

Approved: 3-28-95
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 20, 1995 in Room 526-S of the Capitol.

All members were present except: Representative David Adkins, Absent
Representative Doug Lawrence, Excused
Representative Ruby Gilbert, Absent

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Chairperson stated Representative Packer asked for a copy of the contract between Dick Boushka and Richard Hubbard. Copies have been received and are available. (See Attachment #1)

The Chairperson stated **HB 2547** was scheduled to be worked today; however, there have been some questions raised that has to do with the bill and it involved the Racing Commission and the Lottery itself as this could impact them, so rather than working the bill I am going to appoint a sub-committee to study a specific charge, answering 17 or 18 questions and report back to the full committee by Friday, March 24 if at all possible. The sub-committee will be chaired by Representative Cox and the members will be Representatives Adkins, Aldritt, Lawrence, Nichols, Ruff and Weiland.

Representative Vickrey moved and Representative Swenson seconded to approve the minutes of March 7, 8, 9, 13 and 14. The motion carried.

Representative Cox announced he would send a memorandum to the Sub-Committee members informing them of the time and place of the meeting.

The meeting adjourned at 1:40 p.m. The next meeting will be March 22.

issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger, and without any action on the part of the holder thereof, be converted into 1000 shares of validly issued, fully paid and nonassessable shares of common stock of the Surviving Corporation.

ARTICLE II

ADDITIONAL CONSIDERATION TO THE STOCKHOLDERS

Sunflower currently derives revenues from its ownership and management of tracks for horse racing and dog racing at which pari-mutuel wagering is conducted, together with related food and beverage, simulcast and other related operations ("Pari-Mutuel Operations"). The Kansas legislature is considering legislation that may permit gaming activities in addition to pari-mutuel wagering to take place at licensed tracks for horse or dog racing ("Race Tracks"), which could substantially increase the value of the capital stock of Sunflower. Accordingly, Parent has agreed to pay to the Stockholders, in the circumstances set forth below, the additional consideration specified below for the Merger.

2.1 Additional Consideration in the Event of Parent's Sale of its Surviving Corporation Stock. In the event that Hollywood Park sells all or part of its stock in Sunflower subsequent to (i) enactment into law of legislation that authorizes the creation of a video lottery and (a) permits the operation of video lottery terminals at Race Tracks or (b) provides for the payment to operators of Race Tracks of a percentage of the revenues derived from the video lottery (a "Lottery Royalty"), or (ii) (a) adoption of a resolution by the Kansas legislature to propose an amendment to the Kansas Constitution authorizing gaming activities other than pari-mutuel wagering to take place at or adjacent to Race Tracks, (b) approval of such amendment by the voters of Kansas, and (c) satisfaction of any requirements specified in such amendment for the approval by the voters of the county or city in which the Real Property (as that term is defined in section 3.20) is located, the Stockholders shall be entitled to receive additional shares of Parent Common stock upon the sale by Parent prior to January 1, 2002 of all or part of Parent's stock in Surviving Corporation as follows:

2.1.1 Prior to Gaming Commencement. If such a sale by Parent occurs prior to the date on which Surviving Corporation has commenced Gaming (as that term is defined in section 2.2), Parent shall pay: (i) to Hubbard, the number of shares of Parent Common Stock equal to .20 multiplied by a fraction, the numerator of which shall be Parent's capital gain after taxes from the sale of such stock determined in accordance with generally accepted accounting principles and the denominator of which shall be the Market Price of the

Parent Common Stock on the closing date of such sale (the "Parent Stock Fraction-Sale") and (ii) to Boushka, the number of shares of Parent Common Stock equal to .05 multiplied by the Parent Stock Fraction-Sale.

2.1.2 Subsequent to Gaming Commencement. If the sale by Parent occurs on or after the date on which Surviving Corporation has commenced Gaming, Parent shall pay (i) to Hubbard, the number of shares of Parent Common Stock equal to .20 multiplied by the Parent Stock Fraction-Sale multiplied by a fraction, the numerator of which is the number of days remaining in the Earnout Period (as that term is defined in section 2.2.1) after the closing of such sale and the denominator of which is the total number of days in the Earnout Period (the "Earnout Fraction") and (ii) to Boushka, the number of shares of Parent Common Stock equal to .05 multiplied by the Parent Stock Fraction-Sale multiplied by the Earnout Fraction.

2.2 Additional Consideration In The Event of Gaming Commencement. In the event that Surviving Corporation commences to (i) manage the operation at or adjacent to the Real Property of video lottery terminals and/or gaming activities other than pari-mutuel wagering or (ii) to receive a Lottery Royalty (collectively, "Gaming"), the Stockholders shall be entitled to receive additional shares of Parent Common Stock as follows:

2.2.1 Amount of Additional Consideration. For the period from the date of such commencement (the "Commencement Date") until the earlier of (i) that date that is five years after the Commencement Date or (ii) December 31, 2001 (the "Earnout Period"), Parent shall pay with respect to each calendar year ending during the Earnout Period and, if the Earnout Period shall expire on a date other than December 31, with respect to the calendar year ending immediately following the expiration of the Earnout Period: (i) to Hubbard, the number of shares of Parent Common Stock equal to .20 multiplied by a fraction, the numerator of which shall be the excess of (a) the combined net income of the Surviving Corporation and SR Food & Beverage Company, a Kansas corporation ("SRFB") after taxes during the portion of the Earnout Period occurring during such calendar year (the "Measuring Period") over (b) the combined net income of Sunflower and SRFB for the year ended December 31, 1993 as reflected on the combined statement of income of Sunflower and SRFB prepared in accordance with generally accepted accounting principles, applied on a consistent basis with prior years, and accompanied by the unqualified report of KPMG Peat Marwick with respect thereto, but with the adjustments described below (or such fraction of such adjusted combined net income as the number of days in the Measuring Period bears to the number of days in the calendar year described in clause (a)), and the denominator of which shall be the Market Price of the Parent

Common Stock on the last day of such calendar year (the "Parent Stock Fraction-Operations") and (ii) to Boushka, the number of shares of Parent Common Stock equal to .05 multiplied by the Parent Stock Fraction-Operations. For the purpose of clause (b) of the preceding sentence, the combined net income of Sunflower and SRFB shall (i) be adjusted on a pro forma basis to reflect (a) the elimination of the management fees accrued to Hubbard or Boushka; (b) the elimination of the interest expense accrued with respect to Sunflower's subordinated indebtedness due to Hubbard in excess of an annual rate of 9 percent; (c) the elimination of all interest expense accrued with respect to the amount of outstanding principal of Sunflower's subordinated indebtedness that is repaid pursuant to section 5.10(iii); (d) the elimination of property taxes accrued in excess of the amount of such taxes that is determined to be payable by Sunflower with respect any portion of any taxable year included in the calendar year ended December 31, 1993; (e) the accrual of a provision for income taxes at the rate of 39.78 percent; and (ii) in all events be deemed to be at least equal to \$1,600,000. For the purpose of clause (a) of the first sentence of this section 2.2.1, the combined net income of the Surviving Corporation and SRFB after taxes shall: (i) not reflect (a) expenses incurred to Parent for goods or services in excess of the amounts that would be charged in similar circumstances by an unrelated party for comparable goods or services or (b) expenses incurred to Parent for indirect general and administrative services; and (ii) be determined by (a) treating the Surviving Corporation and SRFB as if they were not included in the federal consolidated and state combined or consolidated income tax returns filed by Parent but instead filed federal and state consolidated income tax returns that included only the Surviving Corporation and SRFB and (b) disregarding any carryback or carryforward of any tax losses or tax credits.

2.2.2 Extension of Earnout. In the event that, prior to the expiration of the Earnout Period, Surviving Corporation shall, in exchange for consideration other than cash, issue additional shares of its stock to a party the income of which is not included in Parent's consolidated financial statements under generally accepted accounting principles such that the relative voting power of Parent's stock in Surviving Corporation that is entitled to vote decreases in the aggregate by twenty (20) percent or more, the expiration of the Earnout Period defined in section 2.2.1 shall be extended by twenty-four months.

2.3 Payment of Additional Consideration. Any amounts payable by Parent to the Stockholders pursuant to sections 2.1 or 2.2 shall be paid no later than ten (10) business days after Parent receives from its independent certified public accountants their report with respect to Parent's consolidated financial statements for the preceding calendar year. Such

payment shall be in the form of at least two certificates in the name of each Stockholder, one of which shall represent the whole number of shares of Parent Common Stock having a value closest to, but no less than, the amount of any interest that may be imputed to such payment under the Internal Revenue Code of 1986, as amended (the "Code") (as determined by Parent acting reasonably), and the other of which shall represent the remainder of the number of shares of Parent Common Stock payable in such payment.

2.4 Limit on Additional Consideration. The Stockholders in the aggregate shall not be entitled to receive more than \$40 million in aggregate value of Parent Common Stock pursuant to sections 2.1 and 2.2. For the purpose of this section 2.4, the value of each share of Parent Common Stock previously paid to a Stockholder pursuant to section 2.1 or 2.2 shall be determined using the Market Price of Parent Common Stock used at the time such share was paid to the Stockholder to calculate the number of shares of Parent Common Stock to be paid to the Stockholders pursuant to section 2.1 or 2.2.

2.5 Additional Consideration to Boushka.

2.5.1 Sale. In the event that (i) Boushka shall sell, exchange or otherwise dispose of any Parent Common Stock paid to him pursuant to section 1.9 prior to the 180th calendar day after the Closing Date, and (ii) the Market Price of Parent Common Stock on the date of such sale, exchange or disposition (the "Sale Test Price") shall be more than ten (10) percent less than the Market Price of Parent Common Stock on the Closing Date (the "Reference Price"), Parent shall pay to Boushka the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Parent Common Stock that Boushka received pursuant to section 1.9 (after taking into account section 1.9.2) and that Boushka sold, exchanged or disposed of, (ii) nine-tenths (0.9), and (iii) a fraction, the numerator of which is the excess of the Reference Price over the Sale Test Price and the denominator of which is the Sale Test Price.

2.5.2 No Sale. In the event that the Market Price of Parent Common Stock on the 180th calendar day after the Closing Date (the "Test Price") shall be more than ten (10) percent less than the Market Price of Parent Common Stock on the Closing Date (the "Reference Price"), Parent shall pay to Boushka the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Parent Common Stock that Boushka received pursuant to section 1.9 (after taking into account section 1.9.2) and that Boushka has not sold, exchanged or disposed of, (ii) nine-tenths (0.9), and (iii) a fraction, the numerator of which is the excess of the Reference Price over the Test Price and the denominator of which is the Test Price.

2.5.3 Limit. Notwithstanding anything to the contrary in this section 2.5, Parent shall not be obligated pursuant to this section 2.5 to pay Boushka in excess of an aggregate of 90,000 shares of Parent Common Stock.

2.6 Fractional Shares. Notwithstanding anything to the contrary in sections 2.1, 2.2 or 2.5, no fractional share of Parent Common Stock shall be issued. All fractional share interests of Parent Common Stock of each Stockholder determined under such provisions and payable at the same time shall be aggregated into whole shares. In lieu of issuing fractional shares for any remaining fractional share interests held by a Stockholder, Parent, at its option, shall pay to such Stockholder either (i) an amount of cash equal to the value of such fractional share interest determined by multiplying such fractional share interest by the Market Price of Parent Common Stock used in determining the Parent Stock Fraction-Sale, Parent Stock Fraction-Operations or the Test Price, as the case may be, or (ii) pay one whole additional share of Parent Common Stock.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SUNFLOWER AND THE STOCKHOLDERS

As an inducement for Parent and Sub to enter into this Agreement, each of the Stockholders and Sunflower represents and warrants, jointly and severally, as follows:

3.1 Existence and Rights. Each of Sunflower and SRFB (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas, without limit as to the duration of its existence; (ii) has the corporate power and adequate authority, rights and franchises to own and operate its properties and to carry on its business as now being conducted; and (iii) is duly qualified and in good standing in each jurisdiction in which the character of its business makes such qualification necessary, except where the failure to be so organized, existing and in good standing or to have such power, authority, rights and franchises or to be so qualified and in good standing would not have a material adverse effect on Sunflower and SRFB taken as a whole.

3.2 Authority Relative to this Agreement. Sunflower has the requisite corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and those contemplated hereby, and to consummate the Transactions. The execution, delivery, and performance of this Agreement have been duly authorized by the Board of Directors of Sunflower and, except for the approval of this Agreement by the shareholders of Sunflower, no other corporate proceedings or actions on the part of Sunflower are necessary to authorize