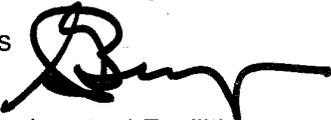


# Memorandum



**Date:** January 20, 2005

**To:** Honorable Joe A. Martinez, Chairman  
And Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager 

**Subject:** Agreements with Pari-mutuel Facilities regarding Slot Machines

Agenda Item No. 11(A)(4)

## RECOMMENDATION

It is recommended that the attached agreements between Miami-Dade County and Calder Racecourse, Flagler Greyhound Track, and Miami Jai Alai be approved.

## BACKGROUND

In November 2004, the electors of the State of Florida voted to amend the Florida Constitution to authorize the electors of Miami-Dade and Broward counties to hold countywide elections on whether to authorize slot machines in existing licensed pari-mutuel facilities that have conducted live racing or games during each of the last two calendar years before the effective date of the amendment. A separate item on this agenda is a resolution for Board approval of a ballot question authorizing slot machines at existing pari-mutuel facilities. The amendment also allows the Legislature to tax slot machine revenues to supplement public education funding statewide. The Legislature is required to pass implementing legislation during the 2005 regular Legislative session.

In Miami-Dade County, there are three pari-mutuel facilities that qualify under the above definition: Calder Race Course, located in the City of Miami Gardens, and Flagler Greyhound Track and Miami Jai Alai, both located in the City of Miami. While the current Miami Jai Alai facility itself is located in the City of Miami, the parking lots used by their customers and all other properties surrounding the facility are located in unincorporated Miami-Dade County. These pari-mutuel facilities approached Miami-Dade County to negotiate agreements with the County to mitigate the impact of this amendment on the County. At the request of Chairman Martinez, the County Attorney and I negotiated the attached agreements with the pari-mutuel facilities.

Anticipated impacts to the County include increased development, traffic, crime, congestion, and, potentially, social service demands. There will be a cost associated with auditing the financial operations of the facilities containing the slot machines. In addition, according to the Initiative Financial Information Statement provided to the Legislature at the time the ballot question was approved, "research indicates that when gambling becomes more accessible there are typically increases in problem gambling. Costs associated with problem gambling, while not quantifiable, may be significant, and would come in the form of increased law enforcement costs, mental health and addiction treatment costs, and possible increases in unemployment compensation costs, among others." Spending on activities that generate sales tax revenue or other revenues that accrue to Miami-Dade County may be diverted to slot machines. It is difficult to quantify the fiscal impact of the additional costs and potential revenue losses at this time.

The agreements that have been negotiated with the three pari-mutuels include payments to Miami-Dade County to mitigate the impacts of this activity on county government, as well as other good and valuable consideration. The pari-mutuel facilities have agreed to an initial payment totaling \$4 million. If the referendum is adopted by the majority of the electorate, the County will receive 1.25% of the gross revenues generated by each slot machine for the first three years of the agreement. Beginning in year four, the County will receive 1.5% of the first \$250,000,000 of gross revenue, per facility, and 2% of gross revenue above \$250,000,000. The payments will in no way impair the revenues that may be generated through State Legislative action to supplement funding for education.

Other provisions of the agreement include, but are not limited to:

- Each pari-mutuel facility shall provide a bond or irrevocable letter of credit in the amount of \$100,000 to secure their obligations under the agreement
- Payments received through this agreement will be in lieu of additional occupational license taxes
- A most-favored nations clause that ensures Miami-Dade County receives the benefits derived from the agreements negotiated with Broward County.
- The pari-mutuels have agreed to enter into covenants running with the land underlying the facilities to further ensure payment guarantees
- The term of the agreement is 30 years, with three 10-year options to renew at the sole discretion of the County
- The agreement contains audit provisions related to the gross slot revenues at each pari-mutuel facility.

The fiscal impact analysis is based upon the information provided by the pari-mutuel facilities and industry research. A total of 6,500 machines will be operated at the three facilities (2,500 at both Calder and Flagler and 1,500 at Miami Jai Alai) and anticipated machine take per day, consistent with the state analysis, is approximately \$275. It will take several years before the targeted number of machines is operational. In the first three years, it is estimated that the County will receive revenues totaling \$3.1 million in the first year, escalating to \$8.1 million once all machines are operational. Beginning in year four, the County will receive 1.5% of the first \$250,000,000 of revenue collected and 2% of revenue in excess of \$250,000,000 per facility. Assuming the variables indicated above hold constant, the County will receive \$9.8 million annually. If the number of machines or the daily machine take increases, the County will receive a greater share of the marginal increment above \$250,000,000.

Separate negotiations are occurring with the affected municipalities in Miami-Dade County. Negotiations are also proceeding between the pari-mutuel facilities in Broward County and the affected municipalities and the county government. At their January 11, 2005 meeting, the Broward Board of County Commissioners accepted the County Administrator's recommended agreements, but deferred final approval of the agreements to January 18, 2005. The Broward agreements currently contain a provision for 1.5% of the gross revenues. The agreements contain a most favored nations clause requiring Broward County their final agreement be equitable to the final agreements approved in Miami-Dade County.

These agreements are the product of good faith negotiations and represent fair consideration of the impacts of this amendment both to the industry and the community. I recommend approval to mitigate those impacts to the County, establish fair practices for the industry, and protect the revenues available to the State to fund education.



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** January 20, 2005

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(4)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(4)  
1-20-05

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE AGREEMENTS BETWEEN MIAMI-DADE COUNTY AND CERTAIN PARI-MUTUELS WITHIN MIAMI-DADE COUNTY REGARDING SLOT MACHINES; WAIVING REQUIREMENTS OF RESOLUTION NO. R-377-04

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein be reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that:

Section 1. This Board authorizes the County Manager to execute agreements between Miami-Dade County and Calder Race Course, Inc.; West Flagler Associates, Ltd., d/b/a Flagler Greyhound Track; and Florida Gaming Centers, Inc., d/b/a Miami Jai Alai; in substantially the form attached, after review and approval by the County Attorney's Office; and to exercise all rights conferred therein.

Section 2. This Board finds it in the best interest of Miami-Dade County to waive the provisions of Resolution No. R-377-04.

The foregoing resolution was and offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

4

Joe A. Martinez, Chairman  
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro  
Jose "Pepe" Diaz  
Sally A. Heyman  
Dorrin D. Rolle  
Katy Sorenson  
Sen. Javier D. Souto

Dr. Barbara Carey-Shuler  
Carlos A. Gimenez  
Barbara J. Jordan  
Natacha Seijas  
Rebeca Sosa

The Chairman thereupon declared the resolution duly passed and adopted this 20<sup>th</sup> day of January, 2005. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Jess M. McCarty

AGREEMENT BETWEEN \_\_\_\_\_ AND MIAMI-DADE COUNTY  
REGARDING SLOT MACHINES IN PARIMUTUEL FACILITIES

THIS AGREEMENT is entered this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between

\_\_\_\_\_, a \_\_\_\_\_  
corporation (hereinafter referred to as "the PARI-MUTUEL"), and MIAMI-DADE COUNTY,  
FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the  
"COUNTY").

WITNESSETH:

WHEREAS, at the November 2, 2004 general election, the electors of the State of Florida voted to adopt an amendment to the Florida Constitution authorizing the electors of Miami-Dade and Broward Counties to hold county-wide elections on whether to authorize slot machines in existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the amendment. Article X, Section 23 of the Florida Constitution, a copy of which amendment is attached and incorporated by reference as Exhibit A ("Amendment 4");

WHEREAS, pursuant to a resolution passed on January 20, 2005, the Miami-Dade Board of County Commissioners called a countywide special election to be held by the County on Tuesday, March 8, 2005 (the "Special Election") for the purpose of submitting to the qualified electors of the County the question of whether to authorize slot machines in certain existing, licensed pari-mutuel facilities as provided in Article X, section 23;

WHEREAS, the COUNTY and the PARI-MUTUEL recognize that each entity impacts the health and general welfare of the residents of Miami-Dade County; and

WHEREAS, the COUNTY and the PARI-MUTUEL recognize that the residents of Miami-Dade County have legitimate concerns over increased development, traffic, crime, congestion, and the quality of life in Miami-Dade County; and

WHEREAS, the PARI-MUTUEL desires to assist the COUNTY in offsetting and defraying governmental impacts, including the costs of regional law enforcement, human services, mass transit operation, and to mitigate lost revenues such as sales tax surcharges that the COUNTY will incur as a result of the PARI-MUTUEL's slot machine operations in Miami-Dade County; and

WHEREAS, in consideration of the COUNTY incurring additional costs of administration and services, the COUNTY experiencing losses of revenues, and other good and valuable consideration, the PARI-MUTUEL and the COUNTY agree to enter into this Agreement.

WHEREAS, if the Referendum is adopted by a majority of the qualified electorate voting in the Special Election, slot machines shall be authorized to operate in each of the following pari-mutuel facilities located in Miami-Dade County, Florida:

<b>Calder Race Course</b> 21001 N.W. 27th Avenue Miami, FL. 33056
<b>Flagler Greyhound Track</b> 401 NW 38th Ct Miami, FL 33126
<b>Miami Jai-Alai Fronton</b> 3500 NW 37th Ave Miami, FL 33142

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually agree and bind themselves as follows:

Section 1. RULES OF LEGAL CONSTRUCTION.

For all purposes of the Agreement, unless otherwise expressly provided:

- a) A defined term has the meaning assigned to it;
- b) Words in the singular include the plural, and words in plural include the singular;
- c) A pronoun in one gender includes and applies to other genders as well; and
- d) The terms “hereunder”, “herein”, “hereof”, “hereto” and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles
- e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the COUNTY or the PARI-MUTUEL.
- f) The whereas clauses set forth above shall be deemed incorporated herein.

g) All exhibits and appendices attached hereto shall be deemed incorporated herein.

Section 2. Definitions As used herein:

“Agreement” means this Agreement between the COUNTY and the PARI-MUTUEL.

“Applicable Laws” means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, policies and procedures and orders which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

“COUNTY” means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof.

“Effective Date” shall have the meaning set forth in Section 3 hereof.

“Fiscal Year” means the County’s fiscal year, which begins October 1 and ends September 30.

“Gross Slot Revenues” means all currency and other consideration placed into any slot machine at the PARI-MUTUEL FACILITY, less payouts to and credits redeemed by players at the PARI-MUTUEL FACILITY.

“Pari-Mutuel Facility” means the facilities at which the PARI-MUTUEL operates.

“Slot Machine” means any machine as defined by Section 849.16 Florida Statutes or any other Applicable Laws.

Section 3. Term and Effective Date

Subject to Section 28 and the terms and conditions contained herein, this Agreement between the COUNTY and the PARI-MUTUEL shall be effective as of the effective date of the resolution of the Miami-Dade Board of County Commissioners approving this Agreement.

This Agreement shall remain in effect for a term of 30 years with three (3) ten (10) year renewal options to be exercised at the County's sole discretion. This Agreement may not be terminated during its term except as expressly provided herein.

Section 4. Compensation

The PARI-MUTUEL agrees to pay the COUNTY one million, three hundred thirty three thousand, three hundred thirty three dollars (\$1,333,333.00) within ten (10) calendar days (including weekends and holidays) after the effective date of this Agreement (the "Flat Fee Advance"). In addition, the PARI-MUTUEL agrees to pay the COUNTY a monthly amount in arrears equal to one and one-quarter percent (1.25 %) of Gross Slot Revenues generated at the PARI-MUTUEL FACILITY for each month during which slot machines were authorized and operating in the PARI-MUTUEL FACILITY beginning on the date that any slot machines are authorized and operating and continuing for three (3) calendar years from such date (the "Preliminary Monthly Percentage Payment"). Beginning with the first day of the fourth calendar year from the date that any slot machines are authorized and operating, and continuing through the term of the Agreement, the PARI-MUTUEL agrees to pay the COUNTY a monthly amount in arrears equal to one and one-half percent (1.50 %) of Gross Slot Revenues generated at the PARI-MUTUEL FACILITY (the "Permanent Monthly Percentage Payment"). The Preliminary Monthly Percentage Payment and the Permanent Monthly Percentage Payment shall become due and payable in the amount calculated pursuant to immediately-preceding sentences on the 15<sup>th</sup> day of the calendar month following its accrual. The Permanent Monthly Percentage Payment shall be made as an advance on the total amount of any percentage payments on Gross Slot Revenues paid by the PARI-MUTUEL FACILITY to the COUNTY. In addition to the cumulative amounts of the Permanent Monthly Percentage Payments during the PARI-MUTUEL FACILITY'S fiscal year, the PARI-MUTUEL FACILITY shall on an annual basis

within 60 days following the conclusion of such PARI-MUTUEL FACILITY'S fiscal year pay the County a supplemental annual percentage of Gross Slot Revenues in accordance with the sliding scale set forth below for the additional amounts, if any, of the percentage of Gross Slot Revenues that are due to the COUNTY for the preceding fiscal year (the "Annual Sliding Scale Percentage Payment") after giving credit for the Monthly Percentage Payments already made to the COUNTY for such fiscal year:

One and one-half percent (1.50 %) of the first \$250 million of Gross Slot Revenues;

Two percent (2.0 %) of any and all amounts by which the Gross Slot Revenues exceed \$250 million;

[For example, assuming that the first full calendar year of slot machine operations in the PARI-MUTUEL corresponded directly to such PARI-MUTUEL'S fiscal year beginning January 1, 2006, and concluding December 31, 2006, and the total amount of the Gross Slot Revenues generated by the PARI-MUTUEL FACILITY during such fiscal year was \$500,000,000.00, the total amount of the Annual Sliding Scale Percentage Payment would be \$8,750,000 (i.e., \$3,750,000, representing 1.5 % of the first \$250 million of Gross Slot Revenues *plus* \$5,000,000 representing 2.0 % of any and all amounts by which the Gross Slot Revenues exceeded \$250 million less the cumulative amounts of the Monthly Percentage Payments already paid to the COUNTY over the course of such fiscal year.]

The PARI-MUTUEL shall submit payment of the fee by corporate check made payable to the COUNTY by delivery to the following address:

Finance Department  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, 26<sup>th</sup> Floor

Miami, Florida 33128

Together with each payment, the PARI-MUTUEL shall submit to the County an accounting of the operation of the slot machines and the computation of the fee.

The compensation payments made pursuant to this Section 4 shall be deemed to satisfy any payment required for occupational licenses for operating slot machines during the term of this Agreement. The PARI-MUTUEL acknowledges that it is still required to obtain occupational licenses, but is not required to pay a fee for such license.

Section 5. Regulatory Cost Reimbursement.

If the Florida Legislature passes any act of law establishing an affirmative obligation on the part of the COUNTY to regulate slot machine operations, each of the PARI-MUTUEL agree to reimburse the COUNTY for one-third of any costs to the COUNTY attributable to such a law.

Section 6. Auditing.

The COUNTY shall have the right to audit the books, records, and accounts of the PARIMUTUEL FACILITY directly relating to the calculation of Gross Slot Revenues, upon reasonable notice, in order to ascertain the correctness of the Gross Slot Revenues Payment required to be made to the COUNTY pursuant to this Agreement, including the accurate reporting of Gross Slot Revenues and the determination of Gross Slot Revenues Payment under this Agreement. The PARIMUTUEL FACILITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the calculation of Gross Slot Revenues. All books, records, and accounts of the PARIMUTUEL FACILITY relating to Gross Slot Revenues shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, the PARIMUTUEL FACILITY shall make same available at no cost to COUNTY in written form. Audited financial statements of the PARIMUTUEL FACILITY which in addition details the

amount of annual Gross Slot Revenues shall be provided to the COUNTY within four (4) months of the close of each fiscal year of the PARIMUTUEL FACILITY.

The PARIMUTUEL FACILITY shall preserve and make available, at reasonable times for examination and audit by the COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to the calculation of Gross Slot Revenues and the Gross Slot Revenues Payment pursuant to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the creation of the record. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined to be applicable to the PARIMUTUEL FACILITY's records relating to Gross Slot Revenues, the PARIMUTUEL FACILITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the PARIMUTUEL FACILITY. Any incomplete or incorrect entry or entries in excess of Two Hundred Thousand and 00/100 (\$200,000.00) of cumulative, annual funds that should have been paid to the COUNTY as a Gross Slot Revenues Payment in a particular fiscal year in such books, records, and accounts shall be a basis for the COUNTY's applying an administrative fee of ten percent (10%) of any amount owed to the COUNTY plus interest in an amount of one percent (1%) per month until the amount owed has been paid. Any underpayment shall be paid by the PARIMUTUEL FACILITY to the COUNTY within ten (10) days of notice of the audit finding, including interest and the administrative fee if owed.

Section 7. Most favored status.

If a PARI-MUTUEL FACILITY licensed to do business in Broward County enters into an agreement with Broward County related to operation of slot machines based on the authority of Article X, Section 23, Florida Constitution, the COUNTY shall have the right to substitute the Broward County agreement for this Agreement as provided in this Section.

The COUNTY shall have the right to amend this Agreement by substituting all material terms from the Broward County agreement for all material terms of this Agreement, except that any material term in the Broward County agreement which is not lawful for a party to this Agreement to comply or which will be invalid or unenforceable with respect to the parties to this Agreement shall be changed as negotiated by the parties. If the parties fail to negotiate a change to any material term that cannot be lawfully complied with or that is invalid or unenforceable, the term shall be subject to reformation in the manner provided by Section 22 (the "Severability" provision). The COUNTY's right shall be exercised as follows: If COUNTY desires to exercise its right to substitute the terms of the Miami-Dade County agreement, it must notify PARIMUTUEL FACILITY within thirty (30) days after receipt by the COUNTY of a true and correct copy of said Agreement.

Section 8. Bond and assignment of revenues.

Within thirty (30) days following the commencement of slot machine operations at the PARI-MUTUEL FACILITY, the PARI-MUTUEL shall provide a bond or irrevocable letter of credit in the amount of \$100,000.00 to the COUNTY to secure the obligations of the PARI-MUTUEL under this Agreement. The PARI-MUTUEL shall keep the bond or irrevocable letter of credit in effect until the earlier of such time as (a) slot machine operations cease at the Pari-Mutuel Facility; (b) this Agreement terminates or (c) the COUNTY Manager agrees to waive or modify the requirements of this section based upon satisfactory payment history by the PARI-MUTUEL.

Section 9. Notices

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the COUNTY:

County Manager  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, 29<sup>th</sup> Floor  
Miami, Florida 33128

With a copy to:

County Attorney  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor  
Miami, Florida 33128

To the PARI-MUTUEL:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Counsel to Pari-Mutuel Facility

&

Holland & Knight LLP  
701 Brickell Avenue  
Suite 3000  
Miami, FL 333131

Fax: 305-789-7799  
Attn: Lori K. Weems, Esq.

Section 10. Agreement Not a Lease

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or improvements is created by this Agreement.

Section 11. Indemnification

The PARI-MUTUEL agrees to indemnify, protect and hold harmless the COUNTY, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which the COUNTY, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the negligent acts or intentional misconduct of the PARI-MUTUEL or its agents, employees, officers or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the COUNTY or its employees, agents or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the COUNTY, its agents or employees may become liable. Upon request of the COUNTY, the PARI-MUTUEL shall undertake to defend, at its sole cost and expense, any and all suits brought against the COUNTY in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence by the PARI-MUTUEL or its agents, employees, officers or contractors. PARI-MUTUEL shall have the right to cooperate in the defense, including the selection of private counsel, if any, at its sole cost and expense, against any suit, action, claim,

demand, damage, loss, penalty or fine made by any party to this Agreement or any third party that could reasonably and foreseeably result in a material adverse impact on the amount of Gross Slot Revenues generated or capable of being generated at the PARI-MUTUEL, provided however that nothing contained herein shall limit the COUNTY's right to direct the defense.

Section 12. Exclusive Venue, Choice of Law, Specific Performance

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. In addition to any other legal rights, the COUNTY and the PARI-MUTUEL FACILITY shall each have the right to specific performance of this Agreement in court.

Section 13. Voluntary payment.

The PARI-MUTUEL and the COUNTY each agree that in the event all or any part of this Agreement is struck down by judicial proceeding or preempted by legislative action, the PARI-MUTUEL and the COUNTY shall continue to honor the terms and conditions of this Agreement to the extent allowed by law.

Section 14. No Oral Change or Termination

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or

discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 15. Compliance with Applicable Laws

Throughout the Term of this Agreement, the PARI-MUTUEL shall comply with all Applicable Laws.

Section 16. Nuisance

The PARI-MUTUEL shall not commit any nuisance or do or permit to be done anything that may result in the creation or commission of a nuisance in or around the PARI-MUTUEL FACILITIES.

Section 17. Representations

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

Section 18. No Exclusive Remedies

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 19. Failure to Exercise Rights not a Waiver

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

Section 20. Events of Default

- (a) The PARI-MUTUEL shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:
- (i) The PARI-MUTUEL fails to comply timely with any payment obligation which is not cured within fifteen (15) days from PARI-MUTUEL failure to meet such payment obligation.
  - (ii) The PARI-MUTUEL fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the COUNTY specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then the PARI-MUTUEL shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.
  - (iii) If the PARI-MUTUEL shall be adjudicated bankrupt, or if the PARI-MUTUEL shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of the PARI-MUTUEL are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of the PARI-MUTUEL which is not dismissed within 60 days of such appointment.
  - (iv) Except for any payment obligation in this Agreement, if PARI-MUTUEL is in default under this Subsection 20(a), if any such default cannot reasonably be cured within thirty (30) days, the PARI-MUTUEL shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

- (b) The COUNTY shall be in default under this Agreement if the COUNTY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from a PARI-MUTUEL specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the COUNTY shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

#### Section 21. Remedies Upon Default

Upon the occurrence of a default by a PARI-MUTUEL under this Agreement not cured within the applicable grace period, the PARI-MUTUEL and the COUNTY agree that the COUNTY, in addition to any other rights provided by law, shall have the right to be reimbursed from the bond set forth elsewhere in this Agreement.

#### Section 22. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

#### Section 23. Assignment and Transfer

This Agreement shall be binding on the PARI-MUTUEL and their heirs, successors and assigns. The PARI-MUTUEL shall not assign this Agreement without the prior written consent of the COUNTY, which shall not be unreasonably withheld.

#### Section 24. Obligations Surviving Termination Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

#### Section 25. Lack of Agency Relationship

Nothing contained herein shall be construed as establishing an agency relationship between the COUNTY and the PARI-MUTUEL and neither the PARI-MUTUEL nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the COUNTY for any purpose hereunder, and the COUNTY, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of the PARI-MUTUEL or its subsidiaries, divisions or affiliates.

#### Section 26. Non-Exclusivity

Nothing in this Agreement is intended to create any exclusive rights in the PARI-MUTUEL to conduct slot machine operations within Miami-Dade County. In the event that by operation of law other persons are authorized to conduct slot operations within the County, then the County may permit, authorize and regulate such business and may enter into contracts to the

same or similar effect as contemplated by this Agreement without incurring any liability, contractual or otherwise, to the PARI-MUTUEL.

Section 27.

Notwithstanding any rights under this Agreement this Agreement shall not bind the Miami-Dade Board of County Commissioners, the Zoning Appeals Board, the Building Department, the Planning and Zoning Department, or any other department or board of the County, including Community Councils, to agree to or grant any zoning changes, permits or any other approvals.

Section 28.

The Parties acknowledge that the COUNTY is entering similar contracts with the other two (2) Pari-Mutuels listed in the Whereas clauses above. The Pari-Mutuels shall pay in full the Flat Fee Advance in the total amount of three million, nine hundred ninety nine thousand, nine hundred ninety nine dollars (\$3,999,999.00).

Section 29. Covenants.

The PARI-MUTUEL agrees to execute a Declaration of Covenants which shall run with the land to ensure that the PARI-MUTUEL shall comply with the monetary obligations of this Agreement and by any person or entity who purchases the stock or assets of the PARI-MUTUEL FACILITY and/or operates slot machines from the PARI-MUTUEL FACILITY's location. The declaration is attached and incorporated by reference as Attachment A.

Section 30.

If the COUNTY takes affirmative action by way of ordinance, resolution or otherwise that would have the reasonable or foreseeable result of negatively impacting the generation or capacity of generation of Gross Slot Revenues at the PARI-MUTUEL Facility, then the COUNTY and the PARI-MUTUEL agree to negotiate in good faith to revise the terms and conditions of this Agreement. If and until such time as an amendment or revised agreement is executed, all terms and conditions of this Agreement shall remain in place. Nothing herein shall be construed to obligate the COUNTY to revise any term or condition of this Agreement.

**[Signature page to follow.]**

IN WITNESS WHEREOF, the COUNTY and the PARI-MUTUEL have caused this Agreement to be duly executed.

\_\_\_\_\_,  
a \_\_\_\_\_ corporation

MIAMI-DADE COUNTY  
a political subdivision of the  
State of Florida

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_

County Manager

Date: \_\_\_\_\_

ATTEST:

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

CLERK OF THE BOARD

By: \_\_\_\_\_

Deputy Clerk

Date: \_\_\_\_\_

Return recorded copy to:

Document prepared by:

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**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, hereinafter referred to as "PARIMUTUEL FACILITY", a \_\_\_\_\_ corporation whose address is \_\_\_\_\_ for the benefit of MIAMI-DADE COUNTY, a political subdivision of the State of Florida, with a post office address at 111 N.W. 1<sup>st</sup> Street, Suite 2910, Miami, Florida 33128.

WHEREAS, PARIMUTUEL FACILITY is the fee title owner of that certain real property, located in Miami-Dade County, Florida, and legally described in Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, OWNER hereby covenants that OWNER is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Declaration; that OWNER has good right and lawful authority to make this Declaration; and that OWNER agrees to fully warrant and defend this Declaration against the claims of all persons whomsoever; and

WHEREAS, in the November 2004 general election, the residents of the State of Florida voted to adopt an amendment to the Florida Constitution so that the residents of Miami-Dade County could vote at a referendum election in order to decide whether to authorize the operation of slot machines exclusively at existing licensed parimutuel facilities located in Miami-Dade County; and

WHEREAS, COUNTY and PARIMUTUEL FACILITY recognize that each entity is concerned with the health and general welfare of the residents of Miami-Dade County as it relates to addition of slot machines within the PARIMUTUEL FACILITY; and

WHEREAS, COUNTY and PARIMUTUEL FACILITY recognize that each entity impacts the health and general welfare of the residents of Miami-Dade County; and

WHEREAS, COUNTY and PARIMUTUEL FACILITY recognize that the residents of Miami-Dade County have legitimate concerns over increased development, traffic, crime, congestion, and the quality of life in Miami-Dade County; and

NOW, THEREFORE, the undersigned agree and covenant to the following:

1. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.
2. In order to assist Miami-Dade County in offsetting and defraying governmental impacts, including but not limited to, the costs of regional law enforcement, human services, mass transit operation, and to mitigate lost revenues such as port fees that COUNTY will incur as a result of PARIMUTUEL FACILITY'S slot machine operations in Miami-Dade County, PARIMUTUEL FACILITY agrees to pay Miami-Dade County in accordance with the Agreement (hereinafter referred to as "Agreement") entered into between Miami-Dade County and PARIMUTUEL FACILITY, attached hereto and made a part hereof as Exhibit "B".
3. MIAMI-DADE COUNTY, through its Board of County Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, MIAMI-DADE COUNTY may enforce these covenants by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of this Covenant.
4. Any failure of MIAMI-DADE COUNTY to enforce these covenants shall not be deemed a waiver of the right to do so thereafter.
5. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.
6. This Declaration of Covenants shall be recorded in the Public Records of Miami-Dade County, Florida, and the provisions hereof shall run with the land and shall remain in full force an effect and be binding upon the undersigned, and their heirs, legal representatives, personal representatives, grantees, and assigns, including any person or entity taking title to the land.

IN WITNESS WHEREOF, PARIMUTUEL FACILITY has executed this Declaration of Restrictive Covenants on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**AGREEMENT**