate approximately \$310.8 million (in 2005 dollars) in slot revenue annually in the stabilized year, equivalent to \$284 win per position per day at 3,000 gaming positions.

HSP Gaming estimates that the SugarHouse Casino gaming market will generate \$320.3 million (in 2005 dollars) of slot revenue annually in the stabilized year, equivalent to \$292 win per position per day at 3,000 gaming positions. Although the Task Force's estimate of slot revenue is 3.0% less than that of the Applicant, the HSP Gaming project appears to have the ability to maintain a steady level and growth of revenue (*Reference: Drive-Time Analysis*).

#### **b. Financial Backer Information**

Pursuant to 4 Pa.C.S. § 1313(b), the board shall require each applicant for a slot machine license to produce the information, documentation and assurances as may be necessary to establish by clear and convincing evidence the integrity of all financial backers, investors, mortgagees, bondholders and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed. Any such person or entity shall produce for the board upon request any document or information which bears any relation to the application. In addition, the applicant shall produce whatever information, documentation or assurances the board requires to establish by clear and convincing evidence the adequacy of financial resources.

At the time of this writing, HSP has provided all required documentation with regard to its financial resources to the Financial Task Force's satisfaction.

#### **c. Ability to Pay License Fee**

Pursuant to 4 Pa.C.S. § 1209, Category 2 slot machine licensees are required to pay a fee of \$50,000,000 upon the issuance of a license. Section 1313 of the Act requires each applicant for a Category 2 slot machine license at the time of application to post a letter of credit or bond in the amount of \$50,000,000 to demonstrate the financial ability to pay the slot machine license fee as required in 4 Pa.C.S. § 1209 if issued a slot machine license by the PGCB. HSP has posted a letter of credit or bond in the amount of \$50,000,000 from Bank of America.



**d. Application and Background Investigation Fees Paid**

Pursuant to 4 Pa.C.S. § 1208, each application for a Category 2 slot machine license must be accompanied by a nonrefundable fee set by the PGCB for the cost of each individual requiring a background investigation and requires reimbursement for the reasonable and necessary costs and expenses incurred in any background investigation or other investigation or proceeding concerning any applicant. To date, HSP has provided the PGCB with \$144,022.56 which represents the required application and investigation fees paid to date. HSP will be required to reimburse PGCB for all costs of investigation, regardless of whether a license is approved or issued.

**e. Bond for Issuance of Slot Machine License**

Pursuant to 4 Pa.C.S. § 1316, before a license is issued, a \$1,000,000 bond must be issued payable to the Commonwealth to insure the applicant's compliance with the Act, including the timely payment of all sums due under the Act. As a condition of licensure, HSP will be required to post a \$1,000,000 bond payable to the Commonwealth as required.

**f. Business Experience**

Pursuant to 4 Pa.C.S. § 1313(d), the board shall require each applicant for a slot machine license to produce the information, documentation and assurances as the board may require to establish by clear and convincing evidence that the applicant has sufficient business ability and experience to create and maintain a successful, efficient operation. Applicants shall produce the names of all proposed Key Employee Qualifiers and a description of their respective or proposed responsibilities as they become known.

Key Employee Qualifier applicant Neil Bluhm, is a co-founder and currently serves as the Chairman of the Board of Falls Management Company ("FMC"). In 1998, FMC was selected by the province of Ontario to assume the management contract for Casino Niagara and to develop and manage Niagara Fallsview Casino Resort. Mr. Bluhm is also one of the founders and President of JMB Realty Corporation and founding principal of Walton Street Capital. JMB, along with its associated entities, is engaged in real estate investment and development. In the aggregate, JMB and Walton Street have acquired in excess of \$25 billion of real estate.

Key Employee Qualifier applicant Daniel J. Keating III, is Chairman and CEO of the Keating Group, which is a multifaceted construction and real estate development company. Founded in 1976, the company has developed and constructed a wide variety of institutional projects valued at over \$7 billion dollars totaling more than 500 projects. With Mr. Keating's oversight, this company has served as the general contractor to many large casino projects including the Tropicana Havana Tower and Quarter in Atlantic City and Bally's Wild West Casino in Atlantic City.

The Chief Executive Officer of HSP will be Gregory Carlin. Mr. Carlin has 11 years of gaming industry experience. In addition, during the construction phase, HSP retained the services of entities familiar with developing and building casino project. These companies include Keating Building Corporation, and Cope Linder Architects.

In addition, HSP has hired Robert D. Sheldon to serve as President and Chief Operating Officer. Mr. Sheldon most recently served as Chief Operating Officer of Foxwoods Resort and Casino in Mashantucket, Connecticut where he was employed for 6 years. Prior to that, Mr. Sheldon worked for Steve Wynn for 11 years, most recently as President of the Golden Nugget Hotel Casino, a Mirage Resorts Inc. property in Las Vegas, Nevada. Mr. Sheldon has filed a Key Employee application with the PGCB.

HSP has also retained Lewin International, LLC as a gaming consultant. Its principal, Larry Lewin, is a 30 year veteran of the casino and hotel industry and has previously worked closely with Mr. Bluhm and Mr. Carlin on other gaming projects. Mr. Lewin's responsibilities included the development and opening of several major gaming properties, including Niagara Fallsview Casino Resort in Ontario, Canada. Lewin international, LLC has filed a vendor registration form.

Heading up the human resource function, Joann Weber has been hired as a consultant. Ms. Weber has been involved in the casino industry for 23 years and most recently was employed by Foxwoods for 8 years, most recently as Senior Vice President for Human Resources. Ms. Weber has filed a vendor registration form with the PGCB.

Debbie Marchese has been retained by HSP to serve as a consultant in the area of casino financial operations and reporting. Ms. Marchese is currently Vice-President of Finance and Information Technology and Chief Financial Officer of Tropicana Casino and Resort in Atlantic City, New Jersey, where she is responsible for all aspects of finance, information technology and purchasing. Ms. Marchese will be leaving Tropicana following the closing of the sale of Tropicana to Columbia Sussex, which is anticipated to occur in November, 2006. Ms. Marchese has filed a vendor registration form with the PGCB.

Lisa Reilly has been retained by HSP to serve as consultant on casino comptroller matters and financial reporting. Ms. Reilly is currently employed by Tropicana Casino and Resort as Assistant Vice President of Finance. She too will be leaving Tropicana upon the closing of the sale to Columbia Sussex. Ms. Reilly has filed a vendor registration form with the PGCB.

HSP has also retained Maven, Inc. to assist with public relations and in the implementation of HSP's Diversity Plan. Maven is experienced in the development and implementation of Diversity Plans and is itself a minority owned business. Melonease Shaw, its Chairman and CEO, has 30 years experience in enterprise management, with an emphasis on the needs of woman and minorities. Maven has filed a vendor registration form with the PGCB.

HSP has retained Casino Training Enterprises, ("CTE"), a minority owned business, as a consultant for personnel and training issues. Both owners of CTE have extensive experience in training casino employees. Ms. Fiore is a principal owner of Casino Gaming Institute ("CGI"), the largest privately owned casino training school serving Atlantic City casinos, having graduated over 10,000 students since 1997. Ms. Tweedle is the operating manager of CGI.

**g. Management Contract**

HSP has not entered into a management contract to date, and consequently no application was filed with the PGCB concerning a management company for HSP. However, HSP has provided

the PGCB an unexecuted management agreement, designating a newly formed company, High Penn Managers, LP, as its management company. Under the terms of this agreement High Penn Managers, LP would be vested with the authority to: determine operating policy, standards of operation, quality of service, the maintenance of the physical appearance of the facility; supervise and direct all phases of advertising, marketing and business promotions; and carry out all programs within the facility. High Penn Managers, LP authority would be limited to the day-to-day management and operation of the gaming facility and does not extend to the management or operation of the owner itself. The term of this contract would be for 39 years and the management fee will be equal to the lesser of the sum of 1% of Gross Receipts of each month, plus 5% of EBITDA for each month or 2% of Gross Receipts for each month. To date, High Penn Managers, LP, has not filed a C2 application with the Board.

However, during recent discussions between PGCB staff and HSP, HSP informed staff that it no longer intended to use High Penn Managers, LP as its management company, but instead, should HSP obtain licensure, all of the experienced gaming personnel that were going to work for High Penn Managers, LP, will now work directly for HSP. High Penn Managers, LP will essentially be an asset manager. Based on the foregoing, High Penn Managers, LP will not be required to file with the PGCB as a management company, but instead, since this entity will still be getting a revenue share from HSP, it will be required to file as an affiliated entity qualifier. HSP indicated that it would file such an application on behalf of High Penn Managers LP.

**i. Bankruptcies**

HSP states and investigation has confirmed that it has never been involved in a bankruptcy.

## **CATEGORY 2 SLOT MACHINE APPLICANT SUITABILITY**

Pursuant to 4 Pa.C.S. §§ 1202(b)(15) and 1325(b)(2), the PGCB shall not issue a license unless it is satisfied that the slot machine operator is of good character, honesty and integrity and that the slot machine operator's prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest or the effective regulation and control of

slot machine operations or create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of slot machine operations or the carrying on of the business and financial arrangements incidental thereto. Slot machine operators must be found suitable and qualified to be issued a license.

**a. Civil Judgments and Law Enforcement Agency Information**

In its application, HSP states and investigation has confirmed that it has no civil judgments, antitrust, trade regulation and securities judgments, statutory and regulatory violations, or adverse law enforcement agency history. The investigation also revealed that there are no liens, judgments or lawsuits open against HSP.

**Adverse Litigation**

Pursuant to 4 Pa.C.S. § 1308(c), the PGCB may not consider an application for a license if the applicant or any person affiliated with or directly related to the applicant is a party in any ongoing civil proceeding in which the party is seeking to overturn or otherwise challenge a decision or order of the PGCB, the State Horse Racing Commission or the State Harness Racing Commission pertaining to the approval, denial or conditioning of a license to conduct thoroughbred or harness horse race meetings or to operate slot machines.

Investigation has confirmed that neither HSP, nor any person affiliated with or directly related to HSP is a party in any such ongoing civil proceeding.

**b. Gaming and Casino Enforcement Information**

HSP states and investigation has confirmed that it has not been subject to gaming or casino enforcement actions.

**c. Felonies and Gambling Offenses**

HSP states and investigation has confirmed that neither it nor its affiliates have any felony arrests or gambling offenses.

**d. Political Contributions**

Pursuant to 4 Pa.C.S. § 1513(a), applicants for a slot machine license, licensed slot machine operators or a person that holds a similar license or a controlling interest in a license in another jurisdiction, or any holding, affiliate, intermediary or subsidiary company thereof, or any officer, director or key employee of such applicant or licensed gaming entity or any holding, affiliate, intermediary or subsidiary company thereof, shall be prohibited from contributing any money or in-kind contribution to a candidate for nomination or election to any public office in this Commonwealth or to any political committee or State party in this Commonwealth or to any group, committee or association organized in support of any such candidate, political committee or State party.

Pursuant to 4 Pa.C.S. § 1513(b) and 58 Pa. Code § 441.4(a)(26), Gregory A. Carlin, CEO and former President of HSP certified in a signed statement dated December 27, 2005 that HSP has developed and implemented internal safeguards and policies intended to prevent a violation of Section 1513 of the Act and that HSP has conducted a good faith investigation that has not revealed any violation of this provision during the past year.

HSP has not listed political contributions of any kind in this or any other jurisdiction. Record checks made through the Pennsylvania Department of State and U.S. Federal Elections Commission (FEC) Campaign Finance databases showed no contributions made by HSP entities for the period January 1, 1996 to October 31, 2006.

**e. Public Official Financial Interest**

Pursuant to 4 Pa.C.S. § 1512, no executive-level State employee, public official, party officer or immediate family member thereof shall have a financial interest in or be employed, directly or indirectly, by a licensed racing entity or a slot machine licensee, or any holding, affiliate, intermediary or subsidiary company. Pursuant to 4 Pa.C.S. § 1512, a financial interest is defined as anyone owning or holding securities exceeding 1% of the equity or fair market value of the licensed entity or its holding companies, affiliates intermediaries or subsidiaries.

No public official holds a financial interest in this applicant that is prohibited by 4 Pa.C.S. § 1512.

**f. Bribes and Kickbacks**

Investigation has not disclosed any bribes and/or kickbacks made by any party acting on behalf of HSP.

**g. Additional Eligibility Criteria**

HSP asserts that it will become a responsible member of the Philadelphia community should it be awarded licensure. HSP claims that its proposed facility will contribute greatly to the revitalization of Philadelphia. HSP states that its facility will create 1,091 living wage jobs with healthcare benefits, upward mobility, and a working environment free from hostility and discrimination with the opening of Phase I of its project. In addition, during the construction phase of the project HSP concurs with the Philadelphia Gaming Advisory Task Force Report that it will generate an additional 1,000 construction jobs.

In addition, HSP has committed to funding a charitable organization known as the Sugar House Foundation. The Sugar House Foundation was established on April 17, 2006. HSP has pledged to donate two and one half percent of its annual pre-tax income to the Sugar House Foundation, capped at \$3,000,000. The Foundation will, under the guidance of a board, make grants for the benefit of the Philadelphia community and the immediate neighborhoods.

Additional information regarding promises and commitments made by HSP can be found in Exhibit 3.

## PROPOSED LICENSED FACILITY

### a. Ownership of Land

HSP's proposed location consists of 22-acres along the Delaware River waterfront located between Shackamaxon and N. Ellen Streets, on Columbus Blvd., or 1001 & 1025 Columbus Blvd., Philadelphia, PA. Primary access to the site will be via Columbus Blvd from I-95. On December 26, 2005 HSP entered into a Real Property Purchase Agreement with LHTW Corporation and 1001 Christopher Columbus Blvd. LLC, owners of the described Site.

The current owners have agreed to sell the subject property along North Delaware Avenue in Philadelphia for \$70,000,000 to HSP. Under the terms of this agreement, HSP will make nonrefundable monthly payments in the amount of \$32,416.67 until the PGCB awards Category 2 licenses. If HSP is awarded licensure, payment of the balance of the purchase price is due within 120 days from the date it receives licensure. Following final payment, LHTW and 1001 Christopher Columbus Blvd. LLC will have fully divested all of its interest in this property.

### b. Location

The location of HSP's proposed facility is along North Delaware Avenue in the City of Philadelphia. The existing site is a currently vacant, underutilized former industrial property. The majority of the site has been vacant since 1980, and was previously used by the Jack Frost Sugar Company as a sugar refinery, packaging and distribution center. All buildings on the site were demolished and removed.

The HSP project area would consist of a mixed land use of industrial, commercial and limited residential development. Properties north of the project site contain commercial/industrial businesses and warehouses. Properties south and west of the project include a mix of new residential condominium towers that are currently under construction, residential town homes, and bar/restaurant establishments.

In addition, pursuant to § 1304(b), because HSP's proposed facility is within Philadelphia, there is no prohibition regarding its distance from any other Philadelphia Category 2 gaming applicants.

### c. Zoning Status

A portion of the Sugarhouse Site is located in the C-3 District, but the majority of the site is zoned G-2 Heavy Industrial. As a result, the HSP site has multiple zoning classifications with the C-3 use reasonably analogous to the sought gaming use. The City of Philadelphia has adopted an ordinance that has created a "Commercial Entertainment District" (CED) which, among other things, permits licensed gaming facilities. To date, the City has not indicated which areas will be designated as CED as it is waiting to see which applicants are licensed by the PGCB. If licensed, HSP has pledged to comply with all requirements set forth in such ordinance. HSP asserts that many of the expressly permitted uses for this site under the existing zoning structure are no longer relevant to modern practical use. In order to accommodate the changes which would occur to this property as a result of gaming, zoning adjustment by the Philadelphia Zoning Board of Adjustment is necessary.

## **Local Impact Reports**

HSP provided the required local impact report, which is posted on the PGCB website.

### **d. Public Input Hearings**

The Public Input Hearing for HSP Gaming, LP was held on April 10-12, 2006, at Drexel University in Philadelphia, Pennsylvania. Numerous representatives of HSP Gaming, LP testified at the Hearing on behalf of HSP Gaming, LP.

Additionally, two Legislators spoke at the Hearing and one supported the proposal and the other neither supported nor opposed the proposal. Three representatives of local government units spoke and one supported the project while the other two were neutral.

Twelve representatives of Community Groups testified at the Hearing. Six of the Groups supported the proposal while the other six were neither for nor against the licensing of HSP Gaming, LP and had some questions or concerns.

Ten individuals testified at the Hearing. There were six individuals who clearly supported licensure of HSP Gaming, LP and two individuals opposed the licensure. The remaining two requested more time to analyze certain aspects of HSP Gaming, LP's proposal.

Attached as Exhibit 4 is the Executive Summary of the Public Input Hearings.

### **e. Gaming Floor Overview**

HSP does not propose a temporary facility, but instead plans to build part of its permanent casino structure at the outset. The permanent interim, facility is designed to accommodate 1,500 slot machines on a 33,000 ± square foot (net) gaming floor. Once fully completed, Phase I of the HSP Facility will house 3,000 slot machines on a ± 84,600 square foot (net) gaming floor. It is anticipated in a future phase that the casino floor will be expanded to ±134,500 square feet and accommodate a total of 5,000 slot machines.

58 Pa. Code § 467 articulates the prerequisites to actual commencement of slot operations should the PGCB act favorably upon a slot machine license application. It requires, in part, that no slot machine facility may be opened to the public and no slot machine gaming conducted unless and until the slot machine licensee demonstrates to the PGCB's satisfaction that the licensed facility itself and its management controls and procedures are suitable to their intended purpose and comply in all respects with the Act, the regulations and any technical standards adopted by the PGCB. Concurrent with its licensing suitability analysis, PGCB staff has been working with HSP toward the development of a gaming floor plan and operating procedures which satisfy PGCB requirements. PGCB staff is likewise working with HSP with regard to the review and approval of any slot machines and associated equipment which it has identified for incorporation into its slot operation. Specifically, HSP will be required to design, outfit and operate its slot facility in accordance with statutory and regulatory mandates covering the following:

- The licensed facility. These mandates include, but are not limited to, PGCB approvals with regard to surveillance camera configuration and recording format specifications, alarming of emergency exits from the gaming floor, cashiers' cage and count room design and security protocols, the provision of on-site office facilities for the PGCB, the Department of Revenue and the Pennsylvania State Police and the ability to communicate with applicable law enforcement and relevant emergency first responders.
- Slot machines and associated equipment. Pursuant to 4 Pa.C.S. § 1320 and 58 Pa. Code § 461, a slot machine or associated equipment, or any modification thereto, "... may not be offered for sale, lease or distribution for ultimate use by a slot machine licensee in this Commonwealth unless a prototype identical in all mechanical, electrical, electronic and other respects has been tested and approved by the Board." 58 Pa. Code § 461.4(a). This regulatory mandate requires PGCB testing and approval, predominantly under the abbreviated testing processes permissible pursuant to 4 Pa.C.S. § 1320, of not only slot machines but all of the ancillary computer systems typically associated with a slot floor including HSP's selected gaming voucher system, player tracking system and any external bonusing or player incentive systems. With regard to slot machines, testing will encompass overall operational integrity as well as compatibility and compliance with the central control computer and protocol specifications approved by the Department of Revenue and required pursuant to 4 Pa.C.S. § 1323.
- Gaming floor plan. The review and approval process associated with the gaming floor plan pursuant to 58 Pa. Code § 467 will be the vehicle through which the PGCB will ultimately fix the maximum square footage of gaming floor and maximum number of slot machines authorized by any slot machine license issued to HSP.
- Internal control systems and audit protocols. These requirements include, but are not limited to, PGCB approval of the accounting and internal controls and jobs compendium required pursuant to 4 Pa.C.S. § 1322 and 58 Pa. Code § 465 as well as security department and surveillance monitoring room minimum staffing. The review and approval process associated with these submissions will insure that HSP has developed, and is in every respect prepared to implement, the comprehensive management controls and surveillance and security functions necessary to insure the accurate reporting of gross terminal revenue and the overall integrity of the slot operation.

The submissions, reviews and inspections referenced above are preliminary and ongoing. It is expected that the facility design, the gaming floor plan and all of the controls and procedures currently under development and review will be significantly refined and revised over the ensuing months in order to achieve compliance with the Act, the regulations and any technical standards adopted by the PGCB. Given the preliminary discussions which have occurred to date, analysis of the proposed gaming floor plan, HSP appears positioned to deliver and operate a slot facility in compliance with the Act, the regulations and any technical standards adopted by the Board.



## DIVERSITY PLAN

HSP submitted a Diversity Plan to the PGCB as part of its application. The plan was reviewed and evaluated by the Office of Chief Counsel and the results of that review are attached as Exhibit 5.

## COMPULSIVE AND PROBLEM GAMBLING PLAN

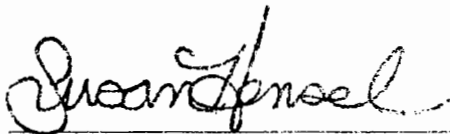
HSP submitted a Compulsive Gambling Plan to the PGCB as part of its application. The plan was reviewed and evaluated by the Office of Chief Counsel and the results of that review are attached as Exhibit 6.

## STATEMENT OF CONDITIONS

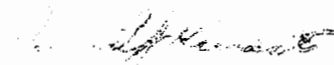
Should HSP be approved for licensure, the approval would be subject to multiple standard and specific conditions. See Exhibit 7 for the Statement of Conditions.

This report was prepared by Don Shiffer, Assistant Chief Counsel, Pennsylvania Gaming Control Board.

This report is respectfully submitted to the Pennsylvania Gaming Control Board for its review and consideration.



Susan Hensel, Director  
Bureau of Licensing

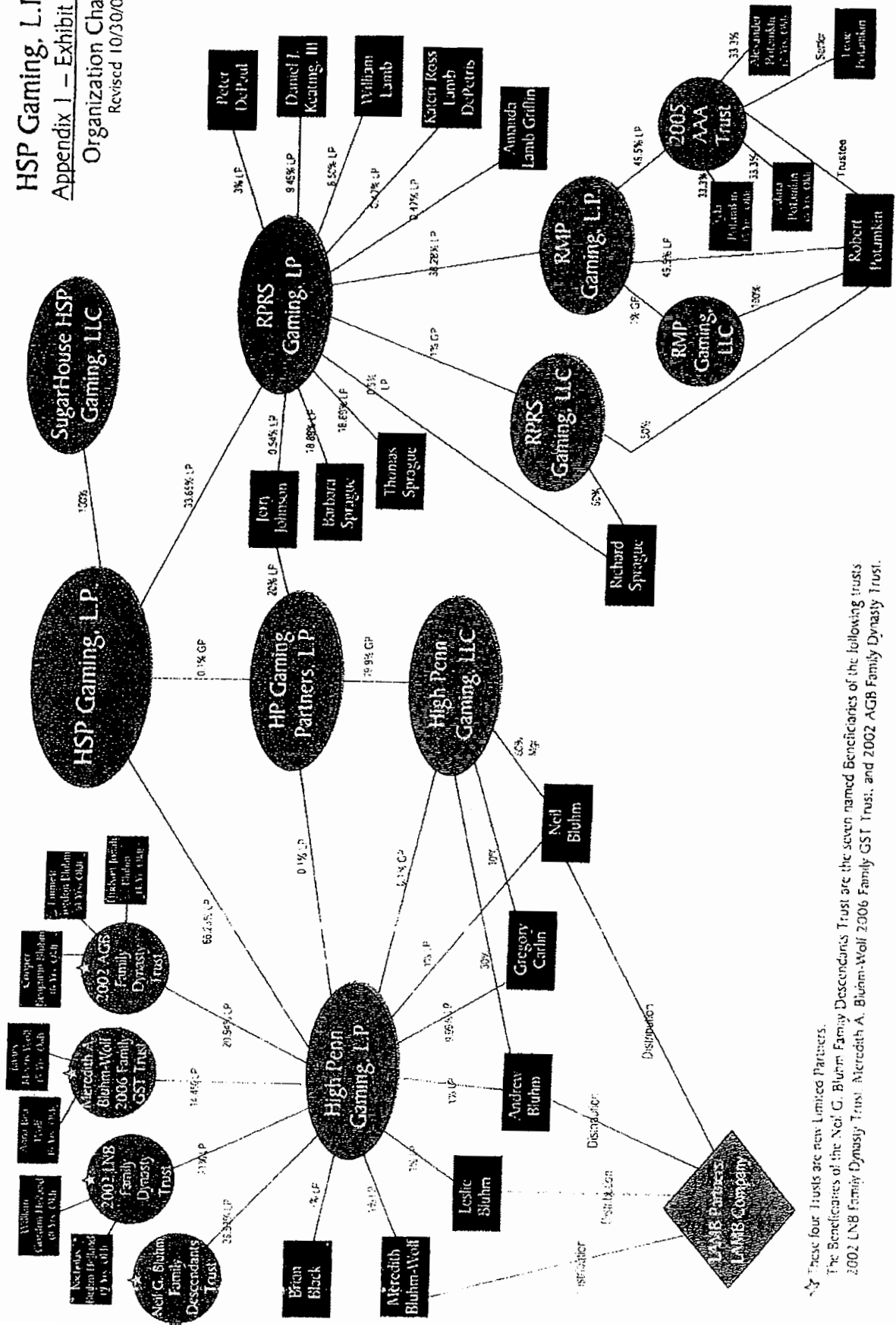


David Kwait, Director  
Bureau of Investigations and Enforcement

Dated: November 9, 2006

**ORGANIZATIONAL CHART**  
**AND**  
**NARRATIVE**

HSP Gaming, L.P.  
 Appendix I – Exhibit B  
 Organization Chart  
 Revised 10/30/06



These four trusts are now Limited Partners. The Beneficiaries of the Neil G. Bluhm Family Descendants Trust are the seven named Beneficiaries of the following trusts: 2002 LNB Family Dynasty Trust, Meredith A. Bluhm-Wolf 2006 Family GST Trust, and 2002 AGB Family Dynasty Trust.

HSP Gaming, LP

| Ownership %   | Owners                                       |
|---------------|--|
| 66.250        | High Penn Gaming, LP                         |
| 33.650        | RPRS Gaming, LP                              |
| 0.100         | HP Gaming Partners, LP                       |
| <hr/> 100.000 |  |
|               | <u>High Penn Gaming, LP</u>                  |
| 28.570        | Neil G. Bluhm Family Descendants Trust       |
| 21.000        | 2002 LNB Family Dynasty Trust                |
| 20.940        | 2002 AGB Family Dynasty Trust                |
| 14.400        | Meredith A. Bluhm-Wolf 2006 Family GST Trust |
| 9.990         | Gregory A. Carlin                            |
| 1.000         | Brian Black                                  |
| 1.000         | Meredith A. Bluhm-Wolf                       |
| 1.000         | Leslie N. Bluhm                              |
| 1.000         | Andrew G. Bluhm                              |
| 1.000         | Neil G. Bluhm                                |
| 0.100         | High Penn Gaming, LLC                        |
| <hr/> 100.000 |  |
|               | <u>HP Gaming Partners, LP</u>                |
| 79.900        | High Penn Gaming, LLC                        |
| 20.000        | Jerry Johnson                                |
| 0.100         | High Penn Gaming, LP                         |
| <hr/> 100.000 |  |
|               | <u>High Penn Gaming, LLC</u>                 |
| 60.000        | Neil G. Bluhm                                |
| 30.000        | Andrew G. Bluhm                              |
| 10.000        | Gregory A. Carlin                            |
| <hr/> 100.000 |  |
|               | <u>RPRS Gaming, LP</u>                       |
| 38.280        | RMP Gaming, LP                               |
| 18.890        | Thomas A. Sprague                            |
| 18.890        | Barbara A. Sprague                           |
| 9.450         | Daniel J. Keating                            |
| 8.500         | William H. Lamb                              |
| 3.000         | Peter D. DePaul                              |
| 1.000         | RPRS Gaming, LLC                             |
| 0.540         | Jerry Johnson                                |
| 0.500         | Richard A. Sprague                           |
| 0.470         | Kateri Ross Lamb DePeiris                    |
| 0.470         | Amanda Lamb Griffin                          |
| <hr/> 100.000 |  |
|               | <u>RPRS Gaming, LLC</u>                      |
| 50.000        | Richard A. Sprague                           |
| 50.000        | Robert M. Potamkin                           |
| <hr/> 100.000 |  |
|               | <u>RMP Gaming, LP</u>                        |
| 49.500        | Robert M. Potamkin                           |
| 49.500        | 2005 AAA Trust                               |
| 1.000         | RMP Gaming, LLC                              |
| <hr/> 100.000 |  |
|               | <u>RMP Gaming, LLC</u>                       |
| 100.000       | Robert M. Potamkin                           |

**PROMISES**  
**AND/OR**  
**COMMITMENTS**



PENNSYLVANIA GAMING CONTROL BOARD  
HARRISBURG, PENNSYLVANIA  
17106-9060

FRANK T. DONAGHUE  
*Chief Counsel*  
P. O. Box 69060  
Harrisburg, PA 17106  
Phone: (717) 346-8300  
Fax: (717) 703-2988

November 3, 2006

*Chairman*  
THOMAS DECKER

*Commissioners*  
RAYMOND S. ANGELI  
MARY DIGIACOMO COLLINS  
JEFFREY W. COY  
JOSEPH W. MARSHALL III  
KENNETH T. MCCABE  
SANFORD RIVERS

*Ex-Officio Members*  
ROBERT P. CASEY JR.  
GREGORY C. FAFF  
DENNIS WOLFF

Dear Applicant,

In order to ensure the most accurate information is considered in the licensing suitability review of your Category 2 application, please provide the Board with the most current information available regarding any promises of support or commitments of any funding that your client has made to any governmental agency, municipality, municipal authority, civil organization, charitable organization or any other type of public or private entity in the event that it is approved for a slot machine license. Please identify whether the promise or commitment is binding upon the applicant and provide copies of any documentation memorializing any such promises or commitments, as well as documentation and details regarding how the promises or commitments will be financed. If the most current information has previously been provided to the Board, you may refer to the prior documentation by date and description of the document in lieu of providing it again if you so desire.

Please provide the information requested above by close of business on Wednesday, November 8, 2006, directed to my attention. Thank you for your prompt attention and cooperation in this matter.

Sincerely,

Frank T. Donaghue,  
Chief Counsel

FTD:pll

## HSP Gaming, L.P.

November 8, 2006

The SugarHouse Foundation  
c/o Jerry Johnson  
Radnor Financial Center  
150 N. Radnor Chester Road, E-120  
Radnor, Pennsylvania 19087

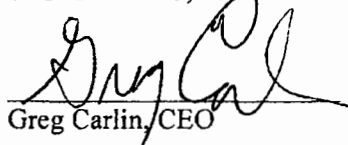
Gentlemen:

Please accept this letter as the commitment of HSP Gaming, L.P. ("HSP") on behalf of the SugarHouse Casino Philadelphia to make charitable contributions to the SugarHouse Foundation ("Foundation"). If HSP is issued a Category 2 Slot Machine License from the Pennsylvania Gaming Control Board, upon the commencement of gaming operations, HSP pledges and covenants to contribute to the Foundation an amount equal to two and one-half percent of its annual pre-tax income (defined as net revenues of the partnership, plus other income, less all expenses, including, but not limited to operating expenses, depreciation, amortization, interest expense and all taxes other than federal and state income taxes); provided, however, that HSP's obligation to make a contribution to the Foundation hereunder with respect to any fiscal year of HSP shall not exceed an aggregate sum of \$3 million for such fiscal year.

Such contribution with respect to any fiscal year of HSP will be made within 60 days following the end of such fiscal year. In addition, HSP will provide the Foundation with a copy of its annual audited financial statements upon completion for each fiscal year.

In consideration for this commitment, the Foundation pledges and covenants to utilize the contributions that it receives from HSP pursuant to this commitment solely for the philanthropic purposes authorized by and consistent with the Foundation's stated goals.

HSP GAMING, L.P.



Greg Carlin, CEO

## **EXHIBIT B**



PENNSYLVANIA GAMING CONTROL BOARD

\* \* \* \* \*

SUITABILITY HEARINGS

IN RE: SUGARHOUSE CASINO

\* \* \* \* \*

PENNSYLVANIA STATE MUSEUM

THIRD AND FORSTER STREETS

HARRISBURG, PENNSYLVANIA

NOVEMBER 13, 2006, 12:30 P.M.

\* \* \* \* \*

BEFORE:

TAD DECKER, CHAIRMAN

RAY ANGELI

MARY DiGIACOMO COLINS

JEFFREY W. COY

JOSEPH W. MARSHALL, III

KENNETH McCABE

SANFORD RIVERS

REPORTER: KENNETH D. O'HEARN

REPORTER - NOTARY PUBLIC

1 fine whether we're 12 months or 16 months after the  
2 other facilities.

3 MR. MARSHALL:

4 Next question is, now do you have  
5 possession of the riparian rights that you'll need for  
6 your project?

7 MR. BLUHM:

8 We believe that there will be no question  
9 that we will get riparian rights. We believe that for  
10 a couple of reasons. First, we think we can get them  
11 either from the administration or alternatively  
12 through legislative action. The Administration would  
13 grant them under a proposed bill that is pending that  
14 has been adopted by the Senate and is pending in the  
15 House that we would expect would be voted on by the  
16 House and approved by and signed by the Governor.  
17 That bill, as I understand it, mandates that the  
18 Administration grant riparian rights to casinos upon  
19 paying fair market value for those rights.

20 MR. MARSHALL:

21 But you don't have a concern?

22 MR. BLUHM:

23 We have no concern, sir. And even if  
24 that bill was not enacted, there is a long history and  
25 policy of granting riparian rights to developers along

1 the water. In fact, the two --- the condominiums  
2 right next to our site have, and were granted,  
3 riparian rights. As a developer in Chicago or in ---  
4 we were involved with Faneuil Hall when it was built  
5 in Boston near the water and the wharf. It's  
6 inconceivable to me that the Legislature would not  
7 grant riparian rights for a project of this sort when  
8 it's going to benefit the Commonwealth and the City of  
9 Pennsylvania (sic) and increase their revenues. So we  
10 have no concerns about getting riparian rights. In  
11 the extremely unlikely --- we don't view it as a  
12 possibility, but if it could happen, we could still  
13 build our project but it would not be as good for the  
14 Commonwealth or the citizens around here.

15 MR. MARSHALL:

16 The point is your project's not dependent  
17 on ---?

18 MR. BLUHM:

19 That's correct.

20 MR. MARSHALL:

21 Yeah. I mean, it makes --- I understand  
22 what you're saying.

23 MR. BLUHM:

24 We'd have to change our design, but it's  
25 not dependent on getting those riparian rights.