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VIRGINIA RACING COMMISSION

January 27, 2016

STATE CORPORATION COMMISSION
TYLER BUILDING
1300 EAST MAIN STREET
RICHMOND, VA 23219

Commencing at 2:00 p.m.

COMMISSION MEMBERS:

D.G. Van Clief, Jr., Chairman
Carol G. Dawson, Vice Chairman
J. Sargeant Reynolds, Jr.
Dr. Charles Steger

COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary
Kimberly C. Mackey, Office Administrator

ATTORNEY GENERAL'S OFFICE:

J. Duncan Pitchford, Esquire

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1 CHAIRMAN VAN CLIEF: I'd like to call the
2 meeting of the Racing Commission to order, and note
3 that we have four commissioners present, and
4 therefore a quorum. We have some, I believe, very
5 late-breaking news. The parties, that being
6 TwinSpires and the VEA, have been involved in
7 negotiations, mediated negotiations, off and on for
8 some days now.

9 I think I'm going to be delighted to be able to
10 announce that we're looking at an agreement. Since
11 this is late-breaking, and literally, I'm holding a
12 copy that I was handed coming through the door and
13 I don't think any of the other commissioners have
14 even seen that, I would like, Mr. Pitchford, if we
15 can go into executive session, and if we might be
16 briefed by counsel on what's in front of us here
17 today.

18 MR. PITCHFORD: Thank you, Mr. Chairman. In
19 accordance with the provisions of §2.2-3711(a)(7)
20 of the code Virginia, I move that the Commission go
21 into closed meeting for the purpose of consultation
22 with legal counsel and briefing by staff members or
23 consultants pertaining to actual or probable
24 litigation, where such consultation or briefing in
25 open meeting would adversely affect the negotiating

1 or litigating posture of the public body; and
2 consultation with legal counsel employed or
3 retained by a public body regarding specific legal
4 matters requiring the provision of legal advice by
5 such counsel concerning agenda item number one,
6 which is the TwinSpires matter. The commissioners
7 will only ask counsel questions and will not engage
8 in deliberations or other activity.

9 CHAIRMAN VAN CLIEF: May I have such a motion?

10 COMMISSIONER REYNOLDS: I move.

11 COMMISSIONER STEGER: Second.

12 CHAIRMAN VAN CLIEF: Commissioner Reynolds
13 makes the motion, Commissioner Steger seconds. Any
14 opposed? All in favor?

15 NOTE: The Commission votes aye.

16 CHAIRMAN VAN CLIEF: The motion carries. Let's
17 adjourn to our executive session.

18 NOTE: The hearing is adjourned from 2:02
19 p.m. until 2:19 p.m.; thereafter, the hearing
20 resumes as follows:

21 CHAIRMAN VAN CLIEF: Mr. Pitchford, could you
22 bring us back out of executive session?

23 MR. PITCHFORD: Thank you, Mr. Chairman.

24 §2.2-3712 of the code of Virginia requires a
25 certification by this Commission that such closed

1 meeting was conducted in conformity with Virginia
2 law. Now, therefore, be it resolved that the
3 Virginia Racing Commission certifies that to the
4 best of each member's knowledge, only public
5 business matters lawfully exempted from open
6 meeting requirements under the Virginia Freedom of
7 Information Act, and only such public business
8 matters as were identified in the motion convening
9 the closed meeting were heard, discussed or
10 considered by the Commission in the closed meeting.

11 CHAIRMAN VAN CLIEF: Do I have such a motion?

12 COMMISSIONER STEGER: So moved.

13 CHAIRMAN VAN CLIEF: Commissioner Steger moves.
14 Second?

15 COMMISSIONER REYNOLDS: Second.

16 CHAIRMAN VAN CLIEF: Commissioner Reynolds
17 seconds. Any opposed? Motion passes. Thank you
18 very much. We are back in session, open session.

19 It appears from the briefing that we just
20 received that we do indeed have a memorandum of
21 understanding between the parties; the parties in
22 this case being the Commonwealth of Virginia,
23 Churchill Downs Technology Initiatives Company,
24 d/b/a Twinspires.com. We got it right that time?

25 MR. JOHNSON: That's right.

1 CHAIRMAN VAN CLIEF: And the Virginia Equine
2 Alliance. That is truly good news, and I'd like to
3 take a moment before I call on the parties to give
4 us a quick briefing on the substance of this
5 agreement to thank those of you, particularly the
6 parties involved, the VEA and TwinSpires, and
7 particularly our counsel, the office of the
8 Attorney General, J. Duncan Pitchford, and perhaps
9 most of all, Mr. Mark Rubin, who is here sitting
10 right back there to my right, who is with the
11 Virginia Center for Consensus Building. He's part
12 of the VCU Office of Continuing and Professional
13 Education.

14 I hear he is one of the best at what he does,
15 and in my experience, if he can bring our industry
16 to a consensus within two days, which he did, then
17 he is indeed one of the best. Thank you,
18 Mr. Rubin, and thanks to all of you. I think this
19 is a very important building block for the relaunch
20 of our industry here in Virginia.

21 Now I'd like to call on the parties, if they so
22 desire, to give us an update, remembering that most
23 of us on this Commission are brand new to this
24 agreement.

25 MR. QUINAN: Yes. Michael Quinan with

1 Christian & Barton. I'm here on behalf of -- I
2 represent the Virginia Horsemen's Benevolent and
3 Protective Association, which is one of the members
4 of the Virginia Equine Alliance and also one of the
5 signatories on the memorandum of understanding.

6 I'd like to start off also by thanking
7 Mr. Rubin. He did a great job and we hung in long
8 and hard. A couple of late nights where we were
9 held captive until we appeared to reach agreement,
10 and then finally did reach agreement, and the
11 memorandum of understanding, notwithstanding the
12 fact that it is relatively detailed for an MOU,
13 still doesn't really capture all of the questions,
14 issues and details that all of the parties had to
15 wrestle with in order to come to this agreement.

16 The situation really is a complex one, and it
17 did take the parties a good amount of effort and
18 compromise on all sides on issues that were issues
19 that are addressed in here that we didn't think
20 should be issues.

21 But everybody at the end gritted their teeth
22 and agreed upon this MOU, which addresses the
23 principal issues of the rates that will be paid or
24 rebates that will be provided of the fees paid
25 under the Virginia code for ADW fees, as well as

1 addressing some of the baggage that has accumulated
2 over the past year or so regarding claims and
3 payments, and this agreement resolves all of those
4 and is a full settlement agreement.

5 One of the provisions in here is the formal
6 agreement that will follow, and will contain mutual
7 releases, and so this does give the parties a
8 platform to move forward with no baggage still
9 hanging on.

10 So we hope you will, you know, approve this
11 agreement and the formal agreements that follow,
12 and that if you have any questions about any of the
13 particular provisions, I'll be glad to respond.

14 CHAIRMAN VAN CLIEF: Thank you very much. Mr.
15 Johnson?

16 MR. JOHNSON: Only very briefly. Mr. Quinan
17 did very nicely summarizing what this is. I'm
18 Harry M. Johnson on behalf of TwinSpires.

19 The only other thing that I imagine you're also
20 interested in, is that this agreement resolves the
21 back-payments, those that have accrued, those that
22 have already accrued, and I believe that's going to
23 be upwards of over \$300,000. The numbers are in
24 here, so I think that's good for the Commonwealth.
25 That's good for the equine interests here.

1 Frankly, it's good for TwinSpires to be back in the
2 good graces of the Commonwealth.

3 CHAIRMAN VAN CLIEF: Thank you. We are glad
4 that they are back.

5 At this point, I would like to convene as part
6 of our hearing an Administrative Process Act
7 hearing on the subject of TwinSpires' advance
8 deposit wagering license application, which I think
9 the foregoing briefing sets up for.

10 Before we get into the substance of that, let
11 me ask our executive secretary, Mr. Hettel, if we
12 have as a Commission all the necessary information
13 and applications, and if so, are they in good order
14 and do they meet all statutory requirements?

15 MR. HETTEL: Yes. They do. They are complete
16 and accurate, and I suggest approval.

17 CHAIRMAN VAN CLIEF: Okay. I'd like to also
18 ask our counsel, Mr. Pitchford, given the
19 completeness and appropriateness of those
20 applications, is there any other issue that we need
21 to address given the circumstances as a Commission
22 before we move forward into the concrete aspects of
23 a license application?

24 MR. PITCHFORD: I don't believe so,
25 Mr. Chairman.

1 CHAIRMAN VAN CLIEF: Thank you very much. I'd
2 like to ask my fellow commissioners if they have
3 any questions about this memorandum of
4 understanding for either of the parties.

5 NOTE: There was no response.

6 CHAIRMAN VAN CLIEF: Okay. Thank you very
7 much. In that case, we come to the topic of the
8 2016 license application for TwinSpires.com, and I
9 think all the questions have been answered. I
10 would like to ask again the parties, starting with
11 Mr. Johnson, if you would have any comments or
12 testimony to offer on this subject of your client's
13 license app?

14 MR. JOHNSON: No, sir. I don't think we need
15 to add anything to what is already in the papers
16 and what has already been heard. My expectation is
17 that this will be provisional on the consummation
18 of the various agreements and obligations herein,
19 but we do appreciate your consideration of our
20 application for 2016 and hope you approve it.

21 CHAIRMAN VAN CLIEF: Okay. Thank you very
22 much. Any comments from the VEA, from the VHBPA or
23 any other constituents involved?

24 MR. QUINAN: No, and no opposition.

25 CHAIRMAN VAN CLIEF: Thank you. There seems to

1 be no opposition. We seem to have an agreement
2 which will in principle at least govern the
3 operation of our ADW operations here in Virginia in
4 2016, and I think it's very encouraging that
5 further moves to address for future operations,
6 OTBs, satellite wagering facilities, should that
7 occur, and we hope it will.

8 Are there any questions or comments from
9 commissioners? If there are not, then I think it
10 would be in order to entertain a motion to
11 provisionally approve the TwinSpires 2016 ADW
12 license. That's provisional upon completion of the
13 necessary agreements and documentation signed by
14 relevant parties, and the license would be issued
15 at that time.

16 COMMISSIONER REYNOLDS: Mr. Chairman, I would
17 move that we the Commission provisionally approve
18 the 2016 ADW license for Churchill Downs Technology
19 Initiatives Company, doing business as
20 TwinSpires.com.

21 CHAIRMAN VAN CLIEF: Thank you. Is there a
22 second to that motion?

23 COMMISSIONER DAWSON: I second that.

24 CHAIRMAN VAN CLIEF: Commissioner Dawson
25 seconds. Is there a discussion or are there any

1 questions? If there are none, then all in favor,
2 signify by saying aye.

3 NOTE: The Commission votes aye.

4 CHAIRMAN VAN CLIEF: The motion passes
5 unanimately. Thank you very much.

6 Okay. Next in line is the approval of the
7 January 6 meeting minutes. I'm going to defer
8 those, since they deal in large part with the
9 conversation with regards to the TwinSpires
10 license, since Commissioner Miller is not here and
11 a lot of that is attributable to him, and also
12 since those minutes were circulated, I think as
13 recently as yesterday evening.

14 I'd like to defer those and we will take up the
15 approval on the January 6 minutes at our next
16 meeting at the same time as our minutes from this
17 meeting. Does that meet with our fellow
18 commissioners?

19 COMMISSIONER DAWSON: Makes sense.

20 CHAIRMAN VAN CLIEF: Thank you very much. We
21 have under new business to address Breeders Fund
22 expenditures for 2015 year-end Breeder and Stallion
23 awards. Ms. Easter, would you like to address
24 that?

25 MS. EASTER: well, I hope that you all would

1 approve that we would spend \$500,000 on breeders'
2 awards for 2015 and 25,000 on Stallion awards.

3 CHAIRMAN VAN CLIEF: Can you refresh our memory
4 as to how that compares with previous years and if
5 there are any changes in detail?

6 MS. EASTER: That would be the same as 2014,
7 and we've been slowly increasing. A lot of
8 previous years to that, a majority of our fund had
9 gone to owners' bonuses at Colonial Downs, and so
10 we've been slowly trying to make that a little bit
11 more of an equal number and reward the breeders,
12 since it is the breeders' incentive fund.

13 CHAIRMAN VAN CLIEF: Thank you. Are there any
14 questions on the Breeders Fund? In that case, I'd
15 like to entertain a motion to approve.

16 COMMISSIONER DAWSON: So moved.

17 CHAIRMAN VAN CLIEF: Thank you, Commissioner
18 Dawson. Is there a second?

19 COMMISSIONER STEGER: Second.

20 CHAIRMAN VAN CLIEF: Commissioner Steger,
21 second. All in favor, signify by saying aye.

22 NOTE: The Commission votes aye.

23 CHAIRMAN VAN CLIEF: Any opposed? Carries
24 unanimately.

25 Lastly, I don't think this is going to be an

1 action item, but we thought it would be a good idea
2 for the VEA to continue its regular budget updates
3 to the Commission. This is, after all, going to be
4 the guts of rebuilding our industry, so we'd like a
5 briefing.

6 I understand you're prepared to give that, and
7 if you could also include -- I gather you have made
8 some progress with regards to your audit
9 requirement, and under the statute, I understand
10 that you are required to provide this Commission
11 with an audit annually, and given the environment
12 with which we are working under the new
13 legislation, we thought it was important to get a
14 fresh look and get an independent audit.

15 Can you brief us on your progress with both
16 your budget development and your audit
17 solicitation?

18 MS. EASTER: I will do that today. Jeb,
19 unfortunately, couldn't make it today because of
20 the snow and his kids being out of school, so I
21 will try to stand in his place, which will not be
22 quite as eloquent.

23 I think in your package, you have a budget, VEA
24 budget, and that is a very fluid document, but I
25 think the budget reflects our current deal with

1 TwinSpires and Xpressbet, the rebates that will
2 kick back. Basically give us net proceeds of about
3 \$1.8 million to work from in 2016.

4 I think also that what might be different, but
5 I'm not sure that it is, I think you actually got
6 it on the last budget. At the bottom, it reflects
7 the money that we are going to need for capital
8 improvements at both Morven Park and also
9 Shenandoah state fairgrounds for the harness
10 improvements.

11 Commissioner Van Clief just asked me to update
12 you on our progress since our last meeting, and I'd
13 say that what's happening now is that we are
14 working with institutions to try and get the loans
15 to fund those improvements. I think that we're
16 fairly optimistic in the very near future that we
17 will have those tied up and hope that we could
18 start cutting some dirt maybe at Tom's facility
19 when we get rid of this weather.

20 But we continue to research how we can get an
21 OTB open as quickly as possible. We met on that
22 subject today. I'm hopeful we'll bring you that
23 application back as soon as possible. Other than
24 that, it's just constant go, but if you all have
25 any questions, I'll be glad to entertain any of

1 those.

2 we're also working to get -- the other priority
3 on our list would be to get a schedule for a race
4 meet, what racing will look like in 2016 as soon as
5 possible, so I hope by the next meeting we'd have
6 something like that for you also.

7 CHAIRMAN VAN CLIEF: Okay. Any questions for
8 Debbie? I'd encourage the commissioners to use
9 these opportunities for updates, and I know she can
10 field operational questions as well as the line
11 items on our budget, so please fire away if you
12 have any.

13 MS. EASTER: And I would encourage you all,
14 obviously, as I said before, I think the very
15 positive thing, as we said before, we'll all be
16 working together, so we would welcome your input,
17 your energy. Whatever you can do to help us move
18 forward would be super.

19 If there are no questions, then as far as the
20 audit, I believe what is going on there is that Jeb
21 has three independent firms, and that he and
22 Mr. Hettel are going to work out, choose somebody
23 they like and we will go ahead and get an audit
24 done whenever you all want that done.

25 That's very standard procedure for everything

1 we do at Easter Associates, so we're happy with
2 whoever you bring in there and we'll do what we
3 need to do.

4 CHAIRMAN VAN CLIEF: Okay. Great. Thank you
5 very much, Debbie.

6 This brings us to the public comment period.
7 As always, we welcome comments from the public.
8 Are there any this afternoon?

9 MS. EASTER: I have one comment, if you don't
10 mind.

11 CHAIRMAN VAN CLIEF: Sure.

12 MS. EASTER: I would certainly -- we had an
13 election at the end of the year, the VTA, and we
14 elected a new board of directors, and about a week
15 ago, we had our first board meeting and elected
16 new officers, and I'd like to introduce you all to
17 our new president, Brooke Royster, and he can tell
18 you a little bit about himself.

19 CHAIRMAN VAN CLIEF: Brooke, congratulations on
20 your election, and the floor is yours.

21 MR. ROYSTER: Thank you. I spent a large part
22 of my life in Kentucky and back in Virginia. About
23 13 years ago, had a commercial breeding operation
24 in Kentucky, take care of some of the horses in
25 your families and very happy to be here and very

1 excited about what's going on with Virginia racing
2 right now.

3 CHAIRMAN VAN CLIEF: Good to have you here, and
4 thanks in advance for your service to the VTA.

5 Any other comments? All right. Thank you very
6 much. In that case, the floor is open for
7 commissioners' comments. If there are any, I'll
8 start to my far left with the former chairman.

9 COMMISSIONER REYNOLDS: I'll be brief. I'm
10 thrilled to death that you all reached an
11 agreement. That's great that you could compromise
12 at the meeting, but I look forward to many more of
13 them.

14 Just a little tongue-in-cheek, Mr. Johnson.
15 Do you still think your 2014 license is in full
16 effect?

17 UNIDENTIFIED: Sit down, Pete. I'm just
18 playing.

19 CHAIRMAN VAN CLIEF: Don't answer that.

20 MR. JOHNSON: If I need to say it, I will.

21 COMMISSIONER REYNOLDS: We look forward to
22 seeing Virginia racing move forward at long last,
23 and thank you all, everybody, for your efforts. It
24 has been a long road, and Mr. Rubin, I don't know
25 if it's Dr. Rubin or Mr. Rubin or Judge Rubin, but

1 thank you very much and the Attorney General staff
2 as well, Duncan and John. Thank you. That's all I
3 have, sir.

4 CHAIRMAN VAN CLIEF: Commissioner Steger.

5 COMMISSIONER STEGER: I would just join
6 Commissioner Reynolds in expressing my gratitude to
7 all the parties who engaged in this mediation to
8 bring this to closure. I think it's very, very
9 important as we begin to get racing off to a
10 healthy start again, and I look forward to the
11 prospects of the future. Thank you, sir.

12 CHAIRMAN VAN CLIEF: Commissioner Dawson.

13 COMMISSIONER DAWSON: I just first want to say
14 I admire and praise you for a good job that you've
15 done today on your first meeting as chairman, and
16 also to echo what Commissioner Reynolds said about
17 those people from the Attorney General's office who
18 have been so helpful, and for the mediator, and for
19 Commissioner Steger who suggested that move.

20 CHAIRMAN VAN CLIEF: Absolutely.

21 COMMISSIONER REYNOLDS: Yes.

22 COMMISSIONER DAWSON: It's good for you, too.
23 So really, it is a pleasure to be at a meeting like
24 this and see things going smoothly, and I agree
25 with Ms. Easter that we can look forward to working

1 together in a more professional and cooperative
2 manner.

3 CHAIRMAN VAN CLIEF: Thank you, Commissioner
4 Dawson. In my case, it's always better to be lucky
5 than smart. That's how I always hope it works for
6 me.

7 I just echo my fellow commissioners' sentiments
8 and know that it's always nice when people of good
9 faith and like mind get together. Thank you all
10 for your efforts.

11 I know that at least one of those days was a
12 very long day, and I don't think that anybody
13 counted on coming back to the table for a second go
14 around, so thank you very much for your good faith
15 and your perseverance and for helping the Virginia
16 industry take this step forward. Thank you very
17 much.

18 with that, I will entertain a motion to
19 adjourn.

20 COMMISSIONER REYNOLDS: So moved.

21 CHAIRMAN VAN CLIEF: Second?

22 COMMISSIONER DAWSON: Second.

23 CHAIRMAN VAN CLIEF: Any opposed? I'll note
24 that also, Bernie, I'm going to ask you to
25 circulate the commissioners for available dates.

1 MR. HETTEL: Okay.

2 CHAIRMAN VAN CLIEF: I think we're going to
3 skip February and try to have an early first week
4 of March meeting.

5 MR. HETTEL: All right.

6 CHAIRMAN VAN CLIEF: So let's see when
7 everybody is available, get that lined up and
8 notices out.

9 MR. HETTEL: Maybe back in the same room.
10 Seems like a nice room.

11 CHAIRMAN VAN CLIEF: So far, so good. Thank
12 you very much, everybody. The meeting is
13 adjourned.

14
15 NOTE: The meeting is adjourned at
16 2:43 p.m.

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CERTIFICATE OF COURT REPORTER

I, Sandra G. Spinner, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 4th day of February, 2016.

SANDRA G. SPINNER
COURT REPORTER