

RESOLUTION No. 2009-02-947-Z-83

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING AN APPLICATION SUBMITTED BY CALDER RACE COURSE, INC., FOR A MODIFICATION OF CONDITION NO. 1 OF THE PREVIOUSLY APPROVED RESOLUTION # Z-296-79; AN UNUSUAL USE TO PERMIT A PROPOSED CASINO GAMING OPERATION; A SPECIAL EXCEPTION TO SPACING REQUIREMENTS AS APPLIED TO ALCOHOLIC BEVERAGE USE TO PERMIT THE PROPOSED CASINO GAMING OPERATION TO BE SPACED LESS THAN THE REQUIRED 2,500 FEET FROM A PUBLIC SCHOOL; AND A NON-USE VARIANCE OF ZONING REGULATIONS LIMITING THE SALES OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES ON WEEKDAYS BETWEEN THE HOURS OF 8:00 A.M. AND 1:00 A.M. OF THE FOLLOWING DAY, AND ON SUNDAY, BETWEEN THE HOURS OF 5:00 P.M. AND 1:00 A.M. ON THE FOLLOWING MONDAY TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES 24 HOURS A DAY 7 DAYS A WEEK; PROVIDING FOR A DECLARATION OF RESTRICTIVE COVENANTS; PROVIDING FOR CONDITIONS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Calder Race Course, Inc. ("Applicant"), owns certain property located at 21001 Northwest 27th Avenue, more particularly described on Exhibit "A" attached hereto ("Property"), and

WHEREAS, the Applicant seeks the following approvals:

1. Unusual use to permit a proposed Amusement Center in the AU District: to wit Casino Gaming Operation.
2. Modification of Condition No. 1 of the previously approved Resolution No. Z-296-79 passed and adopted by the Miami-Dade Board of County Commissioners on January 15, 1980, to read as follows:

From: "That the development be substantially in compliance with the plan entitled 'Calder Race Course, Inc. Master Layout Plan' as prepared by John S. Bristol and Associate, Inc., and dated October, 1972 and revised 5-30-79."

To: "That the development be substantially in compliance with the plans entitled 'Calder Casino: A Churchill Downs Company' consisting of a Cover Page, a Boundary and Topographic Survey, Sheets S-1 thru S-7 as prepared by Craven-Thompson And Associates, Inc.; an ALTA/ASCM Urban Land Survey, Sheets 1 thru 6, as prepared by McLaughlin Engineering Company; a Master Site Plan, Sheet MSP-1; an Overall Site Plan and Key Sheet, Sheet SP-1; Partial Site Plans, Sheets SP-2 thru SP-6; a Floor Plan, Sheet A-110; Building Elevations, Sheet A-210; a Proposed Site Rendering, Sheet A-211; an Overall Landscape Plan, Sheet L-1; Partial Landscape Plans, Sheets L-2 thru L-6; Landscape Notes, Sheet L-7; Landscape Detail Sheet, Sheet L-8, as prepared by Craven-Thompson And Associates, Inc, in conjunction with JCJ Architecture and Interiors, PC.; a Tree Disposition Plan, Sheets T-1 & T-2; a Tree Canopy Calculation Plan. Sheet T-3; and a Tree List, Sheet T-4; and a Liquor Survey, Sheet S-1, as prepared by Craven-Thompson And Associates, Inc. All sheets dated, stamped, and received October 14, 2008.

3. Special exception to permit night club activities and live entertainment in conjunction with the proposed Casino Gaming Operation in the AU District.
4. Special exception to spacing requirements as applied to alcoholic beverage use to permit the proposed Casino Gaming Operation to be spaced less than the required 2,500 feet from a public school.
5. Non-use variance of zoning regulations limiting the sales of alcoholic beverages for consumption on premises on weekdays between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and on Sunday, between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday; to waive same to permit consumption on the premises at the proposed Casino Gaming Operation 24 hours a day, 7 days a week.

WHEREAS, the City Council held public hearings on the application on December 3, 2008, and

WHEREAS, the city's Planning & Zoning staff has made a determination that the application is consistent with the Comprehensive Development Master Plan, and

WHEREAS, the City's Planning and Zoning staff recommends approval of the application subject to certain conditions, and

WHEREAS, the City Council considered the testimony of the Applicant, if any,
and

WHEREAS, the City Council also considered the testimony of the City's Planning
& Zoning staff, and the Staff Report attached hereto as Exhibit "B," incorporated herein
by reference.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas
paragraphs are hereby ratified and confirmed as being true, and the same are hereby
made a specific part of this Resolution.

Section 2. APPROVAL: The City Council of the City of Miami Gardens hereby
approves the application submitted by the Applicant as follows:

1. Unusual use to permit a proposed Amusement Center in the AU District:
to wit Casino Gaming Operation.
2. Modification of Condition No. 1 of the previously approved Resolution No.
Z-296-79 passed and adopted by the Miami-Dade Board of County
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To: "That the development be substantially in compliance with the
plans entitled 'Calder Casino: A Churchill Downs Company'
consisting of a Cover Page, a Boundary and Topographic Survey,
Sheets S-1 thru S-7 as prepared by Craven-Thompson And
Associates, Inc.; an ALTA/ASCM Urban Land Survey, Sheets 1
thru 6, as prepared by McLaughlin Engineering Company; a Master
Site Plan, Sheet MSP-1; an Overall Site Plan and Key Sheet, Sheet
SP-1; Partial Site Plans, Sheets SP-2 thru SP-6; a Floor Plan,
Sheet A-110; Building Elevations, Sheet A-210; a Proposed Site
Rendering, Sheet A-211; an Overall Landscape Plan, Sheet L-1;
Partial Landscape Plans, Sheets L-2 thru L-6; Landscape Notes,

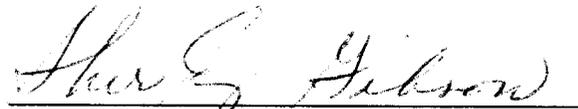
Sheet L-7; Landscape Detail Sheet, Sheet L-8, as prepared by Craven-Thompson And Associates, Inc, in conjunction with JCJ Architecture and Interiors, PC.; a Tree Disposition Plan, Sheets T-1 & T-2; a Tree Canopy Calculation Plan. Sheet T-3; and a Tree List, Sheet T-4; and a Liquor Survey, Sheet S-1, as prepared by Craven-Thompson And Associates, Inc. All sheets dated, stamped, and received October 14, 2008.

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5. Non-use variance of zoning regulations limiting the sales of alcoholic beverages for consumption on premises on weekdays between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and on Sunday, between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday; to waive same to permit consumption on the premises at the proposed Casino Gaming Operation 24 hours a day, 7 days a week.

Section 3. DECLARATION OF RESTRICTIONS: The City Council of the City of Miami Gardens, Florida, hereby approves the Declaration of Restrictive Covenants attached hereto as Exhibit "C."

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS ZONING MEETING HELD ON JANUARY 7, 2009


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert
SECOND BY: Councilman Bratton

VOTE: 6-0

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> </u> (Yes)	<u> </u> (No) (not present)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> X </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> X </u> (Yes)	<u> </u> (No)

SKD/teh
8279687_1.DOC

City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Oliver Gilbert III
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilman André Williams

Agenda Cover Page – Calder Race Course, Inc.

PH-2008-00033

Date: January 7, 2008

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes No Advertising requirement: Yes No

Sponsor Name/Department: Development Services Director via City Manager

Public hearing

Ordinance

1st Reading

Quasi-Judicial

Resolution

2nd Reading

RESOLUTION NO. 2009

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SUMMARY: This item was deferred from the December 3, 2008 meeting at the request of the applicant to allow the applicant's transportation consultant to respond to the City's comments and concerns. The applicant's revised traffic analysis points out that existing traffic improvements serve the 9,000-plus seat existing facility. Additional analysis of intersections and queuing lanes resolve previously stated staff concerns. Previously recommended conditions of approval relative traffic circulation are no longer necessary. The applicant's new traffic analysis is included in the attachments to this report.

ATTACHMENTS:

RESOLUTION

EXHIBIT "A" LEGAL DESCRIPTION

EXHIBIT "C" DECLARATION OF RESTRICTIVE COVENANTS

EXHIBIT "B" STAFF RECOMMENDATION

**ITEM 10-B) RESOLUTION
PUBLIC HEARING
Calder Race Course, Inc.**

Calder Race Course, Inc.

PH-2008-000033: Unusual Use, Resolution Modification, Special Exceptions & Non-Use Variance

Page 3 of 30

EXHIBIT "A" LEGAL DESCRIPTION

EXHIBIT "A"
LEGAL DESCRIPTION

THE NORTH THREE-QUARTERS (N 3/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4), LESS THE WEST 30 FEET THEREOF; THE NORTH ONE-HALF (N 1/2) OF THE NORTHEAST ONE-QUARTER (NE 1/4), AND THE NORTH ONE-HALF (N 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4), ALL OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA;

AND ALL THAT PORTION OF THE SOUTH ONE-HALF (S 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 34 DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID SOUTH ONE-HALF (S 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 34; THENCE RUN SOUTH 51 FEET ALONG THE EAST LINE THEREOF; THENCE RUN WEST 1323.64 FEET, MORE OR LESS TO AN INTERSECTION WITH THE WEST LINE OF SAID SOUTH ONE-HALF (S 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) AT A POINT 76.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, AS MEASURED ALONG SAID WEST LINE; THENCE RUN NORTH 76.00 FEET ALONG SAID WEST LINE, TO THE NORTHWEST CORNER OF SAID SOUTH ONE-HALF (S 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4); THENCE RUN EAST 1323.33 FEET, MORE OR LESS, ALONG THE NORTH LINE OF SAID SOUTH ONE-HALF (S 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) TO THE POINT OF BEGINNING;

AND ALL THAT PORTION OF THE NORTH ONE-HALF (N 1/2) OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 34 DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID NORTH ONE-HALF (N 1/2) OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4); THENCE RUN SOUTH 91.00 FEET ALONG THE EAST LINE THEREOF; THENCE RUN WEST 1322.75 FEET TO AN INTERSECTION WITH THE WEST LINE OF SAID NORTH ONE-HALF (N 1/2) OF THE NORTHEAST ONE-QUARTER (NE 1/4), AT A POINT 115.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, AS MEASURED ALONG SAID WEST LINE; THENCE RUN NORTH 115.00 FEET ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SAID NORTH ONE-HALF (N 1/2) OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4); THENCE RUN EAST 1322.44 FEET ALONG THE NORTH LINE OF SAID NORTH ONE-HALF (N 1/2) OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 34 TO THE POINT OF BEGINNING;

AND ALL THAT PORTION OF THE SOUTH ONE-HALF (S 1/2) OF THE SOUTH ONE-HALF (S 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 34 DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID SOUTH ONE-HALF (S 1/2) OF THE SOUTH ONE-HALF (S 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4); THENCE RUN SOUTH 97.00 FEET ALONG THE EAST LINE THEREOF; THENCE RUN WEST 2596.46 FEET TO AN INTERSECTION WITH A LINE 43.00 FEET EAST OF AS MEASURED AT RIGHT ANGLES, AND PARALLEL TO THE WEST LINE OF SAID NORTHWEST ONE-QUARTER (NW 1/4) AT A POINT 137.00 FEET SOUTH OF THE NORTH LINE OF SAID SOUTH ONE-HALF (S 1/2) OF THE SOUTH ONE-HALF (S 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4), AS MEASURED ALONG SAID PARALLEL LINE; THENCE RUN NORTH 137.00 FEET ALONG SAID PARALLEL LINE, TO AN INTERSECTION WITH SAID NORTH LINE OF THE SOUTH ONE-HALF (S 1/2) OF THE SOUTH ONE-HALF (S 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4); THENCE RUN EAST 2596.03 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;

AND ALL THAT PORTION OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 35, TOWNSHIP 51 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA, LYING WEST OF A LINE 5.00 FEET WEST OF AND PARALLEL TO THE WESTERLY RIGHT-OF-WAY LINE OF THE SUNSHINE STATE PARKWAY (FLORIDA'S TURNPIKE), LESS THE SOUTH 50 FEET THEREOF, ALL AS DESCRIBED IN CLERK'S FILE NO. 74R-111031 AS RECORDED IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA;

AND THE WEST 20 FEET OF THE SOUTH 50.00 FEET OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 35;

AND THE WEST 70.00 FEET OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF SAID SECTION 35 LYING NORTH OF THE SNAKE CREEK CANAL RIGHT-OF-WAY, LESS THE EAST 50 FEET THEREOF;

LESS COUNTY LINE ROAD RIGHT-OF-WAY AS DESCRIBED IN OFFICIAL RECORD BOOK 6971, AT PAGE 631 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA;

AND LESS COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION, 35, TOWNSHIP 51 SOUTH, RANGE 41 EAST; THENCE NORTH 88° 56' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST ONE-QUARTER (NW 1/4), FOR A DISTANCE OF 6.47 FEET; THENCE SOUTH 03° 03' 20" EAST FOR A DISTANCE OF 74.31 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD 872 AS SHOWN ON THE RIGHT-OF-WAY MAP FOR SECTION 87018-2501, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 88° 58' 40" EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROAD 872, FOR 82.88 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF FLORIDA'S TURNPIKE (SUNSHINE STATE PARKWAY) AS SHOWN ON THE RIGHT OF WAY MAP FOR CONTRACT 1.9 SHEET 4 OF 8; THENCE SOUTH 02° 30' 57" EAST ALONG THE WEST RIGHT-OF-WAY LINE OF SAID FLORIDA'S

TURNPIKE FOR 81.15 FEET TO A POINT OF INTERSECTION WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, SAID POINT BEARING NORTH 57° 33' 27" EAST FROM THE CENTER OF SAID CIRCULAR CURVE; THENCE NORTHWESTERLY ALONG SAID CIRCULAR CURVE TO THE LEFT, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 31° 54' 27" AND A RADIUS OF 210.00 FEET FOR AN ARC DISTANCE OF 116.95 FEET TO THE POINT OF BEGINNING, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA.

SAID LANDS BEING A PORTION OF SECTION 34 AND 35, ACCORDING TO NEWMAN'S SURVEY OF THE EAST ONE-HALF (E 1/2) OF TOWNSHIP 51 SOUTH, RANGE 41 EAST, FLORIDA AS RECORDED IN PLAT BOOK 1, PAGE 118, IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

AND LESS TRACT "A" AND A PORTION OF TRACT "B" ACCORDING TO THE PLAT OF HOLIDAY INN AT CALDER AS RECORDED IN PLAT BOOK 95 AT, PAGE 94 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA; THENCE NORTH 88° 30' 20" EAST ALONG THE NORTH LINE OF SAID SECTION 34 FOR 20.00 FEET; THENCE SOUTH 01° 47' 34" EAST PARALLEL WITH THE WEST LINE OF SAID SECTION 34 FOR 54.93 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY LINE ROAD; THENCE RUN NORTH 88° 18' 38" EAST ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY LINE ROAD FOR 10.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A", SAID POINT BEING THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUE NORTH 88° 18' 38" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 175.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "A"; THENCE CONTINUE NORTH 88° 18' 38" EAST ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 458.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "B"; THENCE SOUTH 01° 41' 22" EAST ALONG THE MOST EASTERLY LINE OF SAID TRACT "B" FOR 117.00 FEET TO A POINT; THENCE RUN SOUTH 36° 42' 30" WEST FOR 266.31 FEET TO A POINT; THENCE RUN SOUTH 01° 47' 34" EAST ALONG THE EASTERLY LINE OF SAID TRACT "B" FOR 23.79 FEET TO A POINT; THENCE SOUTH 88° 18' 38" WEST FOR 467.00 FEET TO THE POINT OF INTERSECTION WITH THE WEST LINE OF SAID TRACT "B"; THENCE NORTH 01° 47' 34" WEST ALONG THE WEST LINE OF SAID TRACT "B" FOR 199.50 FEET TO THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE CONTINUE NORTH 01° 47' 34" WEST ALONG THE WEST LINE OF SAID TRACT "A" FOR 150.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A", SAID POINT BEING THE POINT OF BEGINNING.

AND LESS A PORTION OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA; THENCE NORTH 88° 30' 20" EAST ALONG THE

NORTH LINE OF SAID SECTION 34 FOR 20.00 FEET; THENCE SOUTH 01° 47' 34" EAST PARALLEL; WITH THE WEST LINE OF SAID SECTION 34 FOR 54.93 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY LINE ROAD; THENCE RUN NORTH 88° 18' 38" EAST ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY LINE ROAD FOR 10.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A"; THENCE CONTINUE NORTH 88° 18' 38" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 175.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "A"; THENCE CONTINUE NORTH 88° 18' 38" EAST ALONG THE SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 458.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "B"; THENCE SOUTH 01° 41' 22" EAST ALONG THE MOST EASTERLY LINE OF SAID TRACT "B" FOR 117.00 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE SOUTH 01° 41' 22" EAST ALONG THE EXTENSION OF THE MOST EASTERLY LINE OF SAID TRACT "B" FOR 34.52 FEET TO A POINT; THENCE RUN SOUTH 31° 54' 47" WEST FOR 188.66 FEET TO A POINT; THENCE RUN SOUTH 32° 07' 11" WEST FOR 40.14 FEET TO A POINT; THENCE RUN SOUTH 85° 09' 13" WEST FOR 38.69 FEET TO THE POINT OF INTERSECTION WITH THE EASTERLY LINE OF SAID TRACT "B"; THENCE RUN NORTH 01° 47' 34" WEST ALONG THE EASTERLY LINE OF SAID TRACT "B" FOR 18.43 FEET TO A POINT; THENCE RUN NORTH 36° 42' 30" EAST ALONG THE EASTERLY LINE OF TRACT "B" FOR 266.31 FEET TO THE POINT OF BEGINNING.

EXHIBIT "C"
DECLARATION OF
RESTRICTIVE COVENANTS

Return to: (enclose self-addressed stamped envelope)

Name: Ronetta Taylor, City Clerk

Address:

City of Miami Gardens
1515-200 N.W. 167th Street
Miami Gardens, Florida 33169

This Instrument Prepared by:

Sonja K. Dickens, Esquire
Arnstein & Lehr, LLP
200 East Las Olas Blvd., Suite 1700
Fort Lauderdale, Florida 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

DECLARATION OF RESTRICTIONS

WHEREAS, Calder Race Course, Inc. ("Applicant"), owns certain property located at 21001 Northwest 27th Avenue ("Property"), more particularly described on Exhibit "A," attached hereto, and

WHEREAS, the Applicant filed an Application with the City of Miami Gardens for:

1. Unusual use to permit a proposed Amusement Center in the AU District: to wit Casino Gaming Operation.
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IN ORDER TO ASSURE the City of Miami Gardens that the representations made by the Applicant will be abided by, the Applicant, subject only to conditions contained herein, freely, voluntarily and without duress, makes the following Declaration of Restrictions covering and running with the Property:

1. **Site Plan.** The development be substantially in compliance with the plans entitled 'Calder Casino: A Churchill Downs Company' consisting of a Cover Page, a Boundary and Topographic Survey, Sheets S-1 thru S-7 as prepared by Craven-Thompson And Associates, Inc.; an ALTA/ASCM Urban Land Survey, Sheets 1 thru 6, as prepared by McLaughlin Engineering Company; a Master Site Plan, Sheet MSP-1; an Overall Site Plan and Key Sheet, Sheet SP-1; Partial Site Plans, Sheets SP-2 thru SP-6; a Floor Plan, Sheet A-110; Building Elevations, Sheet A-210; a Proposed Site Rendering, Sheet A-211; an Overall Landscape Plan, Sheet L-1; Partial Landscape Plans, Sheets L-2 thru L-6; Landscape Notes, Sheet L-7; Landscape Detail Sheet, Sheet L-8, as prepared by Craven-Thompson And Associates, Inc, in conjunction with JCJ Architecture

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2. **Police Service/Safety.** The following Police Service/Safety concerns shall be addressed to the satisfaction of the City of Miami Gardens Police Department, prior to issuance of Certificate of Occupancy:
 - a. Future expansion shall include lock boxes or call stations at the gates to the north and south of the main entrance to allow emergency personnel access to the property should the main entrance be rendered inaccessible;
 - b. The entrance off County Line Road shall be enhanced to allow accessibility from the west bound lanes as well as the east bound lanes. This entrance shall be clearly marked for first responders should an event occur which prevents ingress or egress from the 27th Avenue locations;
 - c. The County Line Road Stable Entrance shall be maintained to allow "last resort", emergency access to the property;
 - d. Landscape: Trees and shrubs shall be trimmed and manicured at all times to prevent areas of seclusion for the criminal element;
 - e. Interior provisions, logistics, and location of the interior detention/interview room shall be reviewed and approved by the Police Department for purposes of public and personnel safety; and
 - f. Public safety provisions, logistics, and plans for on-site as well as traffic control safety shall meet with the approval of the City of Miami Gardens Police Department.

3. ~~**Traffic Analysis.** Prior to issuance of a building permit, the applicant shall complete the recommended traffic analysis of intersections, turn lanes and queuing to the satisfaction of the Development Services Director. In addition, the applicant shall comply with the following:~~
 - a. ~~After one year of fully functional operation of the casino gaming operation, a traffic analysis shall be provided by the developer/owner which shall analyze level of service and intersection/queuing/turn lane considerations; and~~
 - b. ~~The owner shall be responsible for constructing or otherwise funding, up to a maximum amount of \$200,000, both on and off site transportation improvements as may be deemed necessary due to impacts attributable to the casino gaming operation.~~

4. **City Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and

inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

5. **Covenant Running With The Land.** This Declaration on the part of the Applicant shall constitute a covenant running with the land and shall remain in full force and effect and be binding upon the Applicant, and his heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare.
6. **Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming from the date this Declaration is recorded. This Declaration shall be in effect for a period of thirty (30) years from the date of recordation in the public records of Miami-Dade County, Florida, after which time it shall be automatically extended for periods of ten (10) years. This Declaration may be modified, amended or released as to the Property or any portion thereof by a written instrument executed by the then Applicant(s) of the Property, and applicable mortgagees, if any, provided that same is approved by the City Council after public hearing. In such event, the Mayor or City Manager shall execute a written instrument suitable for recordation acknowledging such modification, amendment or release.
7. **Modification, Amendment, Release.** This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the City, or other procedure permitted under the City's Code, whichever by law has jurisdiction over such matters, after public hearing.
8. **Enforcement.** Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may judge to be reasonable for attorney fees. This enforcement provision shall be in addition to any other remedies available at law or in equity. Jurisdiction shall be proper in Miami-Dade County.
9. **Authorization for Miami Gardens to Withhold Permits and Inspections.** In the event the terms of this Declaration are not complied with, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this Declaration is complied with.

10. **Executed Copy to be provided to the City. Executed Copy to be provided to the City Clerk.** The Applicant shall be fully responsible for providing to the City Clerk an original and fully executed copy of the Declaration of Restrictions within thirty (30) days of the approval of this request by the City Council, unless an appeal is filed or otherwise the Director, for good cause shown, grants a time extension. If this is not accomplished, the approval shall become null and void. If circumstances prevent the Applicant from complying with this timeframe condition, the Applicant may request, in writing, an extension of said thirty-day timeframe in writing to the Development Services Director, who is authorized to take such action upon the request to approve, disapprove or approve with conditions such request.
11. **Election of Remedies.** All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.
12. **Recording.** The City, at Applicant's expense following the approval of the same by the City of Miami Gardens, shall file this Declaration of record in the Public Records of Miami-Dade County, Florida.
13. **Acceptance of Declaration.** Applicant acknowledges that acceptance of this Declaration does not obligate the City in any manner, nor does it entitle Applicant to a favorable recommendation or approval of any application, zoning or otherwise, and the City Council retains its full power and authority to deny each such application in whole or in part, and to decline to accept any conveyance.
14. **Applicant.** The term Applicant shall include the Applicant, and its heirs, successors and assigns.
15. **Waiver.** Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.
16. **Severability.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement

contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

17. **Entire Agreement**. This Agreement and the exhibits attached hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement and exhibits supersede any prior correspondence, memoranda or agreements in total hereto.
18. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, Applicant has executed this Declaration.

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

BY ITS:
PRESIDENT

Signature

Print Name

Date

ACCEPTANCE

The City of Miami Gardens, hereby accepts this Declaration of Restrictions hereby made by _____.

CITY OF MIAMI GARDENS, FLORIDA

Attest:

City Clerk

By: _____
Mayor Shirley S. Gibson

Date: _____

EXHIBIT "B"
STAFF RECOMMENDATION

STAFF RECOMMENDATION
PH-2008-000033: Calder Race Course, Inc.

APPLICATION INFORMATION

Applicant: Calder Race Course, Inc.
Agent: Alan S. Krischer, Esq.
Project Name: Calder Casino
Site Location: 21001 N.W. 27th Avenue
Property Size: ± 231.64 Acres
Future Land Use: Neighborhood
Existing Zoning: AU, Agricultural District
Requested Action(s):

1. UNUSUAL USE to permit a proposed Amusement Center in the AU District: to wit Casino Gaming Operation;
2. MODIFICATION of Condition No. 1 of the previously approved Resolution No. Z-296-79 passed and adopted by the Miami-Dade Board of County Commissioners on January 15, 1980, to read as follows:

From: "That the development be substantially in compliance with the plan entitled 'Calder Race Course, Inc. Master Layout Plan' as prepared by John S. Bristol and Associate, Inc., and dated October, 1972 and revised 5-30-79."

To: "That the development be substantially in compliance with the plans entitled 'Calder Casino: A Churchill Downs Company' consisting of a Cover Page, a Boundary and Topographic Survey, Sheets S-1 thru S-7 as prepared by Craven-Thompson And Associates, Inc.; an ALTA/ASCM Urban Land Survey, Sheets 1 thru 6, as prepared by McLaughlin Engineering Company; a Master Site Plan, Sheet MSP-1; an Overall Site Plan and Key Sheet, Sheet SP-1; Partial Site Plans, Sheets SP-2 thru SP-6; a Floor Plan, Sheet A-110; Building Elevations, Sheet A-210; a Proposed Site Rendering, Sheet A-211; an Overall Landscape Plan, Sheet L-1; Partial Landscape Plans, Sheets L-2 thru L-6; Landscape Notes, Sheet L-7; Landscape Detail Sheet, Sheet L-8, as prepared by Craven-Thompson And Associates, Inc. in conjunction with JCJ Architecture and Interiors, PC.; a Tree Disposition Plan, Sheets T-1 & T-2; a Tree Canopy Calculation Plan. Sheet T-3; and a Tree List, Sheet T-4; and a Liquor Survey, Sheet S-1, as prepared by Craven-Thompson And Associates, Inc. All sheets dated, stamped, and received October 14, 2008.

3. SPECIAL EXCEPTION to permit night club activities and live entertainment in conjunction with the proposed Casino Gaming Operation in the AU District;

4. SPECIAL EXCEPTION TO SPACING REQUIREMENTS AS APPLIED TO ALCOHOLIC BEVERAGE USE to permit the proposed Casino Gaming Operation to be spaced less than the required 2,500 feet from a public school; and
5. NON-USE VARIANCE OF ZONING REGULATIONS limiting the sales of alcoholic beverages for consumption on premises on weekdays between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and on Sunday, between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday; to waive same to permit consumption on the premises at the proposed Casino Gaming Operation 24 hours a day, 7 days a week.

RECOMMENDATION:

Recommend approval of the requested actions subject to the following conditions:

1. The development be substantially in compliance with the plans entitled 'Calder Casino: A Churchill Downs Company' consisting of a Cover Page, a Boundary and Topographic Survey, Sheets S-1 thru S-7 as prepared by Craven-Thompson And Associates, Inc.; an ALTA/ASCM Urban Land Survey, Sheets 1 thru 6, as prepared by McLaughlin Engineering Company; a Master Site Plan, Sheet MSP-1; an Overall Site Plan and Key Sheet, Sheet SP-1; Partial Site Plans, Sheets SP-2 thru SP-6; a Floor Plan, Sheet A-110; Building Elevations, Sheet A-210; a Proposed Site Rendering, Sheet A-211; an Overall Landscape Plan, Sheet L-1; Partial Landscape Plans, Sheets L-2 thru L-6; Landscape Notes, Sheet L-7; Landscape Detail Sheet, Sheet L-8, as prepared by Craven-Thompson And Associates, Inc, in conjunction with JCJ Architecture and Interiors, PC.; a Tree Disposition Plan, Sheets T-1 & T-2; a Tree Canopy Calculation Plan. Sheet T-3; and a Tree List, Sheet T-4; and a Liquor Survey, Sheet S-1, as prepared by Craven-Thompson And Associates, Inc. All sheets dated, stamped, and received October 14, 2008;
2. The following Police Service/Safety comments shall be addressed to the satisfaction of the City of Miami Gardens Police Department, prior to issuance of Certificate of Occupancy:
 - a. Future expansion should include lock boxes or call stations at the gates to the north and south of the main entrance to allow emergency personnel access to the property should the main entrance be rendered inaccessible;
 - b. The entrance off County Line Road shall be enhanced to allow accessibility from the west bound lanes as well as the east bound lanes. This entrance shall be clearly marked for first responders should an event occur which prevents ingress or egress from the 27th Avenue locations;
 - c. The County Line Road Stable Entrance shall be maintained to allow "last resort", emergency access to the property;
 - d. Landscape: Trees and shrubs shall be trimmed and manicured at all times to prevent areas of seclusion for the criminal element;
 - e. Interior provisions, logistics, and location of the interior detention/interview room shall be reviewed and approved by the Police Department for purposes of public and personnel safety;

- f. Public safety provisions, logistics, and plans for on-site as well as traffic control safety shall meet with the approval of the City of Miami Gardens Police Department.

REVIEW AND ANALYSIS

Neighborhood Land Use Characteristics

Property	Zoning	Existing Use	Future Land Use
Site	AU, Agricultural District	Horse Racing Facility	Commerce
North	N/A (City Limits)	County Line Road	N/A(City Limits)
South	BU- 1A, RU-TH, RU-1 & RU-4L	Residential, Retail and School Uses	Neighborhood
East	PAD, Planned Area Development	Multifamily Apartments	Neighborhood
West	RU-1, Single Family Residential	Single-Family Dwellings	Commerce

The site is located in the southeast corner of N.W. 27th Avenue and N.W. 215th Street (County Line Road). It is currently used as a horse track facility and includes the race track itself and the main grandstand building, together with numerous barns, stables and other accessory related to the care and board of the horses, as well as restaurants and food service area, bars and a poker room. The properties south of the site accommodate a mixture of uses, including, but not limited to, some multi-family residential developments, some light retail stores, a public school and a townhouse development. The site is bordered to the north and the east by County Line Road and the Florida Turnpike Expressway, respectively.

Consistency with Comprehensive Development Master Plan (CDMP)

The subject property is designated Commerce on the adopted 2006-2016 Future Land Use Plan Map (FLUP) of the Future Land Use Element (FLUE) of the City’s Comprehensive Development Master Plan (CDMP). The Commerce land use designation is intended for planned commercial, industrial, cultural and economic hubs.

Objective 1.5: Special Areas of the Goals, Objectives and Policies (GOP) of the Future Land Use Element of the City’s Comprehensive Development Master Plan states:

“Policy 1.5.16 Calder Race Track Area. Located on the City’s border with Broward County, the Calder Racetrack is a successful horse racing facility that will expand significantly if and when gambling is approved in Miami-Dade County.”

The expansion on the Calder Race Track property, as proposed by the applicant, was contemplated with the approval of the casino gambling referendum in by Miami-Dade County in the City’s CDMP.

CONCLUSION: Based upon the foregoing, the Applicant’s requests do not impact policies of the CDMP and are consistent with same.

Zoning History

The subject property had been the subject of several zoning hearing actions before the City of Miami Gardens became incorporated. On December 9, 1968, the Metropolitan Dade County Zoning Appeals Board adopted Resolution 4ZAB-77-68 (attached), which approved an application by Caldbenn Properties, Inc. for a unusual use to permit an amusement enterprises, a variance of height requirements as applied to the grandstand-clubhouse-press box building, an unusual use to permit horse auctions, and a non-use variance of height requirements as applied to fences. The following year, Reverend Sterling Tucker appealed this decision of the Metropolitan Dade County Zoning Board to the Board of County Commissioners (BCC), which, upon deliberation and on January 23, 1969, passed and adopted Resolution Z-20-69 (attached) sustaining the decision of the Zoning Appeals Board. On November 6, 1972, the latter Board adopted Resolution 4ZAB-543-72, approving an application by Calder Race Course, Inc. for a modification of the resolution 4ZAB-77-68 (attached) in order to submit new plans and an unusual use to permit the filling of an existing lake. This decision was then appealed by Mr. Bennett M. Lifter to the BCC, which upheld the decision of the Zoning Appeals Board on December 21, 1972, pursuant to Resolution Z-322-72. On May 8, 1973, the BCC subsequently passed Resolution Z-149-73 , to amend Resolution Z-322-72 to extend the time of completion of the installation of the wall and the landscaping from May 6, 1973 to June 15, 1973. On October 9, 1979, pursuant to Resolution 4-ZAB-368-79, the Zoning Appeals Board denied an application by Calder Race Course, Inc. for a modification of Resolution Z-322-72 and a non-use variance of zoning regulations as applied to right-of-way widths for a section-line road. However, this decision of the Zoning Appeals was overruled by the BCC on January 15, 1980, pursuant to Resolution Z-296-79 (attached).

Zoning Criteria and Additional Analysis

Calder Race Course, Inc. is seeking an unusual use to permit a Casino Gaming Operation at its existing horse racing facility located on the City's border with Broward County, between N.W. 27th Avenue and the Florida Turnpike Expressway. The Applicant has been operating a successful race horse track facility on the 230+ acre property since the late 1960s. As a result of the referendum approval, the Applicant is now seeking to add a new 104,245-square foot building on the property to accommodate a casino gaming that will feature the slot machines, food and beverage services, live entertainment, and every other uses ancillary to the slot machine operation, as well as provide an area for the existing poker room located in the grandstand clubhouse of the pari-mutuel racing facility.

Unusual Use to permit the proposed Casino Gaming Operation: This request was reviewed under the criteria set forth in Section 33-311(A)(3) *Special exceptions (for all applications other than public charter schools), unusual and new uses.* , which states that the City Council may:

"Hear application for and grant or deny special exceptions, except applications for public charter schools; that is, those exceptions permitted by the regulations only upon approval after public hearing, new uses and unusual uses which by the regulations are only permitted upon approval after public hearing; provided the applied for exception or use, including exception for site or plot plan approval, in the opinion of the City Council, would not have an unfavorable effect on the economy of the City of Miami-Gardens, Florida, would not generate or result in excessive noise or traffic, cause undue or excessive burden on public facilities, including water, sewer, solid waste

disposal, recreation, transportation, streets, roads, highways or other such facilities which have been constructed or which are planned and budgeted for construction, are accessible by private or public roads, streets or highways, tend to create a fire or other equally or greater dangerous hazards, or provoke excessive overcrowding or concentration of people or population, when considering the necessity for and reasonableness of such applied for exception or use in relation to the present and future development of the area concerned and the compatibility of the applied for exception or use with such area and its development."

The unusual request to permit the Casino Gaming Operation on the property is a direct consequence of the approval earlier this year by voters in Miami-Dade County of the slot machine referendum, which allows slot machines at the county's dog and horse tracks, as well as Jai-Alai fronton.

When considering the necessity for and reasonableness of this unusual use request in relation to the present and future of the area concerned and the compatibility of such request with such area and its development, consideration is given to how this operation may positively impact the economy of the City through permanent job creation and tax base increase. The addition, the proposed casino gaming operation is a logical and compatible expansion of the horse racing operation while not creating any undue or excessive burden on the existing City's infrastructures and services that cannot be mitigated with the imposition of the conditions of approval.

Modification of a Condition of a Previously Approved Resolution: This request was reviewed under the criteria forth in Section 33-311(A)(7), which states that The City Council may:

"Hear applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution, and to modify or eliminate any provisions of restrictive covenants, or parts thereof, accepted at public hearing, except as otherwise provided in Section 33-314(C)(3); provided, that the Council finds after public hearing that, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned, the modification or elimination would not (a) generate excessive noise or traffic, (b) tend to create a fire or other equally or greater dangerous hazard, (c) provoke excessive overcrowding of people, (d) would not tend to provoke a nuisance, or (f) be incompatible with the area concerned."

The purpose of the resolution modification request is to allow the Applicant to submit new development plans showing the proposed 104,245-square foot Casino building, which will accommodate the slot machines and the relocation of the existing poker room. The proposed building sets as far back from the property lines as the existing clubhouse building and, as mentioned above, will not generate excessive noise or overcrowding of people, provoke a nuisance and create any undue burden on the City's services and infrastructures, which cannot be mitigated. As such, the requested resolution modification in order to erect the proposed Casino building on the site meets the criteria of Section 33-311(A)(7).

Special Exception for Night Club Use and for Spacing as applied to Alcoholic Beverages: These requests were reviewed under the criteria of Section 33-311(A)(3) New Uses and Unusual Uses Criteria, which states that the Council may:

"Hear application for and grant or deny special exceptions, except applications for public charter schools; that is, those exceptions permitted by the regulations only upon approval after public hearing, new uses and unusual uses which by the regulations are only permitted upon approval after public hearing; provided the applied for exception or use, including exception for site or plot plan approval, in the opinion of the City Council, would not have an unfavorable effect on the economy of the City of Miami-Gardens, Florida, would not generate or result in excessive noise or traffic, cause undue or excessive burden on public facilities, including water, sewer, solid waste disposal, recreation, transportation, streets, roads, highways or other such facilities which have been constructed or which are planned and budgeted for construction, are accessible by private or public roads, streets or highways, tend to create a fire or other equally or greater dangerous hazards, or provoke excessive overcrowding or concentration of people or population, when considering the necessity for and reasonableness of such applied for exception or use in relation to the present and future development of the area concerned and the compatibility of the applied for exception or use with such area and its development."

The Applicant is seeking approval from the City Council to be able to dispense alcoholic beverages at the proposed Casino building, which is located about 830 feet away from an existing public school and less than the 1,500-foot spacing requirement from the existing, unabandoned and legally established bar located in the grandstand building and clubhouse. Permission is also being sought to perform live entertainment on the premises of the proposed Casino. The Applicant's request of a special exception to the spacing requirements as applied to alcoholic beverages does not technically purport to establish a new use on the property. As mentioned above, the main grandstand building already includes a bar, which has an existing, unabandoned, legally established alcoholic beverage use. As such, this request does not materially create greater adverse impacts on the surrounding uses and properties, and does not further change prior zoning approval on the property.

Furthermore, the Applicant is not requesting to have a typical night club per se on the property. However, entertainment activities, regardless of how limited, are tied to the use defined as "night club" in the Code. The below-provided Code excerpts with associated definitions, criteria and explanation are provided in order to explain how the correct processing of the intent and purpose of this application required that the wording of the request be modified to encompass the term "night club" and related provisions of the Code. Subparagraph (H) of Section 150, *Location of establishments*, states in pertinent terms:

"Entertainment in night clubs and cabarets; hearing on night club use. Except in night clubs and cabarets, band or orchestra music or dancing or entertainment shall be prohibited in all bars, gardens, saloons, package stores or similar establishments dispensing of alcoholic beverages. Night club use shall be prohibited unless the same is approved after a public hearing."

In other words, the activity, "entertainment," when conducted in conjunction with the sale of alcoholic beverages is by definition either a night club and must be approved at a public hearing. When considering the necessity for and reasonableness of this special exception request in relation to the present and future of the area concerned and the compatibility of such request with such area and its development, this request is in keeping with the spirit and intent of the Zoning Code. Together with the existing grandstand building, horse stables, maintenance buildings, and administration and support buildings, the proposed 104,245-square foot venue will cover about 6.52% of and will be located in the interior of the 231.45-acre

site, more than 500 feet away from any residential uses. Adequate landscaping and buffers are also provided that will further screen the proposed Casino use from and reduce its impacts on the adjoining uses. Moreover, if the 840 parking spaces located within the horse stable area are taken into account, more than 1,500 parking spaces are provided in excess of the Code requirements. As such, the night club use will not exert any undue pressure on existing public facilities, nor will generate excessive noise, traffic, and overconcentration of population that the site cannot otherwise accommodate.

Non-Use Variance of Zoning Regulations to Modify the Hours of Sales of Alcoholic Beverages for on-premise Consumption: This request was reviewed under the criteria of Section 33-311(A)(4)(b) *Non-use variances from other than airport regulations*, which states that:

“Upon appeal or direct application in specific cases to hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations, the City Council (following a public hearing) may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required. For the purpose of this subsection, the term “non-use variances” involves matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements and other variances which have no relation to change of use of the property in question.”

The requested non-use variance would allow the Applicant to extend the sale of alcoholic beverages for consumption on the premises 24 hours a day, 7 days a week. The granting of this variance will not change the use of the property as an horse racing, and casino gaming operation and the sale of alcoholic beverages 24 hours a day, 7 days a week is a common and expected service. In addition, the Miami-Dade County Zoning Code does not contemplate a casino gaming operation, since this is a newly established use within the County, and regulations dealing with alcoholic beverage uses and other related uses have not been enacted. In consideration of the above comments the requested non-use variance meets the criteria of Section 33-311(A)(3).

CONCLUSION: The approval of the requests will maintain the basic intent and purpose of the Zoning Code.

ADDITIONAL INFORMATION

Anticipated Facilities Impact

General: Concurrency determinations are not finalized during the zoning approval process.

Drainage/Water Management: Per code requirements, all stormwater runoff must be retained on site utilizing properly designed infiltration or seepage type systems. Drainage must be provided for the 5-year storm event with full on-site retention of a 25-year/3-day storm. Pollution control devices shall be required at all drainage inlet structures. Site grading and development shall comply with the requirements of

Chapter 11C of the Code of Miami-Dade County. Additionally, a Surface Water Management General Permit from DERM shall be required for the construction and operation of the required surface water management.

Traffic Circulation: The proposed Casino Gaming Operation can be accessed from N.W. 215th Street and from N.W. 27th Avenue, and is located in TCMA # 2, which is one the four (4) Transportation Concurrency Management Areas established in the City pursuant to Objective 1.1 of the Transportation Element of the City's CDMP. According to the traffic study submitted by the Applicant, the project is expected to generate 559 vehicle trips during its peak traffic period, between 6:00 PM and 7:00 PM on Friday and Saturday. Given that TCMA # 2 has a positive capacity through the Long Range Planning Timeframe of 2016, the proposed project will comply with the LOS standards of same (LOS E) and will have a de minimus impact on the adjacent roadways.

An analysis of the applicant's initial Kimley-Horn Traffic Study by the City's transportation planner, Corradino Group, recommended that additional intersections be analyzed to insure their satisfactory functionality, as well as an analysis of turn lane capacity and on site queuing to insure that would be no negative impact on traffic on NW 27th Avenue and 215th Street.

The resubmitted and revised Calder Gaming Facility Traffic Study by Kimley-Horn dated December 12, 2008 responds to the City's concerns. The impact of the development will allow effected intersections to continue to operate at an acceptable level of service. In addition, the left turn lanes will offer sufficient queuing distance to support the impact of the proposed facility plus the existing facilities. As such, additional stipulations or conditions related to traffic circulation are not necessary.

It is further noted that the Florida Department of Transportation provided a letter, included with the revised study, that states that the project will not negatively impact the state highway system in the project area.

Police Impact: The City's Police Department analyzed the project's impacts upon police services. See attached. The report indicates several concerns which have been incorporated as conditions of approval. Such conditions include emergency access and accessibility, interior design related to holding cell, and potential need for personnel to on-site safety and traffic control.

Public Notification/Comments

The applicant has indicated that meetings were held with the neighbors to the east, west, and south concerning the particulars of this project.

In accordance with the Zoning Code, notification of this rezoning request was mailed to property owners within 500 feet of the subject site to provide them an opportunity to comment on or object the application if they so choose. No comments were received from any of the property owners within that radius. (See Mailed Notice Radius Map, attached).

Calder Race Course, Inc.

PH-2008-000033: Unusual Use, Resolution Modification, Special Exceptions & Non-Use Variance

Page 18 of 30

Attachments:

Public Hearing Checklist

Letter of Intent

Hearing Map-Zoning

Hearing Map-Aerial

Mailed Notice Affidavit

Mailed Notice Radius Map

Previous Resolutions

Traffic Impact Study-December 2008

City's Traffic Impact Analysis-12/18/08

Police Impact Report

Plans Submitted

Transmittal Notice

