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IN RE: AMENDED PETITION OF HSP GAMING, L.P. FOR AN EXTENSION OF TIME AND MODIFICATIONS TO ITS APPROVED DEVELOPMENT PLANS	COMMONWEALTH OF PENNSYLVANIA BEFORE THE PENNSYLVANIA GAMING CONTROL BOARD PGCB Docket No. 42824

AMENDED PETITION OF HSP GAMING, L.P. FOR ADDITIONAL TIME TO MAKE SLOT MACHINES AVAILABLE TO PLAY AND MODIFICATIONS TO ITS APPROVED DEVELOPMENT PLAN

Petitioner, HSP Gaming, L.P. ("HSP"), by way of this Amended Petition, hereby applies (a) under Section 1210 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. §1101 et. seq. ("Gaming Act") for additional time to make slot machines available to play and (b) for approval of modifications to its approved development plans.

Background

1. On January 11, 2008, the Pennsylvania Gaming Control Board ("Gaming Board") issued Category 2 Slot Machine License No. F-1356 ("License") to HSP.

2. Pursuant to Section 1210 of the Gaming Act, a slot machine license is "required to operate and make available to play a minimum of 1,500 machines. . . . within one year of the issuance by the Board of a slot machine license unless otherwise

extended by the Board upon application and for good cause shown, for an additional period not to exceed 24 months."

3. As the Gaming Board is aware, since its selection to receive a Category 2 Slot Machine License in December 2006, HSP has worked diligently to successfully defeat challenges to the license award and to obtain the approvals and permits necessary to commence and proceed with the development of the SugarHouse Casino ("Project").

4. Such action has included the prosecution or defense of more than eleven separate lawsuits or appeals in the Court of Common Pleas, the Supreme Court of Pennsylvania and the United States District Court.

5. To date, HSP has expended approximately $110 million on its development efforts, in addition to the License Fee payment of $50 million.

6. The $160 million represents the current equity investment; HSP currently has no debt.

7. This equity investment substantially exceeds the equity commitments (approximately $108 million) made by the HSP partners.

Development Efforts

8. HSP has and continues to work diligently to secure the city, state and federal approvals, permits and licenses necessary to construct the Project.

9. On January 8, 2009, HSP filed an Application with the Supreme Court of Pennsylvania seeking the appointment of a Special Master. Attached as **Exhibit A** is a copy of HSP's Application to the Supreme Court of Pennsylvania seeking the

Appointment of a Special Master, which sets forth in detail the obstacles that HSP has faced in proceeding with the development of the SugarHouse Casino.

10. On March 24, 2009, recognizing these obstacles, the Supreme Court appointed the Honorable John Herron as Master. A copy of the Order is attached as **Exhibit B**.

11. HSP has received the following approvals:

(a) Re-zoning of the casino site to the Commercial Entertainment District classification;

(b) Plan of Development for the SugarHouse site as required under the applicable zoning ordinances;

(c) Act 537 sanitary sewer module amendment to enable the SugarHouse Casino to connect to the municipal water and sewer system;[1]

(d) Existing Resource Site Analysis; and

(e) General Notices under Act 14/67/68.

12. HSP has received the following permits/licenses:

(a)National Pollution Discharge Elimination Permit System (Pennsylvania Department of Environmental Protection ("PA DEP"));

(b)Zoning/Use Permit (City of Philadelphia Department of Licenses and Inspections ("Philadelphia L&I"));

(c)Rough Grading Permit (Philadelphia L&I);

(d)Submerged Lands License (City of Philadelphia Commerce Department);

[1] The approval was granted on September 11, 2008. On November 3, 2008, an appeal of that approval was filed by a community group, an environmental group, and an individual. That appeal is pending before the Pennsylvania Environmental Hearing Board. EHB Docket No. 2008-312-L.

(e)Water Obstruction and Encroachment Permit (PA DEP);

(f)Foundation Permit (Philadelphia L&I).

13. HSP has entered into the following agreements with the City of Philadelphia and local community groups:

(a)Development and Tax Settlement Agreement with the City of Philadelphia dated December 17, 2007 (a copy of which was previously submitted to the Gaming Board) which memorializes certain agreements between the parties to ensure the timely and expeditious development, construction, completion and operation of the SugarHouse Casino for the mutual benefit of the City and HSP and provides for the settlement of certain disputes between the parties.

(b)On November 20, 2008, HSP and the Fishtown Action and New Kensington Community Development Corporation (the "Community Groups") signed a "Community Benefits Agreement," (a copy of which was previously submitted to the Gaming Board) pursuant to which HSP committed to coordinate various activities with the Community Groups and to provide funding for a Special Services District to be created to address community issues and needs. This agreement was the result of over a year of detailed and complex negotiations between HSP and the Community Groups.

14. HSP has made significant physical progress on the site, including:

(a)Beginning in the spring of last year, HSP cleared the surface of the site and created drainage and sediment erosion controls;

(b)HSP has excavated and removed much of the surface and subsurface rubble and foundation materials remaining from the preexisting sugar refinery;

(c)On November 12, 2008, HSP's contractors drove the first of seven permanent indicator piles, reaching bedrock. These permanent piles will ultimately serve as the supports for elements of the new foundation;

(d)HSP currently maintains an on-site work force which varies in size from approximately 12 to 24 construction personnel and supervisors.

15. HSP has the necessary approvals to complete excavation, obstruction removal and dynamic compaction and thereafter to proceed to foundation work, the next steps in site development. HSP expects to obtain the remaining approvals and permits as required in due course to proceed further with the development of the Project.

PROPOSED MODIFICATIONS TO THE APPROVED DEVELOPMENT PLANS

16. In recent weeks, HSP principals and project development representatives have had meetings with Philadelphia Mayor Michael A. Nutter, members of his administration and other officials of the City. Mayor Nutter has expressed his unequivocal support for the Sugarhouse project at its current approved location. All parties have expressed a strong desire and willingness to work cooperatively to open the Sugarhouse Casino as expeditiously as possible. See Letter from Mayor Nutter to the Gaming Board, a copy of which is attached hereto as **Exhibit C.**

17. Following the discussions referenced above and subject to Gaming Board review and approval, HSP has proposed and provided to the City plans reflecting certain design modifications to the HSP development plans approved by the Gaming

Board on December 20, 2006 (the "Approved Development Plan") and described in HSP's Statement of Conditions at ¶¶ 54 and 55. A copy of these plans reflecting the design modifications are attached as **Exhibit D.** Mayor Nutter has stated that he supports the modifications as reflected in the modified plans. See Mayor Nutter letter at Exhibit C. Mayor Nutter has pledged "to ensure that all City departments in [his] administration will cooperate and will continue working diligently with Sugarhouse to obtain all permits and approvals within the City's control in a timely manner." See Id.

18. The proposed modified project is substantially similar to the Approved Development Plan. See Spreadsheet attached as **Exhibit E.**

19. The proposed modified project is located on the identical approved site[2] and has a substantially similar footprint as the Approved Development Plan.

20. The proposed design modifications address some of the concerns raised by the City and the City's advisors with regard to the Approved Development Plan, including the height, the scale, public access and the Delaware River waterfront development.

21. The proposed design modifications affect the facility as follows:

(a) The waterfront development along the Delaware River is shifted to the west (away from the river) approximately 30 feet and the development on the river's edge is less intensive; thus, preserving the natural river's edge (this proposal also addresses concerns expressed by the US Army Corps of Engineers);

[2] It is contemplated that additional parking will be located on an adjacent property north of the approved site until completion of the parking garage. See ¶25(a).

(b) The gaming floor and food and beverage facilities are located at grade (approximately street level) rather than on a second floor;

(c) Both the interim and Phase I facility are shifted approximately 300 feet east away from Delaware Avenue. The parking garage remains in essentially the identical location.

22. Consistent with ¶54 of HSP's Statement of Conditions, the interim facility "will include [approximately 1,700] slot machines, related gaming support and regulatory spaces, food and beverage outlets."

23. The "self park facility with approximately [3,300] parking spaces" will be added after the opening of the interim facility. See ¶54 of HSP's Statement of Conditions.

24. The Phase I expansion will contain a total of approximately 3,000 slot machines, additional food and beverage, other amenities and additional back-of-house areas.

25. The proposed modifications incorporate minor changes which include:

(a) Initial parking on surface lots on site and utilizing an adjacent property north of the approved site for parking with the parking garage structure to be constructed after the opening of the interim facility;

(b) The Phase I casino expansion will be located in both the interim building and will occupy portions the first floor of the garage structure;

(c) The porte cochere and interim/Phase I facility will be located on one level rather than two. Both the interim and Phase I facility will have a mezzanine level for additional support and back-of-house space.

26. The budgeted construction costs for the proposed modified project will not materially change from the Approved Development Plan. Attached as **Exhibit F** is a comparison of the projected construction costs for the Approved Development Plan and the proposed project as modified.

27. HSP believes that with the modifications to the Approved Development Plan, and with the support and cooperation of the City, it will be in a better position to obtain financing in this extremely challenging credit environment.

28. The proposed modified facility can be constructed, and in operation, significantly faster than the Approved Development Plan.

29. HSP anticipates that, assuming permits and approvals are timely issued and financing is obtained, construction of the proposed modified facility can commence approximately four months following Gaming Board approval, and with an approximate nine month construction period, for a projected opening of the interim facility in the second quarter of 2010.

30. HSP projects that approximately 500 workers will be employed during the construction of the interim facility and over 500 casino workers will be hired with the projected 2010 opening at an average compensation, including benefits, of $40,000 per year.

31. Upon Gaming Board approval of the proposed modified project, approximately 1,700 slot machines will be in operation in the interim facility within the requested extension period.

32. In accordance with ¶55 of its Statement of Conditions, following the opening of the interim facility, and as soon as practicable, HSP intends to complete the Phase I expansion.

CONCLUSION

33. Despite continuous diligent efforts, and for reasons beyond its control as set forth in part above, HSP is unable to make 1,500 slot machines available for play within one year of its license issuance.

34. Based on the foregoing and as contemplated by ¶51 of its Statement of Conditions, HSP respectfully submits that the proposed modifications as described above are substantially similar in all material respects to the Approved Development Plan, will deliver the positive impacts of job creation, tax revenue and increased business activity envisioned by the Gaming Act as quickly as possible and thus are in the best interests of the Gaming Board, HSP, the City and the Commonwealth.

35. HSP respectfully submits that good cause exists for the Gaming Board to extend the time under Section 1210 for two additional years and to approve the proposed modifications to the Approved Development Plan outlined herein.

EXHIBIT "A"

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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SUPREME COURT
EASTERN DISTRICT

No. 179 E.M. 2007

HSP GAMING, L.P.,

Applicant/Petitioner,

v.

CITY COUNCIL FOR THE CITY OF PHILADELPHIA
and THE CITY OF PHILADELPHIA,

Respondents.

HSP GAMING, L.P.'s APPLICATION FOR RELIEF PURSUANT TO RULES 123 AND 2591(b) OF THE PENNSYLVANIA RULES OF APPELLATE PROCEDURE SEEKING ENFORCEMENT OF THIS COURT'S DECEMBER 3, 2007 ORDER AND THE APPOINTMENT OF A SPECIAL MASTER

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Dated: January 8, 2009

Counsel for HSP Gaming, L.P.

HSP GAMING'S APPLICATION FOR RELIEF

I. Introduction

The Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§ 1101 *et seq.* (the "Gaming Act"), established a comprehensive regulatory framework for bringing the benefits of legalized slot machine gaming to the Commonwealth of Pennsylvania, its citizens, and its economy. While recognizing the need for close financial and operational scrutiny, the Pennsylvania legislature concluded that limited gaming would generate a diverse spectrum of benefits for the Commonwealth, including new jobs, enhanced tourism and entertainment, new sources of revenue for property tax relief and wage tax reduction, economic development opportunities, and substantial direct financial benefits for local governments and public schools. 4 Pa.C.S. § 1102.

This Court's December 3, 2007 directive to the City of Philadelphia could not have been more clear. As this Court recognized in its December 3, 2007 Opinion and Order, HSP Gaming requires certain permits, licenses and approvals from the City to proceed on a timely basis with the development and construction of the SugarHouse Casino. Recognizing that neither City Council nor the City could delay or obstruct casino development by manipulation of the zoning laws or other City requirements, this Court directed the City, among other things, to "review and act" on HSP Gaming's applications for permits and licenses "in the ordinary course and in compliance with this Court's Order."

As the undisputed facts set forth below establish, in open defiance of this Court's December 3, 2007 Order, the City has refused and continues to refuse to

properly act on HSP Gaming's applications or issue the critical licenses, permits, and approvals required for development and to which HSP Gaming is entitled. Accordingly, HSP Gaming files this Application, seeking enforcement of this Court's December 3, 2007 Order and all appropriate ancillary relief, including the appointment of a Special Master under §1506 of the Gaming Act and under this Court's inherent, broad authority to remedy violations of its Orders and to sanction the City for its defiance of this Court's December 3, 2007 Order.[1]

II. Procedural Background

1. Through its February 1, 2007 Adjudication and Order, the Pennsylvania Gaming Control Board formally confirmed and elaborated on its December 20, 2006 approval of HSP Gaming's application for a license to develop and operate a slot machine facility, to be known as the "SugarHouse Casino," at a site on the Delaware River. In that same decision, the Gaming Board approved the application of Philadelphia Entertainment and Development Partners ("Foxwoods") to operate the Foxwoods Casino at a riverfront site in South Philadelphia.

2. On March 2, 2007, Riverwalk Casino, L.P., one of three losing applicants for Category 2 licenses in Philadelphia, filed a Petition for Review under §1204 of the Gaming Act, which vests this Court with "exclusive appellate jurisdiction to

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[1] On October 14, 2008, when faced with similar City stonewalling to that which is recounted here, in the appeal brought by Philadelphia Entertainment and Development Partners, this Court appointed the Honorable Joseph F. McCloskey as a Special Master with "full authority to consider and resolve such further disputes as may arise regarding the issuance of permits, approvals, licenses or other authorizations by the City of Philadelphia for the construction, use and occupancy of [Foxwoods'] licensed gaming facility."

consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of a slot machine license." 4 Pa.C.S. §1204.

3. By Opinion and Order of July 17, 2007, this Court affirmed the Gaming Board's Adjudication and Order in its entirety, upholding the Gaming Board's approval of the license applications of HSP Gaming and Foxwoods, and its rejection of Riverwalk's license application. *See Riverwalk Casino, L.P. v. Pa. Gaming Control Bd.*, 592 Pa. 505, 926 A.2d 926 (2007).

4. In addition to Riverwalk's appeal, challenges to the Gaming Board's Adjudication and Order were brought by Philadelphia's City Council, neighborhood groups and individuals, including persons affiliated with anti-casino organizations. These appeals were captioned *Society Hill Civic Assoc. v. Pa. Gaming Control Bd.*, 51 EM 2007, *Heiko v. Pa. Gaming Control Bd.*, 41 EM 2007, *Neighbors Allied for the Best Riverfront v. Pa. Gaming Control Bd.*, 38 EM 2007, *City Council v. Pa. Gaming Control Bd.*, 39 EM 2007, and *Society Hill Civic Assoc. v. Pa. Gaming Control Bd.*, 40 EM 2007.

5. HSP Gaming intervened in each of these appeals. This Court thereafter dismissed each of these challenges to the Gaming Board's Adjudication and Order. In dismissing the bulk of these challenges on the grounds of the Petitioners' lack of standing, this Court specifically referenced and granted HSP Gaming's Applications for Summary Relief. *See, e.g., Society Hill Civic Assoc. v. Pa. Gaming Control Bd.*, 593 Pa. 1, 24, 928 A.2d 175, 185 (2007) ("Application for Summary Relief filed on

behalf of HSP Gaming, LP, is granted. Petitioners' Petition for Review is dismissed" for lack of standing to appeal the Gaming Board's Category 2 license awards).

6. Earlier, in February, 2006, in anticipation of legalized gaming, Philadelphia had enacted an ordinance creating a new zoning classification for licensed gaming facilities, known as "Commercial Entertainment Districts," or "CEDs." This classification was enacted "to encourage the orderly development of major entertainment facilities and certain other uses in accordance with an approved plan of development." Phila. Code §14-401(1). The CED ordinance expressly recognized that the City had no authority to override the Gaming Board's exclusive authority to decide where Philadelphia's two slot machine facilities would be located. Phila. Code §14-405(2) ("Nothing in this Chapter shall limit the right of the Pennsylvania Gaming Control Board under the Act to identify the property on which it will permit a Category 2 licensed gaming facility within the City.").

7. On March 26, 2007, as required by the CED Ordinance and following months of coordination and consultation between HSP Gaming and representatives of various City departments, HSP Gaming submitted a proposed "Plan of Development" for the SugarHouse Casino to the City's Planning Commission. On May 22, 2007, following a public hearing, the Planning Commission approved HSP Gaming's Plan of Development. The Planning Commission then recommended that Philadelphia's City Council approve three bills needed for HSP Gaming to proceed with its development, namely bills to: (1) amend zoning for HSP Gaming's site for the SugarHouse Casino as a CED District; (2) approve HSP Gaming's Plan of

Development; and (3) authorize the revision of certain lines and grades on the site as well as provide a right of way for sewer maintenance.

8. Despite the cooperation of the administration of then Mayor John Street (the "Street Administration"), City Council made clear that these bills would not be approved, or even considered, by City Council.

9. Indeed, no member of City Council was initially willing to introduce the three bills that the Planning Commission had recommended. It was only after the Street Administration prevailed on Council member Juan Ramos – who had been defeated earlier that month in the City's primary election – that any member of City Council was willing to so much as introduce these bills for consideration.

10. On May 24, 2007, Council member Ramos introduced the three bills before City Council. As this Court later determined, City Council simply refused thereafter to consider these bills, with deliberate intent to nullify the Gaming Board's approval of HSP Gaming's site and for the purpose of delaying, impeding and frustrating the approved development of the SugarHouse Casino.

11. Accordingly, on October 25, 2007, HSP Gaming filed a Petition for Review before this Court, seeking injunctive relief against both City Council and the City of Philadelphia. Specifically, HSP Gaming sought an order from this Court declaring that the bills pending before City Council were deemed approved, and prohibiting both City Council and the City from any further efforts to delay or frustrate the Gaming Board's licensing decision through manipulation of the local zoning, permitting, and approval processes.

12. This Court's December 3, 2007 Opinion and Order granting HSP Gaming's Petition for Review recounted in detail City Council's efforts and public statements intended to frustrate, delay and impede development of the SugarHouse Casino. *See HSP Gaming, L.P. v. City Council for the City of Philadelphia*, 595 Pa. 508, 532, 939 A.2d 273, 287 (2007).

13. As this Court recognized, HSP Gaming's Petition for Review "provided extensive documentation that certain council members have made public statements regarding their efforts to obstruct and derail the Gaming Board's approval of HSP's facility." *HSP Gaming*, 595 Pa. at 524, 939 A.2d at 282.

14. More specifically, the efforts of City Council and individual council members to frustrate and delay implementation of gaming in Philadelphia, as well as public statements critical of HSP Gaming's approved site, included:

- a council member's press release announcing he intended to file an appeal from the Gaming Board's Adjudication, quoting the council member as stating "I think it's a horrible decision. I will do everything I can to delay construction of the facilities until some of these serious concerns are addressed";

- a council member's statement at a March 2, 2007 public hearing on Ordinance No. 070112 that "this was dumped on us, and we got to figure out a way in which we can slow this process down";

- a council member's announcement at the March 2, 2007 public hearing that he "intended to vote for the bills that [another council member had] put forth in an effort to slow this down or stop this process"; and

- a council member's sponsorship on April 19, 2007 of Resolution No. 070322 "[a]uthorizing the creation of a Special Committee on Gaming Alternate Site Selection of the City Council of Philadelphia, for the purpose of holding hearings and making written recommendations to identify alternate locations for slots parlors in the City...."

HSP Gaming, 595 Pa. at 524, 939 A.2d at 282-83.

15. In February 2007, an organization known as Casino-Free Philadelphia, which as its name suggests is devoted to keeping all casinos out of Philadelphia, had attempted to place a question on the May, 2007 primary ballot asking whether the Home Rule Charter should be amended to prohibit City Council from taking any action that would permit licensed gaming within 1500 feet of any residence, apartment, church, school, public park or playground, as well as any residentially zoned district or Institutional Development District in the City of Philadelphia. Casino-Free submitted to City Council petitions that purported to include at least 20,000 valid signatures of registered voter in support of the ballot question. Following an evidentiary hearing, the Honorable Ward F. Clark, specially appointed by this Court, found the signatures permeated with fraud and other irregularities and declared the Petition invalid.

16. If adopted, the proposed Charter amendment would have prevented the SugarHouse Casino from operating at the site approved by the Gaming Board and in effect, would have operated as a total bar to licensed gaming in the City.

17. As a further blatant example of its intent to "veto" the Gaming Board's licensing decisions, City Council engaged in its own referendum initiative, unanimously passing an ordinance intended to submit an identical ballot question to Philadelphia's electors. *HSP Gaming*, 595 Pa. at 524, n. 12, 939 A.2d at 282, n. 12. Again, if adopted this proposed Charter amendment would have abrogated the Gaming Board's licensing and siting decisions.

18. The Gaming Board filed suit to enjoin City Council's proposed amendment from appearing on the ballot, and HSP Gaming intervened in support of the Gaming Board's position. On April 13, 2007, this Court granted the Gaming Board's Emergency Petition for Review and enjoined respondents from placing the proposed amendment on the ballot.

19. This Court's subsequent opinion, issued on August 3, 2007, explained that "the General Assembly intended for the [Gaming] Board to have the sole authority to locate Category 2 licensed facilities in cities of the first class. That is to say, only the [Gaming] Board makes the decision to locate a licensed facility. Section 1304(b)(1) repeatedly states without equivocation that 'Category 2 licensed facilities...shall be located by the [B]oard in cities of the first class,' and both Section 1304(b)(1) and 1307 refer to 'Category 2 licenses' or 'Category 2 licensed facilities' that have been 'located by the [B]oard.' 4 Pa.C.S. §§ 1304(b)(1),1307. We further observe that in these provisions, the General Assembly has not afforded the electorate of a first class city the right to consider, affect or override the Gaming Board's location decision once it is made." *Pa. Gaming Control Bd. v. City Council for the City of Philadelphia*, 593 Pa. 241, 262, 928 A.2d 1255, 1267-68 (2007).

20. Despite this Court's clear pronouncement that neither the City nor City Council had authority to purport to override the Gaming Board's sole authority to determine where Philadelphia's two casinos will be located, City Council continued unabated in its efforts to block development of the SugarHouse Casino at its Gaming Board-approved location.

21. As this Court recognized, a document released by the Council member leading the efforts confirmed that he would continue to use his councilmanic prerogative to delay the zoning legislation for the SugarHouse Casino:

> When the Pennsylvania Gaming Control Board issued gaming licenses to SugarHouse and Foxwoods Casinos, I pledged to my constituents that I would fight their decision with every tool I had available. That's exactly what I've done but the bottom line is that we need the Governor's help.
>
> I introduced several pieces of legislation to block or delay casino construction. Despite two public hearings, those bills have not been voted out of committee.
>
> When Council Member Ramos introduced legislation permitting immediate construction of SugarHouse Casino, I successfully blocked its approval. However, in light of the recent court decisions, I don't know if I can maintain a Council majority to defeat the legislation.
>
> And while I may still have additional options when Council reconvenes in the fall, I sincerely believe that our best hope of success is with additional support at the highest levels of State Government.

HSP Gaming, 595 Pa. at 525, 939 A.2d at 283.

22. Expressing his continuing desire for the relocation of the SugarHouse Casino and his intent to delay the necessary legislation for the construction of the casino at the site approved by the Gaming Board, on August 9, 2007 the Councilman for the district in which the SugarHouse site is located wrote to Governor Rendell: "On behalf of the communities I represent, I want to welcome your leadership and to thank you for considering alternate sites for gaming facilities in Philadelphia. In order to provide the State ample time to review this issue, I

pledge to you and my constituents that I will make my best effort to hold the necessary legislation that would permit casino construction until you complete a full review of the matter." *HSP Gaming*, 595 Pa. at 526, 939 A.2d at 283.

23. This Court's December 3, 2007 Opinion and Order summarized the controlling legal principles at stake, once more making clear that neither the City nor City Council has:

> [P]ower to override the statutory provisions of the Gaming Act regarding the situs of a licensed gaming facility to use its authority to zone to impede implementation of the Gaming Board's authority in that regard. A member of City Council does not have the authority to use local zoning processes to overturn the Gaming Control Board's approval of an applicant's Category 2 slot machine license.

HSP Gaming, 595 Pa. at 532, 939 A.2d at 287.

24. Based on the undisputed documentation submitted by HSP Gaming in support of its Petition for Review, this Court concluded that, with respect to the legislation described above, City Council had engaged in "deliberate inaction ... for the purpose of delay." *Id.*

25. Given the controlling law and undisputed facts, this Court: (1) declared the SugarHouse Casino site zoned as a Commercial Entertainment District under Chapter 14-400 of the Philadelphia Code; (2) declared HSP Gaming's Plan of Development for the SugarHouse Casino to be approved, without any further action by City Council; (3) declared that all revisions and vacations of easements and public rights of way identified in the Plan of Development were authorized; and (4)

expressly retained jurisdiction to enforce its Order. *HSP Gaming*, 595 Pa. at 533, 939 A.2d at 288.

26. Although the City, through the Street Administration had been working in good faith to implement the Gaming Board's licensing decisions, this Court's December 3, 2007 Order made clear that the City's continued compliance was central to the implementation of its declaratory relief.

27. This Court's December 3, 2007 Order thus directed the City "to take all actions necessary to implement the relief granted, including making all necessary changes to City records, maps and plans, *and receiving, reviewing and acting upon all applications from HSP Gaming in the ordinary course* and *in compliance with this Court's order*." *HSP Gaming*, 595 Pa. at 534, 939 A.2d at 288 (emphasis added).

28. On January 4, 2008, Foxwoods filed a Petition for Review seeking relief substantially identical to the relief that this Court's December 3, 2007 Order granted to HSP Gaming.

29. Foxwoods' Petition for Review described in detail City Council's deliberate efforts to delay, obstruct and frustrate the development of its casino project through a clear pattern of legislative inaction and stonewalling.

30. On April 2, 2008, this Court granted Foxwoods' Petition, concluding that "City Council's failure to act, for purposes of delay, was beyond its power, and entitled [Foxwoods] to the same relief" that the Court granted HSP Gaming. *See Philadelphia Entertainment and Development Partners v. City Council for the City of Philadelphia*, 596 Pa. 422, 440, 943 A.2d 955, 966 (2008).

31. As set forth in detail below, however, with the inauguration of Mayor Michael Nutter (the "Nutter Administration") in January, 2008, the Nutter Administration has assumed City Council's role as the primary and driving force to obstruct and impede development of the SugarHouse Casino at the site approved by the Gaming Board.

32. Not only has the Nutter Administration improperly obstructed development of the SugarHouse Casino at the site approved by the Gaming Board, but the Nutter Administration also improperly created obstacles to the development of the Foxwoods Casino at its approved site.

33. Indeed, as this Court is aware, following this Court's April 2, 2008 Order, Foxwoods requested that the City issue a zoning and use registration permit, which is a prerequisite for additional site preparation and construction permits. Although Foxwoods had provided the City with all information required by the Zoning Code, the new City administration rejected Foxwoods' application as incomplete. The Nutter Administration claimed that under an admittedly unpublished policy, Foxwoods was required to submit additional information in support of its application, including a traffic mitigation plan, a transportation plan, a parking plan, and proposed street layout changes.

34. Foxwoods responded that this information had been submitted to the Planning Commission in connection with its plan of development and, in any event, was not information required to obtain a zoning permit under § 14-404 of the CED Ordinance.

35. On July 16, 2008, Foxwoods filed an Application seeking enforcement of this Court's April 2, 2008 Order, and requesting the appointment of a Special Master under § 1506 of the Gaming Act.

36. On October 14, 2008, this Court granted Foxwoods' Application and entered an order granting Foxwoods the following relief:

> (1) the City of Philadelphia is directed to issue the Zoning/Use Registration Permit that PEDP requested;
>
> (2) pursuant to Section 1506 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §1506, the Honorable Joseph F. McCloskey, Senior Judge of the Commonwealth Court, is hereby appointed as Master in the above-captioned matter. The Master shall have full authority to consider and resolve such further disputes as may arise regarding the issuance of permits, approvals, licenses or other authorizations by the City of Philadelphia for the construction, use and occupancy of PEDP's licensed gaming facility; and
>
> (3) The Master shall address any such disputes, including requests for counsel fees or sanctions, in an expeditious manner and shall file a report with this Court setting forth the status and a summary of the proceedings within ten (10) days after completion of such proceedings.

37. As described in detail below, in blatant violation of this Court's December 3, 2007 Order, the Nutter Administration has egregiously refused to process applications and issue permits required for the timely development of the SugarHouse Casino, including a critical foundation permit. In sum, contrary to this Court's plain mandate, the Nutter Administration has failed to "review[] and act[] upon all applications from HSP [Gaming] in the ordinary course and in compliance with this Court's order." *HSP Gaming*, 595 Pa. at 533, 939 A.2d at 288.

38. Accordingly, HSP Gaming files this Application for Relief seeking enforcement of this Court's December 3, 2007 Order and all appropriate relief incident thereto, including the appointment of a Special Master under §1506 of the Gaming Act and under this Court's inherent, broad authority to remedy violations of its Orders and to sanction the Nutter Administration for its defiance of this Court's December 3, 2007 Order. HSP Gaming respectfully requests that this Court vest the Special Master with full authority to consider and resolve all existing and future disputes that may arise between HSP Gaming and the City with respect to any permits, approvals, licenses, or actions required for the timely development of the SugarHouse Casino, and as more fully set forth in HSP Gaming's Request for Relief below.

III. Statement of Material Facts

(a) The Street Administration complied with its legal obligations with respect to HSP Gaming's development of the SugarHouse Casino

39. From January 25, 2007 until the end of Mayor John Street's Administration ("Street Administration") on January 6, 2008, HSP Gaming maintained an excellent working relationship with the various City departments with regard to the SugarHouse Casino construction project.[2] [McKenna Aff. at ¶10].

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[2] The factual assertions set forth in this Application are supported by the Affidavit of Terrence J. McKenna ("McKenna Aff."), Project Executive at Keating Consulting, LLC, which is the development management consultant for Petitioner HSP Gaming. [Exh. "1" to Appendix]. McKenna manages HSP Gaming's development team for the SugarHouse Casino construction project. All exhibits are included in the Appendix being filed herewith.

40. On January 25, 2007, Street Administration officials from various City Departments, including then-City Solicitor Romulo L. Diaz, Jr., Janice Woodcock from the City's Planning Commission, John Elfrey from the Managing Director's Office, Charles Denny from the Streets Department, and Brian Mohl from the Water Department, met with HSP Gaming representative Terrence J. McKenna, to outline the City's plan to coordinate the SugarHouse Casino development process. [McKenna Aff. at ¶¶ 11, 12].

41. At the January 25, 2007 meeting, John Elfrey was appointed as HSP Gaming's primary contact at the City with regard to the casino development process. Elfrey's point of contact at HSP Gaming was McKenna. [McKenna Aff. at ¶12].

42. Adhering to this plan, McKenna would contact Elfrey when technical issues developed between HSP Gaming and the Street Administration, Elfrey would timely respond to McKenna's inquiries and direct the appropriate Street Administration officials to respond to the technical issues involving the SugarHouse Casino construction project. [McKenna Aff. at ¶18].

43. During the Street Administration, this process worked seamlessly. Phone calls from HSP Gaming to City officials were returned in a timely fashion. The City also scheduled bi-weekly meetings with HSP Gaming to discuss outstanding permitting and licensing issues related to the SugarHouse Casino project. The City representatives at these meetings included, among others, then-

City Solicitor Romulo L. Diaz, Jr., then-Managing Director Pedro A. Ramos, and Elfrey. [McKenna Aff. at ¶¶ 13, 17].

44. On August 2, 2007, HSP Gaming and the City reached a written agreement on a Term Sheet (the "Term Sheet") that outlined the essential provisions of a Development and Tax and Claim Settlement Agreement between the parties. Among other things, the City and HSP Gaming agreed in writing to:

> [W]ork together in good faith pursuant to applicable law to obtain the timely approval by the City Council and all other federal, state and local governmental agencies and entities ("Approvals") of CED [Commercial Entertainment District] Site Designation Ordinance, the Plan of Development, ownership or equivalent leasehold interest in the riparian lands and all other approvals, consents and permits required to construct and operate the SugarHouse Casino, including, without limitation, regarding the construction of all required utilities, foundations, grading, infrastructure and other improvements, whether on and off of the site.

[McKenna Aff. at ¶ 14].

45. On December 17, 2007, the City and HSP Gaming entered into the Development and Tax and Claim Settlement Agreement ("Development Agreement"). Pursuant to the Development Agreement, the City specifically agreed that the City would "work in good faith pursuant to applicable law to timely obtain the Approvals necessary to permit the development, construction and operation of the SugarHouse Casino as contemplated by the then-approved Plan of Development as the same may be amended from time to time as provided in this Agreement, and applicable law, including the December 3 Order [of this Court]" and would implement a development process for the SugarHouse Casino, including: (i)

"opportunities to consult with appropriate municipal staff in a timely fashion to ensure that the SugarHouse Casino can be developed and constructed in the most time- and cost-efficient manner possible"; (ii) "timely municipal review processes, where required, *with the City causing most reviews and comments to be completed within ten (10) business days*"; and (iii) "project coordination assistance from the Managing Director's office."[[McKenna Aff. at ¶ 15].

46. Pursuant to the Development Agreement, the Street Administration implemented an efficient development process for the SugarHouse Casino construction project. [McKenna Aff. at ¶ 16].

47. Coordination to obtain proper permits for the SugarHouse Casino project ran smoothly under the Street Administration. For example, on January 2, 2008, after extensive advance coordination between HSP Gaming and the City with respect to what issues the applications should address, HSP Gaming applied for a Rough Grading Permit, and on January 3, 2008, HSP Gaming applied for a Zoning Permit. Because the City knew in advance and had reviewed much of what was in the applications, the City was able to issue both permits to HSP Gaming on January 4, 2008. [McKenna Aff. at ¶¶ 19-20].

48. Unfortunately, the coordination that existed under the Street Administration stopped with the Nutter Administration. Indeed, as set forth below, the Nutter Administration has not only failed to complete its reviews of HSP Gaming's various applications within the ten-day period required by the Development Agreement, the Nutter Administration has deliberately and utterly

violated that Agreement and this Court's December 3, 2007 Order. [McKenna Aff. at ¶¶ 22-26].

(b) **Under the Nutter Administration, the City has violated this Court's December 3, 2007 Order and the Development Agreement by failing to receive, review and act on applications from HSP Gaming in the ordinary course and in compliance with this Court's Order**

49. HSP Gaming's once excellent working relationship with the City ceased with commencement of the Nutter Administration. Indeed, under the Nutter Administration, the City has ignored its obligations under both this Court's December 3, 2007 Order and the Development Agreement.

50. As reported in the *Philadelphia Daily News*, on January 9, 2008, Mayor Nutter's first full day in office, Mayor Nutter directed the Department of Licenses & Inspections ("L&I") to review the Zoning and Rough Grading permits issued to HSP Gaming during the Street Administration. [Exh. "2"]. On information and belief, aside from HSP Gaming, Mayor Nutter did not order the review of any other permits for any developer.

51. Indeed, almost immediately upon taking office, Mayor Nutter stated that his Administration would undertake a full review of all issues surrounding the SugarHouse Casino project, including but not limited to its approved location. [Exh. "3"].

52. At a January 24, 2008 City Hall press conference, Mayor Nutter announced that the City was revoking HSP Gaming's submerged lands license, which had been issued in November, 2007 after a full public hearing held by the City's Commerce Director. [Exh. "4"].

53. In early February, 2008, Mayor Nutter stated to *Plan Philly*: "The previous agreements regarding casinos – I didn't agree to them. As far as I'm concerned, we are back at Square One. Everything is back on the table, from where they are, what they look like, and all the agreements with the City." [Exh. "5"]. Mayor Nutter made this statement notwithstanding the fact that the Mayor's City Solicitor Shelley Smith testified before City Council under oath that her Office could not find any legal grounds for the City to avoid its obligations under a similar development agreement between the City and Foxwoods. [Exh. "6" (City Council Rules Committee Trans. 4/30/2008, at p. 83)]. Additional comments by Mayor Nutter and senior Nutter Administration officials disparaging the SugarHouse Casino and its approved location are set forth in Section "g" below.

54. During the first month of the Nutter Administration, communications from the City to HSP Gaming regarding permitting issues virtually ceased. Where once City officials timely returned telephone calls and answered questions regarding project issues, the new Administration immediately implemented an open-ended reevaluation process as a result of which City officials refused to respond to HSP Gaming issues or inquiries or otherwise proceed in good faith with HSP Gaming's pending permit applications. McKenna was informed of this new City position on January 30, 2008, by Elfrey, who Mayor Nutter had appointed as the Acting Commissioner of Licenses & Inspections. [McKenna Aff. at ¶¶ 22, 23, 26-28, 31-35].

55. Following several telephone calls to City officials, where HSP Gaming informed the City that its new position regarding the SugarHouse Casino project was in clear violation of the Development Agreement, the City appeared to backtrack from its earlier position. Indeed, Elfrey notified McKenna that the City was continuing to review HSP Gaming's applications and submittals related to the casino project, including the proposed Act 537 Planning Module for the SugarHouse Casino.[3] [McKenna Aff. at ¶¶ 35, 36, 41].

56. On January 31, 2008, Teresa Gillen, Senior Advisor to the Mayor for Economic Development, informed McKenna that she would now serve as HSP Gaming's primary point of contact with the City regarding the SugarHouse Casino project. McKenna promptly suggested to Gillen that HSP Gaming's team meet with incoming City officials to discuss the status of the SugarHouse Casino project and the pending permit applications. Gillen, however, summarily rejected this offer to meet. [McKenna Aff. at ¶42].

57. Although assuring HSP Gaming that it would abandon its initial position to halt all review of HSP Gaming applications and cooperate with HSP Gaming, the Nutter Administration failed to abide by that promise.

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[3] The Act 537 Planning Module details HSP Gaming's sewage discharge plan and documents that the City's collection and treatment system has adequate capacity to handle the projected flow from the SugarHouse Casino. Whenever a developer such as HSP Gaming constructs a project in Philadelphia, the City is required to amend its Act 537 Planning Module. The amended planning module then must be approved by the Pennsylvania Department of Environmental Protection ("DEP"). For HSP Gaming to obtain a foundation permit, without which the construction of this project cannot proceed, DEP must, among other requirements, approve the amended Act 537 Planning Module. [McKenna Aff. at ¶ 27, n.2].

58. As described more fully below, the Nutter Administration has disregarded this Court's December 3, 2007 Order, causing significant delays in the timely development of the SugarHouse Casino, which in turn has caused and will cause great harm to HSP Gaming and has denied the citizens of Philadelphia and of the Commonwealth the many benefits of legalized gaming. By way of example, the Nutter Administration has even failed to acknowledge HSP Gaming's foundation permit application, which application had in fact been previously submitted and filed with the City. [McKenna Aff. ¶ 107].

59. Further, the Nutter Administration has delayed and failed to timely review other HSP Gaming requests for approvals and plan reviews, and has even failed to provide routine letters requested by HSP Gaming for notice to utility owners with utility lines near the SugarHouse Casino site. Moreover, the City has continued to make public statements disparaging the location of the SugarHouse Casino site, and has delayed, impeded, and frustrated every aspect of the construction project, even to the point of issuing erroneous and false notices of violations to HSP Gaming. The recent examples cited herein reflect the Nutter Administration's pattern of obstruction in blatant defiance of the Gaming Act's clear mandate and this Court's December 3, 2007 Order.

(c) **The Nutter Administration falsely claims that HSP Gaming never applied for a foundation permit and the City has failed to issue the foundation permit to which HSP Gaming is entitled**

60. On December 6, 2007, HSP Gaming submitted a final application to the City for a foundation permit that HSP Gaming requires to proceed with construction of the SugarHouse Casino. [McKenna Aff. at ¶ 21].

61. As of December 16, 2008, the Nutter Administration, through L&I, has claimed that HSP Gaming did not have a foundation permit application pending. This recent position taken by the City's new administration is demonstrably false and contrary to the City's own prior acknowledgements. [McKenna Aff. at ¶ 107].

62. Under the Philadelphia Building Code and Section A-302 of the Administrative Code, the City will issue a permit to construct a foundation once certain Zoning Unit and Water Department approvals are issued. The Zoning Unit approval is in the form of a zoning permit. The City's Water Department approval is in the form of an acknowledgement that: (a) storm water management has been addressed by the applicant; (b) potable water supply is available to the site; and (c) an amendment to the City's Act 537 Planning Module has been approved by the DEP. [McKenna Aff. at ¶ 102].

63. On October 29, 2007, as part of its application for a submerged lands license and at the City's request, HSP Gaming submitted to L&I a preliminary foundation permit application. On November 8, 2007, again at the City's request, HSP Gaming submitted additional information in support of its eventual foundation permit application. [McKenna Aff. at ¶ 97, 99].

64. On November 15, 2007, through an L&I official, the City confirmed that HSP Gaming had provided the necessary information and forms required as part of a foundation permit application. Indeed, L&I official Robert Murray, P.E. testified under oath at the Commerce Department's public hearing on HSP Gaming's application for a submerged lands license that HSP Gaming had "provided all the information and forms that would accompany a request for a Foundation Permit, with the exception of prerequisite approval for L&I Zoning Unit and the Philadelphia Water Department, which are not part of this application." Murray further testified that "[b]ased on this initial review, it is my opinion that the submittal meets the requirements of the Code and of the Department to have a foundation permit issued once all the prerequisite approvals are obtained. Additional information will be required with any application for a full building permit." [McKenna Aff. at ¶ 100].

65. On December 6, 2007, HSP Gaming submitted a complete foundation permit application to L&I for approval (with the exception of the Zoning Unit and Water Department prerequisite approvals, which would come directly from those departments). As of the date of this Application, and for at least four months prior hereto, all conditions for issuance of the foundation permit have been met, but the City has nonetheless failed to issue the permit to HSP Gaming. [McKenna Aff. at ¶ 101].

66. As stated previously, on January 4, 2008, L&I issued HSP Gaming a Zoning Permit, thereby fulfilling the Zoning Unit prerequisite of the foundation permit. [McKenna Aff. at ¶ 103].

67. On January 4, 2008, DEP issued a National Pollutant Discharge Elimination System ("NPDES") permit to HSP Gaming. The NPDES permit addressed post-construction storm water management, as approved by the City's Water Department. Therefore, issuance of the NPDES permit satisfied the first part of the three-part Water Department prerequisite approval for the foundation permit. (The Water Department provides review and commentary to the DEP relative to the post-construction storm water management portion of the NPDES permit). [McKenna Aff. at ¶ 104].

68. On September 11, 2008, DEP approved the revision to the City's Act 537 Planning Module for the SugarHouse Casino project, thus fulfilling the second part of the Water Department's three-part prerequisite approval.[4] The third and final part of the Water Department's prerequisite approval is simply an acknowledgement that a public water supply exists to serve the site, and that it is properly sized, which the Water Department must issue on request because a public water supply exists and is of a sufficient size. [McKenna Aff. at ¶ 105, 106].

69. Notwithstanding the City's own statements to the contrary and the various submittals by HSP Gaming as described above, on December 16, 2008, the

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[4] Although third parties have appealed DEP's approval to the Environmental Hearing Board, that approval has not been stayed, and remains in full force and effect.

City, for the first time, claimed that HSP Gaming had not submitted a foundation permit application. When presented with HSP Gaming's time-stamped and complete foundation permit application, showing that HSP Gaming had indeed applied for a foundation permit, the City irrationally refused to acknowledge this evidence. If the City is permitted to maintain this position, HSP Gaming would have to start the foundation permit process all over again, preparing and submitting a new application with its voluminous technical information, including geotechnical reports and foundational drawings. [McKenna Aff. at ¶ 107, 108].

70. By failing to issue HSP Gaming's foundation permit, and indeed by denying that it had even received HSP Gaming's foundation permit application – which claim is blatantly contrary to the facts – the City is in clear violation of the Court's December 3, 2007 Order and the Development Agreement.

(d) The Nutter Administration failed to timely comment on or review HSP Gaming's Proposed Act 537 Planning Module, and failed to timely submit the proposed Planning Module to the Commonwealth

71. During the Street Administration, HSP Gaming worked closely with the Philadelphia Water Department on the Act 537 Sewer Planning Module for the SugarHouse Casino. Officials of the Water Department during the Street Administration represented to HSP Gaming that they were comfortable with the Module as proposed, and should be able to provide all required approvals within a few days of being requested to do so. [McKenna Aff. at ¶ 28].

72. On October 27, 2007, the City published a public notice Act 537 Sewer Planning Module for the SugarHouse Casino development, soliciting public

comments, and the public comment period closed 30 days later. At that point, it was the City's obligation to respond to the public comments that the City had received. [McKenna Aff. at ¶¶ 28].

73. With the commencement of the Nutter Administration, the City said it would halt review of the then-pending Act 537 Planning Module because the Administration opposed SugarHouse Casino's site. After HSP Gaming objected, the City purported to retreat from its position and indicated that it would continue to review HSP Gaming's proposed Act 537 plan. [McKenna Aff. at ¶¶ 28, 33-36, 41].

74. Once Mayor Nutter revoked HSP Gaming's submerged lands license, the Nutter Administration then used this revocation as grounds to again halt its review of the Act 537 Planning Module. Indeed, on February 8, 2008, Elfrey confirmed to McKenna that no City official would meet with HSP Gaming to discuss outstanding issues involving the Act 537 Planning Module because of the City's purported revocation of the submerged lands license. [McKenna Aff. at ¶ 52].

75. Notwithstanding that HSP Gaming had provided the City with proposed responses in January, 2008, on March 20, 2008, backing off its position that it would cease all work on the Act 537 Module pending resolution of the legality of the City's revocation of the submerged lands license, the City delivered to HSP Gaming its response to public comments on the Act 537 Planning Module for inclusion in the final Act 537 package that would go back to the City, and thereafter to DEP. [McKenna Aff. at ¶ 69].

76. On March 24, 2008, following its receipt of the City's response to public comments, HSP Gaming submitted to the City's Water Department the final Act 537 Planning Module for final approval and subsequent submittal to DEP. Although HSP Gaming's final submittal included the City's authorized response to public comments, the Nutter Administration, without justification, still failed to approve the plan for submittal to DEP. [McKenna Aff. at ¶ 70].

77. Accordingly, on June 9, 2008, McKenna advised the Nutter Administration that under 25 Pa. Code § 71.53(b), because the City had failed to act within 60 days of the HSP's Gaming's final submission, the Act 537 Planning Module would be deemed approved by the City and ready for submittal to DEP. [McKenna Aff. at ¶ 80].

78. On September 11, 2008, DEP gave final approval to the Act 537 Planning Module for the SugarHouse Casino. [McKenna Aff. at ¶ 105].

79. The City's unreasonable and unjustified delay in initially providing official responses to public comments to HSP Gaming's proposed Act 537 Planning Module, and then in failing to grant final approval for submission to DEP, was in clear violation of this Court's December 3, 2007 Order and in violation of the Development Agreement.

(e) The Nutter Administration has issued erroneous and false violation notices concerning the SugarHouse Casino project

80. In addition to failing to cooperate and timely review and act upon applications by HSP Gaming, the City has issued erroneous and false violation notices to HSP Gaming with respect to the SugarHouse Casino project.

81. On August 22, 2008, HSP Gaming informed the City that in light of this Court's ruling on the submerged lands license issued that same day, HSP Gaming would begin excavation activities to expose and remove underground obstructions on submerged lands. Following this notification, however, in yet another attempt to delay HSP Gaming's construction activities, Elfrey warned McKenna: "[D]o not commence in the riparian area until we review with our attorneys and review the permits." On August 25, 2008, the City's Water Department inspected the SugarHouse Casino project, without prior notice, finding no violations. [McKenna Aff. at ¶¶ 85, 86].

82. From August 25, 2008, through September 5, 2008, high-level L&I officials made numerous visits to the SugarHouse Casino site with a stated intent to shut down excavation activities on the submerged lands. The Nutter Administration was seeking to stop work on the submerged lands based upon the City's assertion that without a Chapter 105 Permit (Dams and Waterway's permit) from DEP, HSP Gaming was precluded from proceeding with any development activities on the submerged lands portion of its site. But since HSP Gaming had previously secured a submerged lands license that permitted all improvements east of the bulkhead line, no Chapter 105 permit was required from DEP to excavate on the submerged lands. [McKenna Aff. at ¶87]. In sum, the City had once again created a bogus justification in an effort to stop HSP Gaming's site work, and ultimately backed off its position.

83. On September 8, 2008, HSP Gaming received a Notice of Violation ("NOV") from the City dated September 2, 2008, stating that a revised rough

grading permit was required to excavate east of the bulkhead line. This NOV, however, was improper and unjustified, as HSP Gaming clarified later that same day with the City, because HSP Gaming's rough grading permit, issued on January 4, 2008, applied to the entire SugarHouse Casino site. [McKenna Aff. at ¶¶ 89, 90].

84. During the period of November 12 through November 18, 2008, HSP Gaming installed indicator piles on the SugarHouse Casino project site. On December 16, 2008, the City informed HSP Gaming that it was in violation of the law because HSP Gaming had not secured a building permit to install the indicator piles and that the City intended to shut down all construction work on the site on December 17, 2008. After HSP Gaming disputed this alleged violation, the City acknowledged that the City was incorrect in its initial position that the installation of the indicator piles required a building permit. The City again ultimately backed off its incorrect position. [McKenna Aff. at ¶¶ 93-95].

85. The City's actions described herein reflect not only its failure to cooperate with HSP Gaming since the start of the Nutter Administration, they also reflect the City's continuing efforts and intent to delay, obstruct and interfere with HSP Gaming's construction activities, in violation of the Court's December 3, 2007 Order and the Development Agreement.

(f) Additional Examples of the Nutter Administration's violations of this Court's December 3, 2007 Order

86. To date, the City has failed to review or act upon HSP Gaming's revised 100 Percent Drawings and Specifications for the Laurel Street Combined Sewer

Outfall ("CSO") work,[5] which were revised by HSP Gaming after it received the City's official comments to the original set of drawings and specifications. HSP Gaming submitted this revised CSO set to the City on April 18, 2008. [McKenna Aff. at ¶ 74].

87. The Laurel Street CSO project involves the: (a) relocation; (b) expansion; and (c) extension of the existing Laurel Street CSO. The CSO relocation work is contemplated to be completed in accordance with the approved plan of development for the SugarHouse Casino project. The expansion and extension work on the CSO (*i.e.*, the improvements to the current Laurel Street CSO) do not directly benefit the SugarHouse Casino project, but instead, are public works projects that the City has directed HSP Gaming to implement pursuant to the terms of the Development Agreement. The "improvement" work on the Laurel Street CSO will initially be funded and constructed by HSP Gaming on behalf of the City. The City, in turn, will reimburse HSP Gaming for the expansion and extension work as provided under the Development Agreement. [McKenna Aff. at ¶ 30].

88. The City has failed, to date, to provide necessary Water Department approvals that are required as part the water quality management permit application for the relocated CSO, which HSP Gaming is required to submit to the

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[5] There are approximately 173 CSOs throughout the City's sewer system network, discharging to either the Schuylkill or Delaware Rivers. A combined sewer conveys both sanitary sewage and storm water runoff in the same pipe. During dry weather, the sanitary sewage is collected and directed to a wastewater treatment plant. During wet weather/storm events, the combined mixture of sanitary sewage and storm water is discharged to the river when the capacity of the collection/treatment system is exceeded. [McKenna Aff. at ¶ 30, n. 3].

DEP in order to begin the Laurel Street CSO work discussed above. [McKenna Aff. at ¶ 79].

89. On February 25, 2008, HSP Gaming requested that the City's Water Department prepare a routine letter, for use by HSP Gaming, to provide information to all utility owners with utility lines within the City-owned streets surrounding the SugarHouse Casino Project. The purpose of this letter would be to inform these utility owners (including private entities such as Verizon and PECO Energy and public entities such as Philadelphia Gas Works) that HSP Gaming was performing utility relocation work on behalf of the Water Department. This was a routine request to the City that required nothing more from the City than a simple letter of notification to utility owners. Notwithstanding the simple nature of this request, on March 13, 2008, Elfrey informed HSP Gaming that the City would not assist it in providing even this basic information to the utility owners. This is yet another example of the City's efforts to delay, obstruct and interfere with HSP Gaming's construction activities. [McKenna Aff. at ¶ 60].

90. Further, on April 1, 2008, the Nutter Administration notified HSP Gaming that the City also would not issue a public works notice verifying to utility owners that certain work required by those utilities under the Development Agreement is a public works project, for which the utilities had to bear their own costs. This request by HSP Gaming to the City was an effort to save the City approximately $2 million. In furtherance of its policy of non-cooperation with HSP Gaming, however, the Nutter Administration yet again was unwilling to take even

the most minimal of action and issue the required notice. This failure will cost the City taxpayers approximately $2 million which the City otherwise would not have expend on the work under Delaware Avenue. The Nutter Administration's position is particularly unfortunate given its public statements that the City is suffering a financial crisis, requiring the closing of libraries, public swimming facilities, and fire fighting resources. [McKenna Aff. at ¶¶ 60, 71].

91. On July 1, 2008, without proper justification, the Nutter Administration denied HSP Gaming permission to discharge groundwater to the City's Sanitary Collection system during the construction of the SugarHouse Casino project. HSP Gaming, through a subcontractor, made this routine request on May 19, 2008. Generally, such requests to discharge groundwater into the City's sewer system during construction are routine and approved by the City within a week or two of making such requests. Because of the City's position, HSP Gaming was required to make alternative provisions for the discharge of groundwater at additional cost and delay. [McKenna Aff. at ¶¶ 76, 77].

92. On July 8, 2008, Mayor Nutter sent a letter to State Senator Fumo and State Representative Evans outlining what the City believed were the outstanding approvals needed to be obtained by HSP Gaming to start construction of the SugarHouse Casino. In that letter the Mayor stated that the City would require HSP Gaming to comply with Air Management Regulation X, which in theory governs all air emissions from complex sources, as defined by the regulation. [Exh. "7"].

93. The current version of Regulation X was enacted in May 1974, and has never been enforced by the City for any type of real estate development addressed by the regulation. In fact, contrary to the requirements of the regulation, the City has never even "established procedures and guidelines for use in preparation, submission and review of air quality impact statements and shall prescribe the information to be supplied in order to determine the effect of the complex source on air quality." [McKenna Aff. at ¶ 43].

94. Despite the fact that the City has never enforced or developed the appropriate guidance documents to comply with the regulation, the Nutter Administration is now unfairly requiring that HSP Gaming comply with this regulation. Furthermore, based upon HSP Gaming's conversations with City Air Management personnel, the City cannot provide any guidance to comply with this regulation, and in turn does not have any internal guidance to evaluate any air quality impact statement submitted by HSP Gaming. [McKenna Aff. at ¶ 43]. In sum, the City is requiring that HSP Gaming comply with a regulation that the City has failed to implement for over 34 years and for which there are no guidelines or other criteria by which HSP Gaming could comply.

95. In all major developments in Philadelphia, upon the request of the developer, L&I routinely performs a preliminary plan review of the plans of the developer, to confirm the developer's interpretation of certain building code requirements applicable to the project. Notwithstanding HSP Gaming's request for preliminary plan review, delivered to the City on March 26, 2008, as of the filing of

this Application, the City has failed to conduct a preliminary plan review of HSP Gaming's project. [McKenna Aff. at ¶¶ 47 & n. 6, 61].

96. On January 30, 2008, HSP Gaming requested that the City Water Department provide coordination with HSP Gaming's engineers, so that the design of the proposed storm water improvements and CSO work, much of it requested by the City to reduce flooding in the Northern Liberties and Fishtown areas of Philadelphia, could be properly integrated with the City's storm water management system. The City initially refused to provide such coordination and make its personnel available to HSP Gaming's engineers, and with the exception of a brief window of communication in February 2008, the City has continued to refuse to provide that necessary coordination as of the date of this filing. [McKenna Aff. at ¶ 44].

97. The City has various water and habitat-related environmental projects it has identified for which it is seeking funding. HSP Gaming worked with the Street Administration throughout 2007 to identify sites that would be appropriate for HSP Gaming to fund, to help the City meet its goals, while at the same time providing additional tidal water, wetlands or other environmental upgrades which the Army Corps of Engineers would take into consideration in reviewing HSP Gaming's application to perform certain fill work and other modifications to the riverfront edge of the SugarHouse site. [McKenna Aff. at ¶ 96].

98. Although the Street Administration had identified specific projects in which it was particularly interested for HSP Gaming to become involved in,

including the Baxter water treatment plant former fish hatchery site used for educational purposes for City residents, as of the date of the filing of this Application the Nutter Administration has failed to give its approval to any participation by HSP Gaming in any of these projects. As a result of the Nutter Administration's inaction, HSP Gaming, at additional cost in dollars and delay, has proposed a modification of its Section 10/404 Permit currently pending before the Army Corps of Engineers. As a further result of this inaction, the City's environmental projects will not directly benefit from the proposed efforts of HSP Gaming. Upon information and belief, the primary reason that the Nutter Administration has failed to authorize HSP Gaming's participation in any offsite environmental project is the Nutter Administration's intent to delay issuance of the Army Corps of Engineers permit, which would subsequently delay construction of the SugarHouse Casino project at the location approved by the Gaming Board. [McKenna Aff. at ¶ 96].

99. Typical of the City's stonewalling efforts was its response to HSP Gaming's request to begin negotiating a contract for the CSO work. On March 12, 2008, counsel for HSP Gaming wrote to Mayor Nutter and City Solicitor Shelley R. Smith, requesting that the City begin the negotiation of a "developer agreement" for the CSO work, as required by § 10(g) of the Development Agreement. [Exh. "8"].

100. By letter dated April 3, 2008, Solicitor Smith responded that such negotiations were premature pending this Court's resolution of the status of HSP Gaming's submerged lands license. [Exh. "9"]. Yet to date, despite this Court's

August 22, 2008 decision sustaining the validity of that license and the subsequent denial of the City's Application for Reconsideration, the City has failed to commence the CSO contract negotiations as required by the Development Agreement.

(g) **Further statements establishing the Nutter Administration's violations of this Court's December 3, 2007 Order and of the Development Agreement**

101. Although the City is required under the Court's December 3, 2007 Order and the Development Agreement to cooperate with HSP Gaming with respect to the SugarHouse Casino project, the Nutter Administration has continually caused delays, obstructed and interfered with this construction project. The Nutter Administration also has continued to publicly reject the approved location of the SugarHouse Casino, demonstrating the Nutter Administration's intention to violate this Court's December 3, 2007 Order and the Development Agreement.

102. On June 4, 2008, a "senior representative" of the Nutter Administration told the *Philadelphia Weekly* newspaper that the City was pursuing any avenue available to relocate the SugarHouse Casino project. [Exh. "10"].

103. In June 2008, Teresa Gillen, the Nutter Administration's chief advisor on casino issues and HSP Gaming's point of contact for the City, stated in a philly.com news article that the Nutter Administration had commissioned a third-party design/urban planning consultant, PennPraxis, to "clarify why [the SugarHouse Casino site] is a bad location." [Exh. "11"].

104. In or around July 2008, Mayor Nutter wrote a letter to State Senator Vincent Fumo and Representative Dwight Evans, where he stated that the licensing hurdles established and controlled by the City, which HSP Gaming must

maneuver in order to construct the SugarHouse Casino project, are "practically insurmountable." [Exh. "7"].

105. On August 27, 2008, the City provided comment letters to the Army Corps of Engineer ("ACOE") to actively oppose the issuance of an ACOE permit that HSP requires to complete the SugarHouse Casino project. The City further stated in its comments to ACOE that "Mayor Nutter and his Administration ... have testified that it is not necessary or desirable to locate gaming establishments on Philadelphia's riverfront." [Exh. "12"].

106. In an October 2008 interview with the *Inquirer*, Mayor Nutter stated that he remained opposed to SugarHouse building on the waterfront. [Exh. "13"].

107. In a December 2008 interview with the *Philadelphia Daily News*, Mayor Nutter once again stated that it is his "preference" that HSP Gaming relocate its site for the SugarHouse Casino project. [Exh. "14"].

(h) The Nutter Administration's actions have caused substantial and irreparable injury to the Commonwealth, the taxpayers, and HSP Gaming

108. The delays caused by the Nutter Administration in receiving, reviewing and acting upon all of HSP Gaming's numerous applications and requests are depriving the Commonwealth and its taxpayers of millions of dollars in tax revenue every month that will never be recovered, thus denying tax relief to the citizens of the Commonwealth, along with the jobs and other benefits that the Gaming Act was intended to bring to the Commonwealth. Ironically, these same delays caused by the Nutter Administration are depriving the Philadelphia School District of millions of dollars annually, and depriving Philadelphia's residents of much needed wage tax

relief, to say nothing of the delay in the creation of thousands of new jobs opportunities which will flow, directly and indirectly, from the construction and operation of the SugarHouse Casino.

109. Because HSP Gaming's casino operations have been and continue to be delayed by the Nutter Administration, HSP Gaming has incurred and will continue to incur hundreds of millions of dollars in lost gaming revenues, lost profits and other potential damages such as increased costs of construction. Further, for each month that HSP Gaming's casino operations have been and continue to be delayed, HSP Gaming has spent and will continue to spend approximately $1 million in out-of-pocket expenses.

110. HSP Gaming's lost revenues, lost profits and consequent lost tax revenues to the Commonwealth and the City, have accrued and will continue to accrue each day that HSP Gaming's casino operations are delayed by the City's obstruction and deliberate inaction and harassment. In addition, the substantial change in the global economy and financing markets that occurred during the delay caused by the Nutter Administration will make this project more expensive to build and operate. These lost revenues will significantly impact the future distribution of funds to state and local governmental programs and the extent to which tax relief ultimately becomes available to the citizens of the Commonwealth and the City.

111. The Gaming Act mandates a "timely implementation of casino gaming." 4 Pa.C.S. § 1506. This General Assembly mandate has been stymied by the City's refusal to honor its commitments under the Development Agreement with HSP

Gaming and to take other actions as contemplated thereby, all of which are in direct contravention of this Court's December 3, 2007 Order, which requires the City to "take all actions necessary to implement the relief granted, including making all necessary changes to City records, maps, and plans, and receiving, reviewing and acting upon all applications from HSP in the ordinary course and in compliance with [the] Court's order ...." *HSP Gaming*, 595 Pa. at 534, 939 A.2d at 288.

112. The development of the SugarHouse Casino requires that permits and approvals for the various stages of construction be issued in a timely and orderly fashion. At this point, without a foundation permit, HSP Gaming is unable to even commence foundation work, the very first major stage of construction. If forced to fight the City's guerilla warfare against issuance of each and every subsequent permit or approval, orderly and rational development will be impossible and enormous additional expense will result from "start-and-stop" construction. In the ordinary course, the developer of a major project such as the SugarHouse Casino requires assurance that the City will not unjustifiably cause gaps between issuance of other future necessary permits, including the core and shell permits and the interior fit-out permits, which encompass electrical, plumbing, life safety and other integral parts of the building development. Without a Special Master to assure an orderly and rational permit and approval process, HSP Gaming will be at the mercy of a hostile City administration which can cause discontinuity, interruptions and unnecessary delays as it experiments with tactic after tactic to impede the SugarHouse Casino development.

IV. Legal Argument

113. The Court has the authority to issue further orders enforcing its prior decision in a matter. 42 Pa. C.S. § 323 (Pennsylvania courts have all legal and equitable powers necessary to enforce their orders); *Philadelphia Entertainment and Dev. Partners v. Philadelphia City Council*, __ Pa. ___, 958 A.2d 1040 (2008) (appointing master to consider and resolve disputes regarding issuance of permits, approvals, licenses or other authorizations by the City of Philadelphia to enforce Court's prior decision); Pa.R.Civ.P. 2591(b).

114. This Court has retained jurisdiction of this matter to address any further matters that arise.

115. By the actions described more fully above, the City has violated paragraph 4 of this Court's December 3, 2007 Order.

116. In addition to this Court's inherent authority to enforce and remedy violations of its Orders, the Court is granted additional authority to appoint a Special Master pursuant to § 1506 of the Gaming Act. *See* 4 Pa. C.S. § 1506 ("as appropriate, [this Court] may appoint a master to hear an appeal under this section."). For example, in *Philadelphia Entertainment*, a case with facts similar to those here, the Court appointed the Honorable Joseph F. McCloskey as Special Master with full authority to consider and resolve disputes arising from the City's refusal and delay in issuing permits, approval, licenses and other authorizations in conjunction with the construction activities of the Foxwoods Casino in Philadelphia.

117. This Court should appoint a Special Master to resolve efficiently the current and future disputes between the City and HSP Gaming regarding the City's

failure to timely receive, review and act upon applications from HSP Gaming for permits, approvals, licenses, authorization and other actions in the ordinary course and in compliance with this Court's December 3, 2007 Order.

118. The actions and inaction by the City, along with the public statements made by the Nutter Administration, make it clear that the City has sought to delay and will continue to seek to delay the SugarHouse Casino project by failing to receive, review and timely act upon the applications for permits, approvals, licenses and other authorizations and actions necessary for the timely construction, use and occupancy of HSP Gaming's SugarHouse Casino project.

119. The actions of the Nutter Administration, in clear contravention of the Court's December 3, 2007 Order, have been taken solely for the purpose of delay and are not only dilatory, but obdurate and vexatious, warranting the Court's award to HSP Gaming of its attorneys' fees and costs incurred in pursuing this Application. Pa.R.A.P. 2744; 42 Pa.C.S. § 2503.

V. Relief Sought

WHEREFORE, Applicant/Petitioner HSP Gaming, L.P. respectfully requests this Honorable Court to enter an order enforcing its Order of December 3, 2007, as follows:

(1) Ordering the City to issue to HSP Gaming the foundation permit for which it previously applied;

(2) As authorized by 4 Pa.C.S. § 1506 and this Court's inherent power to enforce and remedy violations of its Orders, appointing a Special Master in this

action with full authority to consider and resolve any disputes that have arisen or that may arise regarding the issuance of permits, approvals, licenses, variances, interpretations, waivers, or other authorizations or actions required by or from the City of Philadelphia involving zoning, usage, layout, construction and occupancy, including location (as approved by the Gaming Board), size, bulk, and use of HSP Gaming's licensed gaming facility, or in the enforcement of the City's obligations under the December 17, 2007 Tax Settlement and Development Agreement between HSP Gaming and the City, including without limitation disputes that may arise as a result of modifications, changes, revisions, or clarifications of any aspect of the development of the SugarHouse Casino as may be proposed by HSP Gaming consistent with the orderly and prompt construction and opening of HSP Gaming's Category 2 facility;

(3) Granting the Special Master authority to award to HSP Gaming the attorneys' fees and costs that HSP Gaming has incurred to prepare this Application, and any subsequent Application brought before the Special Master by HSP Gaming, and to assess sanctions against the City for failing to receive, review and timely act upon all applications and requests from HSP Gaming in the ordinary course and in compliance with the Court's December 3, 2007 Order; and

(4) Ordering such other relief as this Court deems just and appropriate.

Respectfully submitted,

Lamb McErlane, PC

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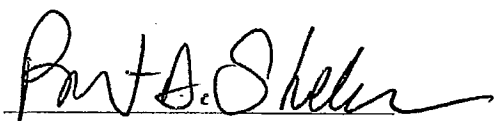
Dated: January 8, 2009

Counsel for HSP Gaming, L.P.

Verification

I, Robert Sheldon, hereby state that I am the President of Applicant HSP Gaming, L.P and verify that the statements made in the foregoing Application for Relief are true and correct to the best of my knowledge, information, and belief. I understand that I am making this Verification subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



Robert Sheldon

Dated: January 8, 2009

Proof of Service

I hereby certify that I am this day serving a complete copy of the foregoing Application for Relief and supporting Appendix upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

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City Solicitor
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Law Department
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SPRAGUE & SPRAGUE

By: Thomas E Groshens

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(215) 561-7681

Dated: January 8, 2009

EXHIBIT "B"

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

HSP GAMING, L.P.,	:	
	:	
Petitioner,	:	No. 179 EM 2007
	:	
v.	:	
	:	
CITY COUNCIL FOR THE CITY OF PHILADLEPHIA, THE CITY OF PHILADELPHIA AND THE CITY PLANNING COMMISSION FOR THE CITY OF PHILADELPHIA,	:	
	:	
Respondents.	:	

AFFIDAVIT OF TERRENCE J. MCKENNA

BACKGROUND INFORMATION

I, Terrence J. McKenna, a competent adult being duly sworn according to law, depose and say:

1. I am a Project Executive at Keating Consulting, LLC ("Keating Consulting"). I am fully familiar with the facts set forth herein and the statements contained herein are based on my personal knowledge.

2. Keating Consulting is a full service real estate development consulting services firm with its main office in Philadelphia, PA.

3. Keating Consulting is part of The Keating Group of Companies ("The Keating Group"), which also includes Keating Building Corporation; Keating Partners, LLC; Keating Environmental Management, Inc.; Keating Urban Partners, LLC; and Keating Hospitality, LLC. For over the past 30 years, The Keating Group has constructed and/or developed a multitude of real estate projects totaling over $10 billion. Notable projects completed within the City of Philadelphia include Philadelphia Gas Works Headquarters, St. Christopher's Hospital for

Children, Hahnemann University Hospital, City of Philadelphia Division of Aviation (airport), City of Philadelphia Criminal Justice Center, City of Philadelphia Municipal Services Building, numerous projects for the University of Pennsylvania, numerous projects for the Philadelphia Housing Authority, numerous project for The School District of Philadelphia, numerous projects for the City of Philadelphia Prison System, Pennsylvania Convention Center, Pennsylvania Convention Center Expansion, Hyatt Regency at Penn's Landing, The Phoenix, the former 30th Street Post Office renovation, Philadelphia Eagles Training Facility, and Lincoln Financial Field.

4. I have been an executive with The Keating Group of Companies for the past 17 years and have actively participated in numerous construction projects within the City of Philadelphia (the "City") over this period of time. I am knowledgeable about the City's licensing, permitting and approvals process for construction projects.

5. Keating Consulting is the development management consultant for Petitioner HSP Gaming, L.P. ("HSP"). I am the Development Manager for HSP's SugarHouse Casino construction project.

6. As HSP's Development Manager, I manage HSP's development team and the overall development process for the SugarHouse Casino construction project.

7. As HSP's Development Manager, I am the primary point of contact for all technical issues involving the SugarHouse site development with the City.

8. As HSP's Development Manager, I oversee all development issues involving the SugarHouse project, including applying for and securing necessary licenses, permits and approvals from the City. These licenses, permits and approvals include those dealing with, but

not limited to, environmental, sewer, water, streets, zoning, planning, construction and traffic issues.

9. The information in the following affidavit was recorded contemporaneously with the events described herein.

CASINO PROJECT DEVELOPMENT PROCESS UNDER STREET ADMINISTRATION

10. From January 25, 2007 to the end of Mayor John Street's Administration on January 6, 2008, I had an excellent working relationship with the various City departments with regard to the SugarHouse Casino construction project.

11. On January 25, 2007, I, on behalf of HSP, met with City officials from various departments, including then-City Solicitor Romulo L. Diaz, Jr. At this meeting the then-City Solicitor outlined the City's plan to coordinate the SugarHouse casino development process. The other City personnel in attendance at this meeting included, Janice Woodcock from the City's Planning Commission; John Elfrey from the Managing Director's Office; Charles Denny from the City's Streets Department; and Brian Mohl from the City's Water Department, among several others.

12. At this meeting, John Elfrey, a then-City official in the Managing Director's Office, was appointed as my primary point of contact at the City with regard to the casino development process. Then-City Solicitor Diaz instructed that all communications with the City in regard to the SugarHouse Casino project (with the exception of legal issues) be directed to Mr. Elfrey, and that Mr. Elfrey would, in turn, facilitate a prompt response from the City.

13. From January 25, 2007 through January 4, 2008, HSP and the City worked together in a cooperative fashion for the purpose of HSP securing certain licenses, permits and approvals. Activities included, but were not limited to: (a) plan of development approval, (b) storm water management approval/permitting, (c) traffic impact analysis, (d) combined storm/sanitary sewer improvements/design, (e) sanitary sewage loading/design, (f) mitigation planning associated with the developments impacts to the Delaware River, (g) submerged lands license approval, (h) Development and Tax and Claim Settlement Agreement negotiations and execution, (i) zoning and use permit approval, (j) rough grading permit approval, and (k) foundation permit review.

14. On August 2, 2007, HSP and the City reached an agreement in principle on a Term Sheet that outlined the essential provisions of a Development and Tax and Claim Settlement Agreement between the parties. Therein the City and HSP agreed to "work together in good faith pursuant to applicable law to obtain the timely approval by the City Council and all other federal, state and local governmental agencies and entities ("Approvals") of CED [Commercial Entertainment District] Site Designation Ordinance, the Plan of Development, ownership or equivalent leasehold interest in the riparian lands and all other approvals, consents and permits required to construct and operate the SugarHouse Casino, including, without limitation, regarding the construction of all required utilities, foundations, grading, infrastructure and other improvements, whether on and off of the site." (A true and correct copy of the Term Sheet is attached hereto as Exhibit A).

15. On December 17, 2007, the City and HSP entered into the Development and Tax and Claim Settlement Agreement ("Development Agreement"), where the parties agreed "to work together in good faith pursuant to applicable law to obtain all necessary final and

unappealable approvals, consents, licenses, grant of right, and permits required from any Governmental Entity and commissions of the City to develop, construct and operate the SugarHouse Casino . . . ." (A true and correct copy of the Development Agreement is attached hereto as Ex. B).

16. Pursuant to the Development Agreement, the City specifically agreed that:

a. the City would "work in good faith pursuant to applicable law to timely obtain the Approvals necessary to permit the development, construction and operation of the SugarHouse Casino as contemplated by the then-approved Plan of Development as the same may be amended from time to time as provided in this Agreement, and applicable law, including the December 3 Order [of this Court]" and

b. the City would implement an efficient development process for the SugarHouse Casino, including: (i) "opportunities to consult with appropriate municipal staff in a timely fashion to ensure that the SugarHouse Casino can be developed and constructed in the most time- and cost-efficient manner possible"; (ii)"timely municipal review processes, where required, with the City causing most reviews and comments to be completed within ten (10) business days"; and (iii) "project coordination assistance from the Managing Director's office."

17. As contemplated under the Term Sheet and the Development Agreement, the City implemented a streamlined development process for the SugarHouse Casino construction project during the Street Administration. For example, my phone calls to City officials were returned in a timely fashion and coordination with the City to obtain design reviews and proper permit approvals ran smoothly. The City also scheduled bi-weekly meetings with HSP to discuss outstanding permitting and licensing issues related to the SugarHouse Casino project. The City

representatives at these meetings included, among others, then-City Solicitor Romulo L. Diaz, Jr, then-Managing Director Pedro A. Ramos, and Mr. Elfrey.

18. When technical issues developed between HSP and the City, I would contact Mr. Elfrey. Mr. Elfrey would timely respond to my inquiries and direct the appropriate City officials to respond to the technical issues involving the SugarHouse Casino construction project.

19. After extensive advance coordination between HSP and the Street Administration with respect to what issues HSP's zoning application should address, on January 3, 2008, HSP submitted its final zoning permit application. On January 4, 2008, the City issued HSP the zoning permit.

20. After extensive advance coordination between HSP and the Street Administration with respect to what issues HSP's rough grading application should address, on January 2, 2008, HSP applied for a rough grading permit. On January 4, 2008, the City issued HSP the rough grading permit.

21. HSP applied for a foundation permit on December 6, 2007. HSP's application for a foundation permit from the City, however, is still pending.[1] Acquiring a foundation permit from the City is a critical component of the SugarHouse Casino construction project. Without this permit, the construction of the SugarHouse Casino cannot proceed. The foundation permit has not been issued by the City to date despite all prerequisites approvals now being in place.

[1] As described more fully below, the City is now erroneously claiming that HSP did not even submit a foundation permit application.

CITY COOPERATION VIRTUALLY CEASED AT THE START OF THE NUTTER ADMINISTRATION

22. Following the inauguration of Mayor Michael Nutter, there has been a marked change in the Casino Project development process due to the City's actions and inactions.

23. After the start of the Mayor Nutter Administration, my point of contact at the City, John Elfrey, became the Acting Commissioner of Licenses and Inspections.

24. I continued to work under the impression that John Elfrey was my main point of contact for the City. I specifically questioned Mr. Elfrey regarding this issue on January 16, 2008, but did not get a definitive response at that time.

25. On or around January 24, 2008, Mayor Nutter announced that the submerged lands license issued by the City to HSP, dated November 27, 2007, was revoked.

26. Following Mayor Nutter's announcement regarding submerged lands license revocation, all communications with City officials regarding permitting for the SugarHouse Casino construction project virtually ceased.

27. Leonard K. Bernstein, the Special Projects Director for the City's Water Department, did not return my repeated phone calls and e-mails dealing with the SugarHouse Casino project. This did not occur prior to the revocation of the submerged lands license, as the development team had worked hand-in-hand with the Water Department on design/approvals for sanitary, storm and water throughout 2007. Indeed, the last conversation I had with Mr. Bernstein (prior to March 2008) was on our about January 9, 2008, where he stated that the

Water Department would have all the Act 537 Planning Module[2] draft comments finalized and submitted to the PADEP for review by January 18, 2008.

28. Communication with Mr. Bernstein was required in order to determine the status of the City's response to public comments concerning the Act 537 Planning Module, a process which began in June 2007, under the Street Administration. The City will only issue HSP a foundation permit after it and the PADEP approve the Act 537 Planning Module.

a. During the Street Administration, HSP worked closely with the Water Department on the Act 537 Planning Module revision. The Street Administration represented to me that the Administration was comfortable with the Act 537 Planning Module, as proposed by HSP and that it should be able to provide all required City approvals within a few days of being requested by HSP to do so.

b. On October 27, 2007, the City, under the Street Administration, published a public notice for the SugarHouse Casino development, soliciting public comments on the Act 537 Planning Module. The Public comment period closed 30 days later on November 29, 2007.

c. Once the public comment period closed, it was the City's obligation to respond to the public comments that the City received.

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[2] As described more fully below, in order for HSP to obtain a foundation permit from the City, the Pennsylvania Department of Environmental Protection ("PADEP") must first approve the City's amended Act 537 Planning Module for the SugarHouse Casino project. The Act 537 Planning Module details HSP's sanitary sewage discharge plan and provides assurances that the City has the capacity in its conveyance and treatment system for the sewage. Whenever a developer, such as HSP, constructs a project in Philadelphia, the PADEP requires the City to amend its Act 537 Planning Module. In order to amend the Act 537 Planning Module, HSP, on behalf of the City, prepared a revised Act 537 planning module, which the City reviewed and sought comments from the public regarding the plan.

d. With the commencement of the Nutter Administration, the City said it would halt review of the then-pending Act 537 Planning Module. I believe the City halted this review because the Nutter Administration opposed SugarHouse Casino's site.

29. Steven J. Furtek, the Engineering Project Manager of the City's Water Department, did not return my repeated phone calls dealing with the design of sanitary and storm sewers, and potable water supply for the SugarHouse Casino project. This did not occur prior to the revocation of the submerged lands license.

30. Communication with Mr. Furtek was required in order to arrange additional technical meetings between the City's Water Department and HSP for the design of the Laurel Street combined sewer outfall (the "CSO"), as well as sanitary sewer and potable water design.[3] The Laurel Street CSO project involves the relocation, expansion and extension of the existing Laurel Street CSO. The CSO relocation work is required by HSP in order to build the approved plan of development for the SugarHouse Casino project. The expansion and extension work on the CSO (i.e. the improvements to the current Laurel Street CSO) do not benefit the SugarHouse Casino project, but instead, are public works projects that the City has directed HSP to implement pursuant to the terms of the Development Agreement. The "improvement" work on the Laurel Street CSO will initially be funded and constructed by HSP on behalf of the City. The City, in turn, will reimburse HSP for this portion of the Laurel Street CSO project (i.e., expansion and extension work) as provided under the Development Agreement.

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[3] There are approximately 173 CSOs throughout the City's sewer system network, discharging to either the Schuylkill or Delaware Rivers. A combined sewer conveys both sanitary sewage and storm water runoff in the same pipe. During dry weather, the sanitary sewage is collected and directed to a wastewater treatment plant. During wet weather/storm events, the combined mixture of sanitary sewage and storm water is discharged to the river when the capacity of the collection/treatment system is exceeded.

31. Mr. Elfrey did not timely respond to my repeated phone calls and e-mails regarding the SugarHouse Casino project in early January 2008. This did not occur prior to the revocation of the submerged lands license.

32. When I finally did speak with Mr. Elfrey on January 29, 2008, I expressed to him my frustration that City officials were not responding to my inquiries. Mr. Elfrey told me to "sit tight" and that he was "waiting for further direction" before he could respond to any issues dealing with the SugarHouse Casino project. This did not occur prior to the revocation of the submerged lands license.

33. On the morning of January 30, 2008, I again spoke with Mr. Elfrey regarding my frustration at the lack of communication by City officials. Specifically, I notified Mr. Elfrey that I had not received any response from Mr. Bernstein regarding the status of the Act 537 Sewage Planning Module. Mr. Elfrey informed me that he was speaking on behalf of the City Administration and that the City had implemented an open-ended shut down of the City's review process for the SugarHouse Casino project, including all applications submitted, but not yet approved, up to this point. Mr. Elfrey also stated that he had been instructed to review all past approvals that had been granted to HSP in order to confirm that they were properly issued by the City.

34. Mr. Elfrey also informed me that the City was reevaluating the specific aspects of the Development Agreement and that he would not speak to me again on substantive matters dealing with the SugarHouse Casino project until the City completed this open-ended reevaluation. Mr. Elfrey also informed me that I would not receive further responses from any other City official on matters related to SugarHouse Casino.

35. I explained to Mr. Elfrey that it is HSP's position that the City is in violation of the Development Agreement based upon this action, and that I am under orders from HSP to continue pursuing the City for action on the casino project. Mr. Elfrey stated that he understood that I have a job to perform, and that I would be continuing to contact City personnel for approval actions, technical meetings and the like. Mr. Elfrey, however, reiterated that until the City's internal review/reevaluation is complete, I should not expect any response from the City.

36. On January 30, 2008, I also telephoned the City's Managing Director's office to find out who, if anyone, replaced Mr. Elfrey as my primary contact person within the City for the SugarHouse Casino project. The receptionist transferred me to Barbara Kopecki, an Assistant to the Managing Director. I asked Ms. Kopecki the same question. She made an inquiry on my behalf and subsequently instructed me that Teresa Gillen, Senior Advisor to the Mayor for Economic Development, was now my contact, and that I should contact her. I subsequently placed a phone call to Ms. Gillen and left her a voicemail message.

37. Given the events listed above, it was my belief that the City was no longer adhering to the streamlined development process the parties established following the January 2007 meeting and in the Development Agreement.

38. In my opinion, Mr. Elfrey's comments clearly violate both the letter and spirit of the Development Agreement.

39. Mr. Elfrey's statements on behalf of the City are in direct contradiction to the actions of City officials with regard to this project during the Mayor Street Administration.

40. The City's position with regards to the SugarHouse Casino project, as articulated by Mr. Elfrey, would effectively shut down the project.

41. In the afternoon of January 30, 2008, Mr. Elfrey contacted me to reverse his and the City's position regarding the SugarHouse Casino construction project. Reversing what he had told me earlier in the day, Mr. Elfrey now stated that the Law and Water Departments had been continuing to work on the Act 537 Sewage Planning Module. While he did not provide an end date for necessary approvals, Mr. Elfrey did state that the City was "moving as fast as possible."

a. Mr. Elfrey stated that officials in the City's Law and Water Department would contact me the week of February 4, 2008 to schedule meetings to discuss the SugarHouse Casino construction project.

b. Mr. Elfrey requested dates for HSP personnel to meet with Steve Furtek and the Water Department's engineering group, regarding the Laurel Street CSO.

c. Mr. Elfrey also stated that Mayor Nutter's recent announcement regarding the revocation of submerged lands license impacted the City's responses to the public comments regarding the Act 537 Sewage Planning Module.

d. Mr. Elfrey and I agreed that the Pennsylvania Department of Transportation ("PennDOT") would be the logical choice for the coordination of traffic and streets issues concerning the SugarHouse Casino construction project.

42. On January 31, 2008 at 5:20 p.m., Terry Gillen returned my voicemail message to notify me that she would be my new primary point of contact with the City regarding the

SugarHouse Casino construction project. Ms. Gillen also notified me that while I could still contact Mr. Elfrey regarding SugarHouse Casino issues, she wanted to be kept "in the loop" as well.

a. I suggested to Ms. Gillen that the HSP SugarHouse Casino team meet with the incoming City officials to discuss the status of the construction project and pending permit applications. Ms. Gillen rejected this meeting.

b. I confirmed with Ms. Gillen that she had a copy of the Development Agreement between HSP and the City. Ms. Gillen replied that she did have a copy of this agreement.

c. I stated to Ms. Gillen that I was confident that HSP's traffic mitigation measures plan would be successful, given that HSP has committed additional traffic mitigation measures beyond what project engineers have recommended. I notified Ms. Gillen about Mr. Elfrey and my assessment that PennDOT is better suited to coordinate meetings between HSP and the City regarding traffic and street issues concerning the SugarHouse Casino project. Ms. Gillen stated that she wanted to discuss this first with Mayor Nutter before confirming.

MY INTERACTIONS WITH THE CITY

43. On January 2008, I received a letter from Edward Wiener of the City's Department of Public Heath, purporting to remind HSP that pursuant to Air Management Regulation X ("Regulation X"), HSP was required to submit a complex source plan and receive approval from the City's Air Management Services prior to construction of the SugarHouse Casino project. (A true and correct copy of the Jan. 22, 2008 letter from E. Wiener to T. McKenna is attached hereto as Ex. C).

a. To the best of my knowledge, the City has not required any other construction project in the City of Philadelphia to comply with Regulation X, which was enacted in May 1974 and, in theory, governs all air emissions from complex sources, as defined by the regulation.

b. In a subsequent conversation with Mr. Weiner, he informed me that the City cannot provide any guidance to comply with this regulation and that it does not have any internal guidance to evaluate any air quality complex source plan submitted by HSP.

c. Despite the fact that the City has never enforced or developed the appropriate guidance documents to comply with Regulation X, the City is now requiring that HSP comply with this regulation.

44. On January 30, 2008, HSP first requested that the City Water Department provide coordination with HSP's engineers, so that the design of the proposed storm water improvements and Laurel Street CSO work discussed above, could be properly integrated with the City's storm water management system.[4]

a. The City initially refused to provide such coordination and make its personnel available to HSP's engineers.

b. With the exception of a brief window of communication in February 2008, to date, the City has continued to refuse to provide that necessary coordination.

[4] The expansion and extension work on the existing Laurel Street CSO was requested by the City to reduce flooding in the Northern Liberties and Fishtown areas of Philadelphia.

45. On January 31, 2008, HSP's engineering firm, Urban Engineers, Inc. ("Urban Engineers"), scheduled a meeting for February 7, 2008 at 10:00 a.m. between Urban Engineers and the City's Water Department to discuss technical issues regarding the design of the Laurel Street CSO project, including the expansion, extension and relocation of this sewer outfall.[5] On December 6, 2007 Urban Engineers submitted 100 Percent Progress Plans for the Laurel Street CSO. The Water Department never responded to this submission, and the primary purpose of the meeting was to obtain Water Department review comments.

46. On January 31, 2008, Urban Engineers scheduled a meeting for February 7, 2008 at 1:00 p.m. between its staff and Philadelphia Gas Works ("PGW") to discuss proposed gas loads and relocation of existing gas lines.

47. On January 31, 2008, I e-mailed Mr. Elfrey (with a copy to Ms. Gillen) to request a Preliminary Plan Review with the City's License and Inspection Department ("L&I"). On February 1, 2008, Eileen Evans, Deputy Commissioner of L&I, e-mailed me to confirm a meeting for February 29, 2008 at 10:00 a.m.[6]

48. On February 5, 2008, I e-mailed Mr. Elfrey (with a copy to Ms. Gillen) to inform him that Mr. Bernstein had neither returned my phone calls or e-mails regarding the public comments to the Act 537 plan. I also informed Mr. Elfrey that I believed the two months that had passed since the end of the public comment period on November 29, 2007 was more than

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[5] Urban Engineers, Inc. is a full-service engineering, planning, construction management and program management firm that is providing HSP with civil and marine engineering services, as well as assisting with the environmental permitting aspects of the project.

[6] In all major developments in Philadelphia, upon the request of the developer, L&I routinely performs a preliminary plan review of the plans of the developer, to confirm the developer's interpretation of certain building code requirements applicable to the project.

sufficient time for the City to address the public comments submitted. I further informed Mr. Elfrey that I had spoken with John Kennedy at the PADEP and that Mr. Kennedy confirmed to me that he had not received anything from the Water Department regarding the Act 537 Planning Module. In response to this e-mail Mr. Elfrey stated that he had "it on [his] calendar to touch base with both Law and PWD tomorrow" and that he would be back "in touch" with me.

49. On February 5, 2008, I also e-mailed Mr. Elfrey (with a copy to Ms. Gillen) reminding him that HSP submitted its 100 Percent Progress Plans for the Laurel Street CSO to the Water Department on December 6, 2007 and that as of that e-mail I had not received comments from the Water Department regarding the plans. I informed Mr. Elfrey that if the City had any comments on these plans that it should submit them in writing and deliver to HSP, through Urban Engineers, at the scheduled February 7, 2008 meeting between the Water Department and Urban Engineers.

50. On February 6, 2008, I again e-mailed Mr. Elfrey (with a copy to Ms. Gillen) to remind him that on December 6, 2007, HSP submitted its 100 Percent Progress Plans to the Water Department for the Laurel Street CSO. I also attached a copy of HSP's transmittal letter to my e-mail. I reiterated to Mr. Elfrey that as of February 6, 2008, two months later, HSP still had not received any comments from the Water Department.

51. On February 7, 2008, I again e-mailed Mr. Elfrey regarding the status of the Act 537 issues. Specifically, I asked Mr. Elfrey if the parties could meet to resolve the outstanding issues regarding the Act 537 Planning Module.

52. On February 8, 2008, Mr. Elfrey called me to inform me that the City would not meet with HSP regarding the Act 537 Planning Module because the City's revocation of the

submerged lands license had "caused problems" for the City with regard to the Act 537 Planning Module. Mr. Elfrey also stated that J. Barry Davis, Chief Deputy City Solicitor, was available to explain this issue further to HSP's attorneys if they contacted him.

53. On February 13, 2008, I sent an e-mail to Len Bernstein regarding HSP's revised Projected Sanitary Sewage Load ("PSSL"), and seeking comments about the same. I received an automated message that Mr. Bernstein was out of the office February 13, 2008 through February 21, 2008. I, therefore, forwarded my e-mail to Mr. Elfrey (with a copy to Ms. Gillen) and asked that he confirm whether Eric Ponert from the Water Department, would be reviewing the PSSL in Mr. Bernstein's absence.

54. Pursuant to Mr. Elfrey's response e-mail to me regarding the Water Department's review of the PSSL, I e-mailed Eric Ponert at the Water Department requesting comments on HSP's PSSL.

55. On February 13, 2008, Joseph F. Musil, Jr. from Urban Engineers informed me that he saw Mr. Bernstein on the morning of February 13, 2008 and that Mr. Bernstein informed Mr. Musil that the Water Department was under a "casino gag order."

56. On February 13, 2008, I e-mailed Mr. Elfrey regarding the alleged comments made by Mr. Bernstein to Mr. Musil that the Water Department was under a "casino gag order." Specifically, I asked Mr. Elfrey how the City can say on one hand that it "continues to work" on the Act 537 Module while on the other, it imposes a "gag order" on they City's chief reviewer (Mr. Bernstein) regarding the Act 537 Module. In response, Mr. Elfrey dismissed my concerns and told me that I should not "read too much into it."

57. On February 19, 2008, following my discussions with Urban Engineers staff, I e-mailed Mr. Elfrey to inform him that subsequent to Urban Engineers' meeting with the Water Department on February 7, 2008, Frank Mawson from the Water Department had failed to respond to calls and e-mails regarding follow-up issues from that meeting. I further informed Mr. Elfrey that this lack of response was hindering the progress on HSP's casino development process. In response, Mr. Elfrey stated that he and I could discuss this in person at our scheduled meeting on Friday, February 22, 2008.

58. On February 22, 2008, HSP met with the City to discuss the status of the Act 537 Planning Module. The City officials in attendance at this meeting were Mr. Elfrey, J. Barry Davis, Mr. Furtek, Brian Mohl and Michael Lavery. At this meeting, the City stated that all data provided by HSP was in order, including the projected sanitary sewage loads. Mr. Elfrey also stated that the Water Department would continue to work with HSP on the various sewer and water-related designs associated with the project.

59. On Monday, February 25, 2008, Joe Musil notified me via e-mail that the City had reconsidered its statements made at the February 22, 2008 meeting regarding the Act 537 Planning Module. Specifically, Mr. Musil informed me that Mr. Bernstein, from the Water Department, requested that HSP revise its calculations regarding sanitary sewage loads. That same day, HSP provided Mr. Bernstein with revised calculations.

60. On February 25, 2008, I sent an e-mail to Mr. Elfrey (with a copy to Ms. Gillen, among other city officials), requesting that the Water Department prepare a letter, for use by HSP, to provide information to all utility owners with lines within the City-owned streets surrounding the SugarHouse Casino Project. The purpose of this letter was to inform these

utility owners (including private entities such as Verizon and PECO Energy, and public entities such as Philadelphia Gas Works) that HSP was performing utility work on the Laurel Street CSO on behalf of the City, and that because it was a public works project, the utilities were required to relocate their subsurface utility lines at no cost to the City or HSP, in accordance with the utilities' easement agreements with the City. This was a routine request to the City that required only a simple letter of notification to the utility owners.

a. On February 26, 2008, I followed up the above e-mail with another e-mail to Mr. Elfrey, forwarding a response I received from Verizon which questioned HSP's reasons for utility relocations. Verizon was not convinced that the proposed work was solely a public works project, given the absence of an documentation from the City.

b. I also informed Mr. Elfrey that HSP drafted a proposed letter the City to issue to utility owners.

c. On February 28, 2008, Mr. Elfrey informed me via e-mail that HSP's requested letter was not forthcoming, and instead that the City would have internal discussions regarding HSP's request for a letter to utility owners with lines within the City-owned streets surrounding the SugarHouse Casino Project. On March 13, 2008, Mr. Elfrey informed me that the City would not assist HSP in providing information to all utility owners with lines within the City-owned streets surrounding the SugarHouse Casino Project, in effect either forcing HSP to pay for such costs, which are estimated at approximately $2.0 million, or delaying the start of the Laurel Street CSO project, and thus the entire SugarHouse Casino project.

61. On February 29, 2008, HSP met with the City's L&I Department, including Mr. Elfrey and Eileen Evans, the Deputy Commissioner of L&I, to discuss HSP's planned

submission of a Preliminary Plan Review in accordance with the L&I policy. L&I stated that it would accept and review the document upon receipt. The purpose of the Preliminary Plan Review was to get City decisions on building code interpretations made by HSP's architect. This is a routine request to L&I relative to building design/construction in the City.

a. On March 26, 2008, HSP submitted the Preliminary Plan Review to the City's L&I Department, as discussed in the meeting with L&I on February 29, 2008.

b. On April 1, 2008, the City, through John Elfrey, acknowledged receipt of the Preliminary Plan Review.

c. To date, the City has not responded to HSP's Preliminary Plan Review.

62. On March 3, 2008, I again contacted Mr. Elfrey via e-mail to inquire when the Water Department would provide comments on HSP's 100 Percent Laurel Street CSO package that HSP submitted to the City in December 2007. This approval is required by the City in order for HSP to begin such work on behalf of the City. I also reminded Mr. Elfrey that HSP needed this information in a timely manner in order to proceed with its plan to award a subcontract for a portion of the CSO work.

63. On or around March 7, 2008, HSP received the Water Department's comments on HSP's 100 Percent Laurel Street CSO package, which was submitted in December 2007.

64. On March 11, 2008, I provided Mr. Elfrey, Ms. Gillen and Michael Lavery, Engineering Project Manager, with a copy of HSP's letter to PECO Energy requesting its participation in the electrical planning and utility relocation activities for the SugarHouse Casino

Project and for the separate CSO relocation project performed by HSP on behalf of the City. The City did not respond to this letter.

65. On March 14, 2008, I wrote Mr. Elfrey (with a copy to Ms. Gillen) to clarify the status of the off-site mitigation associated with the SugarHouse Casino project because the City had not responded to HSP's request to use the Baxter Treatment Plant site as the mitigation area. The City did not respond to this letter. (A true and correct copy of the letter to Mr. Elfrey dated March 14, 2008 is attached hereto as Exhibit D).

66. On March 18, 2008, I e-mailed Mr. Bernstein to inform him that HSP Gaming was submitting the Act 537 Sanitary Planning Module on March, 21, 2008. I also confirmed that the City had reviewed the draft module composed by Urban Engineers and that all parties were in agreement regarding the flow data. Additionally, I informed Mr. Bernstein that the only information HSP did not have was the City's final responses to the public comments as well as the letters where those comments were contained, and it was assumed that the City would insert this data in the module binder where indicated.

67. Mr. Bernstein responded to my March 18, 2008 e-mail by informing me that the City offices were closed on March 21, 2008 for Good Friday. Mr. Bernstein also informed me that the City had not completed its review of the flow figures and that a planning module submitted without municipal responses would be deemed administratively incomplete by the City and would be rejected by the City, even though the City had this data in its possession but was not providing it to HSP. As the developer, HSP is responsible for assembling the complete final version on the Act 537 Planning Module, however, the City to this date has failed to provide HSP with their portion of the information included in the module.

68. On March 20, 2008, Brian Mohl at the City's Water Department informed Urban Engineers that the Act 537 Sanitary Planning Module would be immediately rejected if it was delivered to the City incomplete (i.e., missing the data the City was required to supply and which the City had failed to furnish to HSP).

69. On March 20, 2008, the City delivered to Urban Engineers the City's official response to comments on the Act 537 planning module for inclusion in the final Act 537 package. The public comments were originally received by the City up to November 29, 2007, the end of the 30-day public notice period and the City received HSP's responses thereto in January, 2008. The City's delay in responding to the comments and providing the responses to the HSP effectively delayed the development of the SugarHouse Casino Project by at least 60 days.

70. On March 24, 2008, HSP submitted to the City Water Department the final Act 537 Sanitary Planning Module. The Water Department had 60 days to review and approve the module by statute, but according to my discussion with Mr. Bernstein prior to March 20, 2008, the City could approve immediately since it was actively involved in its development since June 2007. Although HSP's final submittal included the City's authorized response to public comments, the City, under the Nutter Administration, still failed, without justification, to approve the plan for submittal to the PADEP.

71. On April 1, 2008, the City, through John Elfrey, informed me again that the City would not issue a letter verifying to certain public utilities that the Laurel Street CSO work, required by these utilities as part of the Development Agreement, is a public works project.

72. On April 11, 2008, HSP received a letter dated April 3, 2008, from City Solicitor Shelley Smith, informing HSP that the City would not negotiate with HSP regarding infrastructure improvements, such as the Laurel Street CSO work, until the submerged land issue was decided by the Pennsylvania Supreme Court.

73. On April 18, 2008, Charles J. Hardy, who represents HSP, responded to the April 3, 2008 letter from the City Solicitor. Therein, Mr. Hardy requested that the negotiations commence immediately in order to prevent additional delays and costs under the Development Agreement and in construction of the SugarHouse Casino project. (A true and correct copy of Mr. Hardy's letter to the City Solicitor dated April 18, 2008 is attached hereto as Exhibit "E").

74. On April 18, 2008, HSP submitted revised 100 Percent Drawings and Specifications for the Laurel Street CSO work for the City's review and approval. The revised drawings and specifications addressed all comments provided by the City on March 7, 2008. On April 21, 2008, I also sent an e-mail to Mr. Elfrey, informing him that the HSP had submitted these plans and requesting that the City undertake its review in a timely fashion. To date, the City has not acknowledged receipt of these plans and has not responded with any comments or an approval. Furthermore, the City's cooperation and participation in the Laurel Street CSO virtually ceased after the March 7, 2008 submission.

75. On April 21, 2008, Thomas Witt, an attorney representing HSP hand delivered a letter to City Solicitor, Shelly R. Smith, inquiring as to why the City had not revised the City Plan as described in clauses (c) through (g) in Section 1 of City Council Bill No. 070457. Moreover, Mr. Witt informed the City Solicitor that HSP was concerned that the City's failure to revise the City Plan, as required by law, would delay other permits and approval necessary for

development of the SugarHouse Casino Project. (A true and correct copy of Mr. Witt's letter to the City Solicitor dated April 21, 2008 is attached hereto as Exhibit F).

76. On May 19, 2008, Urban Engineers submitted a request to the City for authorization to discharge groundwater into the City's Sanitary Collection system during construction at the SugarHouse Casino site. This was a routine request to the Water Department that should have been approved by the City within a week or two of making this request. Because of the City's position, HSP was required to make alternative provisions for the discharge of groundwater at additional cost and delay.

77. On May 19, 2008, I also e-mailed John Elfrey (with a copy to Ms. Gillen) regarding HSP's routine groundwater discharge request to the City's Water Department. On July 1, 2008, the City denied HSP permission to discharge groundwater to the City's sewer system.

78. On May 20, 2008, I e-mailed John Elfrey (with a copy to Ms. Gillen), informing them that HSP had submitted a copy of The Land Recycling and Environmental Remediation Standards ("Act 2") Notice of Intent to Remediate ("NIR") to the Philadelphia Department of Public Health, Office of Environmental Engineering on May 14, 2008. Submission of the Act 2 NIR to the City is required by the regulation. This was a courtesy notice to Mr. Elfrey and Ms. Gillen. The City's Health Department responded to the NIR by requesting that a public participation plan be developed by HSP.

79. On May 22, 2008, I e-mailed John Elfrey (with a copy to Ms. Gillen) to notify him that HSP was submitting a water quality management permit application to PADEP, on behalf of the City, in order to relocate the Laurel Street CSO discharge point. In my e-mail, I

also informed Mr. Elfrey that in order to submit the application to the PADEP, HSP was required to obtain several signatures from Water Department officials and that HSP had sought to obtain these signatures from the Water Department on May 22, 2008. The Water Department has not provided the necessary signatures to date. HSP subsequently submitted the application to the PADEP, and PADEP did not approve given the absence of City signatures. The City effectively delayed the Laurel Street CSO Project by this action, which, in turn, has delayed the construction of the SugarHouse Casino Project.

80. On June 9, 2008, I wrote a letter to John Elfrey (with a copy to Ms. Gillen) to advise him that 60 days had passed since HSP first submitted to the City the final Act 537 Sewage Facilities Planning Module (the "Module") for the SugarHouse Casino Project. I further confirmed in my letter to Mr. Elfrey that pursuant to 25 Pa. Code § 71.53(b), because the City had not acted within 60 days of HSP's submission, the Module was deemed approved by the City. The City transmitted the planning module to the PADEP on May 28, 2008. A copy of the transmittal was not received by HSP until June 13, 2008. The City deliberately waited the full 60 days and ultimately took no action on the Act 537 Module.

81. On August 1, 2008, the same day that the U.S. Army Corps of Engineers ("ACOE") consented to such work, I notified L&I that on August 4, 2008, HSP would begin excavation activities to expose and remove underground obstructions on non-submerged lands. (A true and correct copy of the August 1, 2008 letter from T. McKenna to J. Elfrey is attached hereto as Ex. G).

82. In response to my letter, dated August 1, 2008, to the City, John Elfrey e-mailed me on August 4, 2008, stating that the City was "currently reviewing the work planned [by HSP]

to ensure SugarHouse is in compliance with applicable terms." HSP, however, continued to proceed as planned.

83. Between August 4 and August 15, 2008, L&I conducted numerous inspections of the SugarHouse Casino site. I believe this was an attempt to shut-down construction operations at the SugarHouse Casino site. L&I, however, could not find cause to shut-down construction operations, and so operations continued.

84. In its attempt to shut-down operations, the City also requested a meeting with the ACOE in August 2008 to confirm that all operations were being performed in accordance with the Corps' approvals. In my experience, this is not a usual request by the City.

85. On August 22, 2008, the Pennsylvania Supreme Court upheld HSP's submerged lands license. I informed the City that, given the Court's ruling on the submerged lands license, HSP would begin excavation activities to expose and remove underground obstructions on submerged lands.

86. Following my notification regarding HSP excavation on submerged lands on August 22, 2008, John Elfrey e-mailed me the following message: "[D]o not commence in the riparian area until we review with our attorneys and review the permits." I replied to Mr. Elfrey that HSP would indeed begin this excavation activity at 7:00 a.m. on Monday, August 25, 2008. (A true and correct copy of the August 22, 2008, e-mails from J. Elfrey and T.McKenna is attached hereto as Ex. H).

87. From August 25, 2008 through September 5, 2008, L&I conducted numerous site inspections of the project site in what, I believe, was an attempt to shut-down excavation

activities on the submerged lands. The City's focus on stopping the work appeared to be associated with HSP's lack of a Chapter 105 Permit (Dams and Waterway's permit) from the PADEP. As HSP had secured a submerged lands license and all improvements east of the bulkhead line were previously permitted, HSP did not agree with the City's position that a Chapter 105 permit was required from PADEP to excavate on the submerged lands, but agreed to stop excavation activities on the submerged lands until the PADEP provided their opinion on that matter. Rather than mediating a disagreement between the City and HSP, the PADEP issued the Chapter 105 permit on September 5, 2008. HSP subsequently began excavation activities on the submerged lands the afternoon of September 5, 2008. This level of scrutiny by the City, in my experience, is unusual for a comparable construction project within the City.

a. Rather than the usual L&I building inspector conducting these inspections, on September 2, 2008, the City sent L&I management to conduct these inspections. These City officials included Michael Fink, Construction Services Director; Michael Maenner, Construction Inspection Manager; and Ralph Dipietro, an L&I Supervisor.

b. In my 17 years as a construction/development executive working on projects in the City, I have never experience this many senior L&I officials inspecting a construction site where minimal earth disturbance was being performed.

88. On August 25, 2008, the City's Water Department conducted a routine inspection of the SugarHouse Casino Project. The City's Earth Disturbance Inspection Report stated that "E & S measure are in compliance" and that there were "no issues at this time." To date, the City's Water Department continues to perform periodic inspections of the erosion and sedimentation controls, and has found the maintenance of the controls to be in order. (A true and

correct copy of the August 25, 2008 Earth Disturbance Inspection Report is attached hereto as Ex. I)

89. On September 8, 2008, in an attempt to once again shut-down excavation at the site, HSP received a Notice of Violation ("NOV"), dated September 2, 2008, from L&I, stating that a revised L&I building permit is required to excavate east of the 1894 bulkhead line, contradicting the City approval in the January 4, 2008 Rough Grading Permit allowing earth disturbance on all uplands areas of the SugarHouse Casino site. (A true and correct copy of the NOV dated 9/2/08 is attached hereto as Ex. J).

90. The NOV described above is indicative of the scrutiny HSP has endured from the City with regard to the SugarHouse Casino Project since the start of the Nutter Administration. The City did not act upon this NOV after PADEP issued a Chapter 105 Permit for the site on September 5, 2008 and HSP demonstrated that the existing rough grading permit covered the entire site, not just the area west of the bulkhead line. PADEP's issuance of the Chapter 105 Permit clarified any "grey area' in any regulation being misinterpreted by the City in support of their apparent goal of stopping or delaying work at the SugarHouse Casino site.

91. On January 2, 2008, HSP applied to PennDOT and the City for a Highway Occupancy Permit ("HOP"). The initial application process, however, actually began in January 2007. PennDOT has designated authority to the City to issue HOPs within City limits for state-owned Highways. PennDOT, however, remains the lead on HSP's application because of HSP's request that it handle this permit application in conjunction with the City. In order to receive final approval from PennDOT, the City, however, must review and provide final comments on

HSP's application. The City failed to undertake a timely review on the most recent permit submittal of September 19, 2008.

a. A PennDOT official, Francis Hanney, stated to me that comments on HSP's Highway Occupancy Permit application submitted on September 19, 2008, would be provided by the end of October 2008. Due to the City's lack of response to the comments prepared by PennDOT, the review letter was not issued until December 23, 2008. By delaying the review/issuance of the letter, the City has delayed the resolution of the HOP application by at least 55 days.

b. On January 18, 2007, the City, PennDOT and HSP held a "kickoff" meeting regarding the Highway Occupancy Permit application process. As such, HSP has actively been in the Highway Occupancy Permit application process for 23 months.

92. On November 24, 2008, the City's Board of Revision of Taxes issued to HSP nine (9) Notices of Proposed Valuation for 2009 on the land to be used for the SugarHouse Casino Project. The City is proposing a tax increase of $863,619.00 due to the increased value associated with the Casino siting, but at the same time is denying HSP the opportunity to start construction of the casino.

93. During the period of November 12 through November 18, 2008, HSP installed indicator piles on the SugarHouse Casino Project site. On December 16, 2008, the City informed HSP via verbal discussions between myself, Michael E. Fink, Director of Construction Services at L&I, and Paul Gonsiewski, L&I Building Inspector, that HSP was in violation of the law because it had not secured a building permit to install the indicator piles, and that L&I would

shut-down the entire project on December 17, 2008 if HSP did not provide evidence of necessary approvals for that activity.

94. On December 16, 2008, I wrote to Mr. Fink to inform him that no building permit was required for this installation. (A true and correct copy of the December 16, 2008 Letter from T. McKenna to M. Fink is attached hereto as Ex. K).

95. While the City initially stated that HSP's installation of indicator piles was a building code violation, the City, through Mr. Elfrey, quickly backtracked from this position. Indeed, the City has now acknowledged that it was incorrect in its initial assessment regarding the requirement for a building permit for the installation of the indicator piles.

96. In an effort to delay the issuance of a Chapter 10/404 Permit required by the ACOE, the City has failed to authorize HSP's participation in any offsite environmental projects.

a. The City has various water and habitat-related environmental projects it has identified for which it is seeking funds to complete the work. HSP worked with the City throughout 2007 to identify sites that would be appropriate for HSP to fund, to help the City meet its goals, and at the same time providing additional tidal water, wetlands or other environmental upgrades which the ACOE would take into consideration in reviewing HSP's application to perform certain fill work and other modifications to the riverfront edge of the SugarHouse site (the Chapter 10/404 Permit).

b. Although the City identified specific projects for HSP to undertake, including the Baxter water treatment plant former fish hatchery site used for educational

purposes for City residents, to date, the City has failed to approve HSP's participation in any environmental projects.

c. I believe the primary reason the City has failed to authorize HSP's participation in any offsite environmental project is the City's belief that this inaction would delay the issuance of the ACOE permit, which, in turn, would delay construction of the SugarHouse Casino project.

d. On August 27, 2008, the City also provided comment letters to the ACOE, opposing issuance of the Chapter 10/404 permit HSP requires to complete the in-water SugarHouse Casino Project improvements. It is my belief that the City's letters were in direct contravention to the Development Agreement. Indeed, the City stated that:

i. "The City is opposing the issuance of the ACOE permit . . "

ii. "Mayor Nutter and his Administration . . . have testified that it is not necessary or desirable to locate gaming establishments on Philadelphia's riverfront."

(True and correct copies of the City's letters are attached hereto as Ex. L).

CONTRARY TO OVERWHELMING EVIDENCE OTHERWISE, THE CITY ERRONEOUSLY MAINTAINS THAT HSP HAS NOT APPLIED FOR A FOUNDATION PERMIT

97. On October 29, 2007, HSP submitted preliminary foundation permit data to L&I as part of its application for a submerged lands license. The City required HSP to submit this foundation permit data in order for HSP to demonstrate a need for the submerged lands license.

98. Per the City's instructions, HSP was to submit a complete foundation permit application as a follow-up to its submerged lands license application, as stated in the transmittal

letter from HSP for the submerged lands license application. (A true and correct copy of the October 29, 2007 transmittal letter from HSP to the City, and associated acknowledgement thereof from L&I are attached hereto as Ex. M).

99. On November 8, 2007, at the request of the City, HSP submitted the following additional information in support of its eventual foundation permit application:

a. Philadelphia Water Department Development Review Approval, 2006-SUGA-448-01, dated 15 May 2007.

b. Letter of Owner Responsibility – Foundation Permit.

c. Pile Inspection Letter, from both MCR Geotechnical Engineers, LLC and Timothy Haahs and Associates, Architect of Record for the parking garage responsible for designing the parking garage foundations and performing the inspection of the garage and casino building.

d. Structural Design Criteria Form, from both The Harman Group and Timothy Haahs and Associates.

e. Special Inspections Form, from both Cope Linder Architects, the Architect of Record for the casino building, and Timothy Haahs and Associates.

f. Geotechnical Report, signed and sealed by a Professional Engineer.

g. Technical specifications for the piles (casino building and garage), prepared by the Architects of Record on the SugarHouse Casino Project.

h. Foundation plans for both the casino building and the parking garage.

(A true and correct copy of the November 8, 2007 transmittal letter from HSP to the City, with accompanying the data identified, above is attached hereto as Ex. N).

100. On November 15, 2007, the City, through an L&I official; stated that HSP had indeed provided all necessary information and forms required by the City as part of a foundation permit application.

a. On this date, Mr. Robert Murray, P.E. of L&I testifies at the Department of Commerce submerged lands license public hearing that HSP Gaming "provided all the information and forms that would accompany a request for a Foundation Permit, with the exception of prerequisite approval for L&I Zoning Unit and the Philadelphia Water Department, which are not part of this application."

b. Mr. Murray further stated that "[b]ased on this initial review, it is my opinion that the submittal meets the requirements of the Code and of the Department to have a foundation permit issued once all the prerequisite approvals are obtained. Additional information will be required with any application for a full building permit."

(A true and correct copy of the transcript of Mr. Murray's testimony at the November 15, 2007, Commerce Department hearing is attached hereto as Ex. O).

101. On December 6, 2007, HSP submitted a complete foundation permit application to L&I for approval, with the exception of the Zoning Unit and Water Department prerequisite approvals, which would originate internally within each of those departments once the individual department approvals were issued. (See a true and correct copy of HSP's time/date stamped copy of the foundation permit application is attached hereto as Ex. P).

102. By City regulation, the foundation permit can not be issued until the Zoning and Water Department approvals are issued. The Zoning approval would be in the form of a zoning permit. The City's Water Department approval would be in the form of an acknowledgement that storm water management has been addressed by the applicant, that potable water supply was available to the site, and that an amendment to the City's Act 537 Sanitary Sewage Facilities Plan has been approved by the PADEP.

103. On January 4, 2008, L&I issued to HSP a Zoning/Use Permit, thereby fulfilling the Zoning Unit prerequisite of the foundation permit. (A true and correct copy of the HSP Zoning/Use permit is attached hereto as Ex. Q).

104. On January 4, 2008, the PADEP issued a National Pollutant Discharge Elimination System ("NPDES") Permit to HSP. The NPDES Permit also addressed post-construction storm water management, as approved by the City's Water Department. As such, the first part of the three-part Water Department prerequisite approval for the foundation permit was fulfilled. (The Water Department provides review and commentary to the PADEP relative to the post-construction storm water management portion of the NPDES permit). (A true and correct copy of the NPDES permit is attached hereto as Ex. R).

105. On September 11, 2008, the PADEP approved the revision to the City's Act 537 Sewage Facilities Plan for the SugarHouse Casino Project, thereby fulfilling the second part of the Water Department's three-part prerequisite approval. (A true and correct copy of the Act 537 approval is attached hereto as Ex. S).

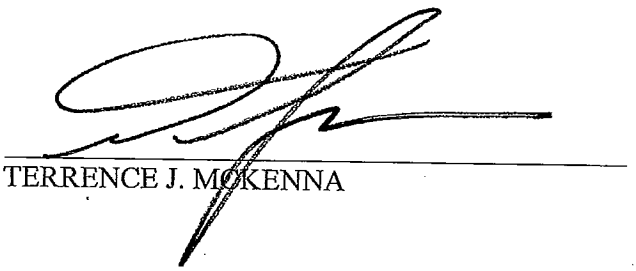
106. The third and final part of the Water Department's prerequisite approval is simply an acknowledgement that a public water supply exists to serve the site, and that it is properly sized, which presumably the Water Department will issue upon request.

a. The public water supply exists and is of a sufficient size, given the previous design work performed by HSP's civil engineer, Urban Engineers, in conjunction with the Water Department.

b. Pursuant to City-established protocol for such approvals, HSP cannot ask the Zoning and Water Departments to issue the prerequisite approvals. Instead, Mr. Elfrey or Ms. Gillen must initiate this process on behalf of the City. To date, the City has failed to act on the prerequisite approvals.

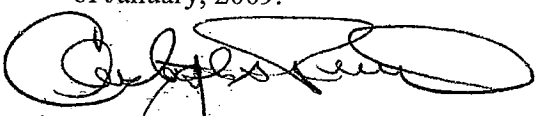
107. On December 16, 2008, in conjunction with a threatened stop-work order associated with the indicator piles that were installed in November 2008 (discussed more fully above), the City, through L&I's Director of Construction Services, informed HSP, for the first time, that no foundation permit application from HSP is pending with the City.

a. L&I further stated that it has no foundation plans on file for the SugarHouse Casino Project, which directly contradicts with the testimony of Mr. Robert Murray on November 15, 2007 at the submerged lands license hearing. When presented with HSP's time-stamped and complete foundation permit application, showing that HSP had indeed applied for a foundation permit, the City refused to acknowledge this evidence. If the City maintains this position, HSP would have to start the foundation permit process all over again, preparing and submitting a new application with its voluminous technical information, including geotechnical reports and foundational drawings.



TERRENCE J. MCKENNA

Sworn to and Subscribed
before me this day 7th
of January, 2009.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
CHRISTOPHER A. RICCIUTI, Notary Public
Marple Twp., Delaware County
My Commission Expires June 6, 2009

EXHIBIT "C"

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

HSP GAMING, L.P.,	:	No. 179 EM 2007
Petitioner	:	
v.	:	
CITY COUNCIL FOR THE CITY OF PHILADELPHIA AND THE CITY OF PHILADELPHIA,	:	
Respondents	:	

ORDER

PER CURIAM

AND NOW, this 24th day of March, 2009, it is hereby ordered as follows:

(1) the City of Philadelphia is directed to issue the foundation permit to HSP forthwith, and without condition;

(2) in furtherance of this Court's December 3, 2007 Per Curiam Opinion and Order in HSP Gaming, L.P. v. City Council for the City of Philadelphia, 939 A.2d 272 (Pa. 2007), and pursuant to Section 1506 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §1506, the Honorable John W. Herron of the First Judicial District is hereby appointed as Master in the above-captioned matter. The Master shall have full authority to consider and resolve disputes regarding the issuance of permits, approvals, licenses, or other authorizations or actions required by or from the City of Philadelphia for the construction, use and occupancy of HSP's licensed gaming facility; including such

Rec via fax 3/24/09 @ 3:45 am/pm MC

disputes that arise from the December 17, 2007 Tax Settlement and Development Agreement; and

(3) the Master shall address any such disputes, including requests for attorneys' fees and costs, in an expeditious manner and shall file a report with this Court setting forth the status and a summary of the proceedings within ten (10) days after completion of such proceedings.

The City of Philadelphia's Application for Leave to File a Supplemental Response is granted. The City of Philadelphia's Application for Oral Argument is denied.

Jurisdiction is retained.

EXHIBIT "B"

CITY OF PHILADELPHIA

OFFICE OF THE MAYOR
ROOM 215 CITY HALL
PHILADELPHIA, PENNSYLVANIA 19107-3295
(215) 686-2181
FAX (215) 686-2180

MICHAEL A. NUTTER
MAYOR

April 6, 2009

Honorable Mary DiGiacomo Colins, Chairman
Pennsylvania Gaming Control Board
PO Box 69060
Harrisburg, PA 17106-9060

RE: HSP Gaming, L.P. (SugarHouse)

To the Honorable Chairman and Members of the Pennsylvania Gaming Control Board:

I would like to thank the Chairman and Members of the Pennsylvania Gaming Control Board for this opportunity to provide information on the City of Philadelphia's efforts to facilitate the prompt construction and early opening of the two licensed gaming casinos in Philadelphia. In conjunction with your invitation to representatives of the two gaming licensees to your meeting of April 8, 2009, to provide a full and complete update on the status of their projects, I am hopeful that my submission will assist in delivering a more complete update concerning these projects. The City has a significant interest and a role to play in these developments, which I believe will generate numerous construction and permanent jobs and important tax revenues, all of which will benefit the Commonwealth as well as the City.

Certainly, you are well aware that the road to gaming has been challenging in Philadelphia. As is often the case with such major development projects in urban neighborhoods -- particularly where coupled with the introduction of a controversial activity -- citizens and community groups have voiced concerns about the various potential implications, ranging from gambling addiction to neighborhood traffic to security threats and corruption. The City recognizes that the Gaming Board has been empowered by the Legislature to confront and resolve many of these concerns and that progress is continuing in this direction. On a parallel track, Philadelphia has encouraged the licensees to design their facilities in a way that will enhance the City's physical plan and produce the optimum economic development impact for our taxpayers. As we in Philadelphia struggle with the effects of the global financial crisis, I have endorsed the conclusions of Governor Rendell and leaders in the General Assembly that a vibrant gaming industry can be an important tool in the creation of jobs and tax revenues. In the town meetings leading to my recent budget presentation, I have received the same message from many voters: move ahead with casino development in Philadelphia as quickly as possible.

In a March 13th press conference, I reiterated in unequivocal terms my support for the Foxwoods and SugarHouse projects and outlined the City's recent work to help these ventures move ahead. I acknowledged that projects of this magnitude and complexity create myriad business, technical, design and community issues, some of which lie beyond the authority of the City. But at the same time I pledged to join with the representatives of both casinos to overcome obstacles to opening these facilities. I have emphasized that while the City will responsibly exercise its regulatory duties and comply with the requirements of the law, I do not expect nor do I intend these traditional municipal functions to delay development.

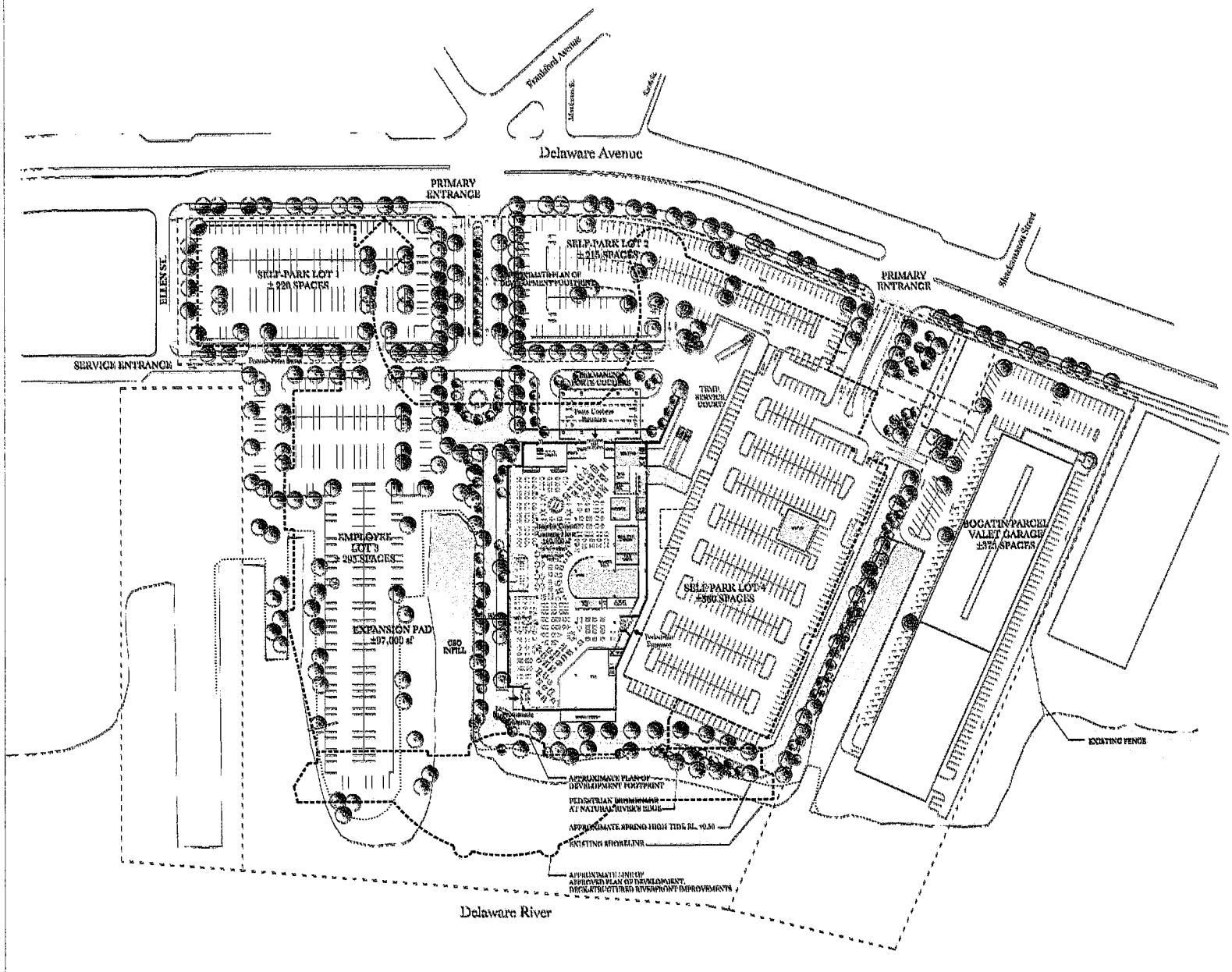
In that same press conference, I also recapped important background information regarding each of the casinos that is particularly relevant to the Board's current inquiry. With regard to SugarHouse, I have publicly expressed my strong support for construction and opening of the facility at its current site as quickly as possible, and I initiated a dialogue between City and casino representatives about facilitating the commencement of construction activities. In the last several days, key City operations officials have spoken frequently with the SugarHouse project management team about current development issues, and have held several joint meetings to collaborate on action items and timelines for completion. The parties have now established a working group that is meeting regularly to facilitate all necessary approvals. SugarHouse already has received key approvals, including its foundation permit. Recently, we began working intensely and cooperatively with SugarHouse on its modified plans which we understand are being presented to you by the licensee. My Administration supports the concept drawings in the proposed SugarHouse plan modifications. SugarHouse has indicated its desire to open an interim gaming facility as part of its modified plan by the second quarter of 2010, and I support the concept drawings that I have reviewed in that plan. I will ensure that all City departments in my Administration will fully cooperate and will continue working diligently with SugarHouse to obtain all permits and approvals within the City's control in a timely manner in order to ensure the opening of the SugarHouse interim gaming facility by the second quarter of 2010.

We hope that this report provides sufficient information to allow the Board a complete understanding of the City's policy position and perspective in connection with SugarHouse's development status. We stand ready to answer any specific inquiries or supply further updates as they may be requested.

Sincerely,

Michael A. Nutter
Mayor

EXHIBIT "E"



SLOT COUNT:	±1,700
PARKING COUNT:	
SURFACE PARKING (73%):	
SELF-PARK LOT 1:	±220
SELF-PARK LOT 2:	±215
EMPLOYEE LOT 3:	±295
SELF PARK LOT 4:	±960
VALET PARKING (27%):	
BOGATIN PARCEL:	±375
TOTAL PARKING:	±1,465
REQUIRED PARKING @ ⅘	±1,360

Interim Casino

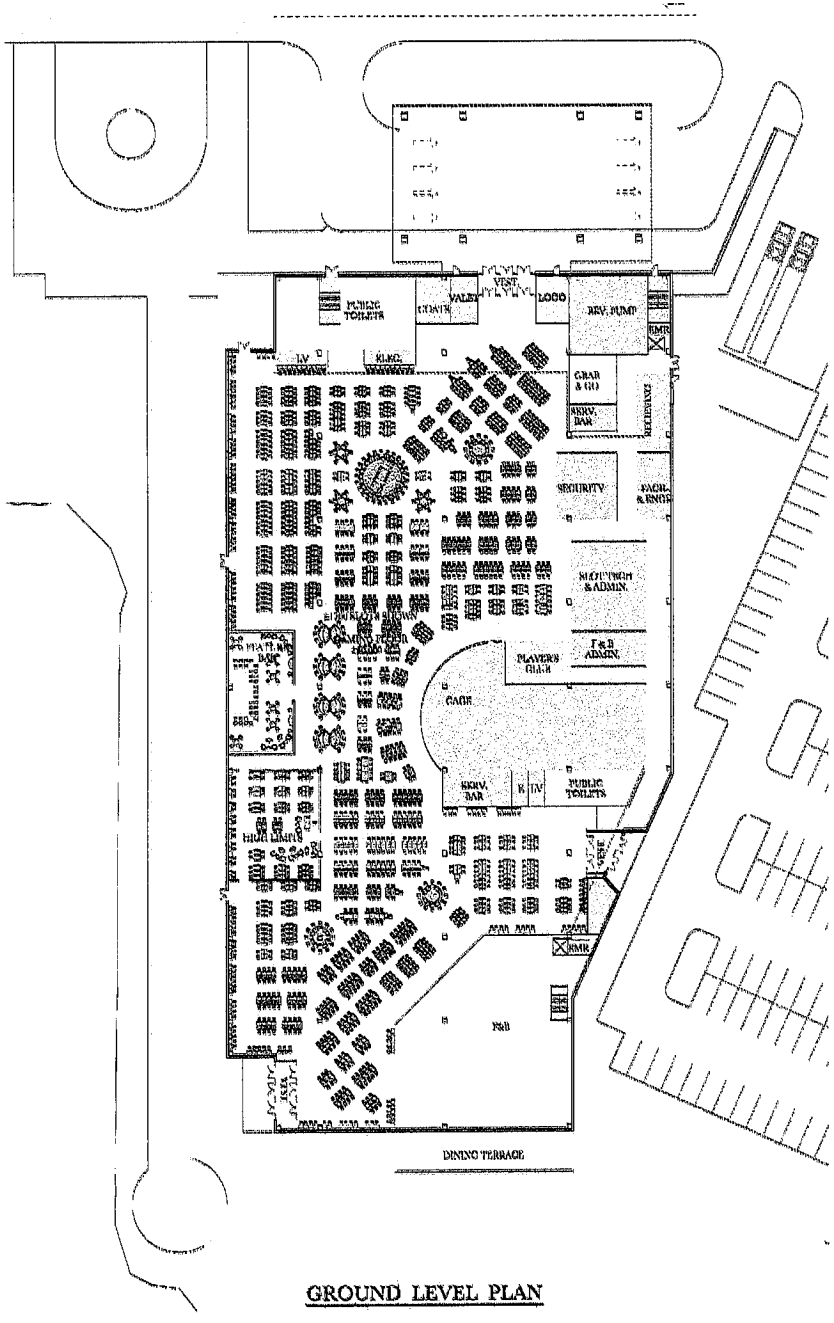
Site Plan

3 Apr 2009

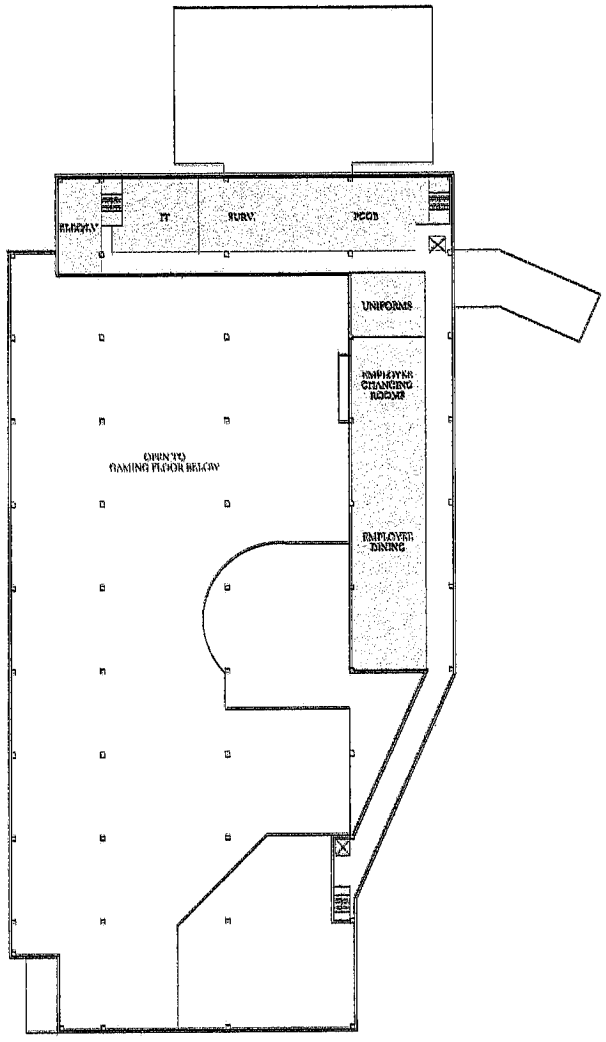
HSP Gaming, L.P.
Philadelphia, Pennsylvania

SugarHouse
PURE FUN

Cope Linder Architects



GROUND LEVEL PLAN



MEZZANINE LEVEL PLAN

MODIFIED PLAN OF DEVELOPMENT CONCEPT PROGRAM AREA (s.f.)

GAMING 2100 SLOTS, TOTAL	
GAMING FLOOR	[illegible]
HIGH LIMITS	[illegible]
F & B	
PRATT'S BAR	[illegible]
CASUAL DINING	[illegible]
GRAB & GO	[illegible]
SERVICE BARS	[illegible]
VISITOR SERVICES	
PLAYERS CLUB DESK	[illegible]
VALET	[illegible]
COATS	[illegible]
RETAIL	[illegible]
BACK - OF - HOUSE	
CAGE	[illegible]
MISC. ELEC., TOILETS, ETCS	[illegible]
B.O.H. MEZZANINE	[illegible]
CIRCULATION	[illegible]
TOTAL G.B.A.	[illegible]

Interim Casino

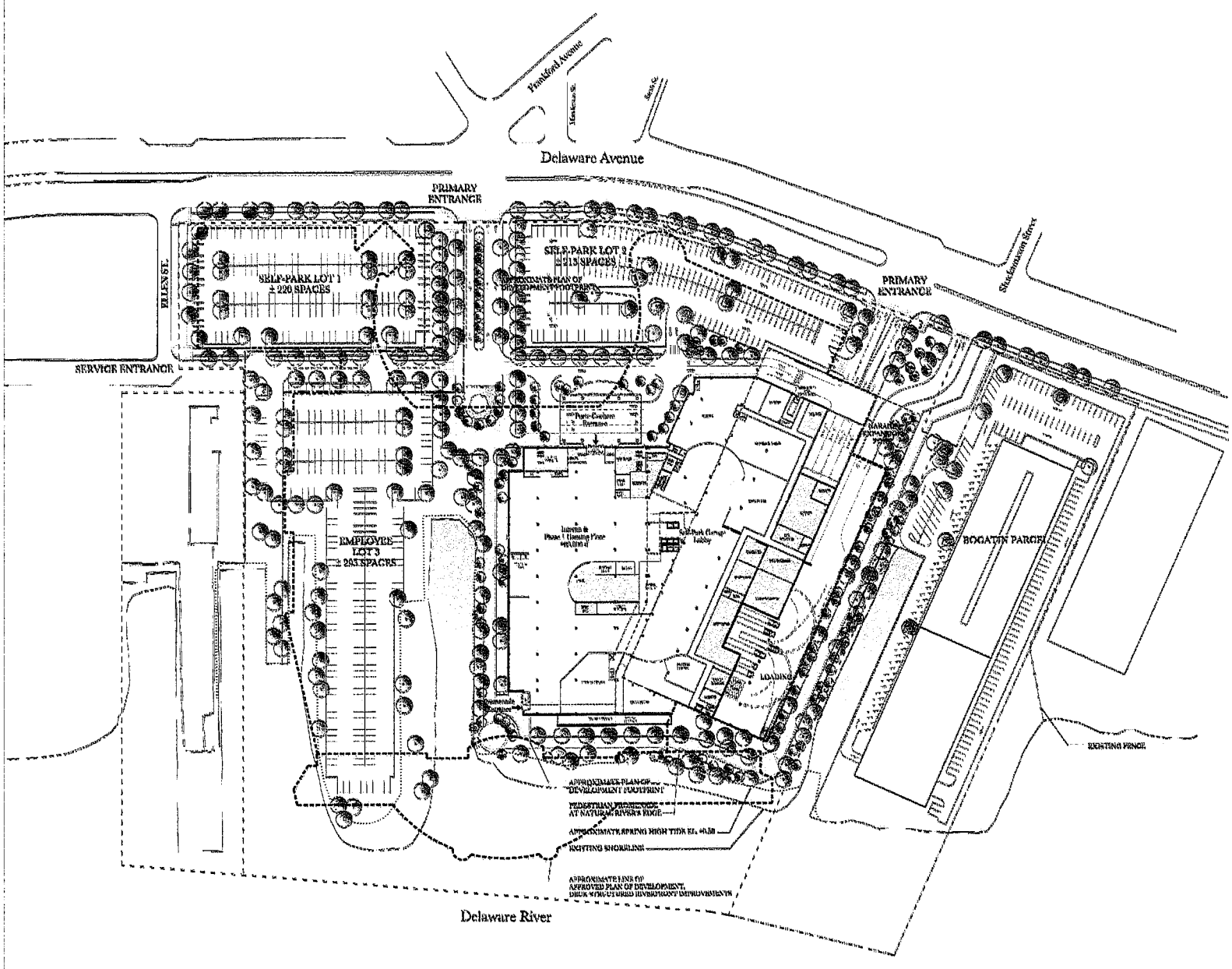
Floor Plans

3 Apr 2009

HSP Gaming, L.P.,
Philadelphia, Pennsylvania

SugarHouse
PURE FUN

Cope Linder Architects
50 South 19th Street
Philadelphia, Pennsylvania 19103
www.Cope-Linder.com



SLOT COUNT:	±3,000
PARKING COUNT:	
SURFACE PARKING (10%):	
SELF-PARK LOT 1:	±220
SELF-PARK LOT 2:	±215
EMPLOYEE LOT 3:	±293
SELF-PARK GARAGE: (82%):	±3265
VALET PARKING (0%):	
BOGATIN PARCEL:	±0
TOTAL PARKING:	±3,995
REQUIRED PARKING @ ⅓:	±2,400

Phase 1 Casino

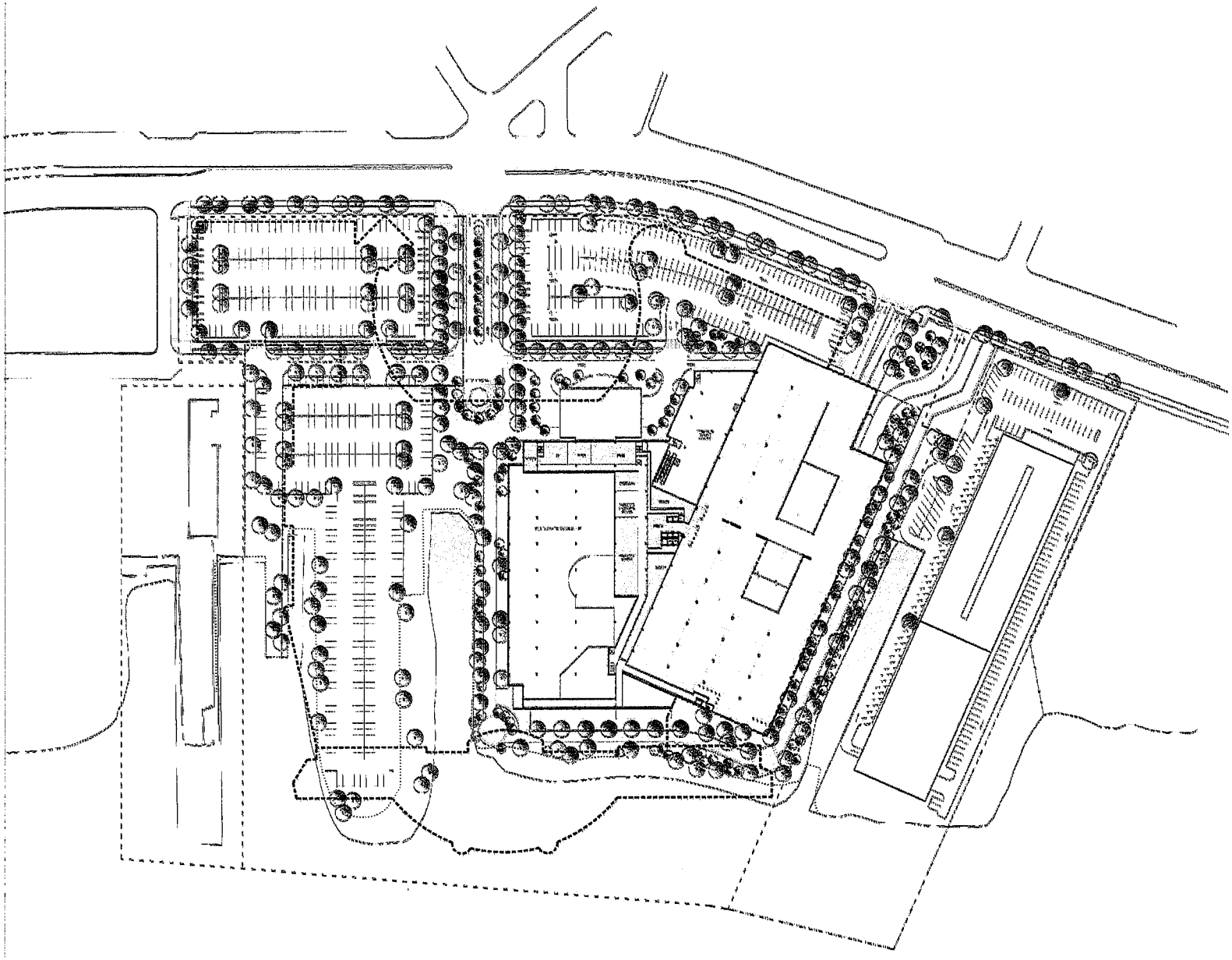
Site Plan

3 Apr 2009

HSP Gaming, L.P.

SugarHouse PURE FUN

Cope Linder Architects



Phase 1 Casino

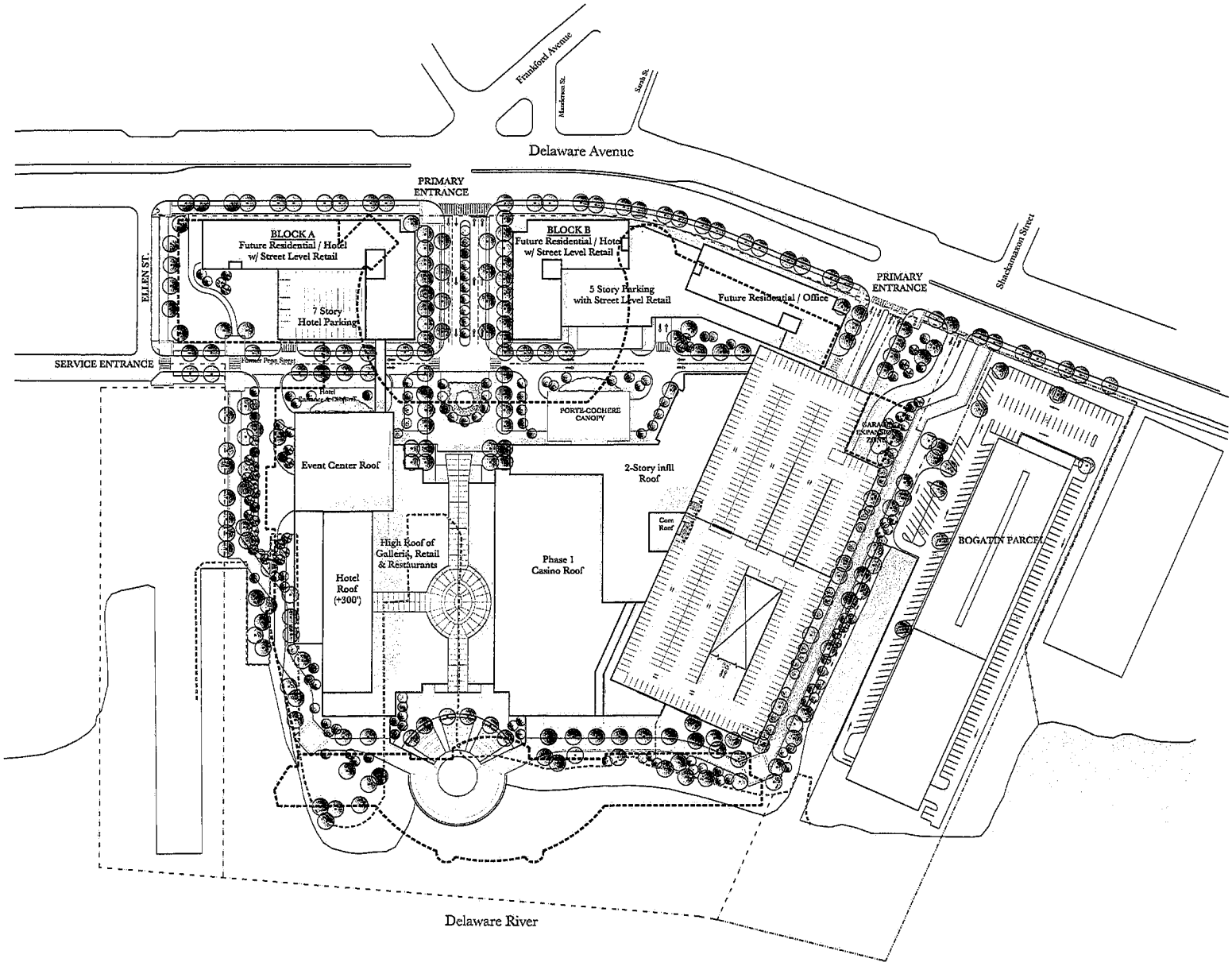
Mezzanine Level Plan

3 Apr 2009

HSP Gaming, L.P.

SugarHouse
PURE FUN

Cope Linder Architects



SLOT COUNT:	±5,000
PARKING COUNT:	
SURFACE PARKING (0%):	
SELF-PARK LOT 1:	±0
SELF-PARK LOT 2:	±0
EMPLOYEE LOT 3:	±0
SELF-PARK LOT 4:	±0
SELF-PARK GARAGE: (77%):	±3265
BLOCK A HOTEL VALET GARAGE: (19%):	±800
BLOCK B HOTEL GARAGE: (19%):	±625
VALET PARKING (0%):	In Block A
BOGATIN PARCEL:	n/a
TOTAL PARKING:	±4,690
REQUIRED SLOTS PARKING @ ¼:	±4,000
ALLOWANCE FOR HOTEL / RESIDENTIAL PARKING:	±500

Phase 2 Casino & Future Development

Site Plan

0 25 50 100 150

3 Apr 2009

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HSP Gaming, L.P..
Philadelphia, Pennsylvania

SugarHouse
PURE FUN

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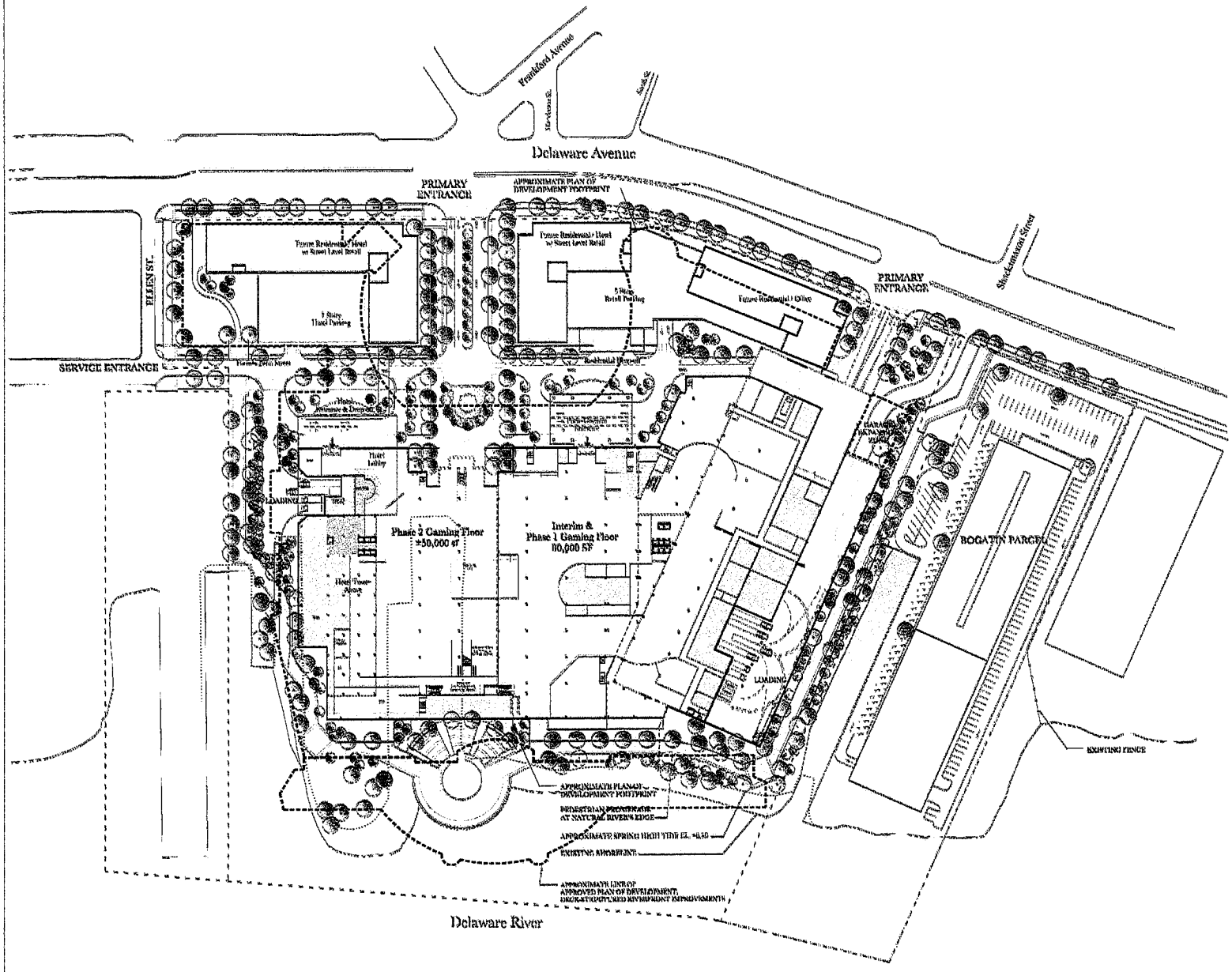
Philadelphia, Pennsylvania 19102
www.Cope-Linder.com



SLOT COUNT:	±5,000
PARKING COUNT:	
SURFACE PARKING (0%):	
SELF-PARK LOT 1:	±0
SELF-PARK LOT 2:	±0
EMPLOYEE LOT 3:	±0
SELF-PARK LOT 4:	±0
SELF-PARK GARAGE: (77%):	±3265
BLOCK A HOTEL VALET GARAGE: (19%):	±800
BLOCK B HOTEL GARAGE: (19%):	±625
VALET PARKING (0%):	In Block A
BOGATIN PARCEL:	n/a
TOTAL PARKING:	±4,690
REQUIRED SLOTS PARKING @ ⅘:	±4,000
ALLOWANCE FOR HOTEL / RESIDENTIAL PARKING:	±500

Phase 2 Casino & Future Development

Site Plan

0 25 50 100 120

3 Apr 2009

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Philadelphia, Pennsylvania

SugarHouse PURE FUN

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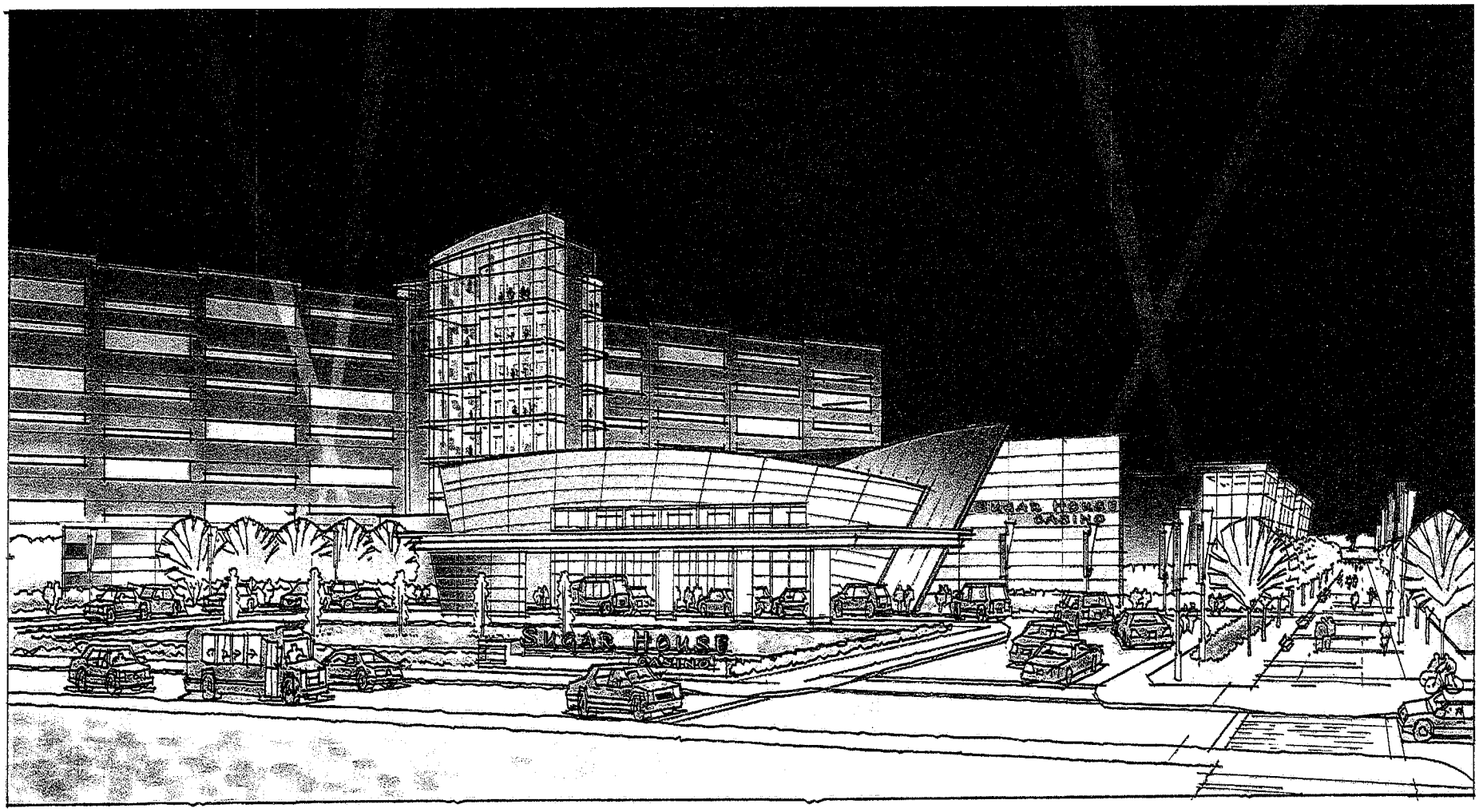

Interim Casino
Perspective View

3 Apr 2009

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HSP Gaming, L.P.,
Philadelphia, Pennsylvania

SugarHouse
PURE FUN

Cope Linder Architects

EXHIBIT "F"

EXHIBIT "C"

SUGARHOUSE CASINO

Exhibit F

	Approved Development Plan (2006)	April 2009 Modified Plan (a)
Construction & Development:		
Slot License	$50	$50
Land	71	73
Interim Facility (b)	146	133
Parking Garage	54	73
Phase I (b)	139	144
Total Construction & Dvlp (c)	$460	$474

Notes:

(a) Modified plan costs exclude approximately $33M in costs incurred to date related to predevelopment, litigation and other costs associated with delay.

(b) Interim and Phase 1 costs include FF&E and pre-opening costs.

(c) Construction and Development costs exclude interim period cash flow, financing and related transaction costs.