Racing Commission Meeting

August 21, 2023

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CANTERBURY PARK LOCATION
1100 CANTERBURY ROAD, STE. 100
SHAKOPEE, MN 55379
TELEPHONE: 952-496-7950
FAX: 952-496-7954
MN.GOV/MRC

MINNESOTA RACING COMMISSION

RUNNING ACES LOCATION
15201 ZURICH STREET, STE. 212
COLUMBUS, MN 55025-7908
TELEPHONE: 651-925-3951
FAX: 651-925-3953
MN.GOV/MRC

Full Commission Meeting
Monday, August 21, 2023, 4:00 p.m.
Nutrena Conference Center
1801 Dudley Avenue Saint Paul, MN 55108

AGENDA

1) Call to Order

2) Roll Call

3) Adoption of Agenda

4) Approval of Minutes from July 17, 2023

5) Action Items
   - A. Old Business
     1. Request from Running Aces to Amend Floor Plan
   - B. New Business
     1. Election of Vice Chair and Second Vice Chair
     2. Committee Appointments
     3. Approval of Thoroughbred and Quarter Horse Breeders' Fund Purse Supplement Allocation for 2023

6) Staff Reports
   - A. Chief Veterinarian
     1. Industrial Laboratories AORC Proficiency test results
   - B. Stewards
   - C. Judges

7) Status Reports
   - A. Canterbury Park Entertainment
   - B. Running Aces Casino, Hotel and Racetrack

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8) Executive Director's Report
   A. Contract Approvals
   B. HISA/HIWU Update
   C. Personnel Update
   D. ADW Report
   E. Licensing Report
   F. Other

9) MTA/MHRI/MNHBPA/MQHRA Updates

10) Announce Future Meetings
   A. Full Commission – Monday, September 18, 2023

11) Adjourn

The Commission meeting packet may contain not public data pursuant to the Minnesota Government Data Practices Act. Commission staff has marked such data as not public. Please discard the data in a safe and confidential manner. Should you have questions about the classification of any data please contact Commission staff.

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Item 4 –
Minutes from
July 17, 2023

Full Commission Meeting

Monday, July 17, 2023 – 4:00 p.m.

Nutrena Conference Center

1801 Dudley Avenue, St. Paul, MN 55108

MINUTES

Call to Order:

Agenda Item 1 – Call to Order

Vice Chair Colombo called the meeting to order at 4:01 p.m.

Roll Call:

Agenda Item 2 – Roll Call

Present – Vice Chair Colombo, Commissioners Goodman, Koob and Gingold. A quorum was acknowledged.

Other participants – Kyle Gustafson (Executive Director, Minnesota Racing Commission), E. Joseph Newton (General Counsel, Minnesota Racing Commission), Dr. Lynn Hovda DVM (Chief Veterinarian Minnesota Racing Commission), Randy Sampson (President/CEO, Canterbury Park and Entertainment), Taro Ito, (President/CEO, Running Aces Casino, Hotel, and Racetrack), Steve Carpenito (Director of Racing, Running Aces Casino, Hotel, and Racetrack), Mike Cronin (Minnesota Horsemen's Benevolent and Protective Association), Cathy Dessert (Vice President, Minnesota Harness Racing, Inc.) Leora Maccabee (Esq. Maslon LLP), Tom DiPasquale (HISA Consultant. Former Executive Director, Minnesota Racing Commission 2013 – 2020 and former MRC Commissioner), Roy Johnson (Commission Advisor)

Adoption of Agenda:

Agenda Item 3 – Approval of Agenda

Commissioner Gingold motioned to approve the agenda; Second by Commissioner Koob; Motion carried.

Approval of Minutes:

Agenda Item 4 – Approval of Minutes

Motion to approve the June 26, 2023, minutes by Commissioner Koob; Second by Commissioner Gingold. Motion passed.

Agenda Item 5 – **Committee Reports**

A. Finance Committee

Commissioner Gingold – no report.

B. Racehorse Aftercare Committee

Commissioner Goodman reviewed the July 11, 2023, Racehorse Aftercare Committee meeting. 3 things were approved to bring to the full commission. 1. Hire a consultant to review the application for next year, use last year's application for this year. 2. Better and more consistent collaboration between the horse tracks and horsemen. 3. Direct staff to finalize and send out previous application for Aftercare grants and funding up to $200.000 and work with staff to determine the review process.

DRAFT

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New Business - Action Items

Agenda Item 6 - Authorizing Resolution to Proceed with Rulemaking and Publish Request for Comments: Proposed Amendments to Rules Governing Horse Racing, Minnesota Rules, Parts 7869-7897; Revisor's ID Number R-04816

Mr. Newton presented. This is a formality to publish request. Motion to approve by Commissioner Gingold; Second by Commissioner Koob. Motion passed.

Agenda Item 7 -Request from Running Aces to Modify Floor Plan

Mr. Ito introduced Leora Maccabee from Malson LLP. Ms. Maccabee handed out a legal opinion in support of Running Aces request, in consideration of the letter received dated July 13, 2023, from the SMSC, regarding SMSC alleged concerns concerning the request. Ms. Maccabee also handed out an updated summary of the request and 2020 – 2023 MRC approvals – Running Aces spreadsheet. Commissioner Goodman pointed out with only 4 commissioners here she was uncomfortable with that. Vice Chair Colombo agreed, would allow testimony but would not vote on the item today. Mr. Ito asked that testimony be on the record and will also testify to the larger group/commission if needed. Ms. Maccabee then summarized the handed-out documents. No questions were asked. Mr. Dipasquale then testified about his experience with a very similar situation and letter from the SMSC. No questions were asked. Mr. Gustafson proposed moving forward with consultation with the tribes. Commissioners discussed. Vice Chair Colombo asked for a motion to table Agenda Item 7. Motion was made by Commissioner Gingold; Second by Commissioner Koob. Motion passed.

New Business – Informational Items

Agenda Item 8 – Status Reports

A. Canterbury Park Entertainment

Mr. Sampson from Canterbury gave this report. Mr. Sampson wanted to start by saying the Canterbury Park does support Running Aces Request. On track crowd is strong, great crowds. On track handle is steady. Out of state is off dramatically, less days and later start date on the front end. Country wide reduction in horse population and owner shortage has made a competitive situation. Need to work together to survive. Construction update 1st phase barn development this year, 2nd phase next year. Development update going fantastic. Great crossover of entertainment.

B. Running Aces Casino, Hotel and Racetrack

Mr. Carpenito from Running Aces gave this report. Pleased with 2023, positive gains, exciting races, have broken long standing records this year. 5 divisions of MN sired horses. Expect large crowd, adding mandatory payout Sunday, guaranteed $75k. Mr. Ito commented that the casino has maintained positive numbers. Also, the hotel rebranding to Wyndham has been positive change, last month best month ever, 79.5% occupancy.

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Agenda Item 9 – Staff Reports

A. Chief Commission Veterinarian Report

Dr Hovda presented. Running Aces 2 medication violations. Working on getting fans installed. Canterbury Park - HISA – took over all TB testing. CO2 testing is way up. 184 horses on vet list, after May 1, 2023, only 33 added. HISA going through rules.

B. Chief State Stewards Report

C. Presiding Judges Report

Agenda Item 10 – Executive Director's Report

A. Contract Approvals
B. HISA/HIWU Update
C. Personnel Update
D. ADW Report
E. Licensing Report
F. Other

Mr. Gustafson, Executive Director presented.

A. Contract Approvals – None.
B. HISA – Hand out
C. Personnel Update – Reviewing Deputy Director Position
D. ADW
E. Licensing Report

Item 11 – MQHRA/MTA/MHRI/MNHBPA Reports

MHRI – Cathy Dessert – History on MN Girl Elimination Race Winner. Interviewing for an Administrative Director.

MNHBPA – Mike Cronin – discussed the recent HIWU search and changes that will be made. Aftercare, more horses documented and going to good places and better options. Joel Berndt's daughter has placed 12 already this year. Thanked Canterbury and others for support for back-siders this year. Stressed the purse money has to be figured out this year for next year. Challenges are real, threat is real. Chair Colombo thanked Mike for his testimony on the state of racing in MN.

MTA – Roy Johnson – 2022 MTA Awards had an excellent turnout.

Item 12 – Future Meetings

Next meeting – Monday August 21, 2023. Meeting place is Nutrena Conference Center 1801 Dudley Avenue Saint Paul, MN 55108.

Item 13 – Adjournment

Motion to adjourn by Commissioner Koob, 2nd by Commissioner Gingold. Vice Chair Colombo adjourned the meeting on Monday, July 17, 2023, at 5:30 p.m.

THESE MEETING MINUTES HAVE BEEN APPROVED ON THIS ____ DAY OF _____, 2023 BY A QUORUM OF THE MINNESOTA RACING COMMISSION.

DRAFT

Item 5 A–
Request from Running Aces to Amend Floor Plan

Running Aces
CASINO • HOTEL • RACETRACK

RunAces.com | info@RunAces.com | 15201 Running Aces Blvd
Columbus, MN 55025 | (651) 925-4600 | 877-RUN-ACES

MRC Executive Staff
Minnesota Racing Commission
Date: May 18th, 2023
Subject: Casino Table Layout Exhibit A, C and D - V1.11

Dear MRC Executive Staff:

Running Aces Casino, Hotel and Racetrack respectfully submits, for your review and approval, changes to the current Floor Plan in our Plan of Operations.

At the present time our dealer assist layout contains one Stadium Three Card Poker with 7 player stations, one Multi-Hand Blackjack with 11 player stations and one Aces Live 5 Card Draw Poker with 4 player stations. In total, there are 22 player stations and three dealer assist tables.

As part of this request, Running Aces would like to change the current layout to include one Stadium Three Card Poker table with 11 player stations, one Aces Live 5 Card Draw Poker table with 11 player stations, and one Multi Hand Blackjack and Baccarat table that will share 11 player stations. In total, there will be 33 player stations and four dealer assist tables.

This floor change request includes (4) dealer assist games with a total of 33 player terminals, (60) pit tables and (14) poker tables for a total of 78 out of our approved 80 tables.

As well as ensuring proper surveillance coverage, the requested changes will be implemented upon your approval.

Please review the attached:

- Building Layout, Exhibit A
- Main Floor Layout, Exhibit C
- Entryway Layout, Exhibit D

If approved the new layouts will replace pages #292, 294 and 295 contained within the Plan of Operations.

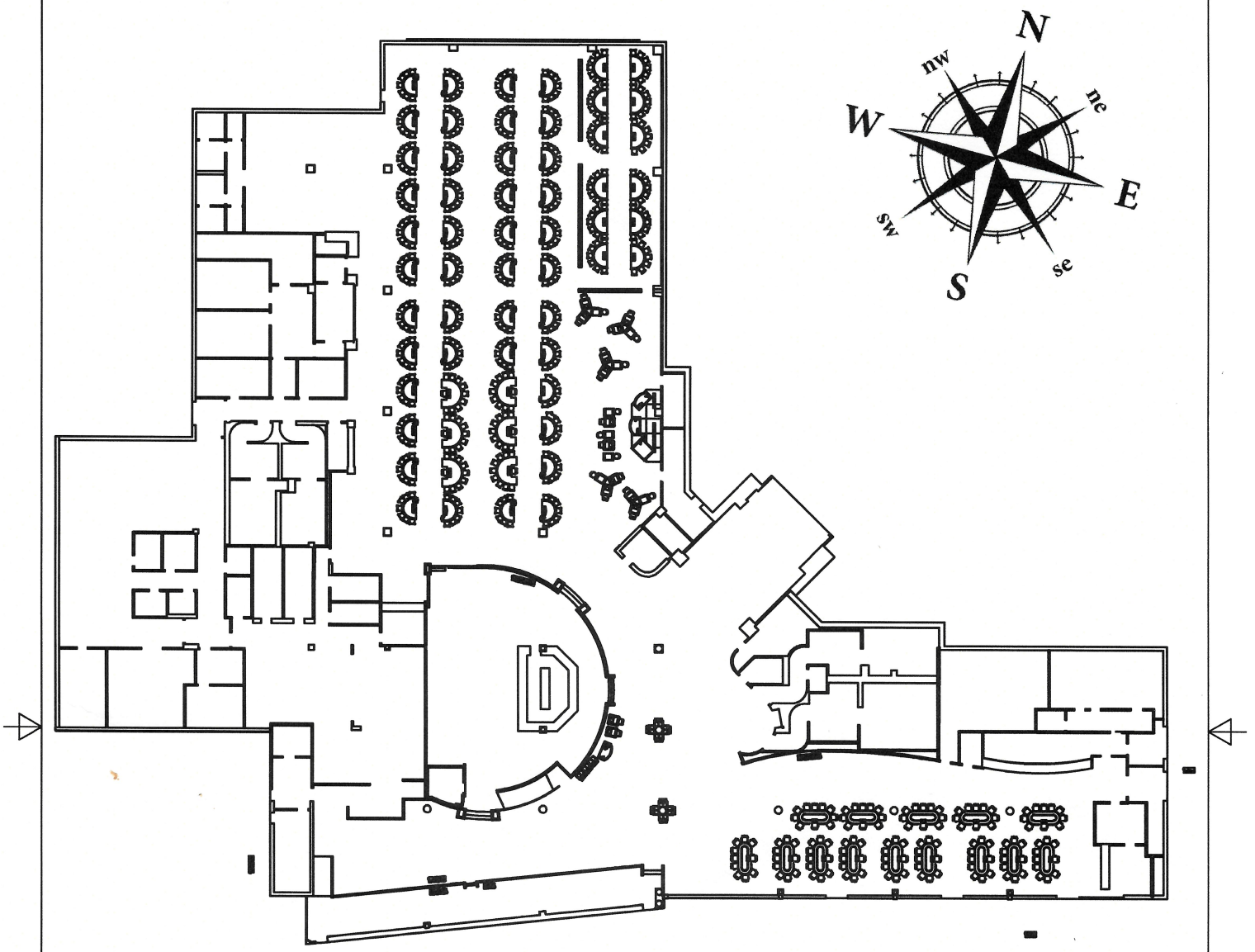
Thank you in advance for your consideration to these changes. We'll be happy to review these with you and answer any questions you may have prior to your approval.

Sincerely,

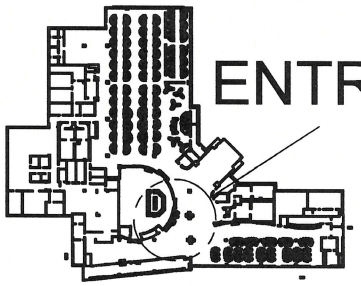
Taro Ito

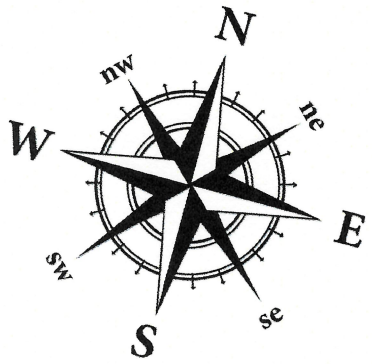
Taro Ito
President & CEO
Running Aces Casino and Racetrack

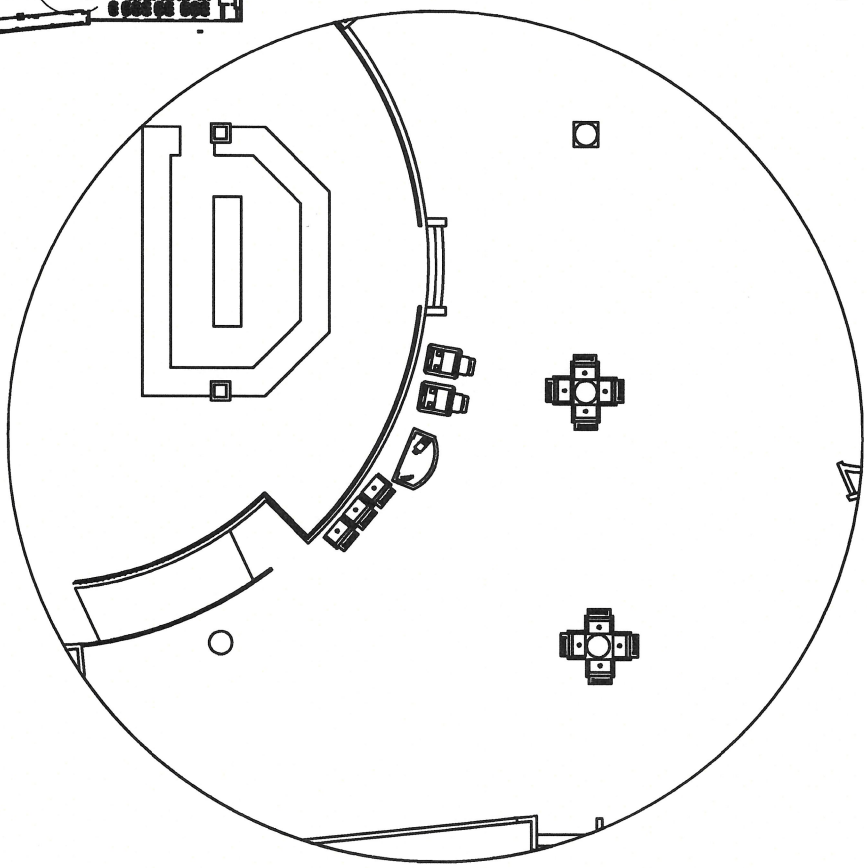
© 2019 Running Aces Casino, Hotel & Racetrack



	Plan of Operations Casino Table Layout
	Exhibit A
	Builting layout (5/23/2023 submission)

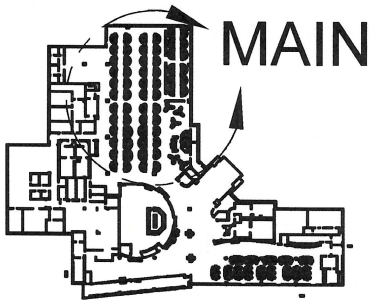




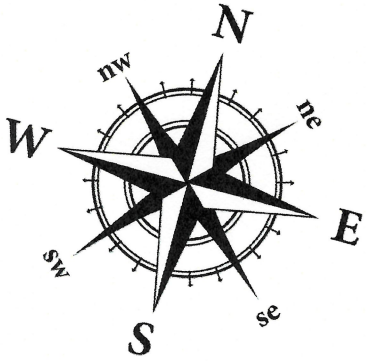


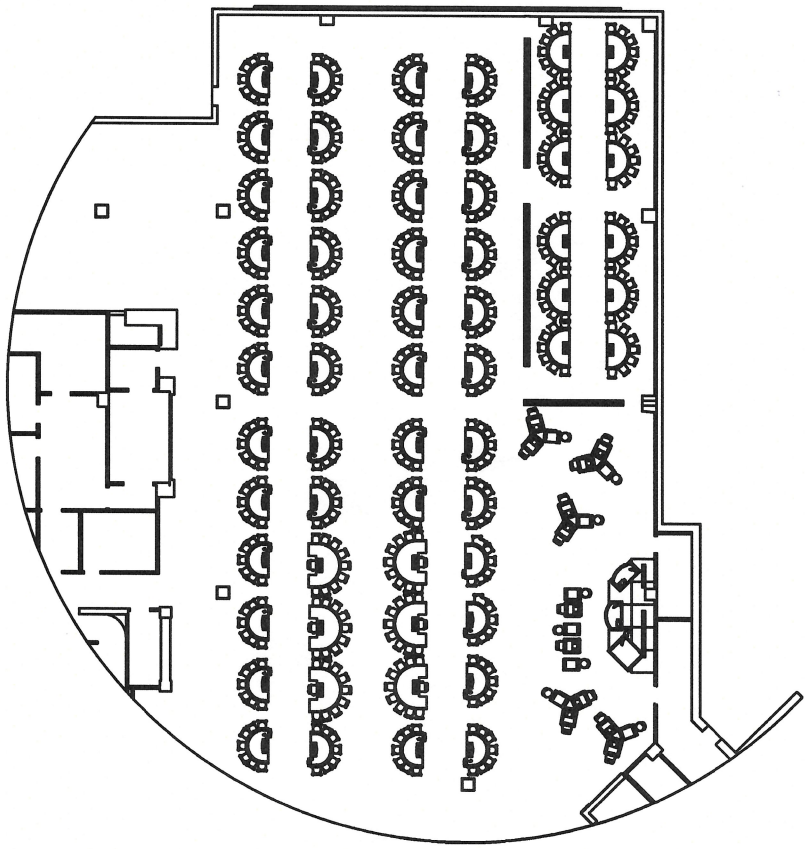
DETAIL ENTRYWAY
SCALE 1/16" = 1'-0"

RA	Plan of Operations Casino Table Layout
	Exhibit D
	Entryway (5/23/2023 Submission)



MAIN FLOOR





DETAIL MAIN FLOOR
SCALE 1/32" = 1'-0"

RA	Plan of Operations Casino Table Layout
	Exhibit C
	Main Floor layout (5/23/2023 Submission)

MASLON

Leora M. Maccabee
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Direct Fax: 612.642.8343
leora.maccabee@maslon.com

August 4, 2023

VIA EMAIL

Governor Tim Walz
Lt. Governor Peggy Flanagan
130 State Capitol
75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Executive Director Kyle Gustafson
Chair Camille McArdle
Vice Chair Barbara Colombo
General Counsel E. Joseph Newton
Commissioners, and Staff
Minnesota Racing Commission
1100 Canterbury Road, Suite 100
Shakopee, Minnesota 55379

Re: Running Aces Request to Modify Floor Plan, Response to July 26, 2023 Letter from Mille Lacs Band of Ojibwe Seeking an Unwarranted Tribal Consultation & Data Practices Act Request

Dear Governor Walz, Lt. Governor Flanagan, Executive Director Gustafson, Chair McArdle, Vice Chair Colombo, General Counsel E. Joseph Newton, Commissioners, and Staff,

We represent Running Aces Casino, Hotel & Racetrack ("Running Aces"), and write as legal counsel to respond to the letter you received dated July 26, 2023 from the Mille Lacs Band of Ojibwe ("the Band") regarding the Band's concerns as to Running Aces' Request to Modify Floor Plan (the "Request"), Item 7 on last month's Minnesota Racing Commission ("MRC") agenda. A true and correct copy of Running Aces' July 16, 2023 Letter in Support of Running Aces' Request to Modify Floor Plan is attached as Exhibit A and incorporated herein. As you are likely aware, this Request simply requests eleven additional seats at the MRC-authorized Dealer Assist tables that have been in place at Running Aces since 2017.

As a preliminary matter, this Request is properly before the MRC and should have been granted administratively through MRC staff months ago. Running Aces' Request was initially submitted to Executive Director Gustafson more than two months ago, on May 18, 2023, pursuant to Running Aces' Plan of Operations—approved by the MRC—which provides that floor plan changes may be approved by the Executive Director, the Deputy Director, or its designee, and also in accordance with what former Executive Director Tom DiPasquale had advised Running Aces, which was that the Executive Director had approval to approve minor requests without the full MRC's vote.

Furthermore, the Band requested that MRC conduct a consultation with the Band under Minn. Stat. §10.65, which is not supported by the statute, as this Request is not a substantial change that will negatively impact the Tribes. It also raises administrative procedure concerns if the Band is entitled to weigh in outside of the public process and Running Aces is not apprised of the Band's concerns.

1. **The MRC Has No Statutory Duty to Consult with Tribal Governments on Running Aces' Request, and Thus Should Not Initiate Such a Consult Outside of the Usual Public Comment Processes and Opportunities.**

The Band requests that the MRC consult with them pursuant to Minn. Stat. §10.65 regarding Running Aces' Request prior to granting the Request. Minnesota Statute § 10.65 provides that state agencies must consult with Minnesota Tribal Governments on "matters that have Tribal implications" including "actions that have substantial direct effects" on Tribal governments, and also provides that this duty is "prospective," not retroactive. Minn. Stat. §10.65, subd. 2(a)(2), subd. 3(h). It is notable that this statute "does not, create any right to administrative or judicial review, or any other right, benefit, or responsibility, substantive or procedural, enforceable against the state of Minnesota, its agencies or instrumentalities…" Minn. Stat. §10.65, subd. 4.

Nowhere in the Band's letter do they offer any facts in support of their allegations that Running Aces' proposed floor plan change to add an additional eleven player seats at its four MRC-authorized Dealer Assist Gaming tables and to move those seats around on the card floor would "negatively impact tribal casinos" or that any of the tribal casinos are in "direct competition with Running Aces." To date, the Band has provided no evidence – and cannot offer because no such evidence exists - that they have lost revenue since the Dealer Assist games were introduced.

Additionally, under Minn. Stat. §10.65, "consultation," is defined as "the direct and interactive involvement of the Minnesota Tribal governments in the development of *policy* on matters that have Tribal implications." Minn. Stat. §10.65, subd. 2(a)(2) (emphasis added). Here, Running Aces is not asking the MRC to develop policy, but to review its floor plan request—an element of MRC's adjudicatory function. The legality of Dealer Assist is not before the MRC—that has been settled since 2017. Thus, a meeting on the specifics of Running Aces' Request would be inappropriate.

As both Running Aces and former MRC Executive Director Tom DiPasquale stated at the July 17, 2023 MRC meeting, this Request is not the kind of action intended by the legislature for consultation. As a preliminary matter, this Request should have been noncontroversial and approved by agency staff—not brought before the MRC. Further, there is zero "direct" impact of this floor plan change on any Tribal governments, and any possible alleged impact is indirect, circumstantial, speculative, and significantly attenuated. Only actions that have "substantial direct effects" on a Tribe require consultation. While that term is not defined by the statute, there a few hints as to what the legislature meant by that term. The word "other actions," which the Band appear to be saying means every MRC request for approval on even the most minute of racing track issues, comes after the words "rules, legislative proposals, and policy statements," signifying big changes in rules, laws, and policy—those are the kind of actions that are supposed to require consultation, not the request by a racetrack to add a few extra seats to a table or to move tables around. *See* Minn. Stat. § 10.65, subd. 2(a)(3). The proposed floor plan adjustment is minor, and does not expand gaming in any way. To the contrary, it builds upon years of uncontroverted authorizations by the MRC of the Dealer Assist Gaming technology.

In addition, since there is no statutory duty to consult with Tribal Governments prior to consideration of the Request, it would set a bad precedent for such a consultation to occur outside of the MRC's usual public comment and testimony processes. Like any interested party, Tribal Governments and/or their members may comment in written form or through oral testimony on any issue pending before the MRC. These written comments and oral testimony then make up the public record and are subject to court scrutiny if an agency decision is later challenged. If the Tribal Governments act outside of this process, it is contrary with the stated goals of the Minnesota Administrative Procedure Act ("APA") of an open and public process. Furthermore, if there is no dissent in the public process, but a Tribal Government raises concerns through a private consult process, a thoughtful decision could be seen as arbitrary. This secret process is especially concerning when Tribal-run casinos are market participants.

Running Aces seeks MRC approval on dozens of de minimis requests throughout the year, such as floor plan amendments to its plan of operations, to betting modifications, contract revisions, protocol edits, and more. (*See* attached Exhibit B, 2020-2023 Minnesota Racing Commission Approvals of Running Aces requests, presented at the July 17th Commission meeting.) If the MRC determines that a consultation is required on this Request, then, as Running Aces and former Executive Director DiPasquale noted at the July 17th MRC meeting, a consultation would be required for each of the MRC approvals included in Exhibit A, creating significant unnecessary delay, distraction, and a waste of the MRC's time and resources. This cannot possibly be what was conceived of by the legislature when it passed Minn. Stat. §10.65.

Thus, the plain and clear language of Minn. Stat. §10.65 does not require a consultation between the MRC and Tribal Governments prior to or in order for the MRC to evaluate and grant Running Aces' pending Request.

2. If the MRC Conducts a Tribal Consultation, that Consultation Should be Completed Immediately, and Not Further Delay the MRC's Vote on Running Aces' Request.

At the July 17th MRC meeting, the MRC heard detailed testimony in support of Running Aces' Request—and none in opposition, and although the MRC's General Counsel Joseph Newton confirmed that the MRC had a quorum to vote on Running Aces' Request, the MRC tabled the Request. Since that meeting, MRC Commissioner Camille McArdle has been reappointed as Chair. There is now no doubt that the MRC has—and had—the legal authority to vote on this Request. To prevent unnecessary delay, action should be taken on this Request at the August MRC meeting.

Additionally, at the July 17th meeting, the MRC discussed the Shakopee Mdewakanton Sioux Community's ("SMSC") request for a consultation regarding Running Aces' Floor Plan Request. The MRC **did not authorize** a consultation with any Tribal Government under Minn. Stat. § 10.65. Executive Director Gustafson requested the opportunity to conduct the annual consultation provided by Minn. Stat. §10.65, subd. 3(d) immediately, suggesting he intended to discuss Running Aces' Request during that annual consultation. MRC members encouraged him to wait until the pending request was no longer on the table. That conversation evidenced the preference

of many MRC members for Running Aces' Request to be considered and evaluated solely on the merits of the documents submitted in favor and against, and public testimony which was solely offered in favor, and not with the addition of a potential outside consultation with the Tribal Governments that is unwarranted under Minn. Stat. §10.65.

To the extent the MRC determines that a consultation regarding Running Aces' Request is appropriate, Minn. Stat. §10.65 provides that the consultation must be done so as to be "included in the agency's decision-making process," and specifically at a "favorable or useful time." Minn. Stat. § 10.65, subd. 2(a)(5). Thus, the MRC cannot and should not sit on Running Aces' Floor Plan Request any longer without making a decision. The consultation—if determined to be warranted—should be done promptly so that the vote can still go forward at the August 21st MRC meeting.

3. If the MRC Conducts a Tribal Consultation, the MRC Should Release All Public Data Relating to that Consultation Pursuant to the Minnesota Data Practices Act.

In addition, since the consultation must—under Subdivision 2(a)(5) of the statute—be part of the "agency's decision-making process," and that decision-making process is a public process, Running Aces is by this letter making a formal request under Minnesota's Government Data Practices Act, Minn. Stat. § 13.03, for any and all public data regarding any consultation or attempt to have a consultation between MRC and any individuals associated with a Tribal Government concerning Running Aces' pending Request, including, but not limited to, all communications between the MRC or Governor's Office and any individuals associated with the Tribal Governments regarding Running Aces' pending Request from May 18, 2023, to present. Running Aces further requests any draft or final MRC's Tribal consultation policies and protocols created in accordance with Minn. Stat. §10.65, subd. 3(b) and any meeting minutes or policies that outline the current or planned appointment of the MRC's Tribal liaison in accordance with Minn. Stat. §10.65, subd. 3(i). In accordance with the Data Practices Act, your response to this data request must be prompt and within a reasonable time.

Furthermore, if such a consultation has or will occur, Running Aces requests a detailed summary of the information discussed at that consultation concerning Running Aces' Request to ensure that your consultation complied with the limitations of Minn. Stat. § 10.65, subd. 4, and to ensure that Running Aces has available for its review and consideration all elements of the record as a whole that have been or will be considered by the MRC in its deliberation on Running Aces' Request.

Running Aces affirms its Request to Modify Floor Plan as submitted on May 18, 2023, asks that any and all public data related to the proposed consultation be provided to Running Aces and any interested persons, and asks that the Request be administratively approved, or at the very least, voted on at the August 21st hearing without delay, so Running Aces can adjust its floor plan as proposed, and in doing so, can further support the horseracing industry by improving purses while advancing the legislature's priorities of ensuring the security of card playing activities and improving internal control systems of card playing activities.

4. Neither the Minnesota Legislature nor the MRC Has Narrowly Defined "Table" in the Manner Sought by the Band with Respect to the Dealer Assist Tables.

Briefly, it is important to respond to the Band's unfounded allegation in its July 26th letter that the legislature intended the definition of "table" under Minn. Stat. § 240.30, subd. 8 to only include a table with seven seats, each seat allowing one bet per seat, because the legislature "only … could have reasonably sought" that definitional limitation. In so stating, the Band is inappropriately and illogically trying to apply the terms and provisions of its blackjack compacts with the State to Running Aces. The legislature provided the MRC with authority under Minnesota Statute Chapter 240 to regulate the playing of a variety of card games at card clubs, and that Chapter, its regulations, and any interpreting case law contain no requirement setting dealer to player ratios that could be applicable to the Dealer Assist Gaming table at Running Aces, and no restrictions as to the number of bets that can be placed per card game per table. As a result, since 2008, with full authorization of MRC and without objection by the Tribes, Running Aces has had several tables on its card room floor exceeding seven seats per table and often allowing multiple bets per player.

The Band's assertions that Running Aces is attempting to circumvent the legislature's limit, redefine "table" under Minnesota law, or expand gaming in Minnesota, are unfounded, and are belied by the realities of MRC authorizations and approvals for card playing at Running Aces going back to the early 2000s. For the sake of brevity, Running Aces refers to the attached Exhibit A, its July 16, 2023 Letter in Support of Running Aces' Request to Modify Floor Plan, which addresses the fact that MRC can authorize additional player stations for the Dealer Assist tables at Running Aces without violating the 80-Table limit or any other Minnesota law.

5. Dealer Asist is not a Video Game, nor a Gambling Device under Minnesota Law.

Running Aces again refers to Exhibit A, which addresses in great detail the undisputed facts and law establishing that Dealer Assist Gaming constitutes card playing, is not video gaming, is in all relevant requests similar to technology previously approved by MRC, and is not a video game of chance nor a gambling device under Minnesota law. Thus, the MRC should not prohibit nor unnecessarily restrict the use of that MRC approved and authorized technology.

6. Underhanded Accusations Against Running Aces for Being a For-Profit Company Are Unwarranted and Inappropriate; Running Aces is a Good Corporate Citizen, and a Pivotal Supporter of Minnesota's Horse Racing and Agricultural Industries.

It almost need not be said, but the Band's mischaracterizations of Running Aces' value, merit, and impact on the local community are inappropriate and unfounded. Yes, Running Aces is a company, but it is the largest employer in its community, currently providing approximately 600 jobs, and it is a good corporate citizen, paying $90,000 annually to the City, and annually approximately $825,000 in property taxes and $85,000 in its hotel occupancy tax. Since opening June 30, 2008, Running Aces has paid $67.5 million in purses—money that directly supports the horse industry in Minnesota, as well as $24 million in license, regulatory and property taxes, and $205 million in

payroll and benefits.

Running Aces is also proud to invest meaningfully in local charities and community organizations. As Linda M. Madsen, Executive Director of Lakes Center for Youth and Families explains so well:

> Lakes Center for Youth and Families partners with Running Aces, through charitable gaming, and their support is critical to our financial stability and fulfilling our mission. Our three program areas of counseling, intervention and enrichment all benefit from the support of Running Aces, which means our community benefits. Particularly our counseling program would not be nearly as robust as it is without the partnership with Running Aces. In 2022, we served 166 counseling clients and provided 2,446 sessions for those clients. We are not the only ones positively impacted by Running Aces and they are known for their support of meaningful projects and organizations in the community. We are grateful for the support from Running Aces of Lakes Center and so many others in the community.

Furthermore, it goes without saying that Running Aces every day, in each and every element of its facility, from live and simulcast racing to Advanced Deposit Wagering to the card room, restaurant, and hotel, makes a substantial economic contribution to all elements of Minnesota's horse racing and agricultural industries. As the 2017 University of Minnesota study sponsored by the MRC on the "Economic Contribution of Minnesota's Horse Racing Industry" noted, Minnesota's horse racing industry generates hundreds of millions in economic activity in the state and supports thousands of full and parti-time jobs. Running Aces' entirely lawful creativity, innovations in technology, and commitment to integrity and security fuel that economic growth.

7. Conclusion

It is a false dichotomy to say that advancements in technology, innovation, and creativity by the providers and leaders of our local horse racing industry like Running Aces are inevitably and undoubtedly going to hurt and harm Tribal communities. Running Aces' Request to add a few more seats to its Dealer Assist Gaming tables is not designed to nor will it have any kind of substantial effect on any Tribal Government. No consultation is necessary under Minn. Stat. §10.65, and Running Aces' Request should be approved by the MRC on August 21st.

Please feel free to contact me at the above number, or Taro Ito, CEO of Running Aces at (310) 346-8858 with any questions. Thank you.

Sincerely,

/s/ Leora M. Maccabee
Leora Miriam Maccabee, Esq.
cc: Joseph S. Nayquonable, Mille Lacs Band of Ojibwe
Steve Schleicher, Esq. and Carly Johnson, Esq., Maslon LLP

EXHIBIT A

MASLON

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CONFIDENTIAL

July 16, 2023

VIA EMAIL

Executive Director Kyle Gustafson
Vice Chair Barbara Colombo
General Counsel E. Joseph Newton
Commissioners, and Staff
Minnesota Racing Commission
1100 Canterbury Road, Suite 100
Shakopee, Minnesota 55379

Re: Running Aces Request to Modify Floor Plan, SMSC Letter in Response – UPDATED

Dear Executive Director Kyle Gustafson, Vice Chair Barbara Colombo, General Counsel E. Joseph Newton, Commissioners, and Staff:

We represent Running Aces Casino, Hotel & Racetrack ("Running Aces"), and write to provide a legal opinion in support of Running Aces' Request to Modify Floor Plan, Item 7 in the agenda for Monday's Minnesota Racing Commission ("MRC") meeting, in consideration for the letter you received dated July 13, 2023 from Mr. Keith B. Anderson on behalf of the Shakopee Mdewakanton Sioux Community ("SMSC") regarding SMSC's alleged concerns concerning that Request, which also asked for MRC to revoke its existing approval of the Dealer Assist Gaming technology and reject Running Aces' Request to Modify Floor Plan.

The MRC has already conclusively determined the following legal issues: (1) that the MRC in 2017 had the authority to grant permission for Running Aces to use the innovative card-playing Dealer Assist Gaming technology under Minn. Stat. § 240.30; (2) that the Dealer Assist Gaming technology approved for play at Running Aces since 2017 is legal under Minnesota statutes and case law; and (3) that MRC had the authority in 2017 to approve Running Aces' request to increase the number of players at its Dealer Assist Gaming tables from 7 to 11, and again in 2018 to approve its request to increase the number of players from 11 to 22 and the number of Dealer Assist Gaming tables from 3 to 4. Any challenge to them is untimely and inappropriate – the MRC's meeting minutes, agenda, and audio recording, from all relevant meetings regarding the Dealer Assist Gaming technology have been publicly available for years, and Dealer Assist gaming has been in operation at Running Aces throughout that time, without legal challenge.

The sole new legal question before the MRC is whether the MRC has legal authority to enact a Floor Plan layout change to provide for an increase from 22 players to up to 33 players spread across the up to four MRC-authorized Dealer Assist Gaming tables - three of which are currently in play - and featuring Three Card Poker, Multi-Hand Blackjack (also called "community card blackjack"), and Aces Live 5 Card Draw Poker, each manned by a live human dealer. The

answer is that the MRC is well within its legal authority in authorizing the Dealer Assist Gaming technology in 2017, affirming that authority several times since, and now, in approving Running Aces' current Request to Modify Floor Plan and thus enabling 11 player stations per each of the Dealer Assist Gaming tables currently on the floor at Running Aces.

Dealer Assist Gaming Constitutes Card Playing, Which Running Aces is Authorized to Offer Under Minn. Stat. § 240.30.

SMSC alleges in its July 13 letter that Dealer Assist Gaming technology does not constitute "card playing". Minnesota statutes define "card playing" as an activity where individuals wager utilizing a 52-unit system comprised of a series of numbers, numbered two through ten, and the letters J, Q, K, and A, combined with four symbols commonly known as hearts, diamonds, spades, and clubs, wherein each individual unit constitutes the display of one of the 52 possible combinations. Minn. Stat. § 240.01, subd. 5; *North Metro Harness Initiative*, 2013 WL 4711204, at *4 (Minn. Ct. App. Sept. 3, 2013)("North Metro Harness Initiative").

Dealer Assist Gaming Three Card Poker, Multi-Hand Blackjack, and Aces Live 5 Card Draw Poker "involve[] wagering and uses a 52–unit system with a series of numbers, two through ten, and the letters J, Q, K, and A combined with four symbols known as hearts, diamonds, spades, and clubs." *See North Metro Harness Initiative*, 2013 WL 4711204, at *4. The Minnesota Court of Appeals has held that the "definition of card playing does not require physical cards . . . [and] does not require a human dealer," and thus found that an electronic blackjack table constituted card-playing under Minn. Stat. §§ 240.01 and 240.30 in *North Metro Harness Initiative*. *See id.* (citations omitted) ("Table Master users are, in essence, playing cards.") Here, thus, even more so, where physical cards are dealt, and a human dealer is utilized, and thus traditional aspects of "card-playing" are maintained, the Dealer Assist Gaming blackjack and power variations constitute "card-playing" under the Minnesota Statutes.

The Legislature has repeatedly had the opportunity to amend Minnesota Statute Chapter 240 to address Dealer Assist Gaming since that technology was first approved by the MRC for use at Running Aces in 2017, and in each year since, as the number of player stations and Dealer Assist Gaming tables increased at Running Aces, if the Legislature was concerned about the legality of the use of the technology, or the legality of the number of player stations per table, or number of potential bets per table, with the Dealer Assist Gaming technology. The fact that the Legislature has not made or even attempted any such amendments shows its satisfaction with and acceptance of the MRC's authorizations and Running Aces' use of that legally compliant technology for card-playing under Minnesota law.

Dealer Assist Gaming Technology is Not Video Gaming, and its MRC-Approved Technology is in all Relevant Requests Similar to Other Technology Previously Approved by MRC.

In its July 13 letter, SMSC alleges that the Dealer Assist Gaming technology constitutes "video table games" and states that such technology is unmentioned in Minnesota statutes and thus unauthorized under Minnesota law.

The Dealer Assist Gaming technology is not a "video game" but rather a technology for the playing of blackjack and poker variations that has no influence on the outcome of the card games, does not utilize a random number generator, and uses a live human dealer with physical cards. Dealer Assist Gaming cannot be considered a "video game" under a common sense understanding of that term, nor under the limited Minnesota legal authority to address video games in the card-playing context. Furthermore, under Minnesota law, Dealer Assist Gaming technology does not "simulate" or "imitate" the playing of blackjack and poker; Dealer Assist Gaming actually constitutes variations of blackjack and poker play.

In fact, in his December 6, 2018 letter to Governor Mark Dayton attached herein as Exhibit A, former Minnesota Racing Commission Executive Director Tom DiPasquale made that exact statement, and affirmed the legality of the Dealer Assist Gaming technology *in contrast to* video blackjack. He stated that while MRC approved the community card blackjack game which utilizes a table with the "dealer assist" technology, "[T]he Minnesota Racing Commission ("MRC") has never approved video blackjack at either of our licensed racetracks."

Dealer Assist Gaming provides a technologically advanced visual aid for card play. It involves substantial human interaction with a live human card dealer who deals actual physical cards, and the outcome of the card game is determined by the physical cards dealt. It also offers technological enhancements such as improved accounting, tracking, and error prevention. Dealer Assist Gaming has since its inception at Running Aces been implemented using a physical table upon which playing cards are dealt by a live human dealer, betting limits are posted, and all individual card players are playing the same game. While the seating at a Dealer Assist Gaming table incorporates a computer technology into a screen in front of the individual player's station, players are still seated within the line of sight of the dealer, so they are able to interact with that dealer as desired.

Rather than constituting "video gaming" technology, the Dealer Assist Gaming technology approved by the MRC in 2017 is and has always been in all relevant respects similar to other technology previously approved by the MRC for use at Running Aces, and many of its features were described without criticism by the Minnesota Court of Appeals in *In re Request of North Metro Harness Initiative, LLC*, No. A13-0033, 2013 WL 4711204, at *1. For example:

- With Dealer Assist Gaming, like the other card games played at Running Aces, physical cards are shuffled, and then they are dealt by a live human dealer. The physical cards dealt are then displayed on each player's monitor.
- With Dealer Assist Gaming, the video camera has a view of all the physical cards as they are dealt by the live human dealer, and each player gets a perfect view of their physical cards on their individual computer monitor screen. The Commission previously approved Running Aces' use of digital video cameras for live tournament streaming, and the Minnesota Court of Appeals noted without criticism that with the iTable games also approved by the MRC, as physical cards are dealt, "an optical camera scans the cards and displays their value on the touchscreens." *Id.* at *1 n.1.
- Dealer Assist Gaming provides a visual display of the current cards and action on the table,

and enables players to make their wagers, side bets, and plays electronically. This is no different from the iTable electronic touchscreens also approved by the MRC. Dealer Assist Gaming offers players more privacy in their betting experience, something that Running Aces has learned is desirable for novices and younger players intimidated by the shoulder-touching proximity of players at currently available card games. The Minnesota Court of Appeals has described without criticism the use of the iTable electronic touchscreens to enable players to make wagers, side bets and plays, and to electronically determine the winners of each hand of cards. *See id.* at *1.

- The Minnesota Court of Appeals has also described the awarding of electronic chips to winners playing at the iTables without criticism. *See id.* at *1. Dealer Assist Gaming similarly awards electronic chips to the winner that can be cashed out using one of the Commission-approved voucher printers. Gaming outcomes, confirmed by the live human dealer, are displayed on each player's electronic touchscreen.

Thus, the MRC was well within its authority in authorizing the Dealer Assist Gaming technology at Running Aces, and no prior approvals of that technology should be revoked.

Minnesota Law Does Not Define "Table," nor Restrict the Number of Seats at a Table, nor the Number of Bets that Can be Placed Per Card Game Per Table, so MRC Can Authorize Additional Player Stations for Dealer Assist Gaming tables Without Violating the 80-Table Limit.

The MRC has already determined that the Dealer Assist Gaming tables at Running Aces constitute "tables" just as any other blackjack or poker table at Running Aces would constitute a "table" as that term is referenced in Minn. Stat. § 240.30, subd. 8, relating to limitations upon card playing. While the seating of Dealer Assist Gaming incorporates the computer technology into a screen in front of the individual player's chair, and thus offers the player more privacy and less risk of intimidation, players are still seated at player stations close to and within sight of the dealer table or nearby so they are able to interact with that dealer as desired.

There is no Minnesota legal requirement that sets specific dealer to player ratios that could be applicable to each Dealer Assist Gaming table at Running Aces, so MRC can authorize the requested additional player stations for each of those existing Dealer Assist Gaming tables at Running Aces without violating Minn. Stat. § 240.30, subd. 8's eighty table limit. Furthermore, there is no restriction under Minnesota law as to the number of bets that can be placed per card game per table, so SMSC's challenge to the Floor Plan Layout request based on the number of potential bets per player at each Dealer Assist Gaming table is irrelevant, at best.

Thus, the MRC was well within its authority in authorizing Running Aces' current Floor Plan with up to four Dealer Assist Gaming tables and a total of 22 player stations at those tables, and it would be well within its authority and in compliance with Minn. Stat. §240.30, subd. 8 to grant Running Aces' current Floor Plan Request to allow an additional 11 player stations to be added to the up to four MRC-authorized Dealer Assist Gaming tables.

The Dealer Assist Gaming Technology is Not a Video Game of Chance Nor a Gambling Device Under Minnesota Law.

As former Chairman DiPasquale recognized in his December 2018 letter to Governor Dayton, there is a "clear distinction" drawn by the Minnesota Court of Appeals between "this type of card table," namely, the Dealer Assist Gaming card-playing technology, and an "illegal gambling device of video game of chance." (*See* Exhibit A at 1.) The MRC recognized when it approved Dealer Assist Gaming in 2017 for use at Running Aces that the technology and its games did not constitute a video game of chance nor a gambling device under Minnesota law, and that determination was and remains the correct legal conclusion.

SMSC now alleges that Dealer Assist Gaming technology is a prohibited "video game of chance" under Minn. Stat. § 609.75, subdivision 8 because "it awards game credits or replays and contains a meter or device that records unplayed credits or replays," but this is a mischaracterization of Minnesota law. For a technology to be prohibited it must also be a "video game" with those characteristics.

Minnesota statutes do not define "video game." In the sole Minnesota case to discuss video games in this context, the Minnesota Court of Appeals described devices that "simulated" casino card games and were automated, without physical cards or a live human dealer. See *In Matter of Premises Permits of Knights of Columbus Council 1621*, License No. 02187, 1997 WL 471242, at *2 (Minn. Ct. App. Aug. 19, 1997). All four of those elements – simulation, automation, lack of physical cards, and lack of a live human dealer, are **not** present with Dealer Assist Gaming.

Furthermore, the plain meaning and common sense understanding of the idea of a "video game" requires the conclusion that Dealer Assist Gaming does not constitute a "video game" under Minn. Stat. § 609.75, subd. 8. Dealer Assist Gaming requires a live human dealer to deal actual physical cards to players. Those physical card images are projected via optical camera on the computer screens of the players. Dealer Assist Gaming is not automated, nor a simulation of play; it is actual card play with a technological visual aid. The term "video game" under the statute should not incorporate any and every new technology that adds a video screen component to card game play. Since Dealer Assist Gaming does not constitute a video game, the technology is not a "video game of chance" and is not a gambling device under Minn. Stat. § 609.75, subd. 8.

SMSC also now alleges that Dealer Assist Gaming technology is a prohibited "gambling device" under Minn. Stat. § 609.75, subd. 4 because its "outcome is determined principally by chance." Technology that provides a person the opportunity to obtain something of value from a game determined "principally by chance" **is not in itself prohibited** by Minnesota law, contrary to SMSC's assertion. If SMSC's characterization of Minnesota law was correct, then any technology enabling or assisting a player to play blackjack or poker would be prohibited.

Minn. Stat. § 609.75, subd. 4 instead defines "gambling device" as: "[A] contrivance the purpose of which is that for a consideration a player is afforded an opportunity to obtain something of value, other than free plays, **automatically** from the machine or otherwise, the award of which is determined principally by chance, whether or not the contrivance is actually played." Since the Dealer Assist Gaming technology does not "automatically" afford the value to a player, it cannot

constitute a "gambling device" under this part of the subdivision.

The term "automatically" in Minn. Stat. § 609.75, subd. 4, is not defined. In *North Metro Harness Initiative*, the Minnesota Court of Appeals describes the Table Master device as a "fully automated" blackjack table four times, noting that such complete automation is the result of Table Master **not involving a human dealer or physical cards**. *See North Metro Harness Initiative,* 2013 WL 4711204, at *1, 4, 6. That Court contrasted the automation of Table Master to the iTable technology, calling the iTable an "accessory to a blackjack game involving a human dealer" who deals physical cards to players. *See id.* at *6. Dealer Assist Gaming technology has no influence on the outcome of the card game and does not utilize a random number generator. The technology serves as a visual display of the game utilizing physical cards and a live human dealer. Players make decisions throughout the Dealer Assist Gaming card play just like they would in any variation of blackjack or poker card play, selecting, for example, whether to hit, stay, draw, fold, or bet and for how much. Dealer Assist Gaming, like the iTable, is an accessory to the card game and not an automated gambling device. The technology is more similar to the terms "associate equipment" and "gambling equipment" as those terms are defined in Minnesota statutes; it constitutes "computerized systems" of monitoring games where the use of the electronic touchscreen "has no effect on the outcome" of the card game. *See* Minn. Stat. § 609.75, subd. 4(a). Closer to legal "gambling equipment," Dealer Assist Gaming is not a gambling device under Minn. Stat. § 609.75, subd. 4.

Since Dealer Assist Gaming does not constitute a video game or gambling device as those terms are defined, characterized, and understood under Minnesota law, Dealer Assist Gaming does not violate Minnesota criminal statutes or any other statutes and should not be prohibited, and MRC's authorization of the technology should not be revoked.

A Consultation Request is Unnecessary, But if Granted, Should Include Running Aces.

SMSC requested that MRC consult with them prior to granting Running Aces' Floor Plan Request because they characterize Running Aces' request as an "expansion" and a "new form of gaming." Minnesota Statute § 10.65 provides that state agencies must consult with Minnesota Tribal Governments on "matters that have Tribal implications" including "actions that have substantial direct effects" on Tribal governments. However neither that law nor the Executive Order that preceded it were designed to nor should be construed to constrain and restrict the MRC from approving de minimis changes to the floor plan layout or plan of operations at the racetracks. To do otherwise sets a problematic precedent that would undoubtedly lead to unnecessary delays in the MRC's day-to-day operations as well as the racetrack's efforts to adapt to the myriad of challenges facing the racing industry.

Furthermore, as noted above, the technology at issue was approved by the MRC in September, 2017, almost six years ago, and has been in active use at Running Aces since October, 2017. In the years since then, the technology has not expanded or changed in any substantial fashion, although new versions of blackjack and poker using the Dealer Assist Gaming technology have been introduced at Running Aces over the years – with approvals by MRC at each juncture. There is nothing new in Running Aces' Floor Plan Request except for the addition of "seats" or

player stations tied to each of the up to four previously MRC-authorized and legally compliant Dealer Assist Gaming tables, and a rearrangement of the floor plan to accommodate those additional player stations. Minn. Stat. § 10.65 is not a retroactive law, and thus must not be applied to require consultation between the MRC and Tribal Governments revisiting and re-analyzing MRC decisions and authorizations – such as the legality of Dealer Assist Gaming and the understanding that each Dealer Assist Gaming table is a "table" with no legislative seat restriction under Minnesota Statute 240 - from years prior to the law's 2021 effective date. Thus, no meeting with SMSC is necessary nor warranted for the MRC to grant Running Aces' current Floor Plan Request.

That said, if you do hold a meeting with SMSC to address these issues, it would be unfair and inappropriate for that meeting to take place without Running Aces and its legal counsel at Maslon LLP being present to participate.

Conclusion

The MRC complied with Minnesota Statutes and case law in September, 2017 when it granted permission to Running Aces to bring the Dealer Assist Gaming technology to Running Aces, and in its continued authorizations since. The Legislature has repeatedly demonstrated its satisfaction with and acceptance of Running Aces' use of that technology by not amending Minnesota Statutes Chapter 240 to disallow or modify the use of that technology in the years since. Dealer Assist Gaming technology does not now and has never violated Minnesota law. The Floor Plan Request proposed by Running Aces complies with Minnesota law and granting it is fully within the MRC's authority. Authorizing Running Aces to continue to utilize that technology benefits the horseracing industry by improving purses, as can be seen in Exhibit B to this letter which includes recent data for the Dealer Assist Gaming at Running Aces, and advances the legislature's priorities of ensuring the security of card playing activities and improving internal control systems of card playing activities. Furthermore, no consultation is necessary with SMSC to grant approval of Running Aces' current Floor Plan Request.

Please feel free to contact me at the above number, or Taro Ito, CEO of Running Aces at (310) 346-8858 with any questions. Thank you.

Sincerely,

/s/ Leora M. Maccabee

Leora Miriam Maccabee, Esq.
Carly Johnson, Esq.
Enclosures

EXHIBIT A

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MINNESOTA RACING COMMISSION

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December 6, 2018

Governor Mark Dayton
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

By E-Mail and U.S. Mail

Dear Governor Dayton:

I look forward to meeting with your staff next week to discuss concerns raised by the Shakopee Mdewakanton Sioux Community regarding video blackjack. In advance of our meeting, I would like to provide you with some key background information. More important, I wish to assure you that the Minnesota Racing Commission ("MRC") has never approved video blackjack at either of our licensed racetracks.

Running Aces did request approval of a form of video blackjack in 2012. After consulting with the Department of Public Safety, Alcohol and Gambling Enforcement Division ("AGED"), we denied this request because video blackjack machines constitute unlawful gambling devices and video games of chance which are not permitted at Minnesota racetracks. Running Aces appealed the denial to the Minnesota Court of Appeals which affirmed our decision. A copy of that opinion is attached to this letter for your reference. Neither racetrack has requested approval of video blackjack since that time.

Minnesota law does allow racetracks to conduct card playing for the purpose of supporting the horse racing and breeding industries. Racetracks may have no more than 80 card tables with betting limits of up to $300. Since the law was passed in 1999, the MRC has approved blackjack, poker, baccarat and other card games at both racetracks within these prescribed limits.

In 2017, Running Aces requested approval of a new card game ("community card blackjack") which utilizes a table with "dealer assist" technology manufactured by a company called Interblock. It is a felt-covered dealer table with regular playing cards physically dealt by a dealer. The game is played slightly differently from traditional blackjack, with the main difference being that players sit at individual stations where they can view community cards and make their wagers on an electronic touch screen. Wagers and payouts are calculated and recorded electronically, thus eliminating cheating and dealer error while affording enhanced security and record-keeping. These features are consistent with the MRC's statutory duty to protect wagering integrity and to ensure the card rooms operate in the public interest to support the racing and breeding industry.

The MRC discussed Running Aces' request at several public meetings in 2017. No one raised opposition. We also reviewed, among other things, the applicable statutes, the Court of Appeals decision, and a detailed legal analysis submitted by the Maslon law firm on behalf of Running Aces, a brief summary of which is attached. As you can see, the Minnesota Court of Appeals opinion draws a clear distinction between this type of card table and an illegal gambling device or video game of chance. Following its review, the MRC approved the game on September 19, 2017 with certain conditions to ensure ongoing compliance. We will provide you with the complete record at our meeting next week. Running Aces is currently using one Interblock table which is included in its 80-table limit and complies with all other card playing requirements, including betting limits.

I thank you for the opportunity to meet with your staff on Monday to discuss this matter.

Sincerely,

Tom DiPasquale
Executive Director

cc: Minnesota Department of Public Safety, Alcohol and Gambling Enforcement Division
Governor-elect Timothy Walz
Speaker-designate Melissa Hortman
Senator Paul Gazelka
Charles R. Vig, Tribal Chairman
Acting Chairman James Lane
Carla Cincotta, AGED

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).

STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0033

In the Matter of the Request of North Metro Harness Initiative, LLC,
to Amend its Plan of Operation to Include the Use of the
TMS 300 Royal Match 21 Blackjack and Royal Match Progressive.

Filed September 3, 2013
Affirmed
Bjorkman, Judge

Minnesota Racing Commission

Thomas A. Keller, III, John P. Boyle, Timothy R. Franzen, Moss & Barnett, Minneapolis, Minnesota (for relator North Metro Harness Initiative, LLC)

Lori Swanson, Attorney General, Joan M. Eichhorst, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Racing Commission)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Relator challenges respondent's denial of its request to amend its plan of operation, arguing that (1) respondent erred by relying on an opinion from another agency, (2) substantial evidence does not support the decision, and (3) the decision is arbitrary and capricious. We affirm.

FACTS

Respondent Minnesota Racing Commission (MRC) issued a license authorizing relator North Metro Harness Initiative LLC (North Metro) to conduct horseracing and card-club operations at Running Aces Harness Park. North Metro's plan of operation allows it to offer card playing, including manually dealt blackjack. On October 2, 2012, North Metro asked MRC for authorization to amend its plan of operation to include the use of TMS300 Royal Match 21 Blackjack and Royal Match Progressive (Table Master), a fully automated blackjack table.

MRC asked the Minnesota Department of Public Safety, Alcohol and Gambling Enforcement Division (Gambling Enforcement) whether North Metro's proposed use of Table Master would comply with Minnesota's gambling laws. After reviewing North Metro's request, which included a description of Table Master and its technical specifications, Gambling Enforcement determined that Table Master is a "gambling device" and "video game of chance" as defined by Minn. Stat. § 609.75, subds. 4, 8 (2012). Because North Metro is not among the entities to which a gambling device may be distributed under Minn. Stat. § 299L.07, subd. 2a(b) (2012), Gambling Enforcement opined that approval of North Metro's request would violate the law.

MRC conducted three public hearings during which North Metro provided testimony to support its request. Tracie Wilson, Running Aces Harness Park's CFO, testified that the card club currently offers two forms of blackjack. In the first, a dealer shuffles physical cards using an electronic shuffler with a random-number algorithm and manually deals the cards to players. The second form uses iTables. A dealer still uses an

electronic shuffler and deals physical cards to players. But iTables have electronic touchscreens for each player that display the value of players' cards[1] and permit players to make wagers, side bets, and plays (e.g., hit or stand). The iTable electronically determines the winners of the hand and distributes electronic credits accordingly.

Wilson explained that Table Master is a fully automated blackjack table. Table Master does not involve a human dealer or physical cards; rather, it deals electronic units (based on a 52-card deck) to the players, using an electronic shuffler with a random-number algorithm. Players insert money directly into Table Master and receive electronic credits, which are displayed on players' screens. Players use their screens to make wagers, side bets, and plays.

Table Master is manufactured by Shufflemaster Entertainment. Brandon Knowles, Shufflemaster's general manager, testified that Table Master is not a simulation of blackjack but the actual game of blackjack played electronically. Knowles stated that Table Master has been tested and recognized as a reliable blackjack table. But he acknowledged that most jurisdictions consider Table Master a slot machine because it uses a random-number generator to determine the game's outcome. Knowles testified that he did not know whether Minnesota law permits Shufflemaster to sell Table Master to North Metro.

North Metro argued that MRC should not rely on Gambling Enforcement's opinion because Minn. Stat. § 240.30, subd. 6 (2012), grants MRC exclusive authority to

[1] As the cards are dealt, an optical camera scans the cards and displays their value on the touchscreens.

determine North Metro's request. North Metro asserted, contrary to Gambling Enforcement's determination, that Table Master is not a gambling device or video game of chance. North Metro further submitted a proposed order with findings of fact and conclusions of law, which incorporated these arguments. MRC staff agreed with Gambling Enforcement's determination and recommended that MRC deny North Metro's request.

During its third hearing on the subject, MRC voted to deny North Metro's request. North Metro asked MRC to state its reasons on the record, but MRC declined because it had moved to another item on its agenda. MRC subsequently issued a written order specifically stating that it declined to adopt North Metro's proposed order and declined to ignore Gambling Enforcement's opinion. This certiorari appeal follows.

DECISION

By investigating North Metro's request to amend its plan of operation, weighing evidentiary facts, applying the law to the facts, and rendering a binding decision, MRC acted in a quasi-judicial manner. *See Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (stating the three indicia of quasi-judicial action are "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim"). An agency's quasi-judicial decision will be upheld unless it is "unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Carter v. Olmsted Cnty. Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998);

see also Hinneberg v. Big Stone Cnty. Hous. & Redevelopment Auth., 706 N.W.2d 220, 225 (Minn. 2005). We do not retry facts or make credibility determinations and will uphold an agency's decision if it "furnished any legal and substantial basis for the action taken." *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (quotation omitted); *see also Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012).

I. MRC did not err by relying on Gambling Enforcement's opinion.

Whether an agency acted within its statutory authority is a question of law, which we review de novo. *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). MRC has the exclusive power to authorize racetracks to operate card clubs in accordance with applicable laws and rules. Minn. Stat. §§ 240.07, subd. 3(b), .30, subd. 1 (2012). Racetracks must obtain approval from MRC of a card club's plan of operation and any subsequent amendments to the plan. Minn. Stat. § 240.30, subds. 1, 6(a), 7(a) (2012). In fulfilling its duties, MRC may request assistance from another state department or agency. Minn. Stat. § 240.04, subd. 7 (2012).

North Metro argues that because MRC has exclusive authority to approve amendments to a card club's plan of operation, the commission erred by relying on Gambling Enforcement's opinion. We disagree. The legislature expressly permitted MRC to seek assistance from other state departments in order to fulfill its duties. *See id.* Because Gambling Enforcement's duties involve licensing gambling-device distributors, MRC reasonably requested Gambling Enforcement's assistance in determining whether North Metro's use of Table Master complies with Minnesota's gambling laws. *See* Minn. Stat. § 299L.02, subd. 2(1) (2012) (authorizing Gambling Enforcement to conduct

background checks of applicants for licenses to distribute gambling equipment). And while Gambling Enforcement's opinion is not entitled to deference because it was not the result of formal rulemaking or adjudication, MRC may still rely on the opinion to the extent that it is persuasive. *See Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 21 (Minn. 2002) (stating that informal agency opinions may be used to persuade).

North Metro further contends that MRC wholly deferred to Gambling Enforcement's opinion and did not use its own expertise and independent judgment. We are not persuaded. The supreme court has emphasized that agencies must employ their own expertise to reach independent decisions and not simply rubber stamp the findings of another body. *See City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984). We discern no rubber stamping in this case. Rather, in reaching its decision, MRC considered Gambling Enforcement's opinion, MRC staff recommendations, Wilson's and Knowles's testimony, and North Metro's arguments and proposed order. MRC's written statement that it declined to ignore Gambling Enforcement's opinion reflects MRC's implicit determination that the opinion is persuasive in light of the entire record. Accordingly, we conclude that MRC did not err by relying on Gambling Enforcement's opinion.

II. Substantial evidence supports MRC's decision.

When reviewing an agency's decision for substantial evidence, we evaluate the evidence in view of the record as a whole. *Cable Commc'ns Bd. v. Nor-west Cable Commc'ns P'ship*, 356 N.W.2d 658, 668 (Minn. 1984). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion;

(2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 465 (Minn. 2002). A party challenging an agency decision has the burden to show that substantial evidence does not support the decision. *Carter*, 574 N.W.2d at 730.

North Metro argues that substantial evidence does not support MRC's decision because (1) there is no evidence that Table Master is a gambling device and (2) use of Table Master constitutes card playing that is permitted under Minn. Stat. § 240.30 (2012). We address each of North Metro's arguments in turn.

A. Substantial evidence demonstrates that Table Master is a gambling device.

A "gambling device" is defined as a contrivance that, in exchange for consideration, provides a person an opportunity to obtain something of value, other than free plays, whose outcome is determined principally by chance. Minn. Stat. § 609.75, subd. 4. A contrivance is "[s]omething contrived, as a mechanical device." *The American Heritage Dictionary* 400 (5th ed. 2011). A gambling device also includes a video game of chance. Minn. Stat. § 609.75, subd. 4.

North Metro contends there is no evidence that Table Master is a gambling device. We disagree. Both Wilson and Knowles testified that Table Master is a fully automated blackjack table that allows players to wager money to win electronic credits, which can be exchanged for money. No human dealer is involved, and patrons play the game by depositing money into the machine. This testimony demonstrates that Table Master is a

mechanical device that provides players an opportunity to win something of value in exchange for consideration. And after reviewing Table Master's description and technical specifications, which include a mathematical analysis of the house's edge and the probability of winning side bets, Gambling Enforcement concluded that Table Master's outcome "is determined principally by chance." Gambling Enforcement further cited *United States v. Dicristina*, 886 F. Supp. 2d 164, 229-30 (E.D.N.Y. 2012), *rev'd*, ___ F.3d ___, 2013 WL 3984970 (2nd Cir. Aug. 6, 2013), which notes blackjack's outcome is predominantly based on chance.[2]

Moreover, North Metro has the burden to show that MRC should approve its proposed amended plan of operation. *See N. Mem'l Med. Ctr. v. Minn. Dep't of Health*, 423 N.W.2d 737, 739 (Minn. App. 1988) ("The burden of proof to show that a license should be granted is on the applicant."). North Metro presented no evidence to rebut Gambling Enforcement's opinion, MRC staff testimony, and other record evidence that Table Master is a gambling device. Based on our careful review of the record, we conclude that substantial evidence supports the determination that Table Master is a gambling device.[3]

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[2] Although *Dicristina* addressed whether poker was a game of chance, 886 F. Supp. 2d at 231, courts in other states have expressly held that blackjack is predominantly a game of chance. *See, e.g.*, *Games Mgmt., Inc. v. Owens*, 662 P.2d 260, 264 (Kan. 1983); *Score Family Fun Ctr., Inc. v. Cnty. of San Diego*, 225 Cal. App. 3d 1217, 1222-23 (Ct. App. 1990); *State v. Eisen*, 192 S.E.2d 613, 616 (N.C. Ct. App. 1972).

[3] Because we conclude that Table Master is a gambling device, we do not analyze whether substantial evidence demonstrates that Table Master is also a video game of chance.

B. Section 240.30 does not authorize MRC to use Table Master.

North Metro asserts that even if Table Master is a gambling device, its use constitutes card playing, which North Metro is authorized to offer under Minn. Stat. § 240.30. Card playing is an activity where players "wager utilizing a 52-unit system comprised of a series of numbers, numbered two through ten, and the letters J, Q, K, and A, combined with four symbols commonly known as hearts, diamonds, spades, and clubs, wherein each individual unit constitutes the display of one of the 52 possible combinations." Minn. Stat. § 240.01, subd. 25 (2012). Table Master is electronic blackjack, which involves wagering and uses a 52-unit system with a series of numbers, two through ten, and the letters J, Q, K, and A combined with four symbols known as hearts, diamonds, spades, and clubs. The definition of card playing does not require physical cards but rather uses the term "units." *See id.* And card playing does not require a human dealer. *See id.* Table Master users are, in essence, playing cards.

But the fact that use of Table Master constitutes card playing does not end our analysis. Table Master is a gambling device. As such, distributors may not sell or provide Table Master to persons or entities other than (1) a federally recognized Indian tribe, (2) a person using the gambling device in his dwelling, (3) a licensed distributor, or (4) a person in another state who is authorized to possess a gambling device. *See* Minn. Stat. § 299L.07, subd. 2a(b). North Metro does not claim to be one of these entities. Therefore, while use of Table Master is card playing, it is not a form of card playing North Metro may offer because no distributer may provide Table Master to North Metro. And we discern no conflict between Minn. Stat. § 299L.07 (2012) and Minn. Stat.

§ 240.30; section 299L.07 does not define card playing or regulate card clubs but rather limits to whom gambling devices may be provided.[4] The evidence that Table Master is a gambling device and the law prohibiting distributors from providing gambling devices to North Metro substantially support MRC's denial of North Metro's request.

III. MRC's decision is not arbitrary and capricious.

An agency's decision is arbitrary and capricious when the agency

> (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). An agency's decision may also be arbitrary and capricious when it lacks articulated reasons. *Mammenga v. State, Dep't of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989); *Carter*, 574 N.W.2d at 729 (stating that, to facilitate review, an agency must state the facts and its conclusions with clarity and completeness). But a decision is not arbitrary and capricious when there is a rational connection between the

[4] North Metro argues that Minn. Stat. § 240.30 conflicts with Minn. Stat. § 609.755 (2012), which makes it a misdemeanor to possess a gambling device except when authorized by statute. We are not persuaded. Even if there is an irreconcilable conflict between the statutes, section 609.755 prevails because it specifically prohibits possession of gambling devices whereas section 240.30 generally allows card playing at card clubs. *See Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 649 (Minn. 2012) (stating that, when statutes conflict, a specific provision of one statute shall be construed as an exception to a general provision of another statute). Moreover, in denying the request, MRC only relied on section 299L.07, subd. 2a(b), which does not conflict with section 240.30.

facts found and the determination made. *In re Review of 2005 Annual Automatic Adjustment of Charges for All Electric & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009).

North Metro first argues that MRC's decision is arbitrary and capricious because MRC did not articulate the reasons behind its decision. We disagree. MRC's order expressly notes Knowles's testimony that Table Master is considered a slot machine in most jurisdictions and that he did not know whether Shufflemaster can legally sell Table Master to North Metro. The order references Gambling Enforcement's opinion that Table Master is a gambling device and states that MRC staff agrees with that determination. These statements demonstrate that MRC considered how Table Master functions and whether it constitutes a gambling device.

We reject North Metro's assertion that MRC's order is deficient for the reasons stated in *White Bear Rod & Gun Club v. City of Hugo*, 388 N.W.2d 739 (Minn. 1986). In that case involving the denial of a special-use permit to operate a gun club, the city council only listed its sources of information without describing how it evaluated or used the information. *White Bear Rod & Gun Club*, 388 N.W.2d at 742. The supreme court reversed and remanded, directing the city council to state the reasons for its decision in more than a conclusory fashion. *Id.* This case is different. Although MRC's findings could have been more detailed, MRC did not merely cite its sources of information. Rather, MRC's order discusses Gambling Enforcement's factual determinations and opinion, notes Knowles's testimony, and endorses MRC staff recommendations. MRC considered and declined to adopt North Metro's proposed order, essentially finding that North Metro did not show that its proposed use of Table Master would comply with

Minnesota law. We conclude MRC's order adequately expresses MRC's reasons for denying North Metro's request.

North Metro next argues that MRC's decision is arbitrary and capricious because it failed to consider that Minn. Stat. § 240.30 gives it the exclusive authority to approve or reject North Metro's proposed amendment. We disagree. North Metro repeatedly made this argument to the MRC and incorporated it into its proposed order. The MRC order notes that the MRC is authorized to seek assistance from other agencies and expressly declined to ignore Gambling Enforcement's opinion.

North Metro finally asserts that MRC arbitrarily failed to follow its own precedent because it approved use of the iTable but not Table Master. This argument is unavailing. Even though the game of blackjack remains largely the same whether played on Table Master or an iTable, Table Master falls within the statutory definition of a gambling device while the iTable does not. A gambling device is a "contrivance" that affords a player an opportunity to gain something of value in exchange for consideration. Minn. Stat. § 609.75, subd. 4. Table Master is a contrivance because it is a fully automated machine. Conversely, the iTable involves a human dealer who deals physical cards to the players. The iTable only has electronic screens that display the value of players' cards and credits and allow them to make plays. Accordingly, the iTable is an accessory to a blackjack game involving a human dealer. There is nothing inconsistent about MRC authorizing North Metro's use of the iTable but not Table Master.

In sum, we conclude that MRC did not err by relying on Gambling Enforcement's opinion, substantial evidence supports MRC's decision, and the decision is not arbitrary and capricious.

Affirmed.

Minnesota Racing Commission

Finance Committee Hearing

September 13, 2017

Running Aces' Request for Approval of Interblock Dealer Assist Gaming

Running Aces Harness Park ("Running Aces") is seeking the Minnesota Racing Commission's ("MRC") approval for additions to the Plan of Operations including its use of the technology for card playing of Dealer Assist Gaming ("Dealer Assist") provided by Interblock Luxury Gaming Products.

Key Components and Benefits of Dealer Assist

- Dealer Assist, like the iTable system currently used at Running Aces, will involve substantial human interaction with a **human card dealer** who deals **actual physical cards** for the players.
- Dealer Assist will improve accounting, tracking, and error prevention for card playing.
- Dealer Assist will bring in additional card club revenue, which will be distributed pursuant to Minn. Stat. §240.135, increasing purse distributions and contributions to the Minnesota Breeders' Fund.

MRC Has Legal Authority to Approve Running Aces' Use of Dealer Assist

- Dealer Assist is card playing, which Running Aces can offer under Minn. Stat. § 240.30.
- Dealer Assist does not constitute a prohibited "gambling device" under Minn. Stat. § 609.75.
- Dealer Assist more aptly falls within Minnesota statutory definitions of "gambling equipment" or the "associated equipment" of gambling, and the Minnesota Court of Appeals' *North Metro Harness Initiative* case supports that conclusion. *See In re Request of North Metro Harness Initiative,* No. A13-0033, 2013 WL 4711204 (Minn. Ct. App. Sept. 3, 2013).
- Running Aces will not utilize any of Dealer Assist's potentially available features that would transform the technology into a gambling device or video game of chance under Minnesota law.
- Dealer Assist at Running Aces will conform with the limitations on card playing identified by the Minnesota legislature, including wager amounts.

*Dealer Assist will **NOT** adversely affect the public health, welfare, or safety any more than does the existing card playing available at Running Aces. In fact, the technological advancements including accounting, tracking, and error prevention offered by Dealer Assist are **MORE** likely to advance, rather than impinge upon, public safety and the public welfare.*

We are happy to answer any questions you may have about the technology or legality of the introduction of the Dealer Assist Gaming technology for card playing at Running Aces.

This document was prepared by Maslon LLP on behalf of Running Aces.

EXHIBIT B

Running Aces

Dealer Assist Games		7/1/22 - 6/30/23 Drop	7/1/21 - 6/30/22 Drop
Community Card 3 Card Poker		$417,378	
Aces Live		$670,709	$821,776
Community Card Blackjack		$3,139,084	$4,003,209
Total Drop		**$4,227,171**	**$4,824,985**
	%		
Standardbred Purse contribution	12.6%	$532,623	$607,948
MN Breeders Fund	1.4%	$59,180	$67,550
Total purse contribution	14.0%	**$591,804**	**$675,498**

EXHIBIT B

2020-2023 Minnesota Racing Commission Approvals - Running Aces		
Date Requested	**Date Approved**	**Requested Subject**
5/22/2023	6/2/2023	Interblock Player Station Lease Amendment
5/11/2023	5/30/2023	Interblock Multi-Hand Blackjack Side Bets
5/9/2023	5/11/2023	Additional casino chips
4/19/2023	5/2/2023	Fuze Technologies (charging stations)
5/30/2023	4/5/2023	PepsiCo Beverage Sales, LLC
3/16/2023	3/22/2023	Inspired Athletics LLC Concussion Protocol
3/8/2023	3/21/2023	Light & Wonder MD3 and Safe Shoe Shufflers
2/23/2023	3/16/2023	Global Payments Agreements
2/2/2023	2/17/2023	Floor Plan Amendment to Plan of Operations
1/19/2023	2/7/2023	Light & Wonder 4 Blazing 7's side bets
12/20/2022	2/17/2023	Dealer Assist Table and 11 3 Card Poker Terminals
12/16/2022	12/29/2022	Mid-States Poker Tour LLC
11/15/2022	11/30/2022	Dealer Assist Interblock Baccarat side bets
11/15/2022	11/30/2022	Modify design of $2 casino chip
10/4/2022	10/13/2022	SVT Broadcast Service Agreement
8/17/2022	8/26/2022	Mid-States Poker Tour LLC
3/9/2022	4/2/2022	Fortune Blackjack side bet
4/28/2022	5/18/2022	Queen Playing Card Inc. contract
5/16/2022	5/17/2022	Floor Plan Amendment to Plan of Operations
11/4/2022	11/4/2022	Floor Plan Amendment to Plan of Operations
6/21/2022	8/28/2022	Light & Wonder contract billing corrections and GM Atlas Upgrade
2/11/2022	2/15/2022	Mid-States Poker Tour LLC
3/11/2022	4/5/2022	Light & Wonder contract
3/9/2022	4/1/2022	Light & Wonder 3 Card Poker player terminal and dealer assist table
2/3/2022	2/3/2022	Light & Wonder MD3
12/27/2021	1/6/2022	Light & Wonder 8 Blazing 7's side bets
12/23/2021	1/3/2022	Global Tote US, LLC
12/14/2021	12/21/2021	NYRA Content Management Solutions
11/23/2021	12/13/2021	New Design and Purchase of casino chips
9/21/2021	9/24/2021	Floor Plan Amendment to Plan of Operations
9/9/2021	9/14/2021	Floor Plan Amendment to Plan of Operations

8/25/2021	8/30/2021	Avalon purchase of 1 Baccarat table
8/25/2021	8/30/2021	Light & Wonder Baccarat hardware and software
8/12/2021	8/13/2021	Floor Plan Amendment to Plan of Operations
8/4/2021	8/8/2021	Casino Back Up Color Changes
1/12/2021	1/19/2021	Light & wonder contract
12/3/2020	1/11/2021	Floor Plan Amendment to Plan of Operations
11/10/2020	11/14/2020	Data Financial Poker Card Contract
2020	10/30/2020	Floor Plan Amendment to Plan of Operations
2020	10/23/2020	IGT EZ Baccarat player stations (Note: Did not utilize this gaming system)
1/7/2020	2/20/2020	Poker game Pineapple added to Plan of Operations
1/7/2020	2/11/2020	Casino Game Security of Card Playing Activities added to Internal Controls

Total of 42 2020 - 2023

August 4, 2023

Governor Tim Walz
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Minnesota Racing Commission
15201 Zurich St #212,
Columbus, MN 55025
Members:
Chair Camille McArdle
Vice Chair Barbara Colombo
General Counsel E. Joseph Newton
Executive Director Kyle Gustafson
Commissioners, and Staff

Re: Letter of Support for Running Aces Casino, Hotel & Racetrack

Dear Governor Walz, Executive Director Kyle Gustafson, Chair Camille McArdle, Vice Chair Barbara Colombo, General Counsel E. Joseph Newton, Commissioners, and Staff,

As Mayor of the City of Columbus, I would like to provide my comments in response to the letter that I have been shown, and which you received, dated July 26, 2023 from the Mille Lacs Band of Ojibwe ("the Band") regarding the Band's alleged concerns as to Running Aces' Request to Modify Floor Plan to add 11 additional player spots for its 4 Commission-authorized "Dealer Assist Gaming" tables (3 of which are on the card floor).

I am submitting this letter in support of Running Aces' Request to Modify Floor Plan, and in opposition to certain of the allegations and mischaracterizations of Running Aces in that Band letter, in my capacity as Mayor and I will seek a similar letter from the City Council when it next meets on August 9, 2023.

Running Aces is an exemplary business in our community. It is the largest employer, currently providing more than 590 jobs! New jobs are added each year as the company creatively adds new elements to their business, including the new hotel on the property, which truly made Running Aces, and the City of Columbus, a popular regional entertainment destination. And not just that, but a clean, family-friendly, smoke-free destination.

In the July 26, 2023 letter, Running Aces is labeled a casino that just "provides dividends and value to shareholders" and is essentially characterized as being unsupportive of the community, of charitable efforts, and of social and philanthropic causes. This is disappointing as it paints Running Aces in a untruthful and misleading light.

First, Running Aces should not be criticized for the fact that it is a company, and in fact, as a relatively large company and employer in our local community, Running Aces contributes financially to the City not just by drawing in new people, and repeat visitors, to the area, but also through its almost $90,000 annual financial contribution to the City, plus approximately $825,000 annually in property taxes, and the 3% hotel occupancy tax to the City, which generates approximately $85,000 annually. That doesn't even factor in the indirect benefits the city gets from Running Aces' employees and customers spending money in the City, and from Running Aces' other investments in the community, like supporting local vendors.

Second, Running Aces has a far deeper effect on our community than its taxes. It invests significant dollars in our local charities, and sponsors them with events, including by highlighting their efforts and raising their visibility on racing nights. They're a good company and good corporate citizens with a proven record in Columbus.

Finally, in the years that I have been Mayor of this great City, I have gotten to know the leadership team at Running Aces very well. When I learned that Running Aces wanted to make a business decision to add more individual player spots to each of its Dealer Assist Gaming tables, and to rearrange those tables and player spots on its card floor as part of that process, I didn't hesitate to write this letter. Running Aces, like so many of our state's businesses, had a hard time during the Covid-19 pandemic financially. In response, management has been and continues to respond creatively to improve revenues and get more people in the door. We know that when they add the individual player spots and rearrange those tables and player spots on the card floor, they'll do so in a way that's secure and safe, and addresses potential bad actors, because that's how they always operate.

Accusations in the July 23 letter that Running Aces is making decisions to try to break laws or somehow go around the Commission and the legislature is just wrong. Running Aces is a by-the-book and above-the-board kind of operation, as I've seen in all my

dealings with them. They aren't trying to give anyone a run-around here. This Floor Plan Request is just another effort by Running Aces to respond creatively to improve its revenues, which by doing so, actually increases the amount of money that goes to racing purses, to the horsemen, and to the State of Minnesota.

Running Aces has told us that these Dealer Assist Gaming tables remain more popular than ever these days because they allow customers to have a little more distance between them as they play, something that a lot of people think is important following the Covid-19 pandemic. If Running Aces thinks it needs more individual player spots at their tables and thinks the card floor should be rearranged to provide for those extra sports, and that the demand is there, we shouldn't stand in their way. More people, more happy customers, helps Running Aces' revenue, helps the horsemen, the horse racing industry as a whole, and it helps the City, and I am grateful for that.

Thank you for your consideration of this letter. I hope you act affirmatively to vote on and support this request from Running Aces.

Sincerely,

Jesse H. Preiner

Jesse H. Preiner
Mayor, City of Columbus

700 Grand Avenue
Onamia, MN 56359
(320) 532-8800
www.mlcv.com

MILLE LACS
CORPORATE VENTURES

July 26, 2023

Governor Tim Walz
130 State Capitol
75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Minnesota Racing Commission
1100 Canterbury Road, Suite 100
Shakopee, Minnesota 55379

Re: Proposal to Increase Video Table Games at Running Aces Racetrack

Dear Governor Walz and Honorable Members of the Minnesota Racing Commission,

On behalf of the Mille Lacs Band of Ojibwe (hereinafter "the Band"), I write to respond to Running Aces' proposal to expand its gaming operations to add a video dealer assist table with 11 video player stations. The Band respectfully requests that the Commission: (1) revoke its prior approval of the Interblock video table game for lack of statutory authority; (2) deny Running Aces' request that would circumvent the 80-table limit; (3) treat the Interblock game as a video game of chance and a gambling device under Minnesota law; and (4) schedule a time for "meaningful consultation" with the Band pursuant to Minn. Stat. § 10.65.

1. The Legislature Has Not Authorized Video Table Games Such as Interblock.

In 1999 the legislature authorized racetracks to "operate a card club" and "offer card playing services." In 2012 the legislature increased the limit on tables, from 50 to 80, and authorized a new definition of the phrase "banked" card game. Minn. Stat. § 240.01, subd. 2. Currently, Minnesota statutes do not mention video table games.

At the time the legislature increased the limit on tables from 50 to 80, the technology that Interblock games use did not exist. A standard table consisted of, and still consists of, seven (7) betting spots with one (1) bet per spot. The dealer at such tables is within arm's reach of all bets placed. These are the only tables the legislature could have reasonably sought to limit at the time it passed the statute.

Under Running Aces' argument, the Commission could authorize 80 dealer assist tables, with 11 betting spots per table, and three (3) bets per spot. This would more than quadruple the amount of betting allowed at standard tables. Moreover, the Interblock technology allows the

dealer to be 50 feet away from each player. Approving such technology would drastically circumvent the 80-table limit imposed by the Minnesota legislature.

2. The Interblock Game is a Video Game of Chance and a Gambling Device under Minnesota Law.

The Interblock game constitutes a video game of chance under Minnesota law. The game "awards game credits or replays and contains a meter or device that records unplayed credits or replays," and is therefore prohibited. Minn. Stat. § 609.75, subd. 8. The Interblock game also constitutes a gambling device "as a contrivance that, in exchange for consideration, provides a person an opportunity to obtain something of value, other than free plays, whose outcome is determined principally by chance." Minn. Stat. § 609.75, subd. 4. As a gambling device and video game of chance under Minnesota law, the Commission should prohibit the use of such technology.

3. The Minnesota Racing Commission has a Statutory Duty to Consult with Indian Tribes.

On July 1, 2021, Governor Walz signed a law requiring Minnesota agencies to consult with Minnesota Tribal governments about agency rules and other agency actions that have substantial direct effects on an Indian tribe. Running Aces' proposal seeks to circumvent the legislature's limitations on numbers of tables. Such action would negatively impact tribal casinos in direct competition with Running Aces, especially the Band's Grand Casino Hinckley.

Tribal casinos have a fundamentally different mission than commercial casinos. Commercial casinos provide dividends and value to shareholders. Tribal casinos fund tribal governments so they may provide healthcare, build affordable housing, preserve their language and culture, conserve natural resources, build essential infrastructure, develop the economies in some of the poorest counties in Minnesota, and fund numerous other social and philanthropic services. Decisions made by the Minnesota Racing Commission that negatively impact tribal casinos have far reaching ramifications. Therefore, prior to any further action by the Commission, the Band respectfully requests the timely and meaningful consultation required by Minnesota law.

We look forward to the opportunity to engage in consultation with the Commission. Thank you for your consideration.

Sincerely,

Joseph S. Nayquonabe
Commissioner of Corporate Affairs, Mille Lacs Band of Ojibwe
CEO, Mille Lacs Corporate Ventures

Item 5 B - Approval of Thoroughbred and Quarter Horse Breeders' Fund Purse Supplement Allocation for 2023

August 9, 2023

Mr. Kyle Gustafson
Executive Director
Minnesota Racing Commission

2023 Thoroughbred & Quarter Horse Purse Supplement Approval Request

Canterbury Park hereby requests the following approvals from the Minnesota Thoroughbred and Quarter Horse Breeder's Advisory Fund Committees and requests that, if approved, the be presented to the full Minnesota Racing Commission at the earliest possible opportunity for Approval:

Minnesota Thoroughbred Breeders' Fund Advisory Committee:

1. Approval to pay Thoroughbred Purse Supplements in accordance with MN 7895.011 Subp. 4(A). Payments to be made at the same time as purses are earned.

2. Approval of a 20% supplement for Minnesota-Bred thoroughbreds running in open-company overnight races, this is a 10% decrease from 2022 (Estimated Expenditure $500,000)

3. Approval of a 10% supplement for all Minnesota-Bred thoroughbreds running in open company stakes races, consistent with 2022 (Estimated Expenditure $15,000)

4. Approval of a 10% supplement for all Minnesota-Bred thoroughbreds running in Minnesota-Bred Stakes Races, consistent with 2022 (Estimated Expenditure $15,000)

Total estimated expenditure= $530,000

Minnesota Quarter Horse Breeders' Fund Advisory Committee:

1. Approval of $20,000 to be paid in each the Minnesota Quarter Horse Futurity and the Minnesota Quarter Horse Derby, a $5,000 increase from 2022 (Estimated expenditure $40,000)

2. Approval of a $4,000 per race supplement for Minnesota-Bred quarter horses running in open-company overnight races, consistent with 2022 (Estimated expenditure $20,000)

Total Estimated Expenditure= $60,000

Please let me know if you have any additional information is needed for any of these requests.

Best Regards,



Chris Merz
Sr. Director of Racing Operations
Canterbury Park

Item 6 A–
Staff Reports
Chief
Veterinarian

Veterinarian's Report
Running Aces Harness Park
July 6th-August 10th

Medication Violations Reported by Industrial Laboratories

- Racing - 0
    - NSAIDS – 0
    - CORTICOSTEROIDS – 0
    - OTHER – 0
    - Out for split sample or appeal - 0
- Workout – 0
- Other – 0

DVM Violations – 0

Post-race Testing – 327 (323 race, 4 qualifiers)

- Blood Only - 88 (86 race, 2 qualifiers)
- Blood and Urine – 239 (237 race, 2 qualifiers)

Pre-race Testing - 9
Workout Samples – 0
Research Samples – 2 (Trainer Request)
OCT – 2 (Hair)
TCO2 tests – 35

Current Veterinarian's List – 20

- Bled - 0
- Ill – 4 (3 respiratory, 1 tie-up)
- Injured – 8
- Non-Ill - 0
- Unsound – 7
- Medication Problem - 1

Horses Working for DVM

- Off > year - 0
- On Vet's List – 5 horses have worked to get off the vet's list this month.
- Cornell collar - 0

Ambulance Use – 0

- Backside - 0
- Racetrack – 0

Deceased Horses – 0

- Racing – 0
- Illness/Other – 0

Other – There have been 7 claims at RAHP this month.

Medication Violations

- Racing - 3
  - **Confirmed**
    - NSAID - 1 (HIWU)
    - CORTICOSTEROID
      - Dexamethasone
      - Betamethasone
      - Triamcinolone
      - Methylprednisolone
    - OTHER - 1 (HIWU)
  - **Split sample or appeal** - 1 (QH)
- Workout - 0
- Other - 0

DVM Violations - 0

Samples Submitted

- Post-race testing - QH only
  - Blood and Urine - 27
  - Blood only - 1
- Deceased Horses - 7
  - Hair and Blood - 6
  - Blood only
  - Hair only - 1
- Out of Competition Testing (HIWU)
- Research - 0
- Special (needles, syringes, bottles, etc.) - 0
- TCO2 (HIWU)
- Workout - 45
- AQHA Challenge Hair - 4

Current Veterinarian's List

- **Total - 154**
  - Bled - 2
  - Ill - 8
  - Injured - 23
  - Non-Ill - 9
  - Unsound - 79
  - Medication Problem - 4
  - Workout Needed - 29

Restricted List Horses Examined - 157

Horses Working for DVM

- **Total – 45 (43 TBs, 2 QHs)**
  - Off greater than one year - 4
  - 4-Year-old and greater first-time starters - 13

- On Vet's List (MN and other states) - 28
- Cornell collar - 0
- Steward's List - 0
- Other - 0

Ambulance Use

- **Total - 22**
  - Backside -3
  - Detention Barn -3
  - Racetrack
    - Main - 6
    - Turf - 5
  - Paddock -1
  - Training Track -4

Deceased Horses

- **Total - 8 (7 racehorses and 1 pony horse)**
  - Racing - 3
    - Dirt Track - 1
    - Turf Track -1
    - Starting Gate
    - Paddock - 1
  - Training - 2
  - Illness/Other - 3 (2 pleuropneumonia; 1 colic)

Claims (Total) - 48
Claims Voided Due to Veterinary Reasons -7

Item 6 A 1 –

Industrial Laboratories AORC Proficiency test results

Association of Official Racing Chemists

C. Pearce, President
Fordham Ely, Cambridgeshire
United Kingdom
clive.pearce@lgcgroup.com

J. Scarth, Sec-Tres
Fordham Ely, Cambridgeshire
United Kingdom
James.scarth@lgcgroup.com

D. Batty. President Elect
Flemington, Victoria
Australia
dbatty@rasl.com.au

A. Wong, Non *Ex Officio*
Hong Kong
China
april.sy.wong-rl@hkjc.org.hk

L. Bailly-Chouriberry, VP
Verrieres Le Buisson
France
l.bailly@lchfrance.fr

P.Hartman, Non *Ex Officio*
Wheat Ridge, CO
United States
petra@industriallabs.net

D. Hill, Executive Director
1021 Storrs Rd
Storrs, Connecticut 06268 USA
Voice: 860-487-3755
dwhill.aorc@charter.net

13 July 2023

Petra Hartmann
Industrial Laboratories Co., Inc.
Colorado
USA

Dear Petra,

Thank you for participating in the 2023 AORC Proficiency Testing Program.

Your laboratory's score for the urine program was 100%.

The drugs and concentrations for the urine program were:

- Sample 1 – Norbuprenorphine 10ng/mL
- Sample 2 – Betamethasone 0.5ng/mL
- Sample 3 – Guanabenz 15ng/mL
- Sample 4 – Pethidine 15ng/mL
- Sample 5 – Andarine 2ng/mL
- Sample 6 – 3-hydroxylignocaine 30ng/mL

Your laboratory's score for the plasma program was 100%.

The drugs and concentrations for the plasma program were:

- Sample A – Mepivacaine 0.5ng/mL; Ostarine 2ng/mL
- Sample B – Caffeine 60ng/mL; Flunixin 10ng/mL
- Sample C – Atenolol 2ng/mL

Your laboratory's score for the hair program was 100%.

The drug for the hair program was:

- Sample – Andarine 20pg/mg

A certificate for this performance is attached with this letter.

Regards,

David Batty
PT Committee Chairman

Item 6 B –
Staff Report

Stewards

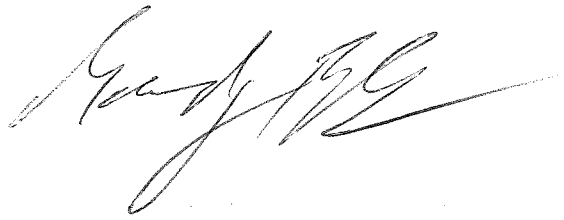
Board of Stewards Monthly Report Through August 10, 2023

Since the beginning of the meet there have been a combined 15 MRC and HISA Rulings: 6 since the last Commission report.

In the case against McLean Robertson, HISA reversed their suspension once the split sample results were analyzed. This case and the subsequent reversal caused HISA to reexamine their policy leading to a change in how they penalize trainers for medication violations. Suspensions are now pending the results of split sample testing, so trainers are no longer being punished for merely suspected violations. This is good news going forward, but another definitive indicator that HISA has too many untested, unclear, and unjust policies. This case hit very close to home, and it was difficult for the Canterbury community to watch Mac be the example.

Claims at Canterbury are significantly down this year. We will provide a comprehensive report with comparative annual totals at the end of the race meet.

Thank you – Randy Blaseg, Chief Steward



Item 6 C –
Staff Report

Judges

MINNESOTA RACING COMMISSION

Running Aces CASINO • HOTEL • RACETRACK

Judges Report - July 2023

We have passed the halfway mark in the 2023 harness racing season here at Running Aces. We managed to get through the month of July without having to cancel any more days due to poor air quality. We did however have to cancel the last 5 races on the July 27 racing program due to a severe thunderstorm.

Most of the racing programs in the month of July offered 11 races per night. The horse supply has been very strong throughout the meet this season. This can be attributed to the strong purse structure here at Running Aces.

The Judges issued 22 Rulings during the month of July bringing the season total to 61. The major violations are noted below.

- 5 – Slow Quarters or Pace Not Comparable to Class.
- 3 – Minor Whipping Violations – Other Than Wrist Action
- 2 – Making Contact with Foot
- 1 – Medication Violation – Resulted in $500 Fine, 10 Day Suspension, and Loss of Purse

Stats For 2023

	May	June	July	Meet
Avg Entries/Day	82	87.2	92	87
Avg Starters/Program	73.8	80.9	85	79.9
Avg Races/Program	9.8	10.1	10.7	10.2
Avg Starters/Race	7.6	8.0	7.8	7.8
Avg Purses/Program	$96,813	$113,531	$121,454	$110,600
Avg On Track Handle	$14,094	$14,285	$15,221	$14,533
Avg Total Handle	$259,905	$261,087	$221,832	$247,608
Total Handle	$2,079,236	$3,133,040	$2,883,812	$8,096,088

Robert Corey
Presiding Judge

Peter Hanley II
Associate Judge

Casey Larson
Associate Judge

Item 7 A-
Status Report
Canterbury Park

CONTAINS NON-PUBLIC DATA

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Pages 56-58 have been omitted under 2020 Minnesota Statutes Chapter 13D.05

Item 7b-
Status Report
Running Aces
Casino, Hotel, and Racetrack

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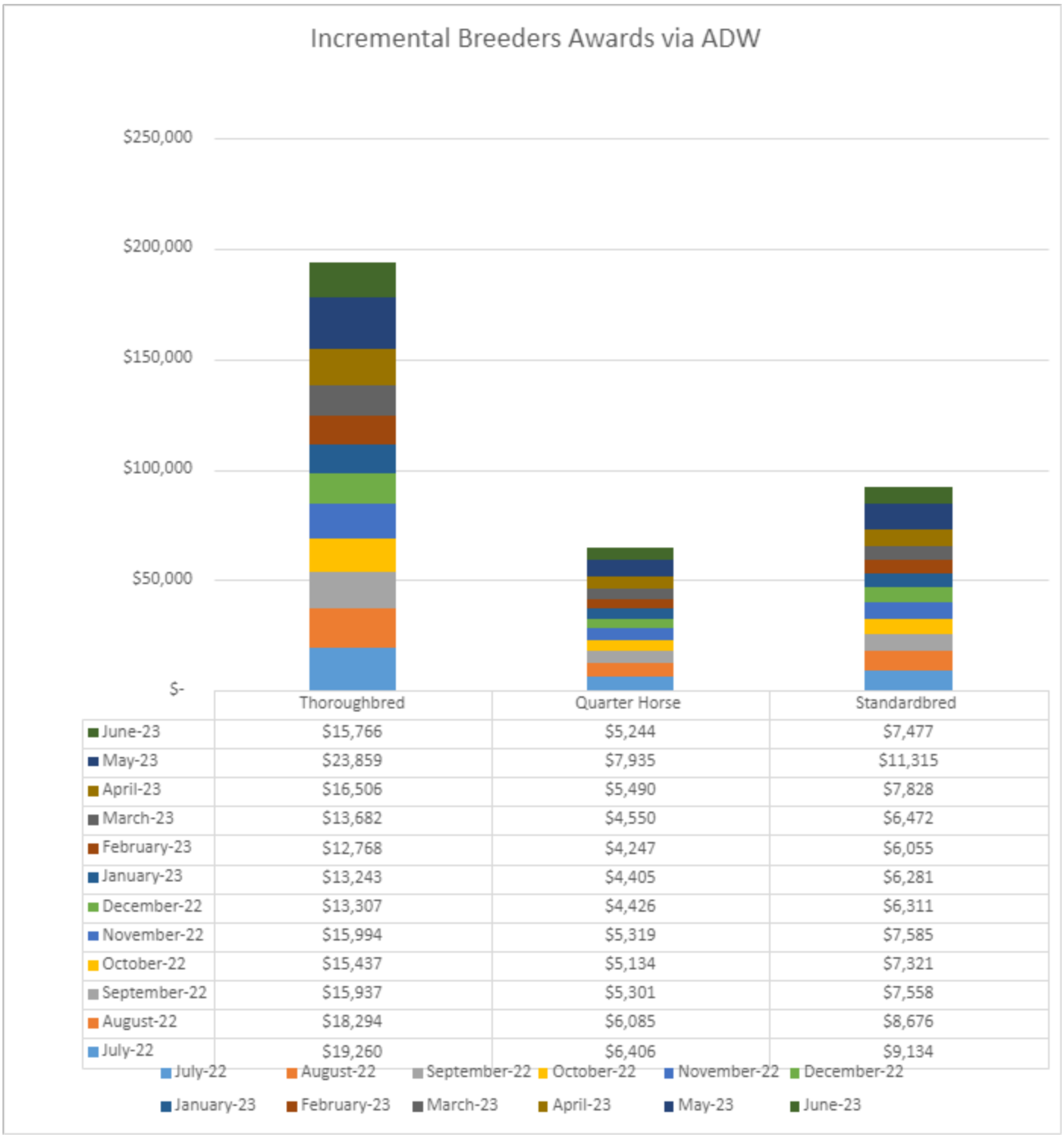
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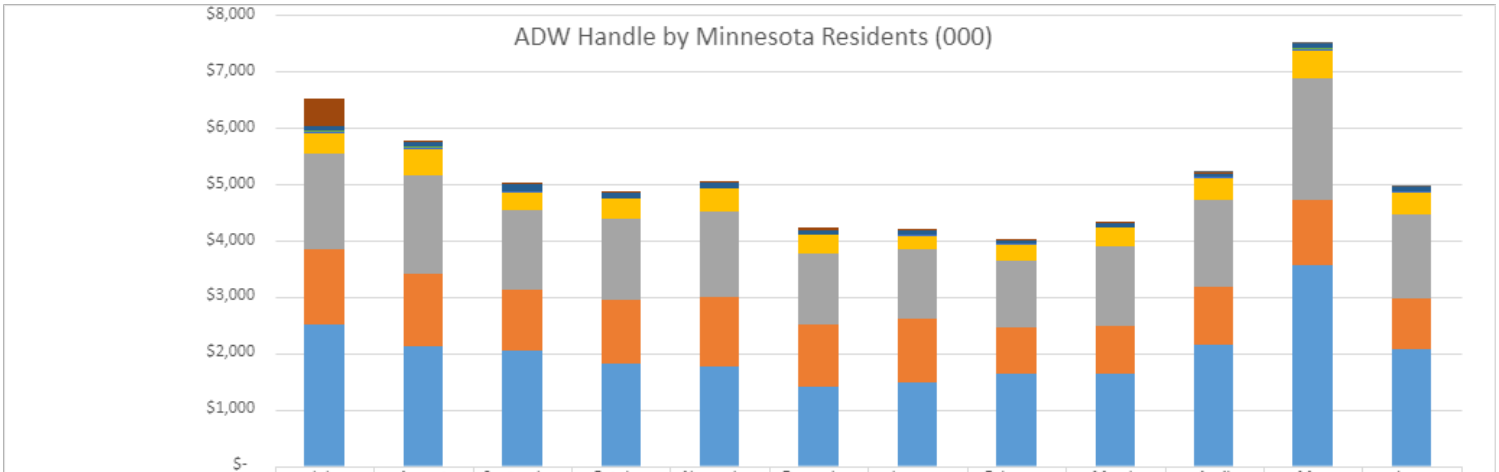
Pages 59-62 have been omitted under 2020 Minnesota Statutes Chapter 13D.05

Item 8 -
Executive Directors Report

A. Contract Approvals
B. HISA Update
C. Personnel Update
D. ADW Report
E. Licensing Report
F. Other

Item 8 D –
ADW Report


Incremental Breeders Awards via ADW
$250,000
$200,000
$150,000
$100,000
$50,000
$-
Thoroughbred
Quarter Horse
Standardbred
June-23 $15,766 $5,244 $7,477
May-23 $23,859 $7,935 $11,315
April-23 $16,506 $5,490 $7,828
March-23 $13,682 $4,550 $6,472
February-23 $12,768 $4,247 $6,055
January-23 $13,243 $4,405 $6,281
December-22 $13,307 $4,426 $6,311
November-22 $15,994 $5,319 $7,585
October-22 $15,437 $5,134 $7,321
September-22 $15,937 $5,301 $7,558
August-22 $18,294 $6,085 $8,676
July-22 $19,260 $6,406 $9,134
July-22
August-22
September-22
October-22
November-22
December-22
January-23
February-23
March-23
April-23
May-23
June-23



	July	August	September	October	November	December	January	February	March	April	May	June
Premier Turf Club										$5	$16	$6
Horse Tourneys	$493	$35	$20	$18	$25	$37	$28	$13	$13	$25	$13	$13
Lien Games	$89	$78	$130	$109	$103	$84	$68	$51	$62	$59	$89	$78
WatchandWager.com LLC	$11	$12	$9	$4	$3	$3	$7	$5	$6	$9	$18	$4
eBet Technologies	$33	$34	$14	$11	$2	$2	$9	$20	$14	$21	$11	$9
NYRA Bets (NewCo Ventures)	$364	$461	$310	$349	$418	$333	$228	$305	$332	$387	$503	$391
TVG (ODS Tech)	$1,688	$1,745	$1,422	$1,427	$1,497	$1,243	$1,236	$1,178	$1,402	$1,531	$2,144	$1,484
Xpressbet, LLC	$1,335	$1,290	$1,082.00	$1,143.00	$1,248.00	$1,109.00	$1,131.00	$806.00	$839.00	$1,029.00	$1,175.00	$903.00
Twinspires.com	$2,516	$2,117	$2,033	$1,814	$1,759	$1,407	$1,489	$1,642	$1,645	$2,151	$3,554	$2,078

Year-Over-Year Monthly ADW Handles

(in 000s)

21-Jul	21-Aug	21-Sep	21-Oct	21-Nov	21-Dec	22-Jan	22-Feb	22-Mar	22-Apr	22-May	22-Jun
$5,933	$6,883	$4,731	$4,803	$5,000	$4,140	$4,740	$4,334	$4,801	$5,975	$8,009	$5,723

22-Jul	22-Aug	22-Sep	22-Oct	22-Nov	22-Dec	23-Jan	23-Feb	23-Mar	23-Apr	23-May	23-Jun
$6,529	$5,772	$5,020	$4,875	$5,055	$4,218	$4,196	$4,020	$4,313	$5,217	$7,523	$4,966

22-Jul	22-Aug	22-Sep	22-Oct	22-Nov	22-Dec	23-Jan	23-Feb	23-Mar	23-Apr	23-May	23-Jun
10%	-16%	6%	1%	1%	2%	-11%	-7%	-10%	-13%	-6%	-13%

Item 8 E-
Licensing Report

CANTERBURY PARK LOCATION
1100 CANTERBURY ROAD, STE. 100
SHAKOPEE, MN 55379
TELEPHONE: 952-496-7950
FAX: 952-496-7954
WWW.MN.GOV/MRC

MINNESOTA RACING COMMISSION

RUNNING ACES CASINO. RACETRACK. HOTEL LOCATION
15201 ZURICH STREET NE, STE. 212
COLUMBUS, MN 55025-7908
TELEPHONE: 651-925-3951
FAX: 651-925-3953
WWW.MN.GOV/MRC

Minnesota Racing Commission

July 2023 Licensing Report

Class C Applications Processed at Canterbury Park: **111**

Class C Applications Processed at Running Aces: **49**

Class C Large Racing/Gaming Vendors: **1**

Class C Small Racing/Gaming Vendors: **0**

Class C Non-racing/Gaming Vendors: **2**

Class C Licensing Fees for July: **$8,970**

Fingerprint Fees for July: **$1,875**
(Fingerprint fees are forwarded to Public Safety for processing reports)

Fines Collected during 2023 Racing Season: **$10,925**