

**THOMPSON, BULL, FUREY, BASS & MACCOLL, LLC, P.A.**  
COUNSELORS AT LAW

NICHOLAS BULL  
MARK G. FUREY \*  
JOHN R. BASS, II  
EDWARD S. MacCOLL  
BRADFORD R. BOWMAN

\* ALSO ADMITTED IN MA  
OF COUNSEL  
PETER P. MICHAUD

120 EXCHANGE STREET  
6<sup>th</sup> Floor  
P.O. BOX 447  
PORTLAND, MAINE 04112-0447

TELEPHONE (207) 774-7600  
FACSIMILE (207) 772-1039  
E-MAIL info@thomport.com

BENJAMIN THOMPSON  
(1857-1918)  
NATHAN W. THOMPSON  
(1895-1969)  
BENJAMIN THOMPSON  
(1921-2002)

October 23, 2003

Mr. Henry Jackson  
Executive Director  
Maine Harness Racing Commission  
State House Station #28  
Augusta, Maine 04333

Re: Industry Agreement

Dear Henry:

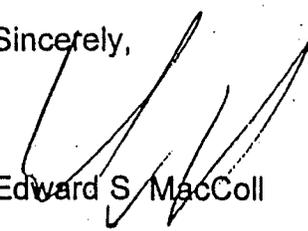
Enclosed is a copy of the Industry Agreement as signed by Shawn Scott. The Agreement has also been signed by most of the others interested in harness racing, with the most notable exception of the Millers.

I believe the legislative changes outlined in the Industry Agreement will make the racetrack referendum a law that will truly benefit the entire harness racing community. I am also confident that we can work with the Commission and others in state government to make sure that any concerns about regulatory oversight are fully and completely allayed. In fact, Bob Tardy already has been in touch with the State Police to try to find out what changes they would like to see in either 1361 or the racetrack referendum to ensure that full, thorough and complete regulation and oversight is possible. I know that Scarborough Downs is committed to working with the state government in that regard.

Please do keep me advised of any developments.

Kind regards.

Sincerely,

  
Edward S. MacColl

ESM/vjk

cc: Ms. Sharon Terry

**MAINE HARNESS RACING INDUSTRY  
AGREEMENT REGARDING L.D. 1371 AND 1361**

This Agreement is made as of this \_\_\_\_\_ day of September, 2003, among the following parties:

Commercial Tracks: DAVRIC MAINE CORPORATION, a Maine corporation with a principal place of business in Scarborough, Maine, d/b/a Scarborough Downs ("Davric" or "Scarborough Downs"), BANGOR HISTORIC TRACK, INC., a Maine corporation with a principal place of business in Bangor, Maine ("BHT") and CAPITAL SEVEN, LLC, a Delaware limited liability company with a principal place of business in Las Vegas, Nevada ("Capital Seven"). The foregoing parties being collectively referred to as the "Commercial Tracks."

OTBs: WINNER'S SPORTS GRILL, STEP TWO LLC, d/b/a Pat's Pizza ("Step Two"), MILLER'S, INC., d/b/a Miller's Restaurant ("Miller's"), MAINE EVENT SPORTS BAR ("Maine Event"), LRI, INC., ("LRI"). The foregoing parties being collectively referred to as the "OTBs."

Horsemen: THE MAINE HARNESS HORSEMEN'S ASSOCIATION ("MHHA"), Maine Standard Bred Breeders and Owners Association MAINE STANDARD BRED BREEDERS AND OWNERS ASSOCIATION ("Breeders"). The foregoing parties being collectively referred to as the "Horsemen."

Fairs: Maine Association of Agricultural Fairs ("Fairs"); (The OTBs, Horsemen, Breeders and Fairs are collectively referred to herein as the "Non-Track Participants".)

**RECITALS**

1. The following legislative initiatives were submitted to the State of Maine 121<sup>st</sup> Legislature, First Regular Session – 2003 (The Maine Legislature is referred to hereafter as the "Legislature."):

(a) L.D. 1361 – "An Act to Support Harness Horse Racing in Maine, Equine Agriculture in Maine, Maine Agriculture Fairs and the General Fund of the State" ("Industry Bill") a copy of the original version of which is attached hereto as Appendix A; and

(b) L.D. 1371 – "An Act to Allow Slot Machines at Commercial Horse Racing Tracks" which will be submitted to the people of the State of Maine by referendum scheduled for November 4, 2003 ("Bangor Bill"); and

(c) An amendment to the Industry Bill, styled as Committee Amendment A to L.D. 1361, which amendment is referred to hereafter as the "OTB-Only Bill." The OTB-Only Bill was passed to be enacted by the Legislature and is currently awaiting action by the Governor of the State of Maine.

2. There have been extensive discussions among the parties regarding the terms and conditions requested for cooperation among all participants in the harness racing and off-track betting industries regarding legislative and referendum efforts to legalize ownership and operation of slot machines and/or video lottery terminals (collectively "Gaming Machines") at commercial tracks and off-track betting locations in Maine, including circulation and comment upon several drafts of a Summary of Terms summarizing the proposed terms of this Agreement.

3 The parties have reached agreement regarding a cooperative effort to promote legislation legalizing the ownership and operation of Gaming Machines at commercial tracks and off-track betting locations in Maine, and desire to reduce that agreement to a formal written agreement (the "Agreement").

### AGREEMENT

In consideration of the foregoing and in consideration of the mutual agreements, covenants and conditions hereinafter set forth, the parties hereby agree as follows:

#### Article I

#### OTB-Only Bill and Industry Bill

1.1 **Advocacy.** All of the parties to this Agreement (collectively the "Parties") agree to actively support the Industry Bill and the OTB-Only Bill, both privately and publicly, as follows:

(a) Regardless of whether the Bangor Bill is enacted into law, by testifying in favor of the OTB-Only Bill before any Legislative Committee(s) considering the OTB-Only Bill; encouraging the governor to sign it into law; and taking other reasonable actions to secure the enactment of the OTB-Only Bill; provided however, that the foregoing shall not obligate any of the Parties to expend substantial or material amounts of time or money; and provided further however that the Commercial Tracks shall have no obligation to support any legislation including without limitation the OTB-Only Bill, which advocates and/or provides for the repeal of the Bangor Bill and/or, if the Bangor Bill is enacted into law, the elimination of Gaming Machines at the Commercial Tracks; and

(b) If, but only if, the Bangor Bill is not enacted into law, by testifying in favor of the Industry Bill; encouraging the governor to sign it into law; and taking other reasonable actions to secure the enactment of the Industry Bill; provided however that the foregoing shall not obligate any of the Parties to expend substantial or material amounts of time or money; and

(c) If, but only if, the Bangor Bill is enacted into law, advocating for the changes to the Bangor Bill described in section 2.2 hereof.

1.2 **Referendum.** Capital Seven agrees to the following regarding the pursuit of its referendum on the Bangor Bill:

(a) In the event the Industry Bill, in its original form as considered by the Legal and Veteran's Affairs Committee, is enacted into law in the Legislature's 121<sup>st</sup> First Regular Session, BHT, Capital Seven will not pursue the adoption of the Bangor Bill by referendum, or otherwise, and will advise the Maine Legislature and Governor that it will abandon its support for the adoption of the Bangor Bill at the referendum election scheduled for November 2003. The parties recognize the referendum must be held in any event under Maine law; however Capital Seven agrees not to campaign for its adoption and to state publicly that adoption is not sought.

(b) In the event the OTB-Only Bill is enacted into law in the Legislature's 121<sup>st</sup> First Regular Session, then the Parties will continue to pursue adoption the Bangor Bill at referendum election.

(c) In the event neither the Industry Bill nor the OTB-Only Bill is enacted into law in the Legislature's 121<sup>st</sup> First Regular Session, then the Parties will continue to pursue adoption the Bangor Bill at referendum election

1.3 **Competing Measure.** The Parties agree that they will oppose any effort to place either the Industry Bill or the OTB-Only Bill on the ballot as a competing measure in competition with the Bangor Bill and the parties shall advocate against treatment of the OTB-Only Bill as a competing measure, whether in the Legislature, in the media or in any resulting litigation.

1.4 **Terms of Industry Bill and OTB-Only Bill.** Capital Seven and BHT's Track's commitments under Sections 1.1 and 1.2(a) this Agreement are subject to the terms of the Industry Bill and the OTB-Only Bill remaining the same, in all material respects, to the copies of the Industry Bill and OTB-Only Bill attached hereto as Appendix A and B. In the event the legislative process results in any material changes adversely impacting the benefits to Bangor Historic Track and Capital Seven under the Industry Bill or OTB-Only Bill, as enacted into law, (other than as set forth in section 2.2 hereof) then Capital Seven and Bangor Historic Track shall no longer have any obligation under Sections 1.1 and 1.2(a) of this Agreement.

## Article II Bangor Bill

2.1 **Support for the Bangor Bill.** Regardless of whether the OTB-Only Bill is enacted into law, all Parties will unequivocally and actively support the referendum and passage of the Bangor Bill as critical to the long-term survival of harness racing in Maine. That support shall include both public and private support for the referendum and a reasonable level of participating in Capital Seven's campaign for approval of the Bangor Bill at the statewide referendum referenced in Recital 2 hereof; provided however that the foregoing shall not obligate any of the Parties to expend substantial or material amounts of time and money;

**2.2 Post-Referendum Legislative Changes.** In consideration of the support of the Parties (other than BHT and Capital Seven) for the Bangor Bill throughout the referendum process as contemplated hereby, Capital Seven agrees that in the event the Bangor Bill is enacted into law, Capital Seven will, following its adoption, advocate for, and publicly and privately support, an amendment to the legislation resulting from the Bangor Bill to provide for the following:

(a) In the event the OTB-Only Bill is not enacted into law:

(i) An expansion of the time limitations for approval of the operation of Gaming Machines at Scarborough Downs, including in any municipality to which Scarborough Downs may move on one occasion and to a location consistent with the provisions of this Agreement, through local referendum as contemplated by Section 911(1)(B) of the Bangor Bill by an additional two years (ending December 31, 2005); and

(ii) Expanding the radius within which the commercial track must be located pursuant to Section 911(1)(A) of the Bangor Bill to an unlimited radius, but subject to the protection for existing commercial tracks set forth below; and

(iii) Authorizing the operation of Gaming Machines at licensed OTB locations in accordance with the licensing requirements and restrictions set forth in the Industry Bill; and

(iv) Ensuring that the purse monies described in Section 923(1)(A)(2) of the Bangor Bill generated by Gaming Machines at any commercial track or OTB will be distributed to all commercial tracks and agricultural fairs that host pari mutuel wagering on harness racing regardless of whether they have Gaming Machines, by the relative number of dashes; and

(v) Ensuring that commercial tracks will not be located within 75 miles of any existing commercial track; and

(vi) Ensuring that 4% of the net terminal income as that term is defined in the Industry Bill (which is the same as gross slot income in the Bangor Bill) from any Gaming Machines located at any commercial track and/or OTB will be distributed to the commercial tracks through the existing commercial meet fund and that three percent (3%) of such net terminal income (or gross slot income) generated at any commercial track located on land not owned by the municipality where the track is located will be allocated to the municipality where the track is located; and

(vii) Establishing the minimum number of Gaming Machines that each licensee may operate on its premises at the levels specified in Section 371(2) of the Industry Bill, i.e.

- Scarborough Downs ..... 1,500 Gaming Machines

- Bangor Historic Track ..... 1,200 Gaming Machines
- Gaming Machines per OTB location ... 200 Gaming Machines

Notwithstanding the foregoing, the parties agree that all parties will support and advocate for whatever number of Gaming Machines is desired by each party, provided that the ratios of Gaming Machines entitlement shall remain consistent with the ratios inherent in the numbers of Gaming Machines licensed to each party under the Industry Bill and provided further that the Parties will advocate for the adoption of the language in the OTB-Only bill allowing commercial tracks to open OTBs with Gaming Machines.

(b) In the event the OTB-Only Bill is enacted into law:

(i) An expansion of the time limitations for approval of the operation of slot machines at Scarborough Downs through local referendum as contemplated by Section 911(1)(B) of the Bangor Bill by an additional two years (ending December 31, 2005); and

(ii) Expanding the radius within which the commercial track must be located pursuant to Section 911(1)(A) of the Bangor Bill to an unlimited radius, but subject to the protection for existing commercial tracks set forth below; and

(iii) Ensuring that the purse monies described in Section 923(1)(A)(2) of the Bangor Bill generated by Gaming Machines at any commercial track or OTB will be distributed to all commercial tracks and agricultural fairs that host pari mutuel wagering on harness racing regardless of whether they have Gaming Machines, by the relative number of dashes; and

(iv) Ensuring that commercial tracks will not be located within 75 miles of any existing commercial track; and

(v) Ensuring that 4% of the net terminal income as that term is defined in the Industry Bill (which is the same as gross slot income in the Bangor Bill) from any Gaming Machines located at any commercial track and/or OTB will be distributed to the commercial tracks through the existing commercial meet fund and that three percent (3%) of such net terminal income (or gross slot income) generated at any commercial track located on land not owned by the municipality where the track is located will be allocated to the municipality where the track is located; and

(vi) Establishing the minimum number of Gaming Machines that each licensee may operate on its premises at the levels specified in Section 371(2) of the Industry Bill, i.e.

- Scarborough Downs ..... 1,500 Gaming Machines
- Bangor Historic Track ..... 1,500 Gaming Machines
- Gaming Machines per OTB location .. 200 Gaming Machines

Notwithstanding the foregoing, the parties agree that all parties will support and advocate for whatever number of Gaming Machines is desired by each party, provided that the ratios of Gaming Machines entitlement shall remain consistent with the ratios inherent in the numbers of Gaming Machines licensed to each party under the Industry Bill and provided further that the parties will advocate for a provision that in the event a commercial track moves closer to and within 15 miles of an OTB that exists as of the date of the referendum on the Bangor Bill then the allocation of Gaming Machines between such commercial track and such OTB shall be governed in accordance with the provisions of section 371(4) of the Industry Bill; provided however, that the forgoing clause shall not apply to any track that moves closer to an OTB that is as of the date hereof currently located within 15 miles of the commercial track and provided further that the Parties will advocate for the preservation of the language in the OTB-Only bill allowing commercial tracks to open OTBs with the number of machines contemplated in the OTB-Only Bill.

(c) Regardless of whether the OTB-Only Bill is enacted into law, amendments to the Bangor Bill providing for the following increases in the percentages of gross slot income directed to the following Non-Track Participants:

- (i) An increase in the portion of the total gross slot income used by the Commission to supplement Harness Racing purses: from 7% to 10%;
- (ii) An increase of the portion of the total gross slot income forwarded by the Commission to the Treasurer of State for credit to the Agricultural Fair Support Fund established in Title 7, Section 76: from 3% to 4.
- (iii) An increase of the portion of the total gross slot income credited by the Commission to the Sire Stakes Fund created in Section 281: from 1% to 3;

(d) Anything in this Agreement including, specifically, subparagraph 2.2(c) hereof to the contrary notwithstanding:

- (i) If the portion of the gross slot income which the Commercial Tracks are entitled to retain is, from time to time and/or at any one or more times, reduced to less than 69% of the total gross slot income, then and in that event 50% of any such reduction ("Reduction") shall be borne by the Commercial Tracks and 50% of any such Reduction shall be borne by the Non-Track Participants (the "NTP Share"). The NTP Share shall be further allocated among the Non-Track Participants on a pari pasu basis; and the portion thereof allocable to each Non-Track Participant shall be referred to herein as an "NTP Allocable Share". Anything in this subparagraph 2.3(d)(i) hereof to the contrary notwithstanding, the aggregate amount of all Reductions allocable to the Non-Track Participants pursuant to this subparagraph 2.3(d)(i) shall be limited to 3% of the total gross slot income; and in no

event shall the share for overnight purses be less than nine percent, or the share for breeders less than two percent or the share of fairs less than three percent.

**2.3 Scarborough Downs and OTB Rationale.** The Parties agree that the rationale for their support of the Bangor Bill is and shall be that they support the Bangor Bill and the referendum because they believe the referendum on the Bangor Bill will allow the people of the State of Maine to address the question of whether Gaming Machines should be associated with harness racing, including at Bangor Raceway and Scarborough Downs, and that if the Bangor Bill is enacted into law, then the entire industry and the Legislature will work to develop appropriate changes to ensure that Gaming Machines will be associated with Scarborough Downs (even if Davric needs to move the track to assure such use) and to authorize operation of Gaming Machines at OTBs.

### **Article III**

#### **Maine Harness Racing Commission Licensure Proceedings**

**3.1 Maine Harness Racing Commission Proceedings.** The Parties agree to unequivocally, affirmatively and actively support Capital Seven and Bangor Historic Track in the following proceedings:

(a) Any and all proceedings (whether now or in the future commenced and/or pending) arising out of or relating to the purchase or other acquisition and/or ownership of some or all of the capital stock of BHT by Capital Seven and/or its principals and any and all hearings (whenever held) arising out of or relating to the issuance of a license and/or race dates to BHT to operate a commercial track for harness horse races (including pari-mutuel wagering) during the years 2003, 2004 and/or 2005 in Bangor or at any other place that is at least 75 miles from Scarborough, Maine, including, without limitation, State of Maine Harness Racing Commission – In re pari-mutuel Harness Racing Licenses and Date Assignments for Year 2003 – Approval of Capital Seven's purchase of 49.8% of the stock of Bangor Historic Track, Inc. and the ownership of such stock by Capital Seven pursuant to 8 M.R.S.A. § 271 and chapter 19, section 4 of the Maine Harness Racing Commission Rules;

(b) Any extension of the current proceeding referenced in the preceding paragraph, or any future proceeding, regarding approval of Capital Seven as an owner of in excess of 50% of the stock of BHT and the issuance or re-issuance of necessary approvals for race dates and licensing for operation of the Bangor Historic Track.

(c) Support for Capital Seven and BHT shall include, without limiting the generality of the foregoing, complete and unequivocal support for Capital Seven, Shawn Scott and its affiliated persons or entities in any "good moral character" determination required with respect to Capital Seven or any of its affiliated persons or entities. Provided, however, that the Parties shall have no obligation to support and may oppose the suitability and "good moral character" of any person not currently employed by Capital Seven and listed on the schedule of Capital Seven employees attached hereto and may request the inclusion of conditions on the license of Capital Seven that any

Party believes in good faith are consistent with Maine law if but only if such conditions relate to the safety of horses and drivers while at BHT and only to the extent complying with such conditions would not impose an unreasonable financial burden on the licensee.

(d) Consistent with the obligations of support set forth above, upon execution of this Agreement, Davric Maine Corporation will immediately take all action to dismiss its current Rule 80C appeal in the matter entitled: Davric Maine Corporation v. Bangor Historic Track, Inc., et al, pending in Cumberland County Superior Court Docket No. CV-AP-03-25.

(e) All of the Parties will support all applications filed by Davric to operate a commercial track with or without Gaming Machines at any one location at least 75 miles from Bangor, Maine or the then location of a commercial track being operated by BHT.

**3.2 Activities.** Each of the Parties (other than BHT and Capital Seven) support for Capital Seven and the BHT in the above-referenced proceedings shall include an agreement not to oppose, challenge, appeal or otherwise make any objection to the approvals requested by BHT and Capital Seven in such proceedings, and to limit their voluntary participation in such proceedings to affirmative support for Capital Seven's and BHT's positions. This provision does not restrict or limit the right or duty of any party to comply with any lawful subpoena, oath or other requirement imposed on such party.

#### **Article IV MHHA**

**4.1 Race Days.** BHT, Capital Seven and Scarborough Downs will work cooperatively with the MHHA to increase the number of race days to the maximum number possible taking into consideration (1) weather conditions and (2) avoiding unnecessary competition with agricultural fairs and between the two commercial tracks and which, in any event, shall include a requirement that Maine's commercial tracks must provide at least 150 live race days each year.

**4.2 Dashes.** BHT, Capital Seven and Scarborough Downs will work cooperatively with the MHHA to run at least six (6) races each race day for Maine-owned or sired horses; provided the races fill with "qualified" horses, based on qualifications for horses agreed upon among the MHHA and the commercial tracks.

#### **Article V Miscellaneous**

**5.1 Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof and thereof. This Agreement, however, is not intended to (and shall not) affect any existing agreement between Miller's and BHT.

## 5.2 Assignment.

(a) Each party's obligations under this Agreement may not be assigned without the express written consent of all of the parties hereto unless the assignor expressly agrees in such assignment to continue to be bound by and perform its obligations hereunder in the event any such obligations are not performed or are inadequately performed by the assignee.

(b) This Agreement shall be binding upon each party's successors and assigns. The successors and assigns of a Track shall include any entity to which the track's license to operate a "Commercial Track" is assigned or any entity the Track assists in acquiring such a license.

5.3 Amendment. This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, all parties hereto.

5.4 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which, taken together, shall constitute one and the same agreement.

## Article VI Execution and Delivery

6.1. Benefits. This Agreement shall apply only to those of the named parties that execute and deliver this Agreement ("Signatories") in accordance with Section 6.2 below. Any Signatories listed hereon that do not timely execute and deliver this Agreement shall not be entitled to any of the benefits provided hereunder (either directly or as a third party beneficiary) and shall not be entitled to enforce the provisions hereof in law or in equity. Without limiting the generality of the foregoing, only Signatories shall be entitled to inclusion in the Signatories' efforts to adopt the Industry Bill and/or extend the benefits of the Bangor Bill or any similar legislation, through the cooperative efforts of the Signatories hereunder. The failure of any one or more named parties to execute and deliver this Agreement shall not in any way negate, invalidate or otherwise affect the validity of this Agreement with respect to the Signatories, it being the intent of the Signatories to be fully bound hereby.

6.2 Execution and Delivery. Each named party must execute and return a signed counterpart of this Agreement to the following address via telecopy, U.S. Mail or overnight courier such that it is received on or before 5:00 p.m. EST on September 25, 2003.

Edward S. MacColl, Esq.  
Thompson, Bull, Furey, Bass & MacColl, P.A.  
120 Exchange Street  
Portland, ME 04101  
Fax: 207-772-1039