STATE OF ILLINOIS
ILLINOIS GAMING BOARD

Accel Entertainment Gaming, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 19-UP-005**
	)	
Eureka Entertainment, LLC, d/b/a Universal Gaming Group,	)	
	)	
	)	
Respondent.	)	

RE: Gano Athletic Club d/b/a Gano Athletic Club (Lic. No. 130704771)

FINAL BOARD ORDER

This cause is before the Illinois Gaming Board (the "Board" or "IGB") pursuant to the Video Gaming Act (the "VGA"), 230 ILCS 40, and Section 1800.320(b) of the Board's Adopted Rules (the "Rules"). 11 Ill. Adm. Code 1800.320(b).

FINDINGS OF FACT

Before me is the entire record of *Accel Entertainment Gaming, LLC, Petitioner* ("Accel") *v. Eureka Entertainment, LLC, d/b/a Universal Gaming Group, Respondent* ("Eureka") Re: Gano Athletic Club d/b/a Gano Athletic Club ("Gano") (Lic. No. 130704771) Docket No. 19-UP-005. The record includes the Petition, all Responses and other documents properly filed, and the Administrator's Recommended Decision.

On January 14, 2019, Accel petitioned the Board to declare Accel's September 18, 2017 agreement with Gano to be valid for the placement and operation of video gaming terminals ("VGTs") in Gano; invalidate the September 22, 2012 agreement between Eureka and Gano (the "Universal Agreement"); and order Eureka to remove its VGTs from Gano. The Board's initial attempt to serve Eureka with Accel's Petition failed. On March 28, 2019, after being properly served with Accel's Petition, Eureka filed a timely Response. I issued an Administrator's Recommended Decision ("ARD") on December 12, 2023 recommending the Board grant Accel's Petition because Gano properly served Eureka with a timely non-renewal notice, thus ending the Universal Agreement after its initial term expired on December 30, 2018. No Exceptions were filed to the ARD.

CONCLUSIONS OF LAW

Pursuant to the VGA, the Rules, and *J&J Gaming Ventures, LLC v. Wild, Inc.*, 2016 IL 119870, the Board has exclusive and original jurisdiction over agreements that purport to control the placement and operation of video gaming terminals. In *Wild*, the Illinois Supreme Court affirmed that there is no common law right to profit from gambling. *Wild* at ¶ 32. The Court further held that the VGA's legalization of video gaming is an exception to the general prohibition on gambling, that video gaming is allowed only as authorized by the VGA and the Rules, and that by "legalizing the use of video gaming terminals for commercial gambling purposes, the legislature enacted a comprehensive statutory scheme, creating rights and duties that have no counterpart in common law or equity." *Id*.

On December 12, 2023, I issued an ARD, recommending the Board grant Accel's Petition. On February 9, 2023, the Board delegated to the IGB Administrator authority to issue a Final Board Order to dispose of a Rule 320 Petition where none of the parties file Exceptions to the ARD. As noted above, none of the parties filed Exceptions in this matter.

Therefore, after careful review and consideration of the entire record, I hereby:

(1) Adopt the Administrator's Recommended Decision as a Final Board Order; and

(2) Grant Accel's Petition.

This is a Final Order subject to judicial review under the Administrative Review Law pursuant to 230 ILCS 10/17.1. The Rules of the Illinois Gaming Board do not permit motions or requests for reconsideration of this Order.

DATED: January 9, 2024

MARCUS D. FRUCHTER, ADMINISTRATOR
ILLINOIS GAMING BOARD

STATE OF ILLINOIS
ILLINOIS GAMING BOARD

Accel Entertainment Gaming, LLC,	)	
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Petitioner,	)	
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v.	)	**No. 19-UP-005**
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Eureka Entertainment, LLC, d/b/a Universal Gaming Group,	)	
	)	
	)	
Respondent.	)	
	)	

RE: Gano Athletic Club d/b/a Gano Athletic Club (License No. 130704771)

ADMINISTRATOR'S RECOMMENDED DECISION

This dispute comes before the Illinois Gaming Board (the "Board" or "IGB") under Section 1800.320(b) of the Board's Adopted Rules (the "Rules"). 11 Ill. Adm. Code 1800.320(b). This Recommendation issues under Rule 320(b)(6). 11 Ill. Adm. Code 1800.320(b)(6).

Petitioner, licensed terminal operator Accel Entertainment Gaming, LLC ("Accel"), asks the Board to: (1) declare Accel's September 17, 2017 agreement with Gano Athletic Club d/b/a Gano Athletic Club ("Gano") (the "Accel Agreement") valid and enforceable for the placement and operation of video gaming terminals ("VGTs") in Gano; (2) find that the use agreement ("UA") between licensed terminal operator Eureka Entertainment, LLC d/b/a Universal Gaming Group ("Eureka") and Gano (the "Universal Agreement") ended on December 30, 2018; and (3) order Eureka to remove its VGTs from Gano.

After considering the parties' submissions, and for the following reasons, I recommend the Board grant Accel's Petition.

I. JURISDICTION

The Video Gaming Act (the "VGA") confers jurisdiction and authority upon the Board to supervise all video gaming operations in Illinois. 230 ILCS 40/78; *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶¶ 3, 39-40. The Board has all powers necessary and proper to effectively execute the VGA, including authority to adopt regulations for the purpose of administering it and "provide for the prevention of practices detrimental to the public interest and for the best interests of video gaming." *Wild*, 2016 IL 119879, ¶ 3. The VGA provides "a comprehensive statutory scheme that vests jurisdiction over video gaming operations" with the Board. *Id.* at ¶ 42. The Board's broad authority over all aspects of video gaming includes the "exclusive, original jurisdiction" to determine the validity and enforceability of agreements that "purport to control placement and operation of video gaming terminals." *Id.*; *see also* 11 Ill. Adm. Code 1800.320(b)(1).

II. RELEVANT BACKGROUND

On September 22, 2012, Eureka's predecessor in interest, Universal Gaming Group, LLC, d/b/a Universal Gaming Group ("Universal"),[1] executed an agreement with Gano for the placement and operation of VGTs in Gano. (Petition ¶ 1, Ex. A, ¶ 4; Response ¶ 1.) According to the Universal Agreement, its initial term is five years from the date one or more of Eureka's VGTs commence operations in Gano. (Petition ¶ 5, Ex. A, ¶ 4; Response ¶ 5.) VGTs were installed and became operational in Gano on December 30, 2013 (Petition ¶ 3; Response ¶ 3), meaning the initial term of the Universal Agreement would expire after December 30, 2018.

The Universal Agreement also provides that it would "automatically renew" for additional five-year terms "unless written notice of termination is given by one of the parties at

[1] On March 23, 2018, Eureka acquired terminal operator Universal and all its assets including this UA.

least 90 days prior to the expiration of the Initial Term or then-current renewal term." (Petition ¶ 6, Ex. A ¶ 4; Response ¶ 6.) October 1, 2018 is 90 days prior to the end of the Universal Agreement's initial term.

The Universal Agreement imposes certain requirements upon the parties for the delivery of notices. Specifically, Paragraph 17 of the Universal Agreement provides that "[a]ll notices shall be deemed duly served (a) on the date sent if delivered by hand, (b) one (1) day after the date deposited with an overnight delivery service, (c) on the date transmitted if delivered via facsimile, or (d) on the date received or the date upon which receipt is refused, if sent by registered or certified U.S. Mail, postage prepaid, return receipt requested. All notices shall be addressed to the intended recipient at the address for said party set forth at the bottom of this [Universal] Agreement, or such other address as such party may designate in writing." (Petition Ex. A ¶ 17.) The Universal Agreement identifies 824 W. Superior Street, Suite 100, Chicago, Illinois 60642 as the "Address for Notices" for Universal. (Response Ex. 1.) There is no evidence in the record that Eureka ever amended or updated the Address for Notices in the Universal Agreement following Eureka's March 23, 2018 acquisition of Universal.

On September 18, 2017, Accel and Gano executed the Accel Agreement for the placement and operation of Accel's VGTs in Gano upon termination of the Universal Agreement. (Petition ¶ 4, Ex. B; Response ¶ 4.) The Accel Agreement displays the signature of an Accel representative as well as the signature of a Mr. John Murray as President of Gano. (Petition Ex. B.) The Accel Agreement affirms that the signatories "are duly authorized and empowered to execute this [Accel] Agreement." (*Id.*) The Accel Agreement also provides that it "shall have an initial term ending ten years" after installation of Accel's VGTs in Gano and

"shall automatically renew for the same term unless" properly non-renewed by one of the parties. (Petition Ex. B.)

The Accel Agreement further provides that the "parties agree to modify any provision as directed by the Illinois Gaming Board, including resigning a new contract to comport with any changes in legislation and/or Illinois Gaming Board Rules and regulations." (*Id*.) At the time Accel and Gano signed the Accel Agreement in September of 2017, Rule 320(a) neither limited the length of UAs to no more than eight years, nor precluded the automatic renewal of UAs in the absence of cancellation by one of the parties. The Board amended Rule 320(a) on February 2, 2018 to prohibit UAs with terms greater than eight years and automatic renewal provisions. 11 Ill. Adm. Code 1800.320, amended at 42 Ill. Reg. 3126, effective February 2, 2018.

On September 17, 2018, Gano sent notice to Eureka of its intent not to renew the Universal Agreement at the end of its initial term on December 30, 2018. (Petition Ex. C.) Gano sent its non-renewal notice through the United States Postal Service (the "USPS") by certified mail, return receipt requested, to Eureka's business address at 240 West Laura Drive in Addison, Illinois, rather than to the designated Address for Notices for Universal identified in the Universal Agreement. (Petition Ex. C.) Gano states it sent the non-renewal notice to Eureka's business address after an internet search and a discussion with Eureka's legal counsel. (Petition ¶ 10.) Eureka admits that 240 West Laura Drive, Addison, Illinois, 60101 is Eureka's business address. (Response ¶ 10.)

On September 19, 2018, the USPS attempted to deliver Gano's notice to Eureka's business address but found "No Authorized Recipient Available." (Petition Ex. C.) Subsequently, the USPS left an attempted delivery notification with Eureka and returned Gano's non-renewal notice to the Post Office. (*Id*.) After Gano's non-renewal notice remained

unclaimed by Eureka for nearly a month, on October 14, 2018, the USPS returned the non-renewal notice to Gano. (*Id*.) By the time the USPS returned the non-renewal notice to Gano, the 90-day period for Gano to non-renew the Universal Agreement had closed on October 1, 2018.

Subsequently, Accel filed this Petition on or around January 14, 2019. On February 1, 2019, Gano filed a timely Response signed by its then President, Mr. Steve Losos, Sr., and Mr. John Murray as "President 2017." The Board's initial attempt to serve Eureka with Accel's Petition failed. However, after being properly served, Eureka also filed a timely Response on March 28, 2019.

II. DISCUSSION

In its Petition, Accel asserts that Gano's non-renewal notice properly terminated the Universal Agreement as of December 30, 2018. Eureka responds that it did not receive Gano's non-renewal notice and, therefore, the Universal Agreement automatically renewed for another five-year term, ending on December 30, 2023. (Response ¶¶ 7-8.) Additionally, Eureka somehow disclaims having "knowledge sufficient to form a belief" as to whether Gano obtained Eureka's business address from Eureka's legal counsel. (Response ¶ 10.) Eureka similarly denies having "knowledge sufficient to form a belief" as to whether the USPS found "No Authorized Recipient Available" at Eureka's business address when the USPS attempted to deliver Gano's certified non-renewal notice to Eureka. (Response ¶ 11.)

In addition to these statements, Eureka raises several "affirmative defenses." Namely, Eureka contends: (1) the Board lacks jurisdiction to consider "common law contract issues;" (2) Rule 320 violates Eureka's right to procedural due process under the United States Constitution and Illinois Constitution because Rule 320 does not provide for "discovery and a full evidentiary hearing before an impartial Administrative Law Judge ("ALJ");" and (3) Rule 320 is invalid

because it fails to include various requirements Eureka contends are required by the Administrative Procedures Act (the "APA") for "contested cases." (Response at p. 6-7.)

Lastly, Eureka challenges the validity of the Accel Agreement by claiming, on the basis of information and belief, that Mr. Murray lacked authority to sign the Accel Agreement on Gano's behalf. (Response ¶ 4.) Eureka supports its assertion with a publicly available version of Gano's updated Video Gaming Application ("Gano's Application") dated February 14, 2017 that does not list Mr. Murray as a Gano officer, director, or board member. (Response Ex. 2.) The parties' arguments are considered fully below. (*Id*.)

A. Whether Gano's non-renewal notice to Eureka complied with the requirements for terminating the Universal Agreement as of December 30, 2018.

The Universal Agreement provides that Gano may non-renew prior to the end of the Universal Agreement's initial term by sending notice to Eureka by October 1, 2018 (Petition Ex. A ¶ 4). Gano may serve its non-renewal notice by hand delivery, overnight delivery service, facsimile or registered or certified U.S. mail. (Petition Ex. A ¶ 17.) If Gano sends its non-renewal notice to Eureka by registered or certified U.S. mail, the Universal Agreement deems the notice as served on the date it is received or refused by Eureka. (*Id*.)

Accel contends that Gano's September 17, 2018 non-renewal notice to Eureka met each of these requirements. To support its argument, Accel attaches group Exhibit C to its Petition. Exhibit C contains copies of the September 17, 2018 non-renewal notice from Gano to Eureka; a USPS certified mail receipt; and tracking information from the USPS website ("USPS Tracking Sheet.") (Petition Ex. C.) Taken as a whole, Exhibit C is sufficient to establish that Gano sent its non-renewal notice to Eureka through certified U.S. mail on September 17, 2018. The USPS Tracking Sheet shows that the USPS attempted to deliver Gano's non-renewal notice to Eureka on September 19, 2018, and that no person authorized by Eureka was available then to accept the

notice. The USPS Tracking Sheet also confirms that USPS left a notice of attempted delivery with Eureka before returning Gano's non-renewal notice to the Post Office. Finally, the USPS Tracking Sheet establishes that Eureka did not collect Gano's non-renewal notice from the Post Office or request its redelivery before the USPS sent it back to Gano on October 14, 2018. By then, the 90-day window to non-renew the Universal Agreement already had closed on October 1, 2018.

In its Response, Eureka asserts that it did not receive Gano's September 17, 2018 non-renewal notice before the October 1, 2018 deadline for non-renewing the Universal Agreement. While this may be true, Eureka does not deny that it received the September 19, 2018 USPS notice of attempted delivery of Gano's non-renewal notice. Nor does Eureka attempt to contest that it refused to collect Gano's non-renewal notice from the Post Office after receiving notice of the attempted delivery and before passage of the October 1, 2018 termination deadline.

Given Eureka's refusal to accept or effectuate delivery of Gano's notice, and because the Universal Agreement deems a notice sent by certified U.S. mail as served on the date it is received or refused, the Board should find that Gano served its non-renewal notice in a timely fashion and, consequently, that the Universal Agreement ended after its initial term expired on December 30, 2018. Additionally, it must be noted that Eureka's failure to update the designated mailing address for non-renewal notices in the Universal Agreement after the purchase from Universal undoubtedly caused some delay and confusion for Gano's non-renewal efforts. Any hardships flowing from Eureka's failure here should be borne by Eureka rather than Gano.

B. "Affirmative Defenses"

1) Jurisdiction

Eureka asserts that the Board's authority over 320 petitions is strictly limited by *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870 and by the language of Rule 320(b) to determining only the validity and enforceability of use agreements. (Response at p. 7.) Eureka further argues that Rule 320(b) is not valid because Rule 320(b)(1) improperly permits the Board to consider "common law contract issues" that "are, and should be, in the purview of the law division judges in the Circuit Courts." In other words, Eureka argues that the Board's authority to determine a 320 petition does not include consideration of common law contract issues, even where decision of those matters is required to determine the merits of a Rule 320 petition.

Eureka's jurisdictional assertions are misplaced for three reasons. First, it is axiomatic that a state agency like the Board is required to follow its own enabling statutes and rules – in this case, the VGA and Rule 320. *See, e.g., Texaco-Cities Serv. Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278, 695 N.E.2d 481 (1998) (an administrative agency lacks the authority to invalidate or to question the validity of a statute); *Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n v. Ill. Labor Rels. Bd.*, 406 Ill. App. 3d 766, 771 (administrative rules have the force and effect of law).

Second, Illinois law is firmly established that the Board has sole authority under the VGA and Rule 320 to determine Accel's Petition. *E.g., Wild*, 2016 IL 119870, ¶33 (holding that whether J & J had the exclusive right to place and operate video gaming terminals in defendants' establishments required a determination of the validity of the use agreements which is a matter that falls within the exclusive province of the Board).

Third, Eureka's narrow reading of the Board's authority over 320 petitions is mistaken. A use agreement is a contract between a licensed terminal operator and a licensed establishment

that provides the terms and conditions for placing and operating VGTs in the establishment. 11 Ill. Adm. Code 1800.110. The Board's exclusive authority to determine the validity and enforceability of this category of contracts is both recognized by the Illinois Supreme Court, *Wild*, 2016 IL 119879, ¶¶ 3, 39-40, and specifically articulated in Rule 320(b), 11 Ill. Adm. Code 1800.320(b). Eureka's strained attempt to preclude the Board from determining issues—like proper notice under a use agreement termination provision—which must be resolved for the Board to determine the validity or enforceability of a use agreement, contravenes *Wild* and would render meaningless the Board's clear authority to decide Rule 320 petitions. Accordingly, Eureka's argument that the Board lacks jurisdiction to decide Accel's 320 Petition is unfounded, contrary to established Illinois law, and must be rejected.

2) Due Process

Eureka next claims that Rule 320 deprives it of procedural due process protections guaranteed by the U.S. and Illinois Constitutions because the rule does not allow for discovery and a trial-like evidentiary hearing before an impartial ALJ. (Response at p. 6.) As noted above, an administrative agency lacks the authority to invalidate or to question the validity of a statute or rule. Even so, Eureka's due process theory fails for at least two reasons. First, procedural due process does not apply here since there is no constitutionally protected liberty or property interest at issue. *See*, *e.g.*, *Dolly's Café LLC v. Ill. Gaming Bd.*, 2019 U.S. Dist. LEXIS 210368, at *9 (N.D. Ill. Dec. 6, 2019) (citing *Wild*, 2016 IL 119870, ¶ 26) ("[t]he Supreme Court of Illinois has addressed the issue and flatly foreclosed the notion that a protected liberty interest exists in the form of a gambling license.").

Second, Eureka's claim that Rule 320 permits review by an outside tribunal is entirely unsupported by statute or controlling case law. "[P]rocedural due process protections are

triggered only when a constitutionally protected liberty or property interest is at stake." *Nehammer v. Basta*, 2022 IL 128354, ¶ 64, 215 N.E.3d 935 (citing *Hill v. Walker*, 241 Ill. 2d 479, 485 (2011)). There is no constitutionally protected right to freely engage in the business of gambling. *See*, *e.g.*, *Wild*, 2016 IL 119870, at ¶ 32. Since there is no liberty interest at stake in this 320 Petition, Eureka must show that the U.S. or Illinois Constitutions entitle Eureka to the UA with Gano and any revenues deriving from the UA. *See*, *e.g.*, *Nyhammer*, 2022 IL 128354, at ¶¶ 65–66. However, here too precedent is clear that there is no protectible interest in gambling contracts. *See Wild*, 2016 IL 119870, at ¶ 32.

Indeed, Eureka's ability to engage in video gaming (including alienating its gaming assets) can be taken away or restricted by statute or rule. *See*, *e.g.*, Rule 340(c) ("no video gaming asset, including the right to place video gaming terminals at a licensed establishment, held by a licensed terminal operator may be transferred or assigned to another licensed terminal operator without prior approval from the Administrator.") Eureka's interest in its UA with Gano, thus relies on a unilateral expectation that the Illinois legislature and the Board will not alter the existing regulatory scheme governing video gaming. This kind of interest does not confer a property right that is protected by the U.S. or Illinois Constitutions. *See Dennis Melancon, Inc. v. City of New Orleans*, 703 F. 3d 262, 274 (5th Cir. 2012) (rejecting a constitutional challenge to amended regulations governing the taxicab industry because license holders do not have a property interest in their taxicab license).

Further, due process is a flexible concept requiring "only such procedural protections as fundamental principles of justice and the particular situation demand." *Key Outdoor, Inc. v. Ill. DOT*, 322 Ill. App. 3d 316, 321, 750 N.E.2d 709, 713 (4th Dist. 2001) ("[d]ue process does not necessitate a hearing in every case of government impairment of a private interest."). In an

administrative context, procedural due process does not necessarily require a process that mirrors evidentiary proceedings in court. *See*, *e.g.*, *Abrahamson v. Illinois Dep't of Prof'l Regulation*, 153 Ill.2d 76, 92, 606 N.E.2d 1111 (1992). "Administrative proceedings are less formal and technical than judicial proceedings" and "not all judicial procedures are appropriate in an administrative proceeding." *WISAM 1, Inc. v. Ill. Liquor Control Comm'n*, 2014 IL 116173, ¶ 27. Rather, "[t]he requirement of due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights." *Reyes v. Court of Claims*, 299 Ill. App. 3d 1097, 1104, 702 N.E.2d 224, 230 (1st Dist. 1998).

The 320 Petition process meets these requirements by providing participants with actual notice and an opportunity to address issues raised through written submissions. This is a legally sound basis for a Board decision where, in most cases, the validity or enforceability of a UA turns upon its compliance with the minimum requirements for UAs found in Rule 320(a), or a party's compliance with the terms of the UA. In this context, the value of discovery and court like evidentiary hearings is minimal. Moreover, the minimal added value, if any, of introducing discovery and court like proceedings into the 320 Petition process is significantly outweighed by the Board's interest in conserving scarce fiscal, administrative, and judicial resources that would otherwise be consumed in full trial-like proceedings with discovery and hearings. Finally, Eureka presents absolutely no facts or evidence to support its vague assertions that Rule 320 deprives Eureka, or any participant in the 320 Petition process, of a fair and impartial tribunal.

For the foregoing reasons, Rule 320 does not violate procedural due process protections of the U.S. or Illinois Constitutions.

3. Illinois Administrative Procedure Act

Eureka's next assertion that Rule 320 is invalid because it does not incorporate the APA's "contested case" provisions is similarly misplaced and unpersuasive. A contested case is "an adjudicatory proceeding . . . in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing." 5 ILCS 100/1-30. In other words, there must be some statutory, administrative, or constitutional authority requiring an agency to conduct a hearing when deciding an issue. *See Nyhammer*, 2022 IL 128354, at ¶ 41. Here, other than Eureka's bare assertions, there is no indication that the VGA or any other statute or regulation requires the Board to hold an APA style hearing prior to determining a 320(b) Petition. *See Id.* at ¶ 49.

"[W]hen the General Assembly intends to require a hearing before an agency makes an administrative decision, it does so explicitly, and it does so in language precisely tracking section 1-30 of the [APA]." *Nyhammer*, 2022 IL 128354, at ¶ 45. Eureka cites no statutory authority that requires the Board to conduct an APA style hearing on Accel's petition. Further, as explained above, Eureka's procedural claims do not implicate a fundamental right protected by the U.S. or Illinois Constitutions. *See Dolly's Café*, 2019 U.S. Dist. LEXIS 210368, at *9 (N.D. Ill. Dec. 6, 2019) (citing *Wild*, 2016 IL 119870, ¶ 26) ("[t]he Supreme Court of Illinois has addressed the issue and flatly foreclosed the notion that a protected liberty interest exists in the form of a gambling license.") Eureka, thus, fails to demonstrate that Rule 320 is invalid absent inclusion of the APA's "contested case" provisions.

Accordingly, and contrary to Eureka's assertions, the Board has jurisdiction to decide this Petition and Rule 320 does not deprive Eureka of due process or violate the APA.

C. The Validity and Enforceability of Accel Agreement

Accel's Petition asks the Board to determine the validity and enforceability of the Accel Agreement. As noted above, Eureka challenges the validity of the Accel Agreement by asserting, solely on information and belief, that Mr. Murray lacked authority on September 18, 2017 to execute the Accel Agreement on behalf of Gano. (Response ¶ 4.) Eureka's claim rests upon the February 14, 2017 update to Gano's Application which does not list Mr. Murray as an officer or director of Gano.

Under Rule 320(b)(2), Accel has the burden of proving by clear and convincing evidence that the Accel Agreement is valid and enforceable. Accel submitted with its verified petition a copy of the Accel Agreement. The Accel Agreement affirmatively states that Mr. Murray and the individual signing for Accel "are duly authorized and empowered to execute this Agreement" on behalf of Gano and Accel, respectively, on the date of its endorsement on September 18, 2017. This statement is later supported by Gano's February 1, 2019 Response to Accel's Petition, which is signed by both Gano's then President, Mr. Losos, as well as Mr. Murray as Gano's President in 2017.

In contrast, Eureka's assertion relies simply on speculation purportedly arising from the February 2017 update to Gano's Application to the Board. The Gano Application, however, does not in itself support a conclusion that Mr. Murray lacked authority to execute the Accel Agreement seven months later in September 2018. In the absence of any such evidence, the record is sufficient to conclude that Mr. Murray had the authority to bind Gano to the Accel Agreement.

Lastly, the Accel Agreement meets the Rule 320(a) minimum standards for UAs in place when Accel and Gano executed the Accel Agreement in September 2017. However, the Accel

Agreement expressly provides that Accel and Gano agree to amend the Accel Agreement as directed by the IGB "to comport with any changes in legislation and/or Illinois Gaming Board Rules and Regulations." Rule 320(a), as amended on February 2, 2018, requires that a "Use Agreement must…[n]ot be for a length of time exceeding eight years" or "provide for automatic renewal in the absence of cancellation." 11 Ill. Adm. Code 1800.320, amended at 42 Ill. Reg. 3126, effective February 2, 2018. Therefore, as contemplated by the contract terms and consistent with the amended Rule 320, the Accel Agreement is valid and enforceable for 8 years without the automatic renewal provision.

IV. CONCLUSION

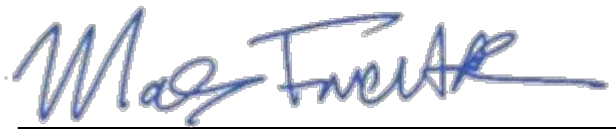
For the foregoing reasons, I recommend that the Board enter an Order:

1. Adopting this Recommend Decision;
2. Finding that Accel's UA is valid and enforceable for the placement and operation of VGTs in Gano for 8 years and without any automatic renewal;
3. Direct Eureka to remove its VGTs from Gano within 30 calendar days of the entry of a Final Board Order.
4. Declare all further proceedings cancelled, and this matter concluded.

Pursuant to Rule 320(b)(7), any party to this Petition wishing to file exceptions must do so by 5:00 p.m. central standard time on the 14th day after receipt of this Recommend Decision.

DATED: December 12, 2023

RESPECTFULLY SUBMITTED,



MARCUS D. FRUCHTER, ADMINISTRATOR
ILLINOIS GAMING BOARD

CERTIFICATE OF SERVICE

I, Agostino Lorenzini, certify that on January 9, 2024 I served a copy of the attached Final Order to all parties of record in *Accel Entertainment Gaming, LLC v. Eureka Entertainment, LLC, d/b/a Universal Gaming Group, In Re Gano Athletic Club d/b/a Gano Athletic Club*, Docket No. 19-UP-005 at the following e-mail addresses:

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1/9/2024

X Agostino Lorenzini

Agostino Lorenzini

Signed by: Agostino Lorenzini

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SERVICE LIST

Pursuant to Board Rules 1800.320(b)(12), and 1800.140, this Final Order is being served *via* e-mail upon all parties of record to *Accel Entertainment Gaming, LLC v. Eureka Entertainment, LLC, d/b/a Universal Gaming Group, In Re Gano Athletic Club d/b/a Gano Athletic Club*, Docket No. 19-UP-005 at the following addresses:

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