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April 30, 2019

Via Email and Federal Express

Paul Weiss, Esq., General Counsel
NJ Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, New Jersey 08401

Re: **Celebrity Corners, Inc.**
Site Plan Application No. 2018-03-2364

Dear Mr. Weiss:

This firm represents the Ocean Club Condominium Association (the "Association"). I am writing on behalf of the Association in connection with the above-referenced Site Plan Application filed by Celebrity Corners, Inc. ("Celebrity") on January 30, 2019 (the "Application"). For the reasons set forth below, Celebrity's Application cannot lawfully be approved and should be denied. Please distribute copies of this letter and attachments to the members of the Board in advance of the hearing in this matter before the Casino Reinvestment Development Authority (the "CRDA") scheduled for May 2, 2019.

Background

By letter dated March 16, 2018, a copy of which is attached hereto as **Exhibit A**, I advised the CRDA and the City of Atlantic City (the "City") of unauthorized construction activities being undertaken by Celebrity through removal of a Boardwalk ramp to Montpelier Avenue for additional restaurant seating (the "Expanded Seating Area"), as well as prior unauthorized activities in connection with construction of a seating area on the public boardwalk at the street end of Montpelier Avenue (the "Montpelier Seating Area") (the Montpelier Seating Area and Expanded Seating Area collectively referred to herein as the "Boardwalk Seating Areas"). In my letter, I noted that both the City and the CRDA confirmed in response to Open Public Records Act ("OPRA") requests that neither had any documents evidencing any approvals for the construction of the Montpelier Seating Area. I specifically asked the CRDA to advise me

if I was incorrect in my conclusion that, therefore, the Montpelier Seating Area was never approved by the CRDA, in response to which the CRDA never advised that my conclusion was incorrect.

I further noted that both the Boardwalk Seating Areas would require a Coastal Areas Facilities Review Act ("CAFRA") Permit as well. Specifically, a CAFRA permit is required for "development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward" N.J.A.C. 7:7-2.2(a)(IV)(3). Indeed, in this case not only was a CAFRA Permit required for the Boardwalk Seating Areas but the CAFRA Rules expressly provide that development in the location of these areas is "discouraged" and specifically refers to the "Montpelier Avenue (60 foot right-of-way)," which is exactly where Celebrity's Application is proposing development. N.J.A.C. 7:7-9.47(f)(1)(ii). More notably, development in these areas is expressly discouraged by the CAFRA Rules, which provide that if any CAFRA approval might, nevertheless, be granted, the developer is required to pay mitigation in the amount of "five times the property tax on the assessed value of the right-of-way area to be developed." N.J.A.C. 7:7-9.47(j)(1)(i).

Celebrity was not only required to obtain a CAFRA Permit but pursuant to the terms of the Revocable License Agreement executed between the City and Celebrity on September 6, 2017 (the "RLA") (a copy of which was submitted with the Application), by which the City purportedly granted Celebrity special rights to make alterations to the Boardwalk and add outdoor seating for its restaurant. The License and any authorization thereunder, however, are expressly conditioned upon "[r]eview and approval of the [Project] by: the Atlantic City Land Use office, the Atlantic City Engineer's Office, the Atlantic City Fire Department, CAFRA, if required." The License further provides that "[a]ll appropriate local, state and federal approvals or permits shall be obtained ... prior to constructing the improvements."

The fact that Celebrity's construction activities removing the Boardwalk ramp and creating the Expanded Seating Area violated the RLA was indisputably confirmed when the City issued a stop work order to Celebrity on February 16, 2018, which provided that Celebrity had failed to obtain all required State, county and local permits, including land use approval from the CRDA. By another letter from me to the CRDA, dated March 26, 2018, a copy of which is attached hereto as **Exhibit B**, I advised the CRDA of the stop work order and provided a copy of the stop work order, along with other relevant documents. I further noted that the Authority's continued silence appears to confirm that it never approved the Montpelier Seating Area.

The fact that the Boardwalk Seating Areas alterations and improvements were never lawfully authorized, in violation of the RLA and the CAFRA Rules, was further confirmed when, on June 29, 2018, the New Jersey Department of Environmental Protection ("NJDEP"), issued a Notice of Violation to Celebrity concerning the Boardwalk Seating Areas (the "NOV"),

a copy of which is attached hereto as **Exhibit C**. In the NOV, DEP noted that “unauthorized development activities ... involve a combination of boardwalk expansion and deck construction exceeding 400 sf, within the regulated CAFRA area ..., including development of the street end right of way of Montpelier Ave. which is discouraged according to NJAC 7:7-9.47(f)ii (Atlantic City).” The NOV required Celebrity to either submit an application for the required CAFRA Permit or a restoration plan to restore the Boardwalk to its pre-disturbance condition, within 30 days. Upon information and belief, Celebrity has done neither.

As you may recall, meanwhile, the CRDA granted the Association a certificate of land use compliance (“CLUC”) to use the common area owned by the Association, including a glass enclosure formerly leased by Celebrity in connection with its restaurant referred to as the “Bubble,” to use for beach item storage. After the lease for the Bubble was not renewed by Celebrity, the Association was free to utilize its property in any lawful manner.

Celebrity filed an appeal of the CRDA’s approval of the CLUC for the Bubble and a hearing was conducted on Celebrity’s appeal. After the hearing, on June 13, 2018, the CRDA issued a written opinion, a copy of which is attached hereto as **Exhibit D**, rejecting each of Celebrity’s challenges to the Bubble CLUC, affirming the approval and authorizing the Association to proceed to obtain permits from the City for the construction of a demising wall between the Bubble and Celebrity’s restaurant and the addition of a door opening onto the Boardwalk (the “CRDA Bubble Decision”).

Celebrity did not appeal the CRDA Bubble decision but, instead, filed a lawsuit in the Superior Court, seeking rights to use and access to the Bubble on various legal theories, and was granted, *ex parte*, a preliminary injunction enjoining the Association proceeding with construction of the demising wall between the Bubble and Celebrity’s restaurant. The Association agreed to leave such injunction in place with parties engaged in discussions toward a resolution, which discussions were unfruitful, after which the Court heard Association’s objection to the injunction. By Order dated April 2, 2019, a copy of which is attached hereto as **Exhibit E**, the Court denied Celebrity’s order to show cause and lifted the temporary injunction, specifically authorizing the Association to construct the demising wall, or any other construction or demolition activities in or adjacent to the Bubble, and to bar Celebrity access to the Bubble. The Association has obtained all required approvals and permits to construct the demising wall and front door to the Bubble and utilize the Bubble pursuant to the CLUC and is prepared to proceed with such work.

LEGAL ARGUMENTS

I. The Granting of the Application Would Unlawfully Infringe Upon the Association's Property Rights.

As set forth above, the Association is lawfully authorized (despite two unsuccessful attempts by Celebrity to thwart such efforts) and prepared to proceed with the construction of a demising wall between the Bubble and Celebrity Restaurant and a door fronting on the Boardwalk. In the Application, Celebrity seeks approval for use of the Boardwalk completely surrounding the Bubble, including the placement of tables and chairs where the Association is authorized to install a door onto the Boardwalk. Accordingly, the CRDA cannot grant the Application authorizing use of any area of Boardwalk without unlawfully infringing upon and interfering with the Association's property rights.

Ironically, part of Celebrity's objection to the Bubble CLUL was that the door would interfere with its use of the Boardwalk pursuant to its city-license. The CRDA astutely observed, however, that the City ordinance authorizing the placement of tables and chairs on the Boardwalk, §226-26(C), was limited to "establishments with frontage on the Boardwalk ..." to provide seating and/or tables along the Boardwalk "... directly in front of the premises" Exhibit D, p.6 (emphasis in original, citing City Ordinance §226-26(C). The CRDA noted further, in fact, that Celebrity's "revocable license agreement for the use of the Boardwalk in front of the Bubble may be invalid in light of the fact that [Celebrity] no longer ha[s] a property interest in the Bubble." *Id.*, p.7. "In any event, public policy prohibits the [CRDA] from taking any action which would deny a property owner lawful access to its property from the abutting public right of way." *Id.* (emphasis added)

Granting the Application would violate this public policy. The CRDA is, accordingly, compelled to conclude in this matter, consistent with its findings in the Bubble CLUC challenge that "the rights of a third party pursuant to a non-exclusive revocable license agreement with the City cannot serve as a basis to deny [the Association]'s application for a CLUC," that it likewise cannot serve as a basis to grant the Application that will equally infringe upon the Association's property rights. *Id.*

As the CRDA noted, the Ordinance extends the right of limited use of the Boardwalk to property owners with frontage on the Boardwalk to the areas directly adjacent to the premises. *Id.*, p.6. A great deal of the Boardwalk Seating Areas includes the Bubble frontage, not the restaurant. Celebrity's site plan conveniently neglects to measure the frontage but a survey submitted by Celebrity in support of an earlier application, a copy of which is attached hereto as **Exhibit F**, which it withdrew, shows that the restaurant contains just under 24 linear feet of frontage. In a CRDA review letter concerning the earlier application, dated July 23, 2018, a copy of which is attached hereto as **Exhibit G**, the CRDA noted this as well as the fact that the proposed license area for the Boardwalk Seating Areas "adjoins approximately 93 linear feet of

privately owned land and that the Applicant's property only adjoins about 24' of the 93' that adjoins the license area" and required that the "Applicability of City Ordinance 222-26(c) must be addressed."

In applying for the Boardwalk area license under Ordinance §226-26(C), Celebrity certified that it "will abide by all of the regulations in Section 222-26 of the City Code." A copy of Celebrity's letter is attached hereto as **Exhibit H**. It has already been noted above, and acknowledged by the CRDA, that Section (C) of that ordinance allowing tables or chairs on the Boardwalk is limited to the owner of such an establishment. Ordinance §222-26(B) provides further that "seating and/or tables may not extend beyond the street level frontage of the retail food establishment unless the license has authority, in writing, ... from one or both adjoining property owners, permitting seating and/or tables in front of said adjacent property or properties." Id. For purposes of this provision of the Ordinance, "the Boardwalk is considered to be a street." Id.

Celebrity did not seek or obtain any permission from the Association to place tables or chairs beyond the frontage of the restaurant and in front of the Association's property (the Bubble). Celebrity has no rights under the Ordinance to place tables or chairs beyond the frontage of the restaurant. Accordingly, the Application seeks unlawful rights and interests in the property of adjacent property owners, and infringes upon such property owner's rights, and must be denied.

II. The Application Is Unauthorized Under the RLA.

As noted in the introductory section, Celebrity was cited for its failure to obtain required approvals and was ordered to stop work and restore the Boardwalk areas. While it is now finally seeking the CRDA's approval, which it had failed to do previously, it still has not sought approval from the NJDEP or restored the Boardwalk, pursuant to the NOV. In its earlier review letter, the CRDA required as a condition of accepting the application, based upon the terms of the RLA, that Celebrity address the status of the NOV. This Application not only fails to address the NOV but even neglects to include the NJDEP as a required approval on the Application checklist. The RLA expressly requires NJDEP approval as a condition of any rights under the RLA.

Finally, the RLA cannot serve as a basis for the required authorization by the owner for Celebrity to expand the Boardwalk with additional seating because the RLA has expired by its own terms. Specifically, the RLA provides that it "shall terminate and be of no effect and the Expanded License Area shall revert back to the City upon the occurrence of any of the following: (1) the Licensee shall fail to construct the decking and improvements as described above within one year from the effective date of the of this license" The RLA was effective September 6, 2017. As noted above, Celebrity was ordered to stop work on the Boardwalk first by the City in February 2018 then by the NJDEP in June 2018.

Conclusion

For the foregoing reasons, Celebrity's Application is unauthorized and unlawful and should be denied as a matter of law. While the Association has additional substantive objections to the Application, it believes it is imperative that the CRDA first address the legal issues raised herein at the outset of the hearing, based upon which, it is respectfully submitted, the CRDA will determine it has no proper jurisdiction or authorization to proceed with substantive review of the Application.

Thank you for your consideration.

Respectfully submitted,



Robert Beckelman

Encls.

cc: Scott Collins, Esq. (via email, w. encls.)
Lance Landgraf, Dir. of Planning and Development (via email, w/ encls.)
Robert L. Reid, Land Use Regulation Enforcement Officer (via email, w/ encls.)
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