



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

SPECIAL TOWN COUNCIL MEETING

AGENDA

TOWN COUNCIL CHAMBERS

FRIDAY, NOVEMBER 16, 2012

1:00 PM

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Audio (Live and Archived)." If you have questions relative to these two features, please contact the Office of Information Systems (561) 227-6315.

I. CALL TO ORDER AND ROLL CALL

Mayor Gail L. Coniglio
David A. Rosow, President
Robert N. Wildrick, President Pro Tem
William J. Diamond
Richard M. Kleid
Michael J. Pucillo

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

- IV. SPECIAL EXCEPTION #20-2012 WITH VARIANCE The application of Harvey E. Oyer, III, Attorney for Del Friscos Restaurant Group; relative to property commonly known as 340 Royal Poinciana Way, Suites 300, 300A, 302, 302A, 306 & 308; described as Lengthy legal description on file; located in the C-PC Zoning District. The applicant requests a Special Exception for a 260 seat, 8,399 square foot restaurant use in the C-PC district to be located in combined tenant spaces on the northeast side of the Royal Poinciana Plaza, as permitted by Section 134-1259 (a)(5). The proposal also includes the elimination of 2,589 square feet of existing second floor office space, the addition of a bar, a wine room, and two private dining rooms. The proposed hours of operation are: lunch and dinner (from 11am to 11pm) Monday through Wednesday, lunch and dinner (from 11am

to midnight) Thursday through Saturday, and dinner only (5pm to 11pm) on Sunday. A special exception is requested for changes in use for more than 2,000 square feet in C-PC district, permitted by Section 134-1261, for a Town-Serving restaurant. A variance is also requested to eliminate the requirement to provide 72 off-street parking spaces to accommodate the 260 seat restaurant. ***(The proposed modified plan submitted by the applicant reduces the proposed restaurant size to 7,732 square feet and reduces the seating to 222 seats. This would reduce amount of variance the applicant is requesting from 72 to 58 off-street parking spaces.)***

[Attorney: Harvey E. Oyer, III]

Deferred from the August 15, 2012, and October 10, 2012, Town Council Meetings.

V. ANY OTHER MATTERS

VI. ADJOURNMENT

PLEASE TAKE NOTE:

Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 16, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Planning, Zoning & Building Director

Re: Del Frisco's Special Exception/Variance

Date: November 7, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council review and consider the application from Del Frisco's to establish a new restaurant in the Royal Poinciana Plaza. The proposed restaurant requires special exception approval as well as a parking variance.

	<u>Original Submittal</u>	<u>Revised Plans</u>
Number of Seats:	260	218
Total Size:	8,399	7,732
Parking Space Variance:	72	57

GENERAL INFORMATION

It is proposed to establish a new restaurant in the existing Royal Poinciana Plaza, at its northeast corner in space formerly occupied with retail/office tenants. This application was considered by the Town Council on August 15, 2012 and October 10, 2012, at which time it was deferred to November 16, 2012. Council members posed many questions during these meetings. Staff believes the following key issues should be reviewed.

- 1. The restaurant exceeds the Town's 2,000 sq. ft. threshold and is therefore required to demonstrate that it will be a town-serving businesses within the C-PC zoning district. Based upon all material presented, do Council members believe that the restaurant is town-serving?**

If no, the request dies. If yes, then the following questions should also be considered.

- 2. Is a parking variance necessary in order for the new restaurant to be established?**

Yes, a variance is necessary for the 57 additional parking spaces required for intensifying the existing tenant space(s) within the Plaza.

3. How many parking spaces exist in the Plaza? There has been conflicting testimony from the applicant and the public in this regard.

The current configuration and number of parking spaces in the Plaza are not consistent with the site plan modification approved by the Town Council in 1999. At some point between 1999 and 2009, the property owner re-striped the Plaza parking lot without the Town's approval. Last year, as a result of Code Enforcement action, the south portion of the Plaza parking lot was restriped to be consistent with that approved site plan. That included the re-creation of tandem parking (rows of stacked parking). The portion of the case related to restriping the north portion of the lot was held in abeyance by the Code Enforcement Board and the owner was given the opportunity to redesign and restripe with a "Cure Plan" once the new bridge realignment was completed. It was understood that the 1999 approved parking lot configuration would change based on the Florida Department of Transportation (FDOT) partial condemnation of the owner's property. The proposed "Cure Plan" is being submitted for site plan modification at the January 9, 2013 Town Council meeting. The "Cure Plan" is designed to recapture as many lost spaces from the new bridge realignment as possible.

Staff's parking count includes all spaces in the Plaza with the exception of the northwest side of the Plaza for which Staff used the proposed "Cure Plan". The Cure Plan more closely matches the 1999 approved plan than what is striped in that area at this time.

As determined by Staff, the Plaza parking count with the proposed "Cure Plan" is 728 spaces.

4. As proposed by the applicant, can existing parking be reassigned from one business to another within the Plaza?

There are no code provisions in Chapter 134, Zoning, that allow for such a reassignment of parking within a property in the C-PC zoning district. There have, however, been two cases dating back to the 1980's, when the Council allowed for reassignment of parking based on reductions of parking demand elsewhere within the Plaza. The 1979 Agreement addresses the number of spaces in the Plaza, but is silent on the issue of new uses within the Plaza which are more intense.

If the Town Council were to consider a reassignment to diminish the variance request, Staff would recommend a Declaration of Use Agreement be required memorializing details.

5. If parking spaces are reassigned, what effect will the reassignment have on the former "Poinciana dining"?

The "Poinciana dining" (a.k.a. "Poinciana Club" or "Celebrity Room") has to remain viable as part of the landmark property. To remain viable and possibly reassign existing parking attributed to the "Poinciana dining", the property owner would have to convert the dining space in whole or in part into retail and/or office use. Based on the parking numbers in Mr. Zimmerman's "fact sheet" from 1981(copy attached), if the former "Poinciana dining" space is entirely converted to office and/or retail use, the demand for parking in that space would be reduced by 28 existing parking spaces in the Plaza. The Council has the decision whether to allow the applicant to use the parking spaces to reduce the amount of variance being requested by the applicant.

6. If parking spaces are reassigned, how is the parking space variance number affected?

The Plaza is grandfathered for the number of spaces that existed in the Plaza based on the uses in 1979. The Plaza is nonconforming to the parking requirements based on both the 1979 Agreement, the Amendments thereto, and today's code. Staff's parking analysis is based only on how the subject tenant spaces, when combined, would impact parking demand based on the new, more intense use (restaurant) occupying those spaces. The Town's principal of equivalency tool was used to determine how much additional parking would be required over what was grandfathered for those tenant spaces. This analysis, using the parking ratio in the 1979 Agreement and Amendments thereto, and the parking ratio for restaurants, demonstrates that the proposed Del Frisco's restaurant would require 57 (originally 72) additional off-street parking spaces over what was grandfathered.

It must be noted that while the 1979 Agreement, and amendments thereto, address a shared parking concept (only ten per cent of the retail can be open at night and the theater is not allowed matinees), that shared parking concept in Staff's opinion only addressed how the uses that existed at that time could coexist in the Plaza without causing parking congestion and was not a mechanism to later justify more intense uses in the Plaza.

The applicant needs a 57 parking space variance. Reassigning 28 spaces from the "Poinciana dining" space to Del Frisco's would reduce the parking space variance to 29.

SPECIAL CONSIDERATIONS

Communications from the public received by the Town prior to the October 10th Council meeting were previously distributed. Attached to this memo are communications received since October 10th.

Attachments

cc: John Randolph, Town Attorney
Paul Castro, Zoning Administrator
John Little
Harvey Oyer
Pf
Zf

DAVIDE DASH L. EDITION
 COUNCIL
 CHARLES H. SWANSON, JR., PRESIDENT
 CHARLES G. BISHOPSON, VICE, 1ST VICE
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H. S. FROST, TOWN MANAGER
 ROBERT A. DASH, JR., ASST. MGR.
 ALBERT G. BELLER, ASST. MGR.
 CHARLES V. FETTER, ASST. MGR.
 HARRY A. JENKINSON, JR., ASST. MGR.
 ROBERT L. THOMPSON, ASST. MGR.
 ROBERT P. BENTLEY, ASST. MGR.
 JAMES A. BENTLEY, ASST. MGR.
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 ROBERT B. BENTLEY, ASST. MGR.
 ALAN W. LEE, ASST. MGR.
 ROBERT A. BENTLEY, ASST. MGR.
 WILLIAM E. BENTLEY, ASST. MGR.

Town of Palm Beach
 P. O. Box 2029
 Palm Beach, Florida 33480

June 17, 1981

MEMORANDUM

To: Mr. George Frost, Town Manager
 From: David Zimmerman, Zoning Administrator
 Re: Beverage License Transfer
 Poinciana Club, Royal Poinciana Plaza

In reviewing the matter of off-street parking facilities at the Royal Poinciana Plaza, we have extracted from our file a copy of the "Fact Sheet" (copy attached) showing the number of parking spaces required for each use existing in the Plaza. This fact sheet is a part of the latest agreement, approved by Town Council, between the Town and the Plaza owners. You will note, the Poinciana Club requires 74 total parking spaces.

Your Town Council Actions have requests from this department a plan showing the location of parking spaces available for this and other uses in the Plaza. We have attached hereto, a plan received from Mr. Paul Owen, that shows the approximate arrangement of the parking that exists today. However, the Plaza owners have never allocated specific parking spaces to tenants. I don't believe it is Town Council's desire to have a specific number of spaces marked for the exclusive use of this or any other use in the Plaza.

Please advise, if you require additional information.

DCS/vs

David Zimmerman

ADDENDUM
TO
FACT SHEET

OFFICE COPY
TOWN OF PALM BEACH
BUILDING DEPT.

3. Proposal with Bldg. "B" only.

A. Square Footage of Office and Shops:

Existing Plaza	92,082	
Existing Center	3,798	
Building "B" → REFURBISHED SLAT HOUSE	37,605	31,375
Total	133,485	127,255

B. Parking Spaces Req'd for Offices & Shops:

Existing Plaza	320	
Building "B"	125	104 445 424

C. Other Uses and Parking Required:

Existing restaurant (Capriccio's)	67	
Theater	172	
Poinciana Club dining	63	
Poinciana Club other	11	
Proposed restaurant Bldg. "B" → SLAT HOUSE	66	
New restaurant in existing space	54	27
Credit for duplicating space from existing Plaza + SLAT HOUSE	-20-21	413 342

D. Total parking spaces required under present proposal

858 806

E. Current spaces plus added spaces:

Existing	549	
Under "B"	35	
Slat House removal area	60	
Added to Plaza (See Site plan)	69	713 618

Parking deleted from Plaza:

Building "B" coverage	-45	
By Council request in front	-25	-70 -25

F. NOT APPLICABLE

G. Building "B" total net spaces provided:

643 593

RECAP

Total parking required	858	806
Total parking provided	643	593
Total non-conformity	215	213
Less number for theater in separate time demand after 1983 (and only one matinee after this season through June 30, 1993)	172	
Number of non-conformity under compromise	41	
Present non-conformity	84	
Non-conformity under compromise plan	41	
Total reduction in non-conformity	43	

THIS COMPROMISE IS WITHOUT ANY CREDIT FOR HARDSHIP OF 107 SPACES IN BUILDING "A" OF ORIGINAL PLAN WITHOUT TREE.

Note: Figures include an Slat House refurbishment.

The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

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Francis X. J. Lynch
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November 8, 2012

Via E-mail and Hand Delivery

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

Re: Improper Attempt to Reduce or Avoid Parking Variance

Dear Mayor and Town Council:

As set forth in further detail in our office's correspondence of October 10, 2012, any consideration (much less approval) of the "offer" by Sterling Palm Beach LLC ("Sterling") "to reduce a portion of the parking spaces presently allocated to the 330 seats at the Poinciana Supper Club space, in order to provide for an internal transfer of 36 of those parking spaces to be used by Del Frisco's Restaurant Group ("Del Frisco's) in support of its Zoning Application (Special Exception #20-2012 with Variance)(the "Application") would constitute reversible error. Nevertheless, at the October 10, 2012 Town Council meeting, Sterling's counsel, John Little, Esq., made a two-pronged pitch that either: a) Sterling could "transfer" parking allocated for the Poinciana Supper Club ("Club") as a prior non-conforming use, to Del Frisco's; or b) to the extent that the non-conforming use of the Club had been terminated (by abandonment or an intervening use), the Plaza would have sufficient parking under a time-shared parking analysis. Neither argument, however, withstands scrutiny. As a result, Del Frisco's must demonstrate a sufficient basis for a variance under Section 134- 021 of the Town Code, (which it legally cannot¹), for the additional parking required by its intensification of the use of former office space to restaurant space in the Plaza.²

¹ The inability of Del Frisco's to demonstrate the required legal hardship for a variance is set forth in more detail within the November 6, 2012, October 4, 2012, and August 9, 2012 letters from our office, which are incorporated by reference herein.

² In fact, it was very clear from the comments of counsel for the Town that even after meeting with Mr. Little on the issue of the potential "transfer" of parking spaces, both Mr. Randolph and the Zoning Administrator, Paul Castro, determined that, regardless of any argument for the "transfer" of spaces within the Plaza, Del Frisco's Application will still required a variance. "So they have decided rather than to challenge that [determination] or take a position in regard to it, as I understand it, to go ahead and apply for the variance. And that is indeed what is before you today in addition to the special exception." "I don't think they're telling you they don't need a variance, and if they are, neither Paul [Castro] nor I are in a position to tell you that they do not need a variance." As a result, to the extent the Town Council determines either that: a) Del Frisco's Application is not Town Serving, or b) that there is no legal hardship to support a variance, there is no need for the Town Council to even reach the issue of whether there can be a "transfer" of parking within the Plaza.

I. Inability to "Transfer" Parking from Supper Club

A. Sterling's Claim of Prior "Transfers"

In support of its position, Sterling asserts that, as part of the First Amendment to the 1979 Agreement, there was an alleged "Fact Sheet" "that was made part of that agreement," which sets forth all of the uses "existing at the Plaza or were going to be built at the Plaza, what the associated required parking was for all of those uses and what the actual parking was that existed" and further "demonstrated that there was a 213 parking space non-conformity or shortage once all the things that the Town had approved could be put on the Plaza were put there." Thereafter, Sterling claims that in 1981 when the Theater was trying to expand, in order to stay under that 213 non-conformity parking space cap, there was "an internal transfer of spaces" from the restaurant being built in the Slat House to the Theater to give the Theater the required parking spaces which would allow it to increase its number of seats. Sterling also claims that this same type of "internal transfer" was allowed again in 1984 in conjunction with the expansion of the Northern Trust space within the Plaza. As a result, Sterling argues that given that (as late as 1994) there were 330 seats in the Supper Club, which equates to 110 parking spaces, it may voluntarily reduce the number of seats in the Club and "internally transfer" a portion of the parking spaces associated with the use of the Supper Club. Therefore, it proposed to voluntarily reduce the number of seats in the Club from 330 to 220 which it claims "equates to 36 parking spaces" which would be "transferred" to Del Frisco's Application, thereby reducing Del Frisco's variance request to 21 spaces.

B. Legal Prohibitions of any Purported "Transfer" of Spaces from Supper Club

There are a multitude of legal problems which prevent any such "transfer" of parking spaces from the Supper Club to Del Frisco's Application, including, but not limited to:

- A. As a procedural matter, the issue of the potential "internal transfer" of parking spaces is not properly before the Town Council. In both cases cited by Mr. Little, the issue of "transferring" of spaces was brought before the Town Council and was noticed to the public by a separate variance application (i.e. Variance 48-81, and 13-84), not as an afterthought to a separate and independent application. In the present case, the only Application pending is that of Del Frisco's which on its face is for a 72 (now reduced to a claimed 57) parking space variance, and does not contain any request or mention of the "transfer" or parking spaces;
- B. The thirty-year-old documents presented in support of any such "transfer", including, but not limited to, the "Fact Sheet" and the correspondence relied upon by Sterling as "part of" the First Amendment to the 1979 Agreement are not part of the Town Record nor are they supported by the Town Council minutes regarding the 1979 Agreement or the First Amendment to the 1979 Agreement.
- C. Even if there could be an "internal transfer" of parking in the Plaza, any such transfer could not involve the Supper Club as a matter of law. As noted previously, to the extent the use of the Club has not been terminated (by abandonment or an intervening

use), the Supper Club would be a prior non-conforming use. As such, Section 134-387 of the Town Code, which strictly prevents the expansion or the relocation of a non-conformity "in whole or in part", would prevent the "transfer" of any parking spaces associated with the Club as a matter of law. Such restriction is also reflected in the fact that both of the Variances cited by Mr. Little as precedence involved spaces which were "taken" from space under construction, not a prior non-conforming use.

- D. Furthermore, in both Variances cited by Sterling, (48-81 and 13-84), the Town Council demanded and received a corresponding reduction in size of a restaurant being built, as opposed to a prior existing building. For example, in Variance 48-81, Mr. Grace indicated that if Mr. Spiegel wanted more seats in the Theater he would have to decrease the "size of the proposed restaurant in the Slat House" and that "the idea that a restaurant is going to be kept the same size and take out 24 seats is hogwash." Instead, *"the only way you reduce parking requirements from a building is to reduce the square footage of it"* and he was not prepared to accept anything less than such a reduction in square footage in the restaurant being built. Ultimately, the Variance was granted with the restriction that "the future building of the Slat House will have to have a reduction in the seating of the restaurant and the square footage of the building accommodate eight less parking spaces."³ A similar restriction was also included in Variance 13-84. By contrast, in the present case, there is no way to reduce, after the fact, the size and square footage of the existing Supper Club. As a result, there is no way to "transfer" spaces from the Club to anywhere else in the Plaza, even under Sterling's own argument.
- E. Also, Sterling conveniently "forgets" that the minutes of the Town Council meeting establishing the 1979 Agreement clearly reflect that any new construction or remodeling of buildings within the Plaza must comply with the new C-PC Zoning Code requirements which would include the new parking standards, as well as the principle of equivalency under Section 134-2175(3) of the Town Code which requires either additional parking or a variance as a result of any intensification of the use of property.
- F. Sterling further "overlooks" that even under its own argument only the "then existing" number of parking spaces were potentially "grandfathered." and that the parking issues addressed in the First Amendment relate only to issues regarding the Slat House. Otherwise, under the 1979 Agreement "No other non-conformity will be permitted." As a result, clearly any future remodeling of the Plaza, (especially that which would further intensify a use) would require strict adherence to the Town Code.

³ A copy of the Minutes for Variance 48-81 is attached hereto as Exhibit "A."

- G. Finally, even if all of the above could be overlooked (which it cannot), both the Town and the owner of the Plaza, Mr. Spiegel (as well as Sterling, as his lessee), are legally estopped from claiming that Del Frisco's can "transfer" parking for any intensification of use in the Plaza, as it would violate over seventeen (17) years of prior practice and a series of special exceptions, variances and site plan modifications requested by Mr. Spiegel and others and granted by the Town as the result of the need for additional parking in the Plaza.

As a result, there can be no "internal transfer" of parking spaces from the Supper Club to DelFrisco's Application. Instead, Del Frisco's continues to need a substantial parking variance, which it cannot legally support.

II. Shortage of Spaces in Plaza even if Supper Club Use has been Abandoned

Of course, there would be no spaces to be "transferred" at all, and all of the above arguments are moot, if the Supper Club's prior non-conforming use has been legally abandoned either by lack of use or an intervening use as suggested by the Town.⁴ Under such as scenario, Sterling asserts that the Club would default to retail or office space and therefor only require twenty-seven (27) parking spaces, but there would be no "excess spaces" to be potentially "transferred" to Del Frisco's.

Nevertheless, Sterling argues that even if the use of the Supper Club has been abandoned, there is still sufficient parking in the Plaza when considered under an intricate "daytime" and "nighttime" parking analysis.⁵ Outside of the fact that any such "time-shared" parking analysis is directly in violation of the Town Code⁶, the numbers and analysis presented by Sterling are misleading as well as factually incorrect.⁷

⁴ At the October 10, 2012 Town Council Meeting, the Town's counsel, Mr. Randolph, indicated that "we have looked at it [the use of the Club] to the point that we feel that the Supper Club use has been abandoned and that there's therefore no seats that can be transferred from the Supper Club."

⁵ Again, Sterling's entire "daytime parking" and "nighttime parking" argument is based upon a time-shared parking analysis which it has repeatedly admitted, (and in fact cited as a potential "hardship" to support its variance), is not permitted within the C-PC Zoning District. As such, any reliance by the Town Council on the time-shared parking analysis presented would be erroneous.

⁶ While Del Frisco's appears to argue that the 1979 Agreement may somehow trump the C-PC Zoning, not only is that not the case, but also any such argument would be in violation of the 1979 Agreement itself, as Spiegel (as the owner of the Plaza) in conjunction with the Amendment to the 1979 Agreement indicated that he would not contest any of the restrictions contained within the new C-PC Zoning District.

⁷ For example, Sterling's argument is based upon the claim that there are a total number of 770 "total parking spaces available" and 729 "post taking" parking spaces within the Plaza. As demonstrated by the Tower's prior correspondence this is not the case. Similarly, Sterling conveniently forgets to add the 180 parking spaces required by the Theater to its count of daytime spaces required.

Instead, even if the Supper Club is reduced to only requiring 27 parking spaces, the number of available spaces, using Sterling's own numbers and calculations, there would still be insufficient parking in the Plaza⁸. In fact the shortage would be some 250 spaces which is calculated as following:

Use	Associated Parking ⁹
Office/Retail/Bank Space 133,485 sq. ft	445
Poinciana Supper Club 8,160 sq. ft.	27
Existing Restaurants	162
Del Frisco's Grille	92
<u>Playhouse/Theater¹⁰</u>	<u>180</u>
Total Required	906
<u>Presently Available</u>	<u>(656)</u>
Total Shortage	250

This shortage (using Sterling's numbers for the total space occupied in the Plaza) is actually significantly less than if one uses the numbers provided by Sterling's own expert, DKS, within its 2008 report.¹¹ Within its 2008 report, DKS indicates that "the current C-PC zoning code requires a total of 1,196 on-site parking spaces, 346 for the Playhouse/Supper Club and 850 spaces for the remaining 159,000 sf of occupied mixed uses." Subtracting the 656 spaces actually presently available at the Plaza, (as testified to by former Town Planning Administrator, Tim Frank), leaves a shortage of 540 spaces.

III. Conclusion

In the end, it is clear that even if Del Frisco's could satisfy the Town Serving element of its Application (which it cannot), it cannot negate the need for a variance as: a) there can be no "transfer" of parking from the Supper Club; and b) even if there was an abandonment of the use of the Supper Club, there remains insufficient parking at the Plaza which will require a substantial

⁸ This analysis is based on Sterling's numbers presented to the Town Council on October 10, 2012, with the addition of the "bank space" square footage identified on the purported "Fact Sheet" which was left out of Sterling's chart.

⁹ Once again, this analysis is performed on a parking ratio of 1:300 which the Towers disputes, given that any new remodeling, as testified to by Robert Moore in the 2007 case against the Town, would be required to be analyzed under the newer more restrictive provisions of the C-PC Zoning District.

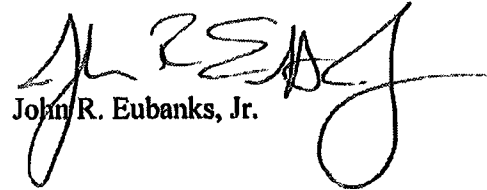
¹⁰ Again, the Theater must be included as there is no time-shared parking in the C-PC Zoning District

¹¹ A copy of the 2008 DKS Report is attached hereto as Exhibit "B."

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
November 8, 2012
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parking variance to be obtained by Del Frisco's. Given that Del Frisco's cannot demonstrate the required hardship for any such variance, its Application should be denied.

Very truly yours,



John R. Eubanks, Jr.

cc: John Page, Director of Planning, Zoning and Building
Peter Elwell, Town Manager
Paul Castro, Zoning Administrator
John C. "Skip" Randolph, Esq.
Town Clerk, Town of Palm Beach
John Grosskopf, General Manager Palm Beach Towers
Henry Goldsmith, President of Board of Palm Beach Towers Condominium

Town Council Minutes of 10-13-81

Mr. Grace stated it is not known for sure if this is part of an emerging plan as nothing has been finalized on it as yet.

Mr. Randolph stated the leverage will be the building permit and the Certificate of Occupancy but if Council wants to, they can require a recorded document on this variance, but the motion will be on file in the Building Department and when anyone would apply for a building permit, this would be on record.

Var. 47-81
Rosseau

Item 22 - Variance NO. 47-81 - Lillian and Enrique Rosseau, 710 S. County Road, permission to construct a second single-family residence on this property, R-A District.

Attorney Peter Holton, with law firm of Jones and Foster, addressed the Council for permission to construct a second single family residence. He pointed out this property consists of two distinct parcels of land both of which exceed required side yards as set by the Zoning Ordinance. Currently on the property are two accessory buildings, one being a two story garage with no kitchen and secondly, a two story house with a kitchen. The Rousseaus have previously been before the Council to request a moratorium waiver. Three reasons why this should be granted:

- (1) The property is large enough to accommodate another house;
- (2) Only 10.5% of the property will be lot coverage;
- (3) They intend to use the accessory house solely as a servant and guest quarters.

Mr. Warwick asked why they needed a variance? Mr. Zimmerman responded this property is presently under one ownership and there is presently on the property one single family residence on 200 feet of frontage and it is approximately 300 feet deep. The reason a variance is needed is because the proposed residence constitutes a second residence on the property.

Mr. Warwick asked what the hardship was? Attorney Holton stated the house presently on the property will not accommodate the Rousseaus since it is not a large residence, nor is it attractive. The existing structure will accommodate the needs of guests and servants.

Mr. Warwick asked if the applicant would be willing to agree the second residence not be rented? Mr. Holton stated they would.

Mr. Ilyinsky asked if a Unity of Title agreement could be executed? Mr. Holton felt this was a different thing. Mr. Warwick asked if there would be two kitchens? Mr. Holton stated there would be. Mr. Matthews felt a unity of title agreement should be required. Mr. Grace asked if he would be willing to commit his clients to a unity of title agreement? Mr. Holton stated he was authorized to do anything the Council wanted in order to secure the variance.

Mr. Grace stated there was another application before Council last month and that was for 800 South County Road and it is a question for the administration and it is when these large estates get torn down, there generally is a gate house or servant's quarters by the roadway and he didn't think these gate houses should become authorized single family residences in this Town, just because the main houses gets torn down. This gatehouse is right on the sidewalk, it is a non-conforming building and it is not attractive and he felt something should be done in this Town, either administratively or otherwise, that gatehouses do not become single family residences when the main structure is being torn down and he wanted this to be brought to the Building Department and to Adley & Associates. In this case, they are not asking for an expansion of the gate house as they did last month for 800 County Road (S). He and Mr. Zimmerman did not agree on the expansion of the gate house as Mr. Zimmerman interpreted the Ordinance as allowing an expansion of a single family structure but Mr. Grace did not know how a gate house got to be a single family structure as it was built as a gate house. In this case he felt there was no single family home on this particular property at all and what is being built is the first single family home and the other building is a gate house and is not a single family home and it should not be allowed to be expanded and the only thing that should ever happen to it is to have it torn down.

Mr. Warwick asked the applicant's attorney if he agreed to not expanding the existing gate house? Mr. Holton agreed.

Mr. Frost gave the Administrative comments: Public Works Department notes that the proposed residence encroaches on the utility lines. Building makes the same observation. Mr. Frost noted as Mr. Grace did that the house that is there now is right on the north and west property lines and if it would be torn down, it would be in the best interest of the Town. Both the garage apartment and the gatehouse are occupied at this time and there are three unrelated people living there.

Mr. Robinson moved the variance application be approved subject to the comments made. Seconded by Mr. Ilyinsky.

Mr. Warwick stated there will be a stipulation that the property will be 1 single family occupancy only.

On roll call, the motion carried unanimously.

48-81
Maccabee
Investments

Item No. 23 - No. 48-81 - Maccabee Investments d/b/a Royal Poinciana Playhouse, 70 Royal Poinciana Plaza, by Albert P. Schwartz and Arthur Kallenberg, permission for addition of 17 seats and 33 seats at time when orchestra pit is not needed; not providing additional ten parking spaces as required, C-FC District.

Barbara Gault of the Playhouse introduced Jim Riley who stated there is a mistake on the application as it should read 15 seats instead of 17 and 32 seats instead of 33. Also they have discovered the Playhouse has always been known to have 860 seats but in actual fact, there are only 852, due to the fact the seats in the boxes have been reduced from six to four, so summarizing what they have, 834 permanent seats in the theatre, 16 box chairs and they are actually requesting 47 additional seats, which will be 39 over the existing capacity. They have earmarked 150 parking spaces for the existing capacity. They will not be employing support personnel as in the past and this would be eight cars add three commercial vehicles which no longer will be necessary, so that would mean 11 spaces available, so only eight additional spaces would be necessary.

They have cut off the apron stage and when the orchestra pit is not required (which would mean for their non-musical productions) they request permission to add the additional seats. They will provide valet service and when there is a matinee performance, they will hire three off-duty policemen to help with the traffic. He has been advised there usually is ample parking for all evening and matinee performances. They will have 12 mid-week performances this Season and half of those will require the use of the orchestra pit area, so the additional parking would only be needed six times during the year and they will hire the off-duty policemen to help with the traffic.

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Mr. Riley stated the theatre because of its size is a minimal operation financially and what Mr. Zev Bufen would like to do is return the Playhouse to Broadway type productions which will return the theatre to first class attractions which will make the Playhouse once again a viable entity.

Mr. Robinson took exception to the statement there is no parking problem there as he has his office in the Plaza and many times cannot find a space to park his car.

Mr. Zimmerman stated there are 172 spaces which are allocated to the theatre and the entire plaza is deficient in parking.

Mr. Robinson asked what other types of events are being held there? Mr. Kallenberg stated the agreement they inherited states that all matinees will cease in June of 1983. During the Season, there is to be only one week-day matinee and the excess traffic could be caused by the Hibel Museum.

Mr. Grace reminded the Council there is another building still to go up in the Plaza and he viewed this as a commercial operation which wishes to expand without providing the proper parking. He felt if they wanted more seats, they can take something out of the proposed building.

Mr. Kallenberg stated the Slat House is about to be constructed and will probably be ready for occupancy next Season and they as the owners of the Plaza are interested in continuing the Playhouse and they are prepared to relinquish eight parking spaces from the proposed Slat House by decreasing the size of the proposed restaurant in the Slat House from 198 seats down 24 seats so that the additional parking spaces can be provided.

Mr. Joel Arnold, Director of Business Affairs for Zev Bufen addressed the Council reiterated what Mr. Riley had to say. The owners have agreed to reduce their restaurant to accommodate the parking for these additional seats requested and they will not be requiring as many employee parking spaces. Mr. Warwick asked Mr. Arnold if he understood that the weekday matinees are being phased out by June, 1983. Mr. Arnold stated he is aware of that.

Mr. Frost gave the Administrative comments: Building Dept. comments that the new zoning will require additional parking spaces for this addition and the parking is already deficient.

Mr. Matthews informed the Council there has been a new restaurant opened up in the Plaza which has parking utilized right now. Mr. Kallenberg stated the weekday matinees do take place after the luncheon period and they are proud of the new restaurant, but there is still approximately 25 to 40 per cent of the parking vacant, but naturally people want to park in the closest position possible to the restaurant and the perimeter areas of the parking lot remain vacant.

Mr. Grace informed those who were not on the Council when the slat house development was being considered that the Council did bend over backwards and grandfathered in some parking and if they are willing to make this commitment in a written agreement that he will reduce the size of the Slat House so there will be eight less parking spaces required for the building, then he will go along with that and it has to be written in a way that it will not be abused the way this Agreement is abused by all of the special events that now go on there. Mr. Kallenberg stated he is not prepared to reduce the size of the building but only to reduce the restaurant by 24 seats to accommodate the parking spaces.

Mr. Arnold stated they are also willing to agree to the fact that there will be no afternoon events other than the one scheduled weekday matinee.

Mr. Robinson stated "afternoon" doesn't cut it as it should encompass hours of peak use, that is the hours during which the offices are open and the hours during which they expect to be using the premises. Mr. Arnold stated when he says afternoon, he means before six PM, and he is willing to agree that there will be no afternoon events in that building other than the one weekday matinee.

Mr. Matthews stated he would move the approval of the application subject to the point that Mr. Grace made about the reduction of the Slat House by the required number of parking spaces. Mr. Warwick asked if he meant by the reduction of 24 seats in the restaurant and no events in the afternoon other than the one matinee until June of 1983. Mr. Grace stated the idea that a restaurant is going to be kept the same size and take out 24 seats is hogwash as if they have the same number of square feet in a restaurant they can get as many people in there that they possibly can and no-one is going to be able to run down there to see how many seats are there. The only way you reduce parking requirements for a building is to reduce the square footage of it and he is not prepared to accept anything else.

Mr. Matthews felt the seating is done on an equated basis. Mr. Zimmerman stated an equivalent seat is equivalent to six square feet of floor area. Mr. Kallenberg stated the proposal was 198 seats in the slat house originally.

Mr. Grace felt this should be done in an office where the information is available and it should not be done orally at this meeting.

Mr. Matthews suggested this be deferred until next meeting. Mr. Kallenberg asked this not be done as the new theatre seats have not been ordered pending Council approval and it will take 90 to 120 days to have them delivered and if this is deferred, the seats will not be available for the Season. He felt they were prepared to make any reduction in the size of the restaurant to accommodate the eight parking spaces and if the Council wanted the size of the restaurant reduced in terms of gross leasable area, he will do so and if Council wanted them to reduce the number of seating capacity in the restaurant and/or both, he is willing to do so.

Mr. Warwick stated whatever the seating capacity is Mr. Zimmerman can verify. Mr. Kallenberg is offering to reduce the number of seats in the restaurant by 24 and the size of the restaurant by 144'7". Mr. Frost recalled they no longer have the authority to build the Slat House due to the fact the time has expired. Mr. Kallenberg did not agree as plans are in the Building Department for approval. Mr. Moore, the acting Building Official stated there are no plans in their Department. Mr. Kallenberg stated they will be delivered shortly by his architect, but the current building permit does not expire until 11-12-81 at which point he hopes to be constructing at the Slat House. Mr. Moore did not agree and felt the time on the Slat House approval had expired.

Mr. Kallenberg stated if this is so, then there would be no non-conformity with the parking and

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secondly, no-one has communicated to him that the permit has expired and work has been done on the demolition permit within the last twelve months, therefore, he really did not think the permit could have expired. Mr. Warwick stated this is a difference of opinion on an administrative level.

Mr. Ilyinsky moved that the applicant be granted the extra seats in the theatre and if there is a permit existing in force on the Slat House, the building will be reduced the required number of square feet and seats. Mr. Grace seconded the motion as long as he could be assured the motion has in it the provision that if there is an existing permit, the future building of the Slat House will have to have a reduction in the seating of the restaurant and the square footage of the building to accommodate eight less parking places. Mr. Ilyinsky stated he was willing to include Mr. Grace's comments as part of his motion. Mr. Robinson asked if the other items discussed are also conditions? Mr. Warwick stated there will be no other events prior to six p.m. other than the one weekday matinee performance, other than on weekends. Mr. Matthews stated he will withdraw his motion in deference to this motion just made.

On roll call, the motion carried with Mr. Warwick abstaining.

Var. 49-81
Kohl - kitchen

Item 24 - Variance No. 49-81 - Sidney A. Kohl, 1070 N. Lake Way, by Attorney A. P. Prosperi, permission to install kitchen unit in attached wing of residence, BB District.

Mr. Prosperi addressed the Council stating his client wishes to install a kitchen in the wing of his house. Mr. Warwick asked if he would be willing to have his client enter into the Kitchen Removal Agreement? Mr. Prosperi agreed.

Mrs. Peters stated there is a letter of objection from Mrs. Honor Evilsizer who objected to the installation of the kitchen and called attention to the fact that since there is no parking on N. Lake Way, these people would be parking on the side streets.

Mr. Frost gave the Administrative comment: No objection as long as the Kitchen Removal Agreement is entered into.

Mr. Frost was asked about the parking by Mr. Warwick. Mr. Frost responded that the observation by Mrs. Evilsizer is correct but he presumed that Mr. Kohl would have off-street parking on his property. Mr. Prosperi stated Mr. Kohl does have a two car garage as well as six off-street parking spaces behind a hedge as this is a two lot house.

Mr. Grace felt there was a hardship to have a lot more than twice the required size and not be allowed to have a second kitchen so on that basis, he would move this be approved subject to the entering into of a Kitchen Removal Agreement. Seconded by Mr. Matthews. On roll call, the motion carried unanimously.

Sp Ex. 12-81
Goodman Co &
M Goodman

Item 25 - Special Exception No. 12-81 - The Goodman Company and Murray N. Goodman.

Mr. Warwick stated this was considered earlier and has been postponed until the November meeting.

Var. 5-81
at Southern
Holdings

Item No. 26 (c) Variance No. 5-81 - First Southern Holdings by Thomas H. Sanabury, Vice President (Paramount) 139 South County Road, permission to modify non-conforming building by addition of a second floor in theatre portion. C-TS District.

Also (b) Variorium Waiver Request No. 81-81 M - deferred from 9-15-81

61-81H
deferred

Mr. Grace asked if there was an alternate plan which does not use any of the RC property for any purpose. Mr. Pollock of Kinley-Horn stated there was not but there was an alternate plan which utilizes a small portion of RC. Mr. Peter Cummings addressed the Council stating he felt there were two issues here, one of parking and one of access. All the required parking can be taken care of on the commercially zoned land but they do not have a drawing which reflects the ingress and egress off of Sunset Avenue. In order for them to enter on Sunset and exit on Sunrise, minimally they need a 23' square piece of land in the RC zone to get the traffic down from the shrunken parking lot out of the lot in conformance with the access plan which their traffic engineer recommended.

Mr. Warwick asked why there could not be an entrance in the western east parking designated area something like the First National parking lot?

Mr. Pollock addressed the Council stating he did not feel there was a conflict on his part as he is not the Town engineer, although his firm is but they have separated employees in the firm which should help not create a conflict. He stated the reason they were looking at the connection onto Sunrise is that if there was an enter/exit only at Sunset there will be a problem at Sunset and North County Road as in the southeast corner of that intersection, there is a building which comes right out to the street and traffic approaching that intersection from the east on Sunset Avenue have a difficult time and there would be a hazard problem of traffic getting onto or across County Road. One way to solve the problem may be the installation of a traffic signal at this intersection and this will solve the safety problem but it will impede the traffic flow on North County Road itself because of the close spacing of traffic lights. From a traffic volume capacity point of view, the suggestion of entering and exiting onto Sunset is viable but from a safety point of view, it is not desirable.

For that reason they have prepared the plan which exits traffic onto Sunrise.

Mr. Warwick asked how many additional trips per day did they estimate would be thrown on Sunrise Avenue with this plan? Mr. Pollock stated additionally there would be 800 trips per day.

Mr. Warwick recalled when the Sun and Surf project was approved, the figure was 1000 vehicle trips per day and now 800 more are to be added and asked what the capacity of that block would be before it becomes saturated. Mr. Pollock responded he has not looked at the total capacity of that block, but he did look at the intersection of Sunrise and N. County Rd., from a capacity point of view and the traffic volumes that are there and he felt the intersection as it now exists does have sufficient capacity to handle the traffic volumes and has the ability to handle more traffic where it be on Sunrise or North County Road.

Mr. Warwick stated if they turn right, they have no exit except through residentially zoned property. Mr. Pollock stated he envisioned a small amount of traffic turning right to go east on Sunrise, but he felt the major traffic flow to and from the site would come from N. County Rd., and the majority of that would be coming from the south, turning right onto Sunset Rd., into the property and then exiting on Sunrise Rd. and turning left back to County Rd., and he felt this would minimize the traffic entering and exiting the site itself.

Mr. Grace agreed it would be difficult to exit onto Sunset Avenue, due to the building on the southeast corner and from a public safety aspect, the Council could approve the minimal use of some RC zoned property as an exit and a way to get onto Sunrise, but he felt the Council should keep this to the 1005

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MEMORANDUM

TO: Maura Ziska Kochman & Ziska
Brian D. Kosoy Sterling Organization

FROM: Jerry T. Wentzel, P.E. Principal Transportation Engineer
Brian C. Johnson Senior Transportation Engineer

DATE: July 24, 2008

SUBJECT: Royal Poinciana Plaza Redevelopment PIA No. 04119-000
Retail Parking Requirements for C-PC District

This memo is provided in support of the request by the Sterling Organization to modify the C-PC zoning requirements governing the Royal Poinciana Plaza in the Town of Palm Beach. The specific request is to change the off-street parking requirement for retail uses from 1 space per 200 sf GLA (5.0 spaces /1000 sf GLA) to 1 space per 250 sf GLA (4.0 spaces per 1000 sf GLA). This proposed change will bring the parking requirements for the Plaza more in line with current, nationally accepted parking standards. Application of a reduced retail parking requirements will still provide more than sufficient parking for the development, exceeding the national standards as well as historic observations of parking demand at the Royal Poinciana Plaza.

Retail Parking Requirements (National)

Comprehensive data on the parking demands of retail centers throughout the United States has been compiled in a research study conducted jointly by the Urban Land Institute (ULI) and the International Council of Shopping Centers (ICSC). This study was an update of a 1980 study. The results have been published in the ULI report *Parking Requirements for Shopping Centers*, Second Edition. The goal of the study was to recommend parking demand ratios for shopping centers in the United States, based on observations of parking at existing centers. The data analyzed in the study suggested that for centers less than 400,000 sf GLA the recommended ratio should be as low as 3.7 spaces per 1000 sf GLA, provided additional spaces are available for restaurants and entertainment uses. However, because of limitations in the data base, the recommendation from the 1980 study was retained for this category of centers. Based on this study, the recommended parking ratio for shopping centers less than 400,000 sf GLA is 4.0 spaces per 1000 sf GLA (1/250 sf GLA). This ratio was determined to be sufficient to accommodate all but the 19 highest hours of parking demand during the year. Almost all of the 20 highest hours are anticipated to occur on Saturdays during the peak Christmas season. During 40 percent of the year over half of the spaces would be empty.

Royal Poinciana Plaza Parking Characteristics

Consistent with the C-PC zoning category, the Royal Poinciana Plaza is a mixed use development including office, retail, restaurants and entertainment uses. The Plaza is the only property in the Town of Palm Beach which is under this zoning category designation. The development contains approximately 196,000 sf of floor area of which approximately 37,000 sf is included in the unoccupied Royal Poinciana Playhouse and Supper Club. The current C-

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EXHIBIT



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PC zoning code requires a total of 1,196 on-site parking spaces, 346 for the Playhouse/Supper Club and 850 spaces for the remaining 159,000 sf of occupied mixed uses (the Plaza). The latter represents a composite parking ratio of 5.35 spaces/1000 sf GLA. Table 1 summarizes the current code requirements.

TABLE 1
Parking Code Analysis for Royal Polyclana Plaza

Rev. 7/24/08

Scenario	Site Location	Land-Use	Size	Criteria	Town of Palm Beach Parking Code	Parking Ratio	Total Required Parking Spaces
EXISTING DEVELOPMENT							
West Property (38,774 sf total)		Supper Club* (10,000 sf)	330 seats		1 per 3 seats	0.3333	110
		Supper Club Support*	4,788 sf		1 per 200 sf	0.00333	16
		Hotel Bldg (retail)	2,774 sf		1 per 200 sf	0.005	14
		Playhouse (27,000 sf)*	878 seats		1 per 4 seats	0.25	220
						Subtotal:	360
Plaza (128,374 sf total)		Office	104,373 sf		1 per 250 sf	0.004	418
		Central Court (retail)	4,397 sf		1 per 200 sf	0.005	22
		Restaurant Seating	7,700 sf		1 per 45 sf	0.0222	171
		Restaurant Support	3,200 sf		1 per 300 sf	0.00333	11
		Retail	1,870 sf		1 per 200 sf	0.005	10
		Bank	4,734 sf		1 per 200 sf	0.005	24
Slushhouse (10,000 sf total)		Office	25,352 sf		1 per 250 sf	0.004	102
		Restaurant Seating	3,254 sf		1 per 45 sf	0.0222	73
		Restaurant Support	1,384 sf		1 per 300 sf	0.00333	5
Existing Development Total					198,148 sf	Total Required by Code	1,196
Unoccupied						Total Provided (As Approved)	776
						Compliance	65.05%

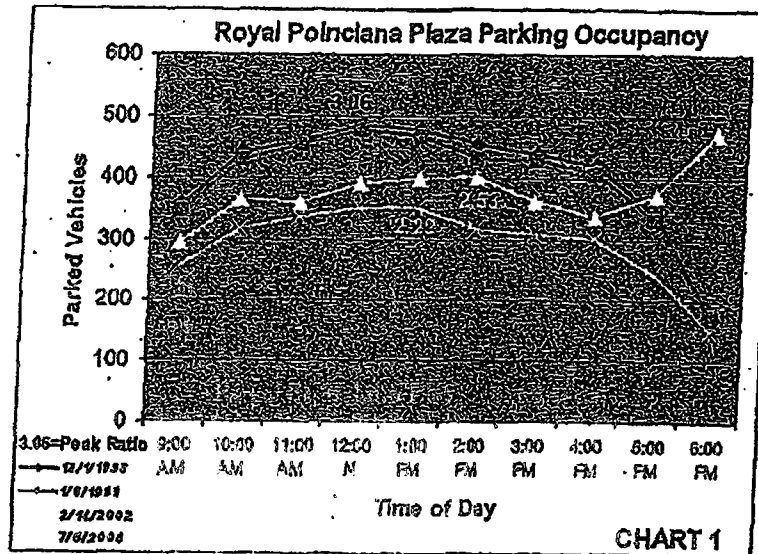
Historically, events at the Playhouse/Supper Club have occurred in the evening and therefore the associated parking demands have not influenced the peak parking demands of the remaining mixed use development. With the Playhouse/Supper Club operations having ceased the parking demands of the Plaza have been examined. Approximately 10% of the 159,000 sf of occupied floor area is currently used by restaurants with the rest involving a mixture of office, financial services and retail uses. This is within the normal proportions specified in the national studies. Limitations to the size (maximum of 2000 sf) of retail shops permitted under the C-PC zoning category tends to discourage major retail users and as a result the center is predominantly oriented to offices and services. Less than six percent of the floor area is devoted to purely retail establishments. As a result of this mixture of uses, peak parking demands at the Plaza are more reflective of the lower ratios generated by office and services. Seasonal fluctuations are less than typical retail centers and the peak weekend demands, normally observed at a retail center are virtually absent. Parking demands for the retail components themselves are lower on weekdays than on Saturdays. Data compiled by ULI and ITE for retail centers indicated peak weekday demands are 90 percent of peak Saturday demands (3.6 spaces/1000 sf GLA as compared to the 4.0 ratio for Saturdays).

Therefore, based on the national standards and current development characteristics, the overall existing peak demand for parking at the Plaza is anticipated to be well below 4.0 spaces/1000 sf GLA.

DKS has performed parking occupancy surveys at Royal Polyclana Plaza on four separate occasions. Three of these took place in the peak season while the fourth occurred in the non-peak season. Only once was activity at the Playhouse a factor. The chart below provides a summary of these observed parking demands. A peak parking ratio of 3.06 spaces/1000 sf GLA has been observed in these surveys. These surveys confirm the adequacy of a 4.0 parking ratio for the entire 159,000 sf GLA of Plaza development.

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Based on the UL/CSC data and observations at the Plaza, the requirement of 1 space /250 sf GLA (4.0 spaces/1000 sf GLA) for retail uses in the development is recommended. Since this factor only applies to the retail component of this unique mixed use development, it has minimal overall effect on the parking conditions (reducing the code requirements of the Plaza component by less than 1%). The adoption of this ratio will provide more than sufficient parking for the mixed use development even as the proportion of purely retail users increases. It will reduce the burden of unused parking spaces, allow flexibility in space utilization and avoid unnecessary requests for zoning variances in the future. This will encourage more retail development without jeopardizing the availability of convenient patron parking. Additional spaces for future restaurant and entertainment uses should consider the time offset of peak parking for these uses compared to the others uses.

The Law Offices of
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November 6, 2012

Via E-mail and Hand Delivery

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

Re: "Taking" of Parking Spaces by FDOT Does Not Constitute Legal Hardship

Dear Mayor and Town Council:

Within its Application (Special Exception #20-2012 with Variance)(the "Application") as well as its two presentations, Del Frisco's Restaurant Group ("Del Frisco's") has argued that the "hardships" which supports its request for a huge¹ (initially 72 and now claimed 57) parking space variance² include that: a) under the 1979 Agreement there is a restriction against any new building, so it cannot merely build a parking garage; b) the property it seeks to lease is in the C-PC Zoning, and as such it cannot participate in shared parking;³ and c) Del Frisco's has suffered a hardship "not of its own making" in the form of "the loss of 41 parking spaces"⁴ in the Plaza due to the condemnation of a portion of the Plaza by the Florida Department of Transportation ("FDOT"). The

¹ As you know, the Town Council has on many occasions agonized over parking variances as small as one or two spaces due to the intensification of use of a property (e.g. a change from office to retail space). Nevertheless, Del Frisco's has chosen to tear out existing office space within the Plaza and replace it with restaurant space which dramatically intensifies its use and results in the need for an enormous variance of 57 spaces.

² It should be noted that while the long-term Lessee of the Plaza, Sterling Palm Beach LLC ("Sterling") has proposed a method of purportedly "transferring" parking from the Supper Club to Del Frisco's, both Town Staff as well as Town's counsel, Mr. Randolph, have found that Del Frisco's still requires a parking variance as part of its Application. See, e.g., Mr. Randolph's comments that after meeting with Mr. Little, he and Paul Castro determined that Del Frisco's still needed a variance. "So they have decided rather than to challenge that [determination] or take a position in regard to it, as I understand it, to go ahead and apply for the variance. And that is indeed what is before you today, in addition to the special exception."

³ Again, despite admitting (although it claims it does not know why) that *shared parking is not permitted* in the C-PC Zoning of the Plaza, (which it is not pursuant to Section 134-2182(a) of the Town Code) Del Frisco's once again spent an inordinate amount of time in its presentation describing the potential spaces available during the day and evening available based upon the use of the Royal Poinciana Playhouse and retail shops, which is nothing more than a time shared parking argument. As a result, on its face, such an argument should be rejected.

⁴ As set forth in detail within the Tower's correspondence dated November 6, 2012, which is incorporated herein, Spiegel/Sterling did not "lose 41 parking spaces" as a result of the Order of Taking as at least 21 of the spaces "lost" were in Parcel 100 which were owned by the Town, not Spiegel/Sterling.

legal insufficiencies of the first two of these arguments was covered within the Palm Beach Tower's correspondence from our office dated October 4, 2012, and incorporated herein.

At the October 10, 2012 Town Council meeting, however, there was an intensification of attention on the third argument, that the "taking" of a portion of the Plaza by the FDOT was somehow a legally sufficient "hardship" which would support the granting of a parking variance to Del Frisco's. The problem is that the facts in this case, the provisions of the Town's Code, and the case law, demonstrate that the granting a variance based upon the FDOT "taking" would constitute reversible error.

A. Del Frisco's Does Not Have Legal Standing to Claim Hardship from Taking

As a preliminary matter, Del Frisco's does not have the legal standing to argue that any "taking" by the FDOT constitutes a hardship to it. By way of an Order of Taking dated January 22, 2010 ("Order of Taking"),⁵ the FDOT "took," via eminent domain proceedings, two parcels of property, Parcels 100 and 101, for the construction of the new Flagler Memorial Bridge ("Bridge")⁶. Parcel 100 was owned by the Town, while Parcel 101 was owned by Sidney Spiegel as Trustee. As such, Del Frisco's (whose Application was not even filed until two and a half years later) does not have any legal interest in either Parcel 100 or 101 and therefore cannot claim a "hardship" as the result of the FDOT's taking of such Parcels.⁷ Consequently, the Order of Taking cannot legally be the basis for the granting of a parking variance to Del Frisco's.

B. Sterling Cannot Claim Hardship from Taking Due to Severance Damages

Nor can Sterling claim any "hardship" as the result of the taking of Parcel 101 given that Sterling is entitled to (and is no doubt seeking within the valuation phase of the FDOT case) not only the fair market value of Parcel 101, but also any "severance damages" for the decreased value of the remainder of the Plaza as a result of the taking of Parcel 101, and any parking spaces thereon. *See, e.g., Florida Department of Transportation v. Armadillo Partners, Inc.*, 849 So. 2d 279,282 (Fla. 2003)("When less than the entire property is being appropriated, full compensation for the taking of private property by eminent domain includes both the value of the portion being appropriated and any damage to the remainder caused by the taking."). As a result, Sterling cannot try to "double dip" by being compensated in full by the FDOT for any severance damages and diminishment in the value of the Plaza for the spaces "lost", and at the same time, attempt to use the FDOT "taking" as the basis for a hardship to support Del Frisco's Application.

⁵ A copy of the Order of Taking is attached hereto as Exhibit "A."

⁶ A copy of the FDOT Survey of Parcels 100 and 101, along with the aerial of the Parcels is attached hereto as Exhibits "B" and Exhibit "C."

C. Del Frisco's was Aware of the FDOT Taking Prior to Filing its Application

In addition to not having standing, Del Frisco's cannot attempt to utilize the Order of Taking to support a "hardship" as it was aware of the effects of the FDOT "taking" as well as the general lack of parking in the Plaza well in advance of the filing of its Application. The Order of Taking was signed by the Court on January 22, 2010. By contrast, Del Frisco's Application was not filed until July, 2012. As a result, regardless of the number of parking spaces "lost" due to the Order of Taking, the remaining number of spaces was clearly known to Del Frisco's prior to filing its Application.⁸ At that point, the "loss" of spaces was no different than any other prior existing restriction within the Plaza such as the Town Code or 1979 Agreement. Nevertheless, Del Frisco's choose to file an Application for the removal of existing office space and replacing it with the much more intensive use of restaurant space, despite knowing that such actions would trigger the need for a parking variance under Town Code.

The case law is overwhelmingly clear that where an applicant knows of the restrictions on a property, yet chooses to propose a use which will require a variance, the prior existing conditions, zoning, or restrictions cannot be used to establish the requisite legal hardship necessary to obtain a zoning variance. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3d DCA 1977)(property owner that purchased property for use as a restaurant knowing it was located in an professional office zone could not demonstrate requisite hardship to support a variance); *Thompson v. Planning Commission of City of Jacksonville*, 464 So. 2d 1231 (Fla. 1st DCA 1985)(landowners who purchased property fully aware of its shape and size, but still designed a building which was too large for the lot, leaving insufficient room for code-required parking, did not establish requisite hardship necessary to obtain a zoning variance); *Green v. City of Miami*, 107 So.2d 390 (3d DCA 1959)(property owner which operated a merchandise plant and sought variance from zoning to operate package liquor store was not entitled to variance as owner knew of the restrictions in zoning prior to the acquisition of liquor license); *Josephson v. Autrey*, 96 So. 2d 784 (Fla. 1957)(where owner of property purchased same knowing it was zoned so as to prohibit building of filling station, purchaser was not permitted to use prior existing restrictions to support a variance); *Weinberg v. Town of Sewall's Point*, 10 Fla. L. Weekly Supp. 689a, 19th Judicial Cir., May 14, 2003 (variance is not warranted when petitioner purchased property fully aware of need for variance, and this hardship was self-imposed); *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3d DCA 1959)(one who purchases property knowing it is in a certain zoning classification and then applying for a variance cannot use the zoning classification as grounds for a hardship sufficient to support the granting of a variance); *World Jai Alai v. Metropolitan Miami-Dade County*, 6 Fla. L. Weekly Supp. 603a,

⁸ As demonstrated further within that correspondence dated November 6, 2012 from our office (which is incorporated herein) Sterling also clearly knew that there were only 579 spaces within the Plaza when it entered into its long-term lease of the Plaza on March 31, 2008, as it had received a survey certified to Sterling dated March 12, 2008 which not only showed that there were only 579 spaces, but also demonstrated that at least 21 of the parking spaces in the Plaza were located in Parcel 100 which belonged to the Town, not Mr. Spiegel.

July 16, 1999 (where a property owner claims as a hardship factors which already existed when he acquired the property there is no legal hardship); *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237 (Fla. 3d DCA 1990)(where a property owner claims as a hardship the effect of factors which existed when he acquired the property, there is no hardship).

Similarly, in the present case, Del Frisco's is seeking to lease a portion of the Plaza knowing the restrictions on parking created by the FDOT Order of Taking. As a result, it cannot thereafter file an Application for a much more intensive use of restaurant space knowing it will require more parking and then use the lack of parking as the basis to establish the requisite hardship necessary to obtain a zoning variance. To grant such a variance based on the Order of Taking would be reversible error.

**D. Proposed Intensification of Use of Property by
Del Frisco's Constitutes a "Self-Imposed" Hardship**

Stated in the alternative, knowing the parking situation in the Plaza, any "hardship" which may exist as a result of the Order of Taking is self-imposed by Del Frisco's. Once again, the case law is very clear that if an applicant is aware of a restriction yet proposes a use which does not comply with the site or zoning code, any purported "hardship" is self-imposed and cannot legally support the issuance of a variance.⁹

The self-imposed nature of Del Frisco's Application is even more apparent from the testimony of Paul Castro, the Town's Zoning Administrator. At the October 10, 2012 Town

⁹ In fact, courts will often deny or invalidate a variance by citing both the prior knowledge of a restriction as well as the "self-imposed" nature of the "hardship" in the alternative. See, e.g. *Metropolitan Dade County v. Betancourt*, 159 So. 2d 1237 (Fla. 3d DCA 1990)("A self-imposed hardship (such as by purchasing property under existing zoning and then applying for a variance) is not the kind of hardship for which a variance should be granted."); *Thompson v. Planning Commission of City of Jacksonville*, 464 So. 2d 1231 (Fla. 1st DCA 1985)(landowners who purchased property fully aware of its shape and size, but still designed a building which was too large for the lot, leaving insufficient room for code-required parking, did not establish requisite hardship necessary to obtain a zoning variance, since the hardship was self imposed and arose solely from their own conduct and expectations); *Crossroads Lounge Inc. v City of Miami*, 195 So.2d 232 (Fla. 3d DCA 1967)(holding that a variance from a zoning ordinance is invalid where the hardship was self-created because the owner knew of the applicable restricted zoning ordinance); *World Jai-Alai v. Metropolitan Miami-Dade County*, 6 Fla. L. Weekly Supp., 603a, (July 16, 1999)("Second even if Atlas' stated hardship ... Atlas has not stated a valid hardship as this so-called hardship was self created by Atlas [as] Atlas was well aware of the depth of the river when they applied for a variance..."); *Josephson v. Autrey*, 96 So. 2d 784, 789 (Fla. 1957)(In addition to having knowledge of the existing zoning restrictions, "[w]hen the owner himself by his own conduct creates the exact hardship which he alleges to exist, he certainly should not be permitted to take advantage of it."); *Elwyn v. City of Miami*, 113 So.2d 849 (Fla. 3d DCA 1959)(same, citing *Autrey*); *Weinberg v. Town of Sewall's Point*, 10 Fla L. Weekly Supp. 689a (19th Cir. Ct. May 14, 2003)("The decisional law that has developed ... clearly establishes that a self-created hardship arises when one purchases a property subject to the regulation from which the variance is sought"); *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (Fla. 3d DCA 1977)("Any 'hardship' [of purchase with knowledge of restrictions] appellant has suffered has been self-created, precluding relief.").

Council Meeting, Mr. Castro indicated that both the Town and Sterling were well aware of the shortage of parking in the Plaza and the issues created by the FDOT Order of Taking. However, rather than requiring a variance for each tenant and space in the Plaza due to a parking non-compliance, the Town treated the entire Plaza as a “non-conforming development” as it related to parking and only required a parking variance if there was an intensification of use in the Plaza which would expand the non-conforming use. As a result, Castro indicated that “going back to 1985 ... we [the Town] did not require them to get variances if they were short on parking ... We required them based upon the principle of equivalency to go for parking if there was more intensive [use] going in - use going in where there was a less intensive use there before.”¹⁰ Therefore, any prior existing space was “grandfathered” for its continued use, but if there was an intensification of use, the applicant would be required to obtain a parking variance. Utilizing this method the Town has in fact reviewed and granted several parking variances, typically for only one or two spaces, in the Plaza due to an intensification of use.¹¹

As a result, not only was Del Frisco’s aware of the “loss” of parking due to the Order of Taking, but it was also aware that the Town would not “penalize” the Plaza for its lack of parking unless and until there was an intensification of use. Nevertheless, Del Frisco’s chose to seek the conversion of a massive amount of office space (having a lesser intensity) to restaurant space (with a much higher intensity) thereby increasing the parking nonconformity in the Plaza and the need for a huge parking variance (originally 72 spaces and now revised to 57 spaces) under the principle of equivalency. Consequently, any “hardship” claimed to be suffered by Del Frisco’s has nothing to do with the “loss of 41 parking spaces” from the Order of Taking, but was clearly self-imposed and therefore legally insufficient to support the requested parking variance.

E. FDOT “Taking” is a Common Hardship Shared by all Tenants of the Plaza

In addition to the above, any alleged “hardship” as the result of the Order of Taking would apply to the entire Plaza, not just the space sought to be converted by Del Frisco’s into restaurant space. Such a “common hardship” is insufficient as a matter of law to support the granting of a variance.

¹⁰ The “principle of equivalency”, created to stop the expansion of a non-conforming use and set forth in the requirements of Section 134-2175(3) of the Code. Section 134-2175(3), requires a comparison of parking “any time the use or occupancy of an existing building is changed to a new use or occupancy having differing off-street parking requirements,” such that “if the total number of spaces required under the new use or occupancy exceeds that of the existing use or occupancy, the difference shall constitute the number of additional off-street parking spaces to be provided.”

¹¹ For example, a copy of Variance 12-2008 and Special Exception #13-2008 with Variance are attached hereto as Composite Exhibit “D.”



ZONING APPLICATION
TOWN OF PALM BEACH

MODIFIED Variance # 12-2008

(Zoning Case Number)

This application includes requests for:

- ____ Site Plan Review
- ____ Special Exception
- X Variance

TO BE HEARD BY THE TOWN COUNCIL ON SEPTEMBER 8, 2008 SOMETIME AFTER 9:30 A.M., IN THE TOWN COUNCIL CHAMBERS, TOWN HALL, 360 S. COUNTY ROAD. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 South County Rd., south entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

I. **SUBJECT ADDRESS:** 340 Royal Poinciana Way Suites 332A and 320 Zoning District CPC

Fee Simple Property Owner's Name: Sidney Spiegel, Trustee

Legal Description: See attached Exhibit "A"

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esq. 222 Lakeview Avenue, Suite 950, West Palm Beach, FL 33401

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. **Applicable Zoning Code Section Number(s):**

1. **Section 134-2176. Same-Schedule**
2. **Section 134-201 Findings Prior to Authorization**

MODIFIED Variance # 12-2008

Zoning Case Number

B. Description of request by Zoning Section Number(s):

1. Request for a variance from the requirement to provide one (1) additional off-street parking space above the amount calculated by the principal of equivalency zoning requirement to convert a 764 square foot space from office use to retail use in the C-PC Zoning District for a new tenant "House of Lavande".
2. Request for a variance from the requirement to provide two (2) additional off-street parking spaces above the amount calculated by the principal of equivalency zoning requirement to convert a 1704 square foot space from office use to retail use in the C-PC Zoning District for an existing tenant "Just for You" to relocate to this new space.

III. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete Exhibit B (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

- a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit B.

The hardship, which runs with the land, is that the parking spaces have already been determined for the Royal Polinciana Plaza and requirements in the Zoning Code are not applicable or realistic to the use of a mixed use shopping plaza.

- b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public interest.

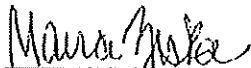
Granting the variance will not be contrary to the public's interest. The change in use from office to retail is actually a decrease in the need for additional parking (contrary to the code provisions). The difference in the requirements in changing from office to retail for the first tenant is less than one (1) parking space (.76) and (2) parking spaces for the second tenant, both are negligible.

IV. SITE HISTORY

Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

There is no zoning history for these particular spaces – suite 332 A and Suite 320 in the Royal Polinciana Plaza. The previous tenants in suites 332A and 320 were real estate companies.

Respectfully submitted,



Applicant's Signature

Maura A. Ziska, Atty. For Sidney Spiegel, Trustee
(Typed name & telephone #561-802-8960)



Fee Simple Property Owner's Signature
(or his/her duly authorized attorney)

Maura A. Ziska, Agent For Sidney Spiegel, Trustee
(Typed name & telephone #561-802-8960)

EXHIBIT A - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The property is a specially zoning C-PC mixed use shopping plaza. As such, the general parking rules should not apply as the reality is that the plaza is a special and unique parcel of property. With such a property, there will always be tenants changing uses from space to space and this is a special circumstance that justifies latitude when applying the parking requirements to this parcel. There are over 300 vacant parking spaces on any given day so the lack of one and two additional parking spaces as the variance requests is negligible.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The Applicant was not the cause of the special conditions of the property, as the Royal Polinciana Plaza is a special district in Town that has existed since it was built 50 years ago.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

The granting of the variances will not confer on the applicant a special privilege that is denied to other lands or buildings or structures in the same zoning district because this property (the shopping plaza) is the only property/use in this zoning district.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

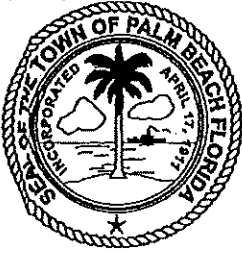
The hardship, which runs with the land, is that the parking spaces have already been determined for the Royal Polinciana Plaza and requirements in the Zoning Code are not applicable or realistic to the use of a mixed use shopping plaza.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

The variance requested is the minimum necessary to make reasonable use of the land as the plan is to have a retail tenant take over an office space and the parking needed for customers will be less intensive, regardless of what the code requires.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The variance request is minor, diminimus and there is justification as this is a unique situation specific to this Property. Granting the variance for one and two parking spaces is reasonable and will not be injurious to the neighborhood.



TOWN OF PALM BEACH

Planning, Zoning & Building Department

September 18, 2008

Ms. Maura Ziska, Esq.
222 Lakeview Avenue
Suite 950
West Palm Beach, FL 33401

Subject: Variance #12-2008, 340 Royal Poinciana Way

Dear Ms. Ziska:

The Town Council, at its September 8, 2008 meeting, conditionally approved your client's variance request from the requirement to provide one (1) additional off-street parking space for Suite 332A above the amount calculated by the principal of equivalency zoning requirement to convert a 764 square foot space from office use to retail use. In addition, a variance was also conditionally granted from the requirement to provide two (2) additional off-street parking spaces for Suite 320 above the amount calculated by the principal of equivalency zoning requirement to convert a 1,704 square foot space from office use to personal services establishment in the C-PC Zoning District. The conditions of approval are as follows:

1. The property owner shall re-stripe the Royal Poinciana Plaza parking lot consistent with the Site Plan Review #5-99 with Variance approved plans stamp dated March 8, 1999, prepared by the Lawrence Group. Said permit for re-striping or a zoning application to modify the approved plan shall be submitted by October 10, 2008.
2. The property owner shall eliminate all reserved and assigned parking spaces and its associated signage for the Royal Poinciana Plaza parking lot by October 10, 2008. However, the property owner shall designate the northeast portion of the Plaza parking lot as employee parking. The property owner shall use its best efforts to ensure its tenant's employees park in that designated area.
3. The property owner shall designate 50% of the parking on the south side of the Plaza as two hour designated parking and mark the spaces accordingly. It shall be the property owner's responsibility to enforce said parking.
4. The property owner shall paint the buildings.
5. Prior to the issuance of building permits or business tax receipts implementing the subject variance, the property owner(s) shall provide an affidavit acceptable to the Town which certifies that the approval of the subject variance does not waive or modify the 1979 agreement between the owner and the Town. In addition, the agreement should state that by its acceptance of the approval of these variances that the property owner acknowledges that it does not provide for further development opportunities as defined in the agreement.

RECEIVED

SEP 22 2008

TOWN CLERK

Please be advised that there appears to be some dispute in regard to condition #4 above. It is the intention of staff to bring this issue in front of the Town Council at its October 13, 2008 meeting for clarification. In the interim, building permits and business tax receipts can be issued subject to your client's agreement in writing to meet all conditions of approval after the clarification is made at the October 13, 2008 Council meeting

Also, please be advised that the Town Council approval of this application for variances constitutes only zoning approval and does not relieve the owner and/or applicant from obtaining additional Town approvals as may be required, such as Landmark Commission approval and necessary construction permits. The work authorized for the tenant improvements under the approval of this variance must be commenced or implemented within one year from the date of approval or said approval will expire.

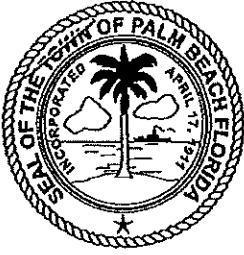
Sincerely,



Paul Castro, AICP
Zoning Administrator

cc: Peter B. Elwell, Town Manager
John S. Page, Director, Planning, Zoning & Building Department
Veronica B. Close, Asst. Director, Planning, Zoning & Building Department
Susan Eichhorn, Town Clerk
Jeff Taylor, Building Official
Timothy M. Frank, Planning Administrator
zf & pf

RECEIVED
SEP 22 2008
TOWN CLERK



TOWN OF PALM BEACH

Planning, Zoning & Building Department

October 23, 2008

Ms. Maura Ziska, Esq.
222 Lakeview Avenue
Suite 950
West Palm Beach, FL 33401

Subject: Variance #12-2008, 340 Royal Poinciana Way

Dear Ms. Ziska:

The Town Council, at the regularly scheduled meeting of October 13, 2008, clarified the conditions of approval for the above referenced variance. Please be advised that the requirement to paint the buildings as Condition 4 of the approval was eliminated. In addition, Condition 1 which requires the re-striping of the Royal Poinciana Plaza parking lot consistent with the Site Plan Review #5-99 with Variance approval is not required at this time. At the time a decision is made on the redevelopment of the Plaza, the property owner will be required to either re-stripe the lot as approved or obtain Town approval to redesign the parking lot to capture the required off-street parking spaces lost when the property was re-striped without Town permission.

If you have any further questions or if I can be of assistance please contact me at your convenience at 227-6406.

Sincerely,

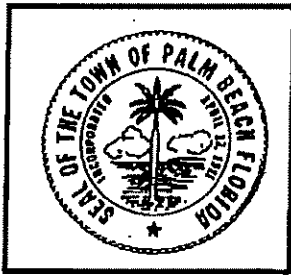
Paul Castro, AICP
Zoning Administrator

cc: Peter B. Elwell, Town Manager
John S. Page, Director, Planning, Zoning & Building
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Susan Eichhorn, Town Clerk
Jeff Taylor, Building Official
Robert Walton, Lead Code Enforcement Officer
Jane Day
zf & pf

RECEIVED

OCT 27 2008

TOWN CLERK



ZONING APPLICATION

TOWN OF PALM BEACH

Special Exception # 13-2008 with Variance

(Zoning Case Number)

This application includes requests for:

☐ Site Plan Review
☒ Special Exception
☒ Variance

RECEIVED

AUG 22 2008

TOWN OF PALM BEACH
PZB DEPT

TO BE HEARD BY THE TOWN COUNCIL ON OCTOBER 13, 2008 SOMETIME AFTER 9:30 A.M., IN THE TOWN COUNCIL CHAMBERS, TOWN HALL, 360 S. COUNTY ROAD. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 South County Rd., south entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

I. **SUBJECT ADDRESS:** 340 Royal Poinclana Way Suite 328

Zoning District C-PC

Fee Simple Property Owner's Name: Sidney Spliegel, Trustee

Legal Description: See attached Exhibit "A"

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esq. 222 Lakeview Avenue, Suite 950, West Palm Beach, FL 33401

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. Applicable Zoning Code Section Number(s):

1. Section 134-2176. Same-Schedule
2. Section 134-201 Findings Prior to Authorization
3. Section 134-1257 (b) Regulation of existing nonconforming commercial uses
4. Section 134-229 Requirements for granting

Special Exception # 13-2008 with Variance
Zoning Case Number

B. Description of request by Zoning Section Number(s):

1. Request for special exception approval to change a use from office space to retail space which involves gross leasable area exceeding 2,000 square feet.
2. Request for a variance from the requirement to provide two (2) additional off-street parking spaces above the amount calculated by the principal of equivalency zoning requirement to convert a 2,218 square foot space from office use to retail use in the C-PC Zoning District.

III. **APPLICATIONS CONTAINING SPECIAL EXCEPTIONS**

If the application contains requests for Special Exceptions, complete Exhibit B, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit B (Requirements for granting Special Exceptions by the Town Council as stated in the Town's Zoning Code at Section 134-229).

A retail use is a permitted use and special exception use (if over 2,000 square feet) in the C-PC Zoning District and this store has been town serving for over twenty-five (25) years in other locations on the Royal Poinciana Plaza Property.

IV. **APPLICATIONS CONTAINING VARIANCES**

If the application contains requests for variances, please respond to the questions below, and complete Exhibit C (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

- a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit C.

The hardship, which runs with the land, is that the parking spaces have already been determined for the Royal Poinciana Plaza and requirements in the Zoning Code are not applicable or realistic to the use of a mixed use shopping plaza.

- b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public interest.

Granting the variance will not be contrary to the public's interest. The change in use from office to retail is actually a decrease in the need for additional parking (contrary to the code provisions). The difference in the requirements in changing from office to retail is 2 parking spaces and negligible.

V. **SITE HISTORY**

Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

There is no zoning history for this particular space - Suite 328 in the Royal Poinciana Plaza. The previous tenant in this space was TAJA Realty and Palm Beach Construction Management, a real estate company and a general contracting company.

Respectfully submitted,



Applicant's Signature

Maura A. Ziska, Atty. For Designers to You
(Typed name & telephone #561-802-8960)



Fee Simple Property Owner's Signature
(or his/her duly authorized attorney)

Maura A. Ziska, Agent For Sidney Spiegel, Trustee
(Typed name & telephone #561-802-8960)

EXHIBIT C - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The property is a specially zoning C-PC mixed use shopping plaza. As such, the general parking rules should not apply as the reality is that the plaza is a special and unique parcel of property. With such a property, there will always be tenants changing uses from space to space and this is a special circumstance that justifies latitude when applying the parking requirements to this parcel. There are over 300 vacant parking spaces on any given day so the lack of two additional parking spaces as the variance requests is negligible.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The Applicant was not the cause of the special conditions of the property, as the Royal Poinciana Plaza is a special district in Town that has existed since it was built 50 years ago.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

The granting of the variances will not confer on the applicant a special privilege that is denied to other lands or buildings or structures in the same zoning district because this property (the shopping plaza) is the only property/use in this zoning district.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The hardship, which runs with the land, is that the parking spaces have already been determined for the Royal Poinciana Plaza and requirements in the Zoning Code are not applicable or realistic to the use of a mixed use shopping plaza.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

The variance requested is the minimum necessary to make reasonable use of the land as the plan is to have a retail tenant take over an office space and the parking needed for customers will be less intensive, regardless of what the code requires.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The variance request is minor, diminimus and there is justification as this is a unique situation specific to this Property. Granting the variance for two parking spaces is reasonable and will not be injurious to the neighborhood.

EXHIBIT B - REQUEST FOR SPECIAL EXCEPTION

The Town Council must find the application in conformance with a number of requirements. Please provide sufficient information on each of the requirements to enable the Council to make a determination on your application.

1. The use is a permitted special exception use as set forth in article VI of this chapter.
This proposed use (retail – clothing store) is a permitted use in the C-PC Zoning District.
2. The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.
The design, location and operation of the proposed clothing store will not adversely affect public health, safety, welfare or morals.
3. The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
The clothing store will not cause substantial injury to the value of other properties in the neighborhood as there will be no exterior modifications and the use (retail) remains the same - it is merely an relocating an existing business in the Royal Poinciana Plaza.
4. The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.
The proposed clothing store will be compatible with the neighborhood as this is a permitted commercial activity in a commercial district, amongst many other businesses in the Royal Poinciana Plaza.
5. The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.
The proposed clothing store will comply with all requirements set forth in Article VI of the Zoning Code, if applicable.
6. The use will comply with all elements of the comprehensive plan.
The proposed clothing store will comply with the comprehensive plan, if applicable.
7. The use not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.
The proposed clothing store will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district since the use will remain the same and there will be no changes to the exterior of the building.
8. Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
Current ingress and egress, parking, loading areas, automotive and pedestrian safety and convenience and traffic flow will not be impacted as a result of the new occupant and operation of a clothing store in this location.
9. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.
No new signage or exterior lighting is proposed at this time and any changes in the future will be compatible with the neighborhood and approved by the applicable Town department.
10. Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.
Utility service will remain unchanged, thus there will no negative impact on health and safety.
11. Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.
Refuse and service areas will remain unchanged, thus there will no negative impact on automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.
12. The proposed use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be townpersons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine its credibility and the appropriateness of the applicant's conclusions. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant.
Designers to You has served Palm Beach residents and "townpersons" for approximately twenty five (25) years (town serving documentation will be submitted).
13. If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter. **N/A**
14. The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations.
The proposed clothing store will not place a greater burden on police or fire protection services.

PLANNING, ZONING & BUILDING DEPARTMENT
DEPARTMENTAL COMMENTS MEETING

Development Review Item # Special Exception #13-2008 Date of Meeting: October 13, 2008

Address: 340 Royal Poinciana Way

Please provide comments in the designated space, along with a detailed explanation.

POLICE DEPARTMENT

NO COMMENT ☒ COMMENTS _____

Name

FRANZ

Position

Capt.

Signature

[Signature]

Date

8/25

FIRE-RESCUE DEPARTMENT

NO COMMENT _____ COMMENTS ☒

Owner/Occupant shall provide Fire Sprinkler System - Change of Occupancy

Name

Timothy Poupas

Position

Fire Marshal

Signature

[Signature]

Date

8/25/08

PUBLIC WORKS DEPARTMENT

NO COMMENT ☒ COMMENTS _____

Name

MARTIN GAUTHIER

Position

Signature

[Signature]

Date

8/25/08

COMPREHENSIVE PLAN

NO COMMENT _____ COMMENTS _____

DUES NOT MEET THE CRITERIA FOR GRANTING VARIANCES ... PARKING IS PRESENTLY INSUFFICIENT -

Name

DM FRANK

Position

PLN

ADMIN. Signature

[Signature]

Date

8-25

BUILDING

NO COMMENT _____ COMMENTS _____

Typical change-of-use/parking issue in Plaza. Handicap?

Name

Position

Signature

[Signature]

Date

8/25/08

ZONING

NO COMMENT

COMMENTS

No Hardship

Name

Phil Castro

Position

Junior Admin

Signature

[Signature]

Date

*8/25/08***ARGOM/LPC**

NO COMMENT

COMMENTS

Name

TIM FRANK

Position

*PRDCT.
COORD.*

Signature

[Signature]

Date

*8.25.08***TOWN MANAGER**

NO COMMENT

COMMENTS

Name

Position

Signature

Date

PLANNING, ZONING & BUILDING DEPARTMENT

NO COMMENT

COMMENTS

*CHANGE OF USE - WILL TRIGGER REQUIREMENT
FOR SPACE TO MEET ALL CURRENT BUILDING AND ACCESSIBILITY
CODES*

DIRECTOR, PLANNING, ZONING & BUILDING

DATE

8/25/08

OTHER:

File: SE. 13-2008



Fw: Variance Zoning #13-2008 (Special Exception)
Cheryl Kleen to: council
Cc: Peter Elwell, John Page, Anne Boyles, Sue Elchhorn

10/10/2008 09:11 AM

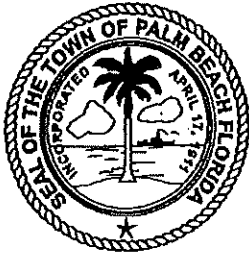
--- Forwarded by Cheryl Kleen/PalmBeach on 10/10/2008 09:13 AM ---

From: "patrick henry flynn" <phflynn@gmail.com>
To: council@townofpalmbeach.com
Cc: "peter elwell" <pelwell@townofpalmbeach.com>
Date: 10/09/2008 05:04 PM
Subject: Variance Zoning #13-2008 (Special Exception)

The staff has uniformly commented that this request for variance does not meet the criterion for hardship. The parking at Royal Poinciana Plaza is currently is not in conformity. The change of use will trigger handicap accessibility.

--
Patrick Henry Flynn, President
Palm Beach Theater Guild, Inc.
POB 667, Palm Beach, FL 33480
T. 561 366-8980; F. 561 833-6865
www.pbtheaterguild.org

RECEIVED
OCT 10 2008
TOWN CLERK



TOWN OF PALM BEACH

Planning, Zoning & Building Department

October 23, 2008

Ms. Maura Ziska, Esq.
222 Lakeview Avenue
Suite 950
West Palm Beach, FL 33401

Subject: Special Exception #13-2008 with Variance, 340 Royal Poinciana Way

Dear Ms. Ziska:

The Town Council, at the regularly scheduled meeting of October 13, 2008, approved your client's application to change the use from office space to a retail use which involves gross leasable area exceeding 2,000 square feet. The variance which was approved allows the occupancy without the required two additional off-street parking spaces based on the principal of equivalency to convert from office to a retail use. The approval is identified on sheet drawings A000 and A100, prepared by Ames Bennett & Associates, stamp dated August 22, 2008, and made part of the approval application.

The Town Council approval of this application for a special exception and variance constitutes only zoning approval and does not relieve the owner and/or applicant from obtaining additional Town approvals as may be required, such as Landmark Commission approval and necessary construction permits. The work authorized under the approval of this special exception must be commenced or implemented within one year from the date of approval or said approval will expire.

Sincerely,

Paul Castro, AICP
Zoning Administrator

cc: Peter B. Elwell, Town Manager
John Page, Director, Planning, Zoning and Building
Veronica Close, Asst. Director, Planning, Zoning and Building
Susan Eichhorn, Town Clerk
Jeff Taylor, Building Official
Jane Day
zf & pf

RECEIVED

OCT 27 2008

TOWN CLERK

SEXTON ENGINEERING SKETCHES



SEXTON ENGINEERING ASSOCIATES, INC.
CONSULTING ENGINEERS AND SURVEYORS
1200 CORPORATE CENTER WAY, SUITE 102
WELLINGTON, FLORIDA 33414
PHONE 561-792-3122 FAX 561-792-3165

STATE ROAD A-1-A (ROYAL POINCIANA WAY)
SECTION NO. 93060-2527
F.P. NO. 412489-2

PARENT TRACT
PARCEL 101

PROJ. NO. 1443 P101
DATE 10/03/2008
SHEET 1 OF 6

BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen - Of Counsel

www.blesmlaw.com
Sender's Direct Line: (561) 721-4002
E-Mail: jeubanks@blesmlaw.com

1209 North Olive Avenue
West Palm Beach, FL 33401-3515
Phone: (561) 721-4000
Facsimile: (561) 721-4001

November 5, 2012

Via E-mail and Hand Delivery

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

**Re: Oops, He Said it Again - Del Frisco's CEO Cites Bar as "Huge Component" of
Del Frisco's Grille Concept**

Dear Mayor and Town Council:

In presenting its Zoning Application (Special Exception #20-2012 with Variance) ("Application") Del Frisco's Restaurant Group ("Del Frisco's") has attempted to downplay the "bar-centric" nature of its Del Frisco's Grille concept, despite recent news articles and blogs describing the focus of the restaurants being an "energetic bar" which is a "destination in and of itself" and even a quote from Del Frisco's CEO, Mark Mednansky, that "[i]t's three to four people deep every night around our bars." Mr. Mednansky's recent comments, once again touting the prominence of the bar within the Del Frisco's Grille concept, only serve to further the concern of Town Residents.

In an article published in the Nations Restaurant News on October 16, 2012 about the most recent Del Frisco's Grille which opened in Atlanta, Mr. Mednansky stated "[w]e're learning a lot with the Grille [concept]. I'd say the Atlanta decor package is closer to a true prototype for future growth... *The bar is a huge component of the Grille, ...*" (emphasis added).¹

The continued focus on the bar as a "huge component" of the Grille concept combined with the "Priority Age Block" of 25-34 year olds for the opening of a Del Frisco's Grille, demonstrates (once again) that the Application is not Town Serving. Nor do the last minute changes made by Del Frisco's at the Town Council meeting on October 10, 2012 change this analysis, or allay the fears of local residents.

While, initially the "bar area" within the Application included a bar with 40 seats and 16 seats at high-tops for a total of 56 seats, the latest "revised" version of the Application contains a bar with 20 seats and 28 seats at nearby high-tops for a total of 48 seats in the "bar area." This arrangement creates a net change of 8 fewer seats in the "bar area" but also creates more standing area. The revision has done very little to actually "tailor" the Application to Palm Beach. Instead,

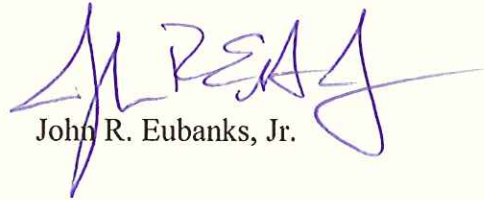
¹ A copy of the October 16, 2012 Nation's Restaurant News article is attached hereto as Exhibit "A."

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
November 5, 2012
Page 2

the newly proposed 7,732 sq. ft. restaurant still fits the mold of an approximately "7,500 square foot floor plan that includes seats for about 260 *and ample standing room around the bar.*"²

At the end of the day, the Application remains in synch with the Del Frisco Grille "concept" and its logo "Meat Up. "Drink Up" and not with the character and demographics of the Town of Palm Beach.

Very truly yours,



John R. Eubanks, Jr.

cc: John Page, Director of Planning, Zoning and Building
Peter Elwell, Town Manager
Paul Castro, Zoning Administrator
John C. "Skip" Randolph, Esq.
Town Clerk, Town of Palm Beach
John Grosskopf, General Manager Palm Beach Towers
Henry Goldsmith, President of Board of Palm Beach Towers Condominium

² See, statements by Mr. Mednansky in the September 3, 2012 Nation's Restaurant News, attached as Exhibit "B." In fact, notably in the picture previously submitted of the Del Frisco's Grille in Washington D.C. (and attached hereto as Exhibit "C") very few people are actually sitting at the bar, but instead the majority are standing in the bar area.

ORIGINAL

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIVIL ACTION NO.: 502009CA035248 AN

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Petitioner,

-vs-

Parcels No.: 100 / 101

TOWN OF PALM BEACH, a
Florida municipal corporation, et al.,

Defendants.

RECEIVED
DISTRICT 4
JAN 25 AM 10:03
CLERK OF COURT

ORDER OF TAKING

THIS CAUSE coming on to be heard by the Court, and it appearing that proper notice was first given to all the Defendants and to all persons having or claiming any equity, lien, title, or other interest in or to the real property described in the Petition that the Petitioner would apply to this Court on the 22nd day of January, 2010, for an Order of Taking, and the Court being fully advised in the premises, upon consideration, it is, therefore,

ADJUDGED:

1. That the Court has jurisdiction of the subject matter of and the parties to this cause;
2. That the pleadings in this cause are sufficient, and the Petitioner is properly exercising its delegated authority;

Handwritten signature
1/22/2010

3. That each Estimate of Value filed in this cause by the Petitioner was made in good faith and based upon a valid appraisal;

4. That upon the payment of the deposit hereinafter specified into the Registry of this Court, all right, title or interest specified in the Petition as described herein shall vest in the Petitioner;

Item/Segment No. 4124892
(Section No. 93060-2527)
(04-30-08)

Fee Simple Right of Way

Parcel No. 100 State Road A-1-A Palm Beach County Description

A portion of land lying South of and adjacent to State Road A-1-A (Royal Poinciana Way) in Government Lot 1, Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Northwest Corner of Tract 13, BREAKERS ROW PLAT NO. 1 - REPLAT, according to the plat thereof, as recorded in Plat Book 46, Page 188, of the Public Records of Palm Beach County, Florida; thence North $88^{\circ}54'30''$ West along the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way) and its extension, as shown on the Florida Department of Transportation Right of Way Map for Item/Segment No. 4124892, Section No. 93060-2527, a distance of 603.57 feet; thence North $01^{\circ}05'30''$ East along said Southerly Existing Right of Way Line, a distance of 10.00 feet; thence North $88^{\circ}54'30''$ West continuing along said Southerly Existing Right of Way Line, a distance of 34.75 feet to the POINT OF BEGINNING; thence South $00^{\circ}06'10''$ East, a distance of 49.66 feet; thence South $82^{\circ}43'52''$ West, a distance of 149.45 feet; thence North $88^{\circ}58'37''$ West, a distance of 62.24 feet; thence North $06^{\circ}04'30''$ East, a distance of 71.88 feet to a point on said Southerly Existing Right of Way Line for State Road A-1-A (Royal Poinciana Way); thence South $88^{\circ}11'30''$ East along said Southerly Existing Right of Way Line, a distance of 12.08 feet; thence South $88^{\circ}54'30''$ East continuing along said Southerly Existing Right of Way Line, a distance of 190.74 feet to the POINT OF BEGINNING.

Containing 13,146 square feet, more or less.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 100	State Road A-1-A	Palm Beach County	Description
----------------	------------------	-------------------	-------------

(Continued from Previous Page)

OWNED BY: TOWN OF PALM BEACH, a Florida municipal corporation

ENCUMBERED BY: EASEMENT, and all subsequent supplements thereto, recorded in O.R. Book 3722, Page 1952, Public Records of Palm Beach County, Florida, in favor of: FLORIDA POWER AND LIGHT COMPANY, a Florida corporation.

Item/Segment No. 4124892
(Section No. 93060-2527)
(07-09-09)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

A portion of land lying in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Northwest Corner of Tract 13, BREAKERS ROW PLAT NO. 1 - REPLAT, according to the plat thereof, as recorded in Plat Book 46, Page 188, of the Public Records of Palm Beach County, Florida; thence North $88^{\circ}54'30''$ West along the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way) and its extension, as shown on the Florida Department of Transportation Right of Way Map for Item/Segment No. 4124892, Section No. 93060-2527, a distance of 603.57 feet; thence continue along said Southerly Existing Right of Way Line for State Road A-1-A (Royal Poinciana Way) for the next three (3) calls: (1) North $01^{\circ}05'30''$ East, a distance of 10.00 feet; thence (2) North $88^{\circ}54'30''$ West, a distance of 225.49 feet; thence (3) North $88^{\circ}11'30''$ West, a distance of 12.08 feet to a point on the Southerly Bulkhead Line for the Intracoastal Waterway as shown on said map; thence South $06^{\circ}04'30''$ West along said Bulkhead Line, a distance of 67.55 feet to the POINT OF BEGINNING; thence continue South $06^{\circ}04'30''$ West, a distance of 4.33 feet; thence South $88^{\circ}58'37''$ East, a distance of 62.24 feet; thence South $82^{\circ}43'52''$ West, a distance of 135.89 feet; thence North $07^{\circ}00'31''$ East, a distance of 25.10 feet; thence South $88^{\circ}06'53''$ East, a distance of 70.00 feet to the POINT OF BEGINNING.

Containing 1,637 square feet, more or less.

AND

A portion of land lying South of and adjacent to State Road A-1-A (Royal Poinciana Way) in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

(Continue on the next page)

Item/Segment No. 4124892
(Section No. 93060-2527)
(07-09-09)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

Commence at the Northwest Corner of Tract 13, BREAKERS ROW PLAT NO. 1 - REPLAT, according to the plat thereof, as recorded in Plat Book 46, Page 188, of the Public Records of Palm Beach County, Florida; thence North $88^{\circ}54'30''$ West along the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way) and its extension, as shown on the Florida Department of Transportation right of Way Map for Item/Segment No. 4124892, Section No. 93060-2527, a distance of 383.56 feet to the POINT OF BEGINNING; thence South $01^{\circ}05'30''$ West, a distance of 20.00 feet; thence North $88^{\circ}54'30''$ West, a distance of 120.00 feet; thence South $82^{\circ}43'52''$ West, a distance of 135.16 feet; thence North $00^{\circ}06'10''$ West, a distance of 49.66 feet to a point on the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way); thence continues along said Southerly Existing Right of Way line for the next three (3) calls:
(1) South $88^{\circ}54'30''$ East, a distance of 34.75 feet; thence
(2) South $01^{\circ}05'30''$ West, a distance of 10.00 feet; thence
(3) South $88^{\circ}54'30''$ East, a distance of 220.01 feet to the POINT OF BEGINNING.

Containing 6,751 square feet, more or less.

All together containing 8,388 square feet, more or less.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: MEMORANDUM OF GROUND LEASE, and all subsequent supplements thereto, recorded in O.R. Book 22551, Page 401, Public Records of Palm Beach County, Florida, in favor of: STERLING PALM BEACH, LLC, a Florida limited liability company.

EASEMENT, and all subsequent supplements thereto, recorded in O.R. Book 3722, Page 1952, Public Records of Palm Beach County, Florida, in favor of: FLORIDA POWER AND LIGHT COMPANY, a Florida corporation.

UNRECORDED LEASE in favor of ADVANCED MENTAL HEALTH CARE, INC., a Florida corporation.

UNRECORDED LEASE in favor of ALATA PALM BEACH, INC., a Florida corporation.

UNRECORDED LEASE in favor of ALLEY, MAASS, ROGERS & LINDSAY, P.A., a Florida Corporation.

UNRECORDED LEASE in favor of ALPHABET SOUP, LLC, a Florida limited liability company,

UNRECORDED LEASE in favor of ANGELO'S OF PALM BEACH, INC., a Florida corporation.

UNRECORDED LEASE in favor of CONNIE BEAUDOIN.

UNRECORDED LEASE in favor of BG STRATEGIC ADVISORS, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of BOCA NURSING SERVICES, INC., a Florida corporation.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions
of a certain Trust Agreement dated October 25, 1984, and
known as Trust No. 31520371

ENCUMBERED BY: NOTICE OF COMMENCEMENT recorded in O.R. Book 22904,
Page 1259, Public Records of Palm Beach County, Florida, in
favor of BUCKEYE PLUMBING, INC., a Florida corporation,

UNRECORDED LEASE in favor of CHIROPRACTIC CARE OF
PALM BEACH, INC., a Florida corporation.

UNRECORDED LEASE in favor of D'AMBROSIO
MANAGEMENT COMPANY, INC., a Florida corporation.

UNRECORDED LEASE in favor of Dr. SUSAN LEE, LCSW.

UNRECORDED LEASE in favor of EDGARDO ARTURO
GRANDE, DMD, P.A., a Florida dissolved corporation.

UNRECORDED LEASE in favor of EDWARD, INC., a Florida
corporation.

UNRECORDED LEASE in favor of FLORIDA INSTITUTE FOR
RECOVERY AND SEX THERAPY, INC., a Florida corporation.

UNRECORDED LEASE in favor of FRANCIS P. CONROY,
D.M.D., P.A., a Florida corporation.

UNRECORDED LEASE in favor of GRAND PRIX IHM, INC., a
Florida corporation.

UNRECORDED LEASE in favor of HILLSTONE RESTAURANT
GROUP, INC., a Delaware corporation.

UNRECORDED LEASE in favor of HOME OFFICE
TRANSPORT, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of INNKEEPERS USA
LIMITED PARTNERSHIP, a Virginia Limited Partnership.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: UNRECORDED LEASE in favor of ISLAND HOSPITALITY. FLORIDA MANAGEMENT, INC., a Florida corporation.

UNRECORDED LEASE in favor of ISLAND HOSPITALITY MANAGEMENT II, INC., a Florida corporation.

UNRECORDED LEASE in favor of ISLAND HOSPITALITY MANAGEMENT, INC., a Florida corporation.

UNRECORDED LEASE in favor of ISLAND MEDICAL CARE, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of JUST FOR YOU EXERCISE & RESOURCE CENTRE, INC., a Florida corporation.

UNRECORDED LEASE in favor of LAVANDE PB, INC., a Florida corporation.

UNRECORDED LEASE in favor of LAYNE D. NISENBAUM, D.O., P.A., a Florida corporation.

UNRECORDED LEASE in favor of MARTHA A. GOTTFRIED, INC., a Florida corporation.

UNRECORDED LEASE in favor of MCCARTY CONSULTING, LLC, a Florida Limited Liability Company.

UNRECORDED LEASE in favor of METTLER, SHELTON, RANDOLPH, CARROLL & STERLACCI, P.L., a Florida limited liability company.

UNRECORDED LEASE in favor of MIRSKY REALTY GROUP, LLC, a Florida limited liability company.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: UNRECORDED LEASE in favor of MURPHY REID, LLP, a Florida limited liability partnership.

UNRECORDED LEASE in favor of NRT NEW YORK, LLC, a Delaware limited liability company.

UNRECORDED LEASE in favor of PALISADE CAPITAL MANAGEMENT, LLC, a New Jersey limited liability company.

UNRECORDED LEASE in favor of PARK AVENUE MORTGAGE GROUP OF FLORIDA, INC., a Florida corporation.

UNRECORDED LEASE in favor of POINCIANA MANAGEMENT, INC., a Florida corporation.

NOTICE OF COMMENCEMENT recorded in O.R. Book 23327, Page 1233, Public Records of Palm Beach County, Florida, in favor of PRIME MECHANICAL SERVICES, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of ROYAL PET GROOMING, INC., a Florida corporation.

UNRECORDED LEASE in favor of SBZZ PALM BEACH, LTD., a Florida limited partnership.

UNRECORDED LEASE in favor of SIDNEY KOHL.

UNRECORDED LEASE in favor of STERLING RETAIL SERVICES, INC., a Florida corporation.

UNRECORDED LEASE in favor of SOTHEY'S INTERNATIONAL REALTY, INC., a Michigan corporation.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions
of a certain Trust Agreement dated October 25, 1984, and
known as Trust No. 31520371

ENCUMBERED BY: UNRECORDED LEASE in favor of SUNTRUST BANK, a
Georgia corporation.

UNRECORDED LEASE in favor of THE FITNESS EDGE, INC.,
a Florida corporation.

UNRECORDED LEASE in favor of THE MANHATTAN
MORTGAGE CO., INC., a New York corporation.

UNRECORDED LEASE in favor of THE MICHAEL R.
MCCARTY RESTAURANT GROUP, LLC., a Florida limited
liability company.

UNRECORDED LEASE in favor of THE STERLING
ORGANIZATION, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of THE TREE OF LIFE
FOUNDATION INTERNATIONAL, INC., a Florida not for profit
corporation.

UNRECORDED LEASE in favor of TOOJAY'S PALM BEACH,
LLC, a Florida limited liability company.

5. That the deposit of money will secure the persons lawfully entitled to the compensation which will be ultimately determined by final judgment of this Court;

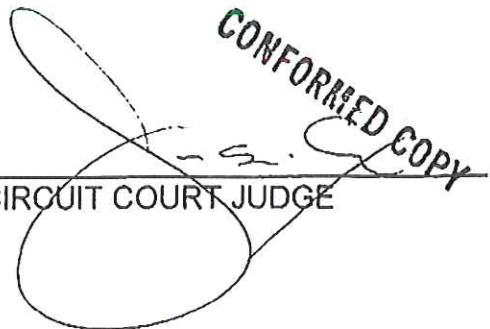
6. That the sum of money to be deposited in the Registry of the Court within twenty (20) days of the entry of this Order shall be in the amount of:

Parcel 100	\$1,046,900.00
Parcel 101	<u>\$1,158,200.00</u>
TOTAL	<u>\$2,205,100.00</u>

7. That on deposit as set forth above and without further notice or Order of this Court, the Petitioner shall be entitled to possession of the property described in the Petition.

8. The taking is pursuant to the eminent domain power of Petitioner, without the consent and over the objection of Sterling Palm Beach, LLC, on behalf of itself and on behalf of Sidney Spiegel, et al, Island Properties of Palm Beach, Inc., Sterling Retail Services, Inc., The Sterling Organization, LLC, and Hillstone Restaurant Group, Inc.. In the event compensation is submitted for jury determination, the jury will be advised that the Court determined the Petitioner may condemn the properties involved in this action.

DONE AND ORDERED this 22 day of January, 2010, in the State of Florida, County of Palm Beach.


CONFIRMED COPY
CIRCUIT COURT JUDGE

GROUND LEASE

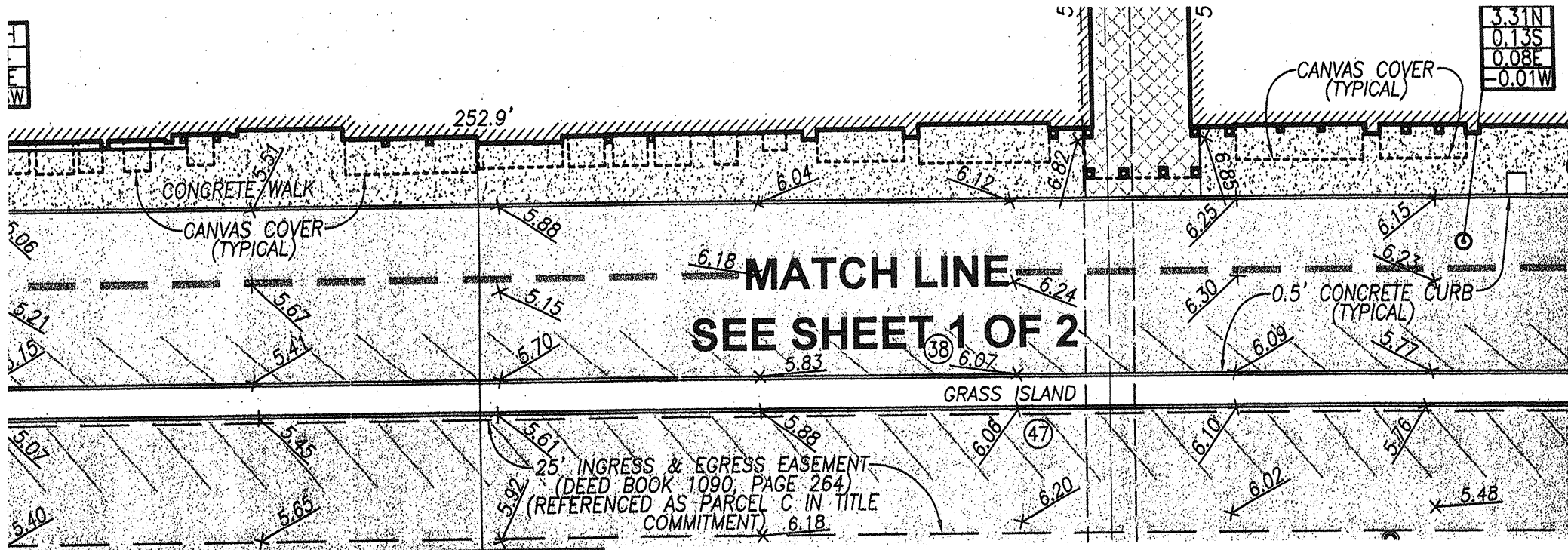
between

SIDNEY SPIEGEL, AS SUCCESSOR TRUSTEE
Under the Provisions of a certain Trust Agreement dated
October 25, 1984 and known as Trust No. 31520371 and ISLAND PROPERTIES
OF PALM BEACH, INC., a Florida corporation, as lessor

and

STERLING PALM BEACH, LLC,
a Florida limited liability company, as lessee

Dated as of March 31, 2008



LEGEND

ON REBAR	C/L = CENTERLINE
B NO. 7344	CA = CENTRAL ANGLE
BOLT AND	CB = CHORD BEARING
B NO. 7344	F.F.E. = FINISHED FLOOR ELEVATION
PREVENTOR	I.R.C. = CAPPED IRON ROD
IN	L = ARC LENGTH
UTILITY POLE	O.R.B. = OFFICIAL RECORDS BOOK
ANT	R = RADIUS
OR	R/W = RIGHT OF WAY
UTILITY LINE	 = ASPHALT PAVING
MANHOLE	 = CONCRETE
SHED BOX	 = CONCRETE PATIO STONES
BLE	 = HANDICAP PARKING SPACE
GNAL BOX	 = NUMBER OF REGULAR PARKING SPACES
X	
TER	
VE	
AS-BUILT	

SURVEYOR'S NOTES

- 1) (BB) DESIGNATES THE BASE BEARING FOR THIS SURVEY AND ALL OTHER BEARINGS SHOWN HEREON ARE RELATIVE HERETO.
- 2) NO BELOW GROUND IMPROVEMENTS/STRUCTURES, IF ANY, HAVE BEEN LOCATED.
- 3) ALL DATES SHOWN WITHIN THE REVISIONS BLOCK HEREON ARE FOR INTER-OFFICE/ FILING USE ONLY, AND IN NO WAY AFFECT THE DATE OF FIELD SURVEY AS STATED IN THE CERTIFICATION BLOCK HEREON.
- 4) THE PROPERTY SHOWN HEREON IS LOCATED IN F.I.R.M. FLOOD ZONE "A7", ELEVATION 7.0, NGVD 1929, AS SHOWN ON F.I.R.M. COMMUNITY PANEL NUMBER 120220 0002 C, MAP REVISED SEPTEMBER 30, 1982.
- 5) ELEVATIONS SHOWN HEREON ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 1929).

PARKING TABULATION	
REGULAR SPACES	574
HANDICAP SPACES	5

ATION
LEVATION

ARK
UG
RTH
37

18

41

0.5' CONCRETE CURB (TYPICAL)

S89°09'00"E
12.08'

71.88'(DEED FOR PARCEL A)
71.89'(SURVEY)
N05°07'00"E

SOUTH LINE OF THE EAST APPROACH OF FLAGLER MEMORIAL BRIDGE AND SOUTHERLY RIGHT-OF-WAY LINE OF ROYAL POINCIANA WAY

C/L 6" WATER MAIN EASEMENT (RESERVATION A)
(DEED BOOK 548, PAGE 472)

METAL COVER FOR ELECTRIC VAULT

N89°52'00"
34.75'

S89°52'00"E
190.74'

RESERVATION C (DEED BOOK 548, PAGE 472)
METAL POLE WITH SOLAR PANEL

FOUND 1" CRIMPED IRON PIPE 0.13' WEST

NOT INCLUDED
(DEED BOOK 592, PAGE 478)

MH B
5.13

71.20'(DEED FOR PARCEL A)
71.22'(SURVEY)
S01°03'40"E

ASPHA

208.44'(DEED FOR PARCEL A)
210.55'(SURVEY) S89°56'15"E

BOLLARDS

FOUND PK-NAIL WASHER #6216

N89°56'15"W
286.11'

CB C
4.82
1.57S

CB E
4.81
1.52SW

CB D
4.35
2.42W

GRASS (TYPICAL)

13' FLORIDA PUBLIC UTILITIES COMPANY EASEMENT
(DEED BOOK 1163, PAGE 613)

MH A
5.47
0.99NW
0.98S
1.08NE
0.97SE

GRASS ISLAND

0.5' CONCRETE CURB (TYPICAL)

PLAN (TYP)

SEXTON ENGINEERING SKETCHES



SEXTON ENGINEERING ASSOCIATES, INC.
CONSULTING ENGINEERS AND SURVEYORS
1200 CORPORATE CENTER WAY, SUITE 102
WELLINGTON, FLORIDA 33414
PHONE 561-792-3122 FAX 561-792-3165

STATE ROAD A-1-A (ROYAL POINCIANA WAY)
SECTION NO. 93060-2527
F.P. NO. 412489-2

PARENT TRACT
PARCEL 101

PROJ. NO. 1443 P101
DATE 10/03/2008
SHEET 1 OF 6

RELEASE AND DISCHARGE
AND
DESIGNATION OF SUCCESSOR TRUSTEE

NORTHERN TRUST BANK OF FLORIDA, N.A.,
as Trustee under Land Trust Agreement
Dated October 25, 1984, as amended,
and known as Trust Number 31520371 ("the Trust")

WHEREAS, the undersigned, as a beneficiary of the above-captioned Trust, hereby acknowledges receipt of the resignation of NORTHERN TRUST BANK OF FLORIDA, N.A., as Trustee of the Trust and hereby designates SIDNEY SPIEGEL as Successor Trustee of the Trust and, in addition, the undersigned:

1. Does hereby release and discharge the NORTHERN TRUST BANK OF FLORIDA, N.A., individually and as Trustee as aforesaid for or on account of any matter or thing done, permitted or omitted to be done, in and about the execution of the Trust;

2. Does hereby agree to assume and pay all taxes and any other liabilities or obligations which may hereafter be asserted against the NORTHERN TRUST BANK OF FLORIDA, N.A., individually or as Trustee as aforesaid to the extent that the property so conveyed and delivered to the Successor Trustee would be liable if it had remained in the hands of NORTHERN TRUST BANK OF FLORIDA, N.A.;

3. Does hereby indemnify and hold harmless NORTHERN TRUST BANK OF FLORIDA, N.A., individually and as Trustee as aforesaid from and against any and all liability, loss, or expense which it may incur, including legal fees and expenses, by reason of its acting as Trustee of the Trust.

4. Does hereby agree to cause NORTHERN TRUST BANK OF FLORIDA, N.A. as Trustee as aforesaid to be dismissed as a party to any and all litigation with respect to the above-captioned trust and will cause SIDNEY SPIEGEL, as successor Trustee of the trust, to be substituted in lieu of NORTHERN TRUST BANK OF FLORIDA, N.A. with respect to any and all such litigation.

This release and discharge may be signed in counterparts, each of which shall be considered an original.

RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.

ORB 7620 Pa 1034

Witness the hand and seal of the undersigned this 22 day of January, 1993.

Signed in the presence of:

Ray Duke
Lisa Gouriniller

Norman Smith
Beverly Morris

Ray Duke
Lisa Gouriniller

Ray Duke
Lisa Gouriniller

Ray Duke
Lisa Gouriniller

Beneficiaries

S.S.I.L. INC

By: Sidney Spiegel
Sidney Spiegel, President

SIBLIN & ASSOCIATES, LTD.

By: Herbert Siblin
Herbert Siblin, President

Collateral Assignees

LINDISFARNE INVESTMENTS LIMITED

By: Sidney Spiegel
Sidney Spiegel, President

PANCAN INC.

By: Sidney Spiegel
Sidney Spiegel, President

CRAWMET INVESTMENTS CORPORATION

By: Sidney Spiegel
Sidney Spiegel, President

RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.

Return to (enclose self-addressed stamped envelope)

Name

Address

Property Appraiser Parcel Identification (folio) Number(s):

ORB 7620 Pg 1035
RECORD VERIFIED DOROTHY H WILKIN
CLERK OF THE COURT - PB COUNTY, FL

EXHIBIT "D"

**ACCEPTANCE OF SUCCESSOR TRUSTEESHIP OF THE
LAND TRUST AGREEMENT DATED OCTOBER 25, 1984,
AS AMENDED**

WHEREAS, NORTHERN TRUST BANK OF FLORIDA, N.A. has resigned as trustee of the above-captioned land trust and the beneficiaries of the above-captioned land trust by instrument dated January 22, 1993 have designated SIDNEY SPIEGEL as successor trustee of the land trust agreement; and

WHEREAS, the undersigned, SIDNEY SPIEGEL, has indicated his willingness to accept the successor trusteeship of the trust;

NOW, THEREFORE, SIDNEY SPIEGEL, hereby accepts the successor trusteeship of that certain land trust agreement dated October 25, 1984, as restated on February 7, 1987 and subsequently amended as of May 31, 1988. SIDNEY SPIEGEL hereby agrees to cause NORTHERN TRUST BANK OF FLORIDA, N.A. as trustee as aforesaid to be dismissed as a party to any and all litigation with respect to the above-captioned trust and will cause SIDNEY SPIEGEL, as successor trustee of the trust, to be substituted in lieu of NORTHERN TRUST BANK OF FLORIDA, N.A.

IN WITNESS WHEREOF, SIDNEY SPIEGEL, has executed this Acceptance as of the 22 day of January, 1993.

Signed in the presence of:

[Signature]
[Signature]

[Signature: Sidney Spiegel]
SIDNEY SPIEGEL, as successor trustee as aforesaid
c/o Royal Poinciana Plaza
P.O. Box 11
Palm Beach, Florida 33480

Del Frisco's: Private dining to boost holiday bookings

October 16, 2012 | By [Ron Ruggless](#)

Reflecting general improvements in consumer sentiment, Del Frisco's Restaurant Group Inc., with three higher-end concepts, is anticipating strong holiday private-dining bookings, executives said in an earnings call with analysts Tuesday.

DEL FRISCO'S
RESTAURANT GROUP

The Southlake, Texas-based operator of the Double Eagle Steak House, Sullivan's Steakhouse and Del Frisco's Grille brands on Tuesday posted a net loss of \$2.4 million, or 12 cents per share, on sales of \$47.9 million in the third quarter, which ended Sept. 4 and included expenses from the company's initial public offering on Aug. 1. That compared to a net loss of \$1.8 million, or 10 cents per share, on sales of \$41.3 million in the third quarter 2011.

Executives expressed confidence in upcoming November-December holiday bookings. "We feel pretty confident in our December to this point compared with last year," said Mark Mednansky, chief executive of Del Frisco's. Between 60 and 70 percent of private dining reservations come in mid-November to Dec. 1, he added.

RELATED

- [Hot Concepts 2012: Del Frisco's Grille](#)
- [Newly public Del Frisco's posts 2Q profit increase](#)
- [More restaurant industry finance news](#)

The company intends to ramp up private dining, which represents about 14 percent of current sales. "We've hired a corporate-wide private dining salesperson for the first time in this company's history to spearhead this effort," Mednansky said. Private dining provides higher check averages per guest and higher margins compared to regular dining guests, he said.

The higher-end concepts had seen softness in sales in the post-third quarter September period, Mednansky said, but added: "We're encouraged in that we've seen some acceleration in moving out of

September."

Thomas J. Pennison Jr., chief financial officer, said the company expects to end the fiscal year with a 3.5-percent to 4-percent increase in total same-store sales. For the third quarter, it reported a combined -store same-store sales increase of 3.5 percent, which included a 5.3 percent increase at Del Frisco's Double Eagle and a 1.4 percent bump at Sullivan's. Same-store sales in third quarter 2011 had increased 11.9 percent.

Two promotions helped sales in the third quarter, including the "Power Couple" promotion at Del Frisco's that featured a steak and lobster dinner for two for \$99, and a summer three-course dinner for two at Sullivan's for \$79. It was the second year for both promotions, Mednansky said, and they ran about a week longer than in 2011. Pennison said the 2012 version saw a 30-percent increase in the use of the value promotions.

As of Sept. 4, Del Frisco's Restaurant Group owned and operated 32 restaurants across 18 states, including nine Del Frisco's, 19 Sullivan's and four Del Frisco's Grilles. During the third quarter, the company opened one Del Frisco's Grille in Washington, D.C., and closed one Sullivan's in Dallas.

This past weekend, the company opened a fifth Del Frisco's Grille in Atlanta, and the company plans to debut four to five more of that concept in 2013. It currently has units in Dallas; New York City; Phoenix, Ariz.; and Washington, D.C.

"It's a great back-fill in markets where we already have a Double Eagle or Sullivan's," Mednansky said of the Del Frisco's Grille Concept, adding that it also serves as a "scout" concept to see if one of the two higher end brands might work in a market.

"We're learning a lot with the Grille," Mednansky added. "I'd say the Atlanta décor package is closer to a true prototype for future growth. ... The bar is a huge component of the Grille, and the bar is perfectly situated in this location."

The remaining unit DFRG will open this year is a Double Eagle Steak House in Chicago, which will occupy 24,000 square feet and include a 46-foot-tall wine tower, Mednansky said.

"In our estimation, our three concepts together target a much broader customer base than just fine dining," he said, "and therefore provide us with much more white-space opportunity" for growth.

Contact Ron Ruggless at ronald.ruggless@penton.com.
Follow him on Twitter: [@RonRuggless](#)

[Post a Comment](#)

BY STEVE COOMES

Five years ago, Mark Mednansky, chief executive of Del Frisco's Restaurant Group Inc., which includes 19 higher-end Sullivan's Steakhouse units and nine Del Frisco's Double Eagle Steak House units, wondered aloud to his team, "When our regulars aren't here eating with us, where are they?"

Mednansky knew few people would be able to eat at DFRG's 28 premium steakhouses nightly, but his hunch was his customers were not homebodies who only visited his places.

"We figured they were at Brio [Tuscan Grille] or P.F. Chang's



[China Bistro], exciting venues that cost less than our concepts but still were polished and upscale," he said.

The brands owned by DFRG, a Southlake, Texas-based company that recently began trading on Nasdaq, were known chiefly for their premium beef and fine wines, assets that Mednansky and his team wanted to maintain in a scaled-down concept that was more affordable and casual.

"Not everyone wants to make a special occasion of going out to dinner, especially a business traveler who wants a good meal, but wants to relax," he said. "We wanted to create a place where, if that guy wants it, he can have that good steak, but also a place where he can have a great burger or flatbread if he wants only that, and

pair either with a fine Bordeaux."

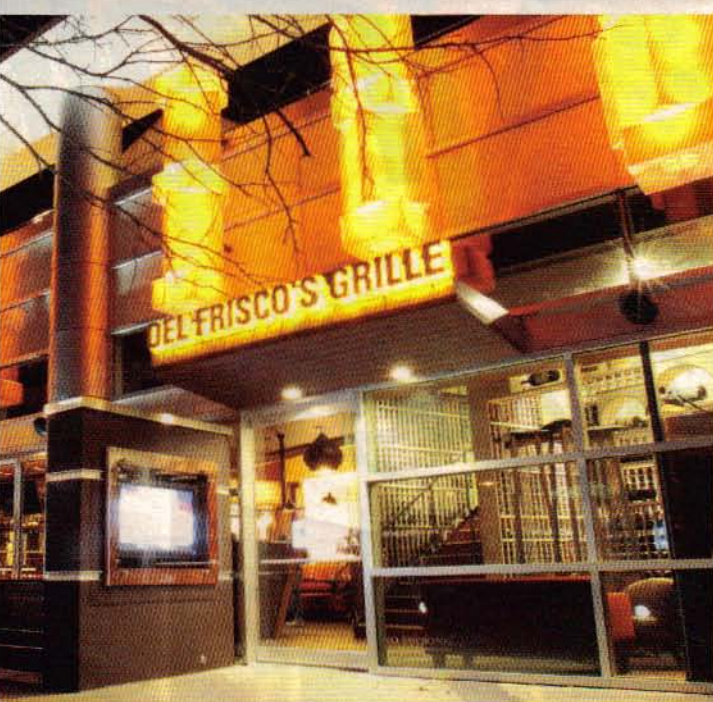
Five years that Mednansky said "seemed like endless menu tasting" and working with designers and architects yielded Del Frisco's Grille in 2011. Now a four-unit concept with a trim yet varied menu and an equally lean but still eyebrow-raising wine list, each Grille has a 7,500-square-foot floor plan that includes seats for about 260 and ample standing room around the bar.

"Our customers like to socialize in a bar that's a fun and very beautiful setting," Mednansky said, adding that about 38 percent of total revenue is generated through beverage transactions. "It's three- to four-people deep every night around our bars."

In making the food less formal,

Nestlé
PROFESSIONAL
Bever

*Ketchum Global I



CONCEPT:

Del Frisco's Grille

OWNER: Del Frisco's Restaurant Group Inc.

HEADQUARTERS: Southlake, Texas

MARKET SEGMENT: upscale casual

NO. OF UNITS: 4

STATES WHERE

LOCATED: Arizona; Washington, D.C.; New York; Texas

SYSTEMWIDE SALES: estimated \$16 million-\$24 million

AVERAGE UNIT

VOLUME: \$4 million-\$6 million

AVERAGE CHECK: \$53

YEAR FOUNDED: 2011

TARGET MARKETS:

Boston; Dallas-Fort Worth; Houston; Nashville, Tenn.; Palm Beach, Fla.

METHOD OF GROWTH/

FUNDING: company owned

WEBSITE:

<http://delfriscosgrille.com>



Del Frisco's Restaurant Group chief executive Mark Mednansky, above left, said Del Frisco's Grille aims to give customers a high-quality yet affordable experience. Chef Thomas Dritsas, above right, developed trendy and shareable dishes, such as Ahi Tacos, left, for the concept.



ads complement the mix, alongside comfort items like Veal Meatloaf, Chicken Schnitzel, and, of course, big beef and seafood items transferred from sister concepts.

Dritsas said the final lineup was the product of constant collaboration among DFRG's many chefs.

"A lot of people contributed their ideas, many of which were features that had sold successfully in our other brands," he said, referring to those restaurants' nightly specials. "Taking what we already knew from our steakhouses and putting that into a ca-

sual concept played a big hand in diversifying the menu."

The average check is \$53, which compares with about \$110 at a traditional Del Frisco's. Even with a build-out cost of about \$3.25 million and placement in high-demand locations, Mednansky said he expects Del Frisco's Grille to deliver a return on investment in as little as two to three years.

Overlooking Manhattan's Rockefeller Center, the first Grille opened in August 2011 and tallied \$5.5 million in sales from October of that year to March 2012. Its second location, in Dallas, rang up \$1.9 million in sales in the first quarter of 2012.

The concept's positioning of

affordable luxury is correct for the times and is properly targeted toward increasingly educated diners, said Dennis Lombardi, a consultant with WD Partners in Dublin, Ohio.

"Premium casual seems to be one of the better-performing subsegments right now, partly because it provides more opportunities for frequency than high-end dining does," Lombardi said. "I think the whole variation on a theme of what's worked well for them already is very good. I give it better than equal odds of doing well." ■

vice president and corporate chef Thomas Dritsas aimed for shareable, trendy dishes such as Ahi Tacos, Lollipop Chicken Wings, Deviled Eggs, an assortment of flatbread pizzas and Two-Fisted Sandwiches easily split at the table. Three protein-centered entrée sal-



Dear Madame Mayor and Town Council Members,

I have been a resident of Palm Beach for well over thirty years. I am perplexed and troubled that the town would even consider a proposal from Del Frisco's Restaurant Chain in this location at the Poincianna Plaza. To do so they would need council approval to operate as a special exception and variances to provide the parking spaces that would be required. The Poincianna Playhouse has a dining facility, why are they not using that space? Restaurateurs on the island had to either buy or lease an existing restaurant space in order to operate their eateries. Why should an outside chain of restaurants that has nothing to do with Palm Beach get any sort of special consideration from our Town Council.

The Sterling Group wrote a letter to the Shiny Sheet stating that this restaurant would complement the already existing successful restaurants. I totally disagree with that opinion. Even with their new proposed cut backs in seating and scale this restaurant is a "giant" compared to our local restaurants and while competition is healthy our local restaurateurs have been struggling in our weakened economy. Many of these restaurants have been around for decades and operated by people who live in our community, they are friends and family. They have been serving us loyally for years, hiring our children when they needed a job, and actively involved in our community. We need to be focusing on how to help our existing businesses thrive. What make's Palm Beach special are our mom and popshops, and our small town feeling. We should do everything possible to preserve this. Over the years we have watched many of these disappear and we need as a community to rally and support the business's that are here.

This group also would like to make changes to a landmarked structure.

It is my opinion that Del Frisco's should not be granted any special exceptions or variances and should be made to do business as every other restaurateur. They should be required to find an existing restaurant to buy or lease and precede following proper business practices here in Palm Beach.

Sincerely,

Dragana Connaughton



Fw: Inability to "Transfer" Parking Spaces in Plaza

Paul Castro to: Debby Morakis

11/06/2012 04:45 PM

Deb,

For the file.

Paul

----- Forwarded by Paul Castro/PalmBeach on 11/06/2012 04:44 PM -----

From: "Randolph, John C." <JRandolph@jonesfoster.com>
To: "PCastro@TownofPalmBeach.com" <PCastro@TownofPalmBeach.com>
Date: 11/06/2012 01:00 PM
Subject: FW: Inability to "Transfer" Parking Spaces in Plaza

See attached from John Eubanks.

John C. Randolph Attorney

Direct Dial: 561.650.0458 | Fax: 561.650.5300 | jrandolph@jonesfoster.com

Flagler Center Tower, 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401
561-659-3000 | www.jonesfoster.com

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From: John Eubanks [mailto:jeubanks@blesmlaw.com]
Sent: Tuesday, November 06, 2012 12:59 PM
To: Randolph, John C.
Cc: JEGROSSKOPF
Subject: Inability to "Transfer" Parking Spaces in Plaza

Dear Skip:

As a follow up to our conversation on Friday in which you indicated that you may be changing your mind as to the ability of Sterling to "transfer" parking spaces from one area of the Plaza to another, I would note the following issues (in addition to my correspondence of October 9th and 10th), which would seem to negate such a position.

1. As we discussed, as a matter of procedural due process, the issue is not properly before the Town. In both cases cited by Mr. Little, the issue of "transferring" spaces was brought before the Town Council (in 1981 and 1984) and was noticed to the public by a separate Variance application, i.e. Variance 48-81 and 13-84. The only

application now pending before the Town Council is for a 72 (reduced to 57) parking space variance which does not include any transfer of parking.

2. The documents presented, including, but not limited to, the "Fact Sheet" and correspondence relied upon by Sterling, are not part of the Town Record nor are they supported by the Town Council Minutes regarding the 1979 Agreement or the First Amendment to the 1979 Agreement. Nowhere within the records of the approval of the 1979 Agreement or the First Amendment by the Town Council is there even any reference to a "Fact Sheet."

3. Even if there could be a transfer of parking in the Plaza, any such transfer could not involve the Supper Club. As noted previously, to the extent the use has not been abandoned, the Supper Club would be a prior non-conforming use. As such, Section 134-387 would prevent the relocation "in whole or in part" of such non-conformity. In both the variances provided by Sterling, the use from which spaces were being "taken" involved a space under construction or already in operation.

4. Furthermore, in both variances cited by Sterling, the Town Council demanded a corresponding reduction in a restaurant being built. For example in Variance 48-81, Mr. Grace indicated that if Mr. Spiegel wanted more seats in the Theater, he would have to decrease the "size of the proposed restaurant in the Slat House" and that "the idea that a restaurant is going to be kept the same size and take out 24 seats is hogwash" and that instead, "the only way you reduce parking requirements for a building is to reduce the square footage of it and he is not prepared to accept anything else." Ultimately, the Variance passed with the restriction that "the future building of the Slat House will have to have a reduction in the seating of the restaurant and the square footage of the building to accommodate eight less parking spaces." This is also true in Variance 13-84. In the present case, there is no way to reduce, after the fact, the size of the square footage of the Supper Club. As a result, there is no way to transfer spaces from the Club to anywhere else in the Plaza.

5. Also, Sterling conveniently forgets that the minutes of the 1979 Agreement clearly reflect that any new construction or remodeling must comply with the new C-PC Code Requirements – which would require an examination under the principle of equivalency under Section 134-2175(3) of the Town Code.

6. Of course, there are no spaces to be transferred at all if the Supper Club use has been abandoned by lack of use or an intervening use. In which case, the Club would only have, according to Sterling, 27 spaces attributed to it, which would be the bare minimum of spaces (at 1 space per 300 square feet of GLA -the ratio of which the Towers still disagrees) and therefore there would be no excess spaces to be transferred.

7. In the meantime, even if there were only 27 spaces attributable to the Supper Club there would still be insufficient parking in the Plaza. The total Office/Retail space (even at the incorrect ratio of 1:300 square feet for GLA) in the Plaza requires 445 parking spaces, plus 27 for the Club, plus 162 for the existing restaurants, plus 92 for Del Frisco's, and finally 180+ for the Theater (as there is no time-shared parking in C-PC) creates a requirement of 906 spaces when there are only 656 presently available, leaving a shortage of 250 spaces.

As a result, in the end, it appears clear that even if the Applicant could satisfy the requirement of being Town Serving (which it has not), it cannot negate the need for a variance approval because: a) there can be no transfer of parking from the Supper Club; and b) there remains insufficient parking at the Plaza which will require a substantial parking variance to be obtained by Del Frisco's.

John R. Eubanks, Jr.
Breton, Lynch, Eubanks & Suarez-Murias, P.A.
1209 N. Olive Avenue
West Palm Beach, FL 33401

Telephone: 561-721-4000
Facsimile: 561-721-4001
Direct Dial: 561-721-4002
Email: jeubanks@blesmlaw.com

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John R. Eubanks Jr. (jeubanks@blesmlaw.com).vcf

BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

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Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
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West Palm Beach, FL 33401-3515
Phone: (561) 721-4000
Facsimile: (561) 721-4001

November 5, 2012

Via E-mail and Hand Delivery

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

**Re: AMEX Report Submitted by Del Frisco's Restaurant Group
Does Not Support Town Serving Requirement**

Dear Mayor and Town Council:

As you are aware, pursuant to Section 134-229 of the Town Code, among the requirements which an applicant seeking a Special Exception must satisfy is that "the proposed special exception will not attract the principal portion of its customers/clients from off-island locations." As such, it is the *burden of the applicant* to "submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons." Absent meeting this burden, the special exception cannot be granted and an application must be denied.

In reviewing the Zoning Application (Special Exception #20-2012 with Variance)(the "Application") by Del Frisco's Restaurant Group ("Del Frisco's"), as well as in its presentations to the Town Council on August 15, 2012 and October 10, 2012, Del Frisco's has relied virtually exclusively on the American Express Marketing Report attached as Exhibit "K" to its Application ("AMEX Report" or "Report") to meet the "Town Serving" requirements. The problem is that a careful reading of the Report demonstrates that it does not support the assertion that Del Frisco's Application is Town Serving¹, because a "Del Frisco's Grille" will necessarily draw more than 50 percent of its customers from "off-island locations."

The Myths Within the AMEX Report

To better understand the conclusions of the AMEX Report, and why it does not prove that the Application is "Town Serving", it is important to debunk some of its myths, misunderstandings, and misinterpretations.

¹ While an inordinate amount of time was spent at the October 10, 2012 Town Council meeting discussing the exact number of parking spaces at the Plaza, the potential to "transfer" parking within the Plaza, and whether Del Frisco's can demonstrate the requisite "hardship" for a parking variance (which legally it cannot), the Town Council need not even reach these issues in light of the failure of Del Frisco's to meet its burden of demonstrating that its Application is Town Serving.

Myth 1: The AMEX Report Tracks Spending by Palm Beach Residents

The most common myth or misunderstanding is that the Report somehow “pinpoints” the dining expenditures by “town persons.” This is not the case.

Instead, page 4 of the AMEX Report clearly identifies the “Recommended Methodology” as “analyzing market trends and *Cardmember* spend and behavioral patterns around the prospective location.” (emphasis added). The Report claims that it is attempting to “Develop a picture of how dining behaviors and *Cardmember* traffic changes by season, day of week and time of day.” (emphasis added).

However, a “Cardmember” does not refer to residents of the Town but is defined on page 6 of the Report as “*any individual who carries an Amex card issued in the US and uses it to dine within the analysis time period and within the analysis geography.*” (emphasis added).² In fact, even a “Local” Cardmember is not necessarily a Town resident, but instead is defined on page 6 of the Report as a Cardmember who “lives in the DMA and spends on dining using an Amex card.” The “DMA” in this case is identified on page 11 not as the Town, but as the West Palm Beach - Ft. Pierce area.³

Similarly, while page 5 of the Report indicates that the “area of focus for this analysis is the 33480 zip code (Palm Beach)”, it goes on to state that “[t]he analysis will cover *all dining spend on Palm Beach,*” i.e. not just spending by Town residents. As a result, by definition, the Report cannot be utilized to demonstrate that “not less than 50 percent of the customers of the proposed use will be town persons” as required within the “Town Serving” requirements of the Code.

Myth 2: The AMEX Report Supports Need for “Upscale Casual Dining”

Within its Application as well as its presentations, Del Frisco’s consistently claims that what is missing in Palm Beach are more choices for “Upscale Casual Dining.” The only problem is that the AMEX Report does not demonstrate a need for “Upscale Casual Dining.” On the contrary, it shows the preference by those who dine in area code 33480 for “Fine Dining,” which is defined on

² The difficulty in attempting to use the AMEX Report to draw any conclusions as to whether Del Frisco’s would be “Town Serving” is that the Report does not include any transactions other than AMEX, such as Visa, MasterCard, Diner’s Club or even cash. As such, there is no way for the Town Council to determine whether the “conclusions” reached in the AMEX Report would even apply when all dining transactions are considered.

³ Apparently the West Palm - Ft. Pierce DMA also includes areas as far south as Boca Raton, as page 11 of the Report lists two zip codes in Boca Raton as #1 and #2 in the category the “Top 5 Zip Codes in West Palm Beach DMA for Upscale Dining Spend.”

page 7 of the Report as “an average check size of about \$130 or more.”⁴

For example, page 9 of the Executive Summary notes that “Palm Beach (33480) is an attractive area for the Del Frisco’s Grille concept as it delivers *81% of its spend from Fine Dining*” (emphasis added) This same information, that “81% of Restaurant Spend in Palm Beach is Sourced from *Fine Dining*”, is repeated on page 13 of the Report and even shown in pie chart form as well. By stark contrast, the pie chart on page 13 of the Report clearly demonstrates that “Upscale Casual” spending is only 14% of total spending. Once again, rather than supporting the idea that Del Frisco’s Grille will be “Town Serving,” the AMEX Report shows a clear preference for “Fine Dining” in Palm Beach, not “Upscale Casual Dining.”⁵ Consequently, Del Frisco’s Grille will necessarily need to draw “the principal portion of its customers/clients from off-island locations from an area outside of Palm Beach” to survive, thereby making it, by definition, *not* Town Serving.

**Myth 3: The AMEX Report Shows that Town Residents
Spend \$33M in Upscale Dining Per Year**

Myth number 3 is perhaps the most widely misinterpreted statistic, that Town Residents allegedly spend \$33M in Upscale Dining with an average check of \$143 per meal and \$442 annually at Palm Beach “Upscale Dining” restaurants. Once again, the sleight of hand is that nowhere is there any information within the Report to demonstrate that “Town Residents” spend that amount of money.⁶

Instead, looking at the “Palm Beach Spend Metrics (Upscale Dining)” on page 14 of the Report demonstrates that a “Total Spend” of \$33,158,332 came from *Total CMs of 74,953* (not “Local” Cardmembers). As a result, given that the present population of the Town is less than 10,000, every man, woman and child in the Town, regardless of age, would have to hold 7.49 AMEX Cards for the \$33 MM and \$143 per meal amount to include only Town Residents. Consequently, once again, Del Frisco’s cannot rely upon any such numbers to demonstrate that it will derive at least 50 percent of its income from “town persons.”

⁴ By contrast, according to Del Frisco’s S-1, the average check for a Del Frisco’s Grille is only \$45-\$55.

⁵ In an attempt to confuse the casual reader of the Report, Del Frisco’s has had AMEX conveniently combine both “Fine Dining” as well as “Upscale Casual Dining” into a new category of “Upscale Dining” which is defined on page 7 of the Report as “a combination of ‘Fine’ and ‘Upscale Casual Dining’ categories.” Del Frisco then attempts to use numbers and conclusions such as “95% of all Dining in Palm Beach is Upscale...” on page 14 when it is clear that 81% of that number is Fine Dining and not Casual Upscale Dining.

⁶ In fact, the \$33M spend number just for AMEX users in the 33480 Zip Code, which Del Frisco’s claims is approximately 40% of total spend, is questionable given that it would equate to a total spend of over \$90+ MM in the Town. That number, when divided by the total number of restaurants in the Town, produces an annual receipt per restaurant which is higher than is achieved even in the dreams of most of the restaurants in Town.

**Myth 4: The AMEX Report Demonstrates that More “Local” Town Residents
than Off-Island Residents Dine in Palm Beach**

The next myth is that the Report somehow supports the idea that local, Town Residents spend more on dining in Palm Beach than Off-Island Residents. In fact, the Report demonstrates the exact opposite.

The “Distribution by CM Proximity (Palm Beach, Upscale Dining)” chart on page 21 of the Report demonstrates that 67% of Cardmembers who dine in Palm Beach are “Inbound” not “Local.”⁷ Furthermore, 60% of all spending is from “Inbound” Cardmembers and 53% of all transactions are from “Inbound” as opposed to “Local” customers.⁸ As a result, the AMEX Report demonstrates that as a whole, “Upscale Dining” in Palm Beach consists of more “Off-Island,” “Inbound” diners than Town Resident diners, and therefore by definition negates the proposition that a Del Frisco’s Grille will be “Town Serving.”

**Myth 5: Del Frisco’s Can Overcome Its S-1 “Minimum Criteria”⁹
by Virtue of the AMEX Report**

Finally, the last major Myth to be considered (although there are several other minor ones) is the assertion that Del Frisco’s Grille can somehow overcome the “minium criteria” set forth in its S-1 filing with the SEC through the conclusions contained within the AMEX Report. Once again, the AMEX Report does not support such a conclusion.

As the Council is aware, the chart of target demographics and “Priority Age Blocks” found in the table on Page 73 of Del Frisco’s S-1 SEC filing demonstrates a target population necessary to support a Del Frisco’s Grille being 75,000+ full time residents and 100,000+ day time population,

⁷ This same percentage is supported by the Intra Zip Upscale Dining Spend chart on page 27 of the Report which demonstrates that \$10,112,226 of the \$33,158,332 total spend in the 33480 zip code was by residents within the same 33480 zip code.

⁸ Again, it should be noted that even “Local” CMS are defined on page 6 of the Report not as Town Residents, but instead, Cardmembers from the DMA which is in turn defined as West Palm Beach-Ft. Pierce.

⁹ Del Frisco’s itself established the criteria on page 73 of its SEC S-1 discussed herein as “the minimum criteria in our site trade areas.”

and a traffic count of at least 25,000.¹⁰ In addition, the target “Primary Age Block”¹¹ for a Del Frisco’s Grille is 25-34 year olds, with even secondary and tertiary target groups never rising to over the age of 54. By contrast the latest census information found on Sterling’s own website shows only 261 residents of Palm Beach who are 24 to 34 year olds, only 427 of 35-44 year olds, and only 761 residents within the age of 45 to 54 years old.

Recognizing this inconvenient shortcoming, Del Frisco’s wants the Town to believe that because the “Annual Dine Frequency” of Town residents is above 4, each resident can be counted as four people. As a result, if there are 20,000 residents in season on average, (again ignoring that there are less than 10,000 permanent residents) this creates an “artificial” population of 80,000 people¹² which is designed to give the appearance of satisfying a figure that is close to the “minimum criteria” identified within Del Frisco’s S-1. There are, however, a multitude of fallacies with such a position.

First, even if the “Annual Dine Frequency” for a “Local” in Palm Beach is in excess of 4, this does not mean that each and every one of those four dining episodes will be at Del Frisco’s Grille. Second, as demonstrated on page 21 of the Report, while the “Annual Dine Frequency” of “Locals” is 4.48, the “Inbound” frequency is 2.51, and the Overall average Annual Dine Frequency is 3.10. As a result, a “Local” diner eats out only 1.38 times more than the average diner. Even using Del Frisco’s flawed logic, this would equate to the “functional equivalent” of a “population”¹³ of only 27,600,¹⁴ which is far short of the minimum 75,000+ full time residents and 100,000+ day time population criteria established by Del Frisco’s in its own S-1.

Finally, and perhaps most importantly, while Del Frisco’s has tried every trick to artificially inflate the “population” of the Town to meet its S-1 criteria, it has not even attempted to address the shortcomings in the demographic established in its S-1, which are only compounded by the information contained within the AMEX Report.

¹⁰ This need to draw from a large population is why Del Frisco’s Grilles are located in large metropolitan areas such as New York, Dallas, and Atlanta, and not in small, exclusive resort communities such as Palm Beach.

¹¹ The “Priority Age Block” is defined in the SEC filing as representing “the targeted age demographics for a prospective site.” See, p. 73 footnote b.

¹² Actually, at best, even if one ignores the flaws in Del Frisco’s application of the “Annual Dine Frequency”, it would only amount to the functional equivalent of *80,000 meals, not persons*. Those meals in turn would need to be distributed among every potential restaurant at which a resident might chose to dine.

¹³ Again, this number should really only be the functional equivalent of 27,600 meals.

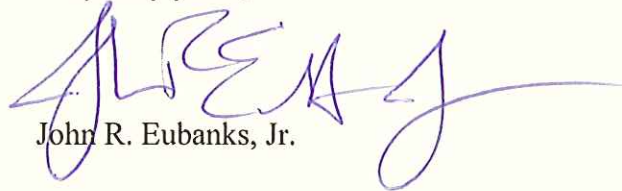
¹⁴ Even if Del Frisco’s wanted to make the argument that “Local” diners (at a 4.48 Annual Dine Frequency) eat out 1.97 more times per year than “Inbound” diners (with a 2.51 Annual Dine Frequency), this calculation would only equate to the “functional equivalent” of 37,400 residents, or actually, meals.

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
November 5, 2012
Page 6

As set forth on the top of page 23 of the AMEX Report "**Older Consumers** drive Upscale Dining from October through May." (emphasis added). Similarly, the graph on page 23 declares that "The October through May Surge in Spend is **Driven by Boomers and Seniors**," which is clearly not the 25-34 year "targeted age demographics" for a Del Frisco's Grille contained within Del Frisco's S-1. (emphasis added). As a result, Del Frisco's will necessarily attract the principal portion of its customers/clients in the "targeted age demographics" from "off-island locations" which by definition does not meet the standard of "Town Serving."

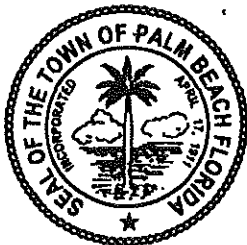
In the end, it is clear that, rather than supporting Del Frisco's Application, the AMEX Report overwhelmingly demonstrates that the opening of an "Upscale Casual Dining" restaurant in the form of a "Del Frisco's Grille" would necessarily draw more than 50 percent of its targeted customers from "off-island locations." As a result, Del Frisco's has failed to meet its burden of demonstrating that its Application is "Town Serving" and its special exception must be denied.

Very truly yours,

A handwritten signature in blue ink, appearing to read "JRE", with a long horizontal flourish extending to the right.

John R. Eubanks, Jr.

cc: John Page, Director of Planning, Zoning and Building
Peter Elwell, Town Manager
Paul Castro, Zoning Administrator
John C. "Skip" Randolph, Esq.
Town Clerk, Town of Palm Beach
John Grosskopf, General Manager Palm Beach Towers
Henry Goldsmith, President of Board of Palm Beach Towers Condominium



TOWN OF PALM BEACH

Public Works Department

August 22, 2003

Mr. Sidney Spiegel
Royal Poinciana Plaza
50 Coconut Row
Palm Beach, FL 33480

RE: TOWN OWNED PROPERTY ADJACENT TO ROYAL POINCIANA PLAZA

Dear Mr. Spiegel:

I understand that you are questioning the Town's claim to ownership of a parcel of land lying at the northwest corner of the Royal Poinciana Plaza site. We have agreed to work together to resolve this differing opinion.

Attached please find the following documentation:

1. A survey dated April 26, 2000 prepared by W.L. Fish and Company, Land Surveyors, illustrating the Town's parcel.
2. A print-out from the Palm Beach County property appraiser's office noting the Town of Palm Beach as property owner for the parcel illustrated in the attached survey.
3. A copy of Deed Book 592, Pages 478 through 484 which documents and describes ownership of the parcel of land that was purchased by the Town of Palm Beach from the Florida East Coast Hotel Company on September 11, 1939.
4. A copy of Official Record Book 7620, Page 1030, dated March 3, 1993 which is a Trustee's Deed transferring ownership of the Royal Poinciana Way Plaza property to you, Sidney Spiegel. It is noted that in the legal description of Attachment "A", the Town-owned parcel is specifically left out of the transfer.

I believe the information provided herein supports the Town's claim for ownership of the "disputed" property. Please forward to me any documentation that you have that supports your claim to ownership of this parcel.

Sincerely,

James M. Bowser, P.E.
Town Engineer

JMB:ms

Attachments

cc: Peter B. Elwell, Town Manager, w/Attachments
Albert P. Dusey, P.E., Director of Public Works and Public Works File, w/Attachments
Robert L. Moore, Director of Planning, Zoning and Building, w/Attachments
H. Paul Brazil, P.E., Assistant Director of Public Works, w/Attachments

MAILING ADDRESS: Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480 • (561) 838-5440
LOCATION: Suite A • 951 Old Okeechobee Road • West Palm Beach, Florida 33401 • Fax (561) 835-4691

ROYAL
POINCIANA
TCR
PC
V
C
PF

11/11/03

RECEIVED
TOWN OF PALM BEACH
AUG 22 2003

MAP
FILE

BRIDGE

S. LINE OF THE "EAST APPROACH OF
PROPOSED FLAGLER MEMORIAL BRIDGE"

Royal Ponce de Leon Way

POINT OF BEGINNING

TRAFFIC
SIGNAL BOX

SET IR/C, LB.#6216
N.88°08'15"W.
12.08'(D)

SET PK/DISC
IN SEA WALL
LB.# 6216
3.50' O/S

S.06°07'45"W.
71.88'(D)

SEA WALL

SET IR/C
RETAINING WALL

MANHOLE
VAULT

SBT RISER

TRAFFIC
SIGNAL BOX

FPL MH

FPL PAD

SBT PAD

4' CONC. SIDEWALK
IRON PIPE

N.88°51'15"W. - 190.74'(D)

SOLAR PANEL DEVICE
CONC. CURB

ASPHALT PARKING LOT

CONC. PAVER STRIP

SBT RISER

CONC. STRIP

SANITARY MANHOLE

HYDRANT

SET PK/DISC
LB.# 6216 (TYP.)

S88°55'30"E. 210.55'(C)
208.44'(D)

70.00'(D)
N.01°09'45"E.

N.88°51'15"W.
34.75'(D)

S.01°09'45"W.
10.00'(D)

FOUND "X" CUT IN CONC.

N00°02'55"W.
71.22'(C)
71.20'(D)

NOTE: A FULL COPY
OF THE SURVEY
IS AVAILABLE
IN PUBLIC WORKS

COPY TO TOWN EMPLOYEES
ON LETTER TO SIDNEY SPENCEL 8/22/59

PARTIAL

BOUNDARY SURVEY FOR:

TOWN OF PALM BEACH

FLAGLER MEMORIAL BRIDGE

TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA

THIS DEED, Made this 11th day of September, A.D.

1939, between FLORIDA EAST COAST HOTEL COMPANY, a corporation organized and existing under the laws of the State of Florida, hereinafter called "Grantor", and TOWN OF PALM BEACH, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter called "Grantee,"

WITNESSETH:

That the Grantor, in consideration of the sum of Ten (\$10.00) Dollars, the receipt whereof is hereby acknowledged, and in consideration of the covenants of the Grantee herein contained, does give, grant, bargain, sell, alien, remise, release, enfeoff, convey and confirm, subject to the exceptions and reservations hereinafter contained, unto the Grantee, its successors and assigns, in fee simple, the lands situate in Palm Beach County, State of Florida, described as follows:

A tract of land in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, more particularly described as follows: - Commencing at a point in a straight line between the Northeast and Southeast corners of said Section 22, at a distance of 509.55 feet, more or less, measured along said line southerly from the Northeast corner of said Section 22; thence westerly, making an angle with the preceding course, measured from north to west $87^{\circ} 51' 15''$, a distance of 22.52 feet, more or less, to a point in the west line of the right of way of the County Road, as now laid out and in use within the Town of Palm Beach, Florida; said point being the northeast corner of the tract of land conveyed by the Florida East Coast Hotel Company to the Bridge District of Palm Beach by deed dated December 31st, 1936, and recorded in Deed Book 548, at page 472, of the public records of Palm Beach County, Florida, and therein referred to as "East Approach of proposed Flagler Memorial Bridge"; thence run southerly and westerly along the arc of a curve concave to the northwest and having a radius of 40 feet and a central angle of $92^{\circ} 38' 20''$, a distance of 64.67 feet, more or less, to its point of tangency with the north line of the right of way of the "East approach of proposed Flagler Memorial Bridge" herein-after mentioned; thence North $88^{\circ} 23' 21''$ west, along the said north line of the right of way of said "East approach of Flagler Memorial Bridge", a distance of 1536.93 feet, more or less, to a point where the north line of said right of way of said "East approach" makes

a right angle turn to the south; thence southerly on a line at right angles to the preceding easterly and westerly line a distance of 70 feet to a point; thence westerly on a line at right angles to the preceding northerly and southerly line a distance of 34.75 feet to a point in the south line of the "East approach of Flagler Memorial Bridge" aforesaid, which is the point of beginning of the tract of land hereby conveyed; thence continue westerly on a line having a bearing of South 88° 23' 21" East, a distance of 190.74 feet to a point in said line; thence continue westerly on a line having a bearing South 87° 40' 21" East, a distance of 12.08 feet to a point in the west face of the concrete bulkhead which marks the western boundary of the land hereby conveyed, and which west face of the seawall is within the waters of Lake Worth; thence in a southerly direction along the west face of the concrete bulkhead aforesaid and the waters of Lake Worth, on a line bearing South 6° 55' 39" west, a distance of 71.88 feet to a point in the west face of the concrete bulkhead aforesaid; thence east on a line making an angle of 83° 19' 21", measured from north to east, with the concrete bulkhead aforesaid, a distance of 209.44 feet to a one-inch iron pipe; thence northerly on a line which makes an angle of 90° 30' 0", measured from west to north with the last preceding line a distance of 71.2 feet to the point of beginning of the tract of land hereby conveyed. Together with all riparian rights thereunto appertaining or in anywise belonging. SUBJECT, NEVERTHELESS, to an easement of lateral support and for location of toe of two to one slope for fill, of a height not exceeding 7½ feet at west end of line of a triangular strip of land lying within the above described property, and more fully and particularly described in that certain deed dated December 31st, 1936, from Florida East Coast Hotel Company, a corporation, grantor, to Bridge District of Palm Beach, a body corporate under the laws of Florida, grantee, said deed being recorded in Deed Book 349, page 472, of the Palm Beach County public records.

RESERVATION A: ALSO EXCEPTING AND RESERVING unto Grantor, its successors and assigns forever (and Grantee by acceptance of this deed, does hereby confirm unto Grantor) a perpetual easement for the use, maintenance, operation, repair and rebuilding of a water pipe under the surface of the ground, together with full right of access to the same, at the cost to Grantee, its successors and assigns, as follows:

A strip of land six (6) feet in width, being three (3) feet on each side of center line of and for the whole length of the following described 24" water pipe line, to-wit:

A 24" water main as now located, commencing at a point 1563 feet west of west property line of County Road, and 31.5 feet south of center line of East approach right of way of proposed Flagler Memorial Bridge; thence westerly 220.8 feet to a point 31.6 feet south of said center line of east approach of said bridge; thence westerly 31.7 feet, more or less, to a point on the west face of present East seawall of Lake Worth 34.3 feet south of said center line last mentioned. Said 1563 feet being measured on center line of east approach of said Bridge. AND ALSO a strip of land six (6) feet in width, being three (3) feet on each side of center line of an existing 24" submarine water pipe line of West Palm Beach Water Company extending from the west face of the East seawall of Lake Worth (being the westerly line of the parcel of land first hereinabove described) westwardly to the channel of Lake Worth, said 24" water pipe line being the same 24" water pipe described in this above "RESERVATION A".

RESERVATION B: FURTHER EXCEPTING AND RESERVING unto Grantor, its successors and assigns forever (and the Grantee by acceptance of this deed, does hereby confirm unto Grantor) a perpetual easement for the use, operation, maintenance, repair and rebuilding of a valve box or valve vault on and upon a rectangular area of land 8 feet in width east and west by 12 feet in length north and south, the center point of which is located 31.2 feet measured at right angles from the west face of the present east seawall of Lake Worth, and 27.1 feet south of the center line of east approach right of way of Flagler Memorial Bridge. Said area 8 feet by 12 feet being partly located upon the easement described in foregoing "RESERVATION A" of this instrument.

RESERVATION C: FURTHER EXCEPTING AND RESERVING unto Grantor, its successors and assigns forever (and the Grantee by acceptance of this deed, does hereby confirm unto Grantor) a perpetual easement for the use, operation, maintenance, repair and rebuilding of underground telephone cables in conduits under the surface of the ground, and one manhole for same, together with full right of access to the same, upon and along a strip of land four (4) feet in width, being two (2) feet on each side of the center line of a line drawn 18 feet northerly of and parallel to the southerly line of the parcel of land first hereinabove described, said center line extending from the seawall and westerly line of said parcel to the easterly line of said parcel first hereinabove described. AND ALSO a strip of land four (4) feet in width, being two (2) feet on each side of the center line of an existing submarine telephone cable as the same is now located, extending from the

westerly line of the parcel of land first hereinabove described westwardly to the channel of Lake Worth and upon and across the submerged lands and any rights therein which are incident or appurtenant to the parcel of land first hereinabove described.

PRESERVATION D: ALSO FURTHER EXCEPTING AND RESERVING unto Grantor, its successors and assigns forever (and the Grantee by acceptance of this deed, does hereby confirm unto Grantor) a perpetual easement for the use, operation, maintenance, repair and rebuilding of electric power cables under the surface of the ground, together with full right of access to the same, upon and along a curving strip of land four (4) feet in width, being two (2) feet on each side of the center line of a certain electric power cable of the Florida Power and Light Company, extending from a point on the west line of the land first hereinabove described, 24 feet south of the north line of said parcel; and thence with a curve to the north to a point in the north line of the parcel of land first hereinabove described, 37 feet east of the westerly line of said parcel. AND ALSO a strip of land four (4) feet in width, being two (2) feet on each side of the center line of so much of the existing submarine power cable of Florida Power and Light Company as lies within the submerged land between the parcel of land first hereinabove described and the channel of Lake Worth.

PRESERVATION E: ALSO EXCEPTING AND RESERVING unto Grantor, its successors and assigns forever (and the Grantee, by acceptance of this deed, does hereby confirm unto Grantor) a perpetual easement for the use, maintenance, operation, repair and rebuilding of underground electric telegraph cables in conduits, and one manhole for same, together with full right of access to the same, upon and along a strip of land four (4) feet in width, being two (2) feet in width on each side of the center line of an existing underground cable conduit system of Western Union Telegraph Company, which conduit system extends from a point in the northerly line of the parcel of land first hereinabove described, 4.5 feet, more or less, from the westerly line of said parcel, thence 225 feet more or less southeasterly to a manhole, the center point of which manhole is located 33 feet measured at right angles westerly from the easterly line of the parcel of land first hereinabove described, and 7.5 feet measured at right angles northerly from the southerly line of the parcel of land first hereinabove described; and said strip of land four (4) feet in width, thence extending 12.5 feet southerly from said

manhole to the southerly line of the parcel of land first hereinabove described, along said center line of said underground cable conduit system as now existing.

RESERVATION VI. FURTHER EXCEPTING AND RESERVING
unto Grantor, its successors and assigns forever (and the Grantee by acceptance of this deed, does hereby confirm unto Grantor) a perpetual easement for the use, maintenance, operation, repair and rebuilding of an underground sewer line under the surface of the ground and a one manhole for same together with the full right of access to same, at the cost of Grantee, its successors and assigns, upon and along a strip of land six (6) feet in width, being three (3) feet on each side of center line of and for the whole length of an existing sixteen (16) inch sewer line as now located, and which sewer line commences at a point on the southerly boundary of the area of land first hereinabove described 115 1/2 feet from the easterly boundary thereof, and extends thence northerly a distance of 2 1/2 feet to the center of an existing manhole which manhole is the junction of Grantor's sewer line with a similar sewer line of Grantee hereof.

TO HAVE AND TO HOLD all and singular the premises, rights and privileges, SUBJECT, HOWEVER, to the easements, exceptions and reservations aforesaid, unto the Grantee, its successors and assigns, in fee simple forever.

AND THE SAID GRANTOR, for itself, its successors and assigns, covenants with said Grantee, its successors and assigns, that said Grantor is indefeasibly seized in fee simple of all of the lands hereinabove conveyed in fee simple unto Grantee; that Grantor has full power and lawful right to so convey said lands in fee simple; that it shall be lawful for said Grantee, its successors and assigns, at all times to peaceably and quietly enter upon, hold, occupy and enjoy said lands so conveyed in fee simple; that all of said lands so conveyed in fee simple are each free of all encumbrances; that said Grantor does hereby fully warrant the title to the lands hereby conveyed in fee simple and Grantor will defend said lands against the lawful claims of all lawful persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed in its corporate name by its President, and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

Signed, sealed and delivered
in the presence of:

FLORIDA EAST COAST HOTEL COMPANY (SEAL)

Jo. C. C. C.

Wm. E. Smith
As to Its President.

Mr. K. K. K.
Its President.

Attest Ed. D. D.
Its Secretary.

Jo. C. C. C.

Wm. E. Smith
As to Its Secretary.

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I HEREBY CERTIFY, That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, WILLIAM E. KEHAN, JR., to me well known to be the President of FLORIDA EAST COAST HOTEL COMPANY, a corporation, and he acknowledged to and before me that he executed the foregoing instrument as such officer, in the name and on behalf of said corporation, for the uses and purposes therein set forth and under due authority from said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in said State and County, this 12th day of September A.D. 1939.

Mary E. Ballentine

My Official Commission Expires:

Mary E. Ballentine, Notary Public

New York County Clerk

N. Y. Co. Clerk's No. 741 R. N. O. B. 18

My Commission expires March 24, 1940

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I HEREBY CERTIFY, That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, O. D. BOICE, to me well known to be the Secretary of FLORIDA EAST COAST HOTEL COMPANY, a corporation; and he acknowledged to and before me that he executed the foregoing instrument as such officer in the name and on behalf of said corporation, and that he affixed thereto the corporate seal of said corporation, for the uses and purposes therein set forth and under due authority from said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in said State and County, this 12th day of September A.D. 1939.

Mary E. Ballentine

My Official Commission Expires:

Mary E. Ballentine, Notary Public

New York County Clerk

N. Y. Co. Clerk's No. 741 R. N. O. B. 18

My Commission expires March 24, 1940

This Instrument was filed for Record at
10 A.M. this 16 day of Sept
1939, and Recorded in Deed Book 592
at page 498. Notary Verified. Geo. O.
Butler, Clerk Circuit Court, Palm Beach
County, Florida.

Gary R. Nikollts, CFA
Palm Beach County Appraiser
Public Access System

Property Information

Location Address: ROYAL POINCIANA WAY
Municipality: CITY OF PALM BEACH
Parcel Control Number: 50-43-43-22-00-001-0030
Subdivision:
Official Records Book: **Page:** **Sale Date:**
Legal Description: 22-43-43, TH PT OF GOV LT 1 LYG S OF & ADJ TO ROYALPOINCIANA WAY IN DB592P630

Owner Information

Name: PALM BEACH TOWN OF
Mailing Address: PO BOX 2029
PALM BEACH FL 33480 2029

2002 Certified Appraisal

Improvement Value:	\$0	Number of	Structural...
		Units:	
Land Value:	\$1,038,660	Total Sq. Ft:	Extra...
Market Value:	\$1,038,660	Acres:	Land...
Use Code:	8900	Description:	MUNICIPAL

2002 Certified Tax

Ad Valorem:	\$0.00
Non ad valorem:	\$0.00
Total:	\$0.00

[Detail...](#)

2002 Certified Assessed & Taxable Values

Assessed Value:	\$1,038,660.00
Exemption amount:	\$0 (2002 Exemption)
Taxable:	\$1,038,660.00

Exemption Information Unavailable.

Sales Information

Sales Date	Book	Page	Price Instrument	Owner
-------------------	-------------	-------------	-------------------------	--------------

[Print Information](#)

[Home](#) | [Back](#) | [Search](#) | [Search Result](#)



Please send us your feedback

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All Rights Reserved

This instrument was prepared by
and should be returned to:
Robert P. Marshall, Esq.
Voley & Lardner
777 South Flagler Drive, Suite 200
West Palm Beach, Florida 33401

MR-11-1993 12:13 PM 93-073271
ONE 7620 P 1030
Can 100.00 Doc .70

TRUSTEE'S DEED

THIS INDENTURE, made this 3rd day of MARCH, 1993, between NORTHERN TRUST BANK OF FLORIDA N.A., (formerly NORTHERN TRUST BANK OF FLORIDA/PALM BEACH N.A.), as Trustee under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371, hereinafter called Grantor, and SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371, whose mailing address is Royal Poinciana Plaza, Box 11, Palm Beach, Florida, hereinafter called Grantee.

WITNESSETH:

THAT said Grantor, for and in consideration of the sum of TEN AND NO/100ths (\$10.00) DOLLARS, and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee, and grantee's heirs, administrators, successors and assigns, as the case may be, forever, the following described land, situate, lying and being in Palm Beach County, Florida:

SEE EXHIBIT "A" ATTACHED HERETO
AND MADE A PART HEREOF

TOGETHER with the buildings and improvements located thereon.

SUBJECT to restrictions, reservations and easements of record.

TO HAVE AND TO HOLD the same in fee simple forever.

This conveyance is made pursuant to the (i) Resignation of Trustee of Northern Trust Bank of Florida N.A., dated January 22, 1993; (ii) Release and Discharge and Designation of Sidney Spiegel as Successor Trustee, dated January 22, 1993; and (iii) Acceptance of Successor Trusteeship of the Land Trust Agreement dated October 25, 1984, as amended, dated January 22, 1993, copies of which are attached hereto as Exhibits "B", "C" and "D", respectively.

IN WITNESS WHEREOF the Grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officer thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered
in our presence:

Kimberly J. Fealty
(Signature of Witness)
Kimberly J. Fealty
(Print Name of Witness)
Mindy Hanson
(Signature of Witness)
Mindy Hanson
(Print Name of Witness)

NORTHERN TRUST BANK OF FLORIDA N.A.
as Trustee as aforesaid

By: [Signature]
(Signature of Officer)
DONNA L. MENDOZA
(Print Name of Officer)
P.O. Box 11
(Address of Grantor)
1111 22nd St. J.C. 33480

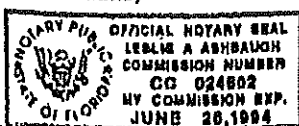
(CORPORATE SEAL)

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me this 3rd day of MARCH, 1993, by Robert P. Marshall, Esq., the Attorney in Fact of NORTHERN TRUST BANK OF FLORIDA N.A., (formerly NORTHERN TRUST BANK OF FLORIDA/PALM BEACH, N.A.), as Trustee under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371, on behalf of the Trustee, who is personally known to me or who produced N/A as identification and who did not take an oath.

(NOTARY SEAL)



[Signature]
(Signature of Notary Public)
LESLIE A. ASHBAUGH
(Print Name of Notary Public)
Serial Number
My Commission Expires:

LEGAL DESCRIPTION

Exhibit "A"

A parcel of land in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, bounded as follows:

On the north by the southerly right-of-way line of Royal Poinciana Way; on the east by the westerly right-of-way line of Cocoanut Row; on the west by the Waters of Lake Worth; on the south by the following described line:

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Cocoanut Row, as said streets are described in deed recorded in Deed Book 814, Page 477, and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Cocoanut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of $23^{\circ} 53' 30''$; thence northerly along the arc of said curve, a distance of 137.44 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 59.62 feet to the point of beginning of the herein described south line; thence westerly making an angle from southwest to west of $66^{\circ} 14' 30''$, a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of a curve to the northeast, having a radius of 65.03 feet and a central angle of $85^{\circ} 42' 43''$, a distance of 97.28 feet; thence northwesterly a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, Page 226, public records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein described curve, and having a radius of 90.03 feet and a central angle of $102^{\circ} 55' 30''$ and is 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature of a curve concave to the west, having a radius of 513.29 feet and a central angle of $15^{\circ} 35' 22''$; thence northerly along the arc of said reverse curvature a distance of 97.62 feet to a point in a line parallel with and 461.20 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, Page 226, public records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the Waters of Lake Worth and the end of the herein described southerly line.

Excepting, however, so much of a nearly rectangular area of land, together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing described parcel of land, and which nearly rectangular area of land has a southerly boundary of 208.44 feet, an easterly boundary of 71.20 feet, a northerly boundary of 190.74 feet plus 12.08 feet, on two different courses coinciding with the south line of the east approach of Flagler Memorial Bridge, and having a westerly boundary of 71.88 feet coinciding with the west face of an existing concrete bulkhead within the Waters of Lake Worth, and all as such nearly rectangular area of land and riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company to Town of Palm Beach, dated September 11, 1939, and recorded in Deed Book 592, Page 478, of the public records of Palm Beach County, Florida.

RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.

**RESIGNATION OF TRUSTEE OF LAND TRUST AGREEMENT
DATED OCTOBER 25, 1984**

WHEREAS, NORTHERN TRUST BANK OF FLORIDA, N.A., of Palm Beach, Florida is currently acting as Trustee under Land Trust Agreement dated October 25, 1984, as restated on February 7, 1987 and subsequently amended as of May 31, 1988, and known as Trust Number 31520371 ("the Trust").

WHEREAS, NORTHERN TRUST BANK OF FLORIDA, N.A., hereby wishes to resign as Trustee of the Trust pursuant to the provisions of Paragraph 6 of the Trust, which resignation shall become effective 30 days after the mailing date of the notice of Resignation; and

WHEREAS, the Beneficiaries of the Trust intend to designate SIDNEY SPIEGEL, to act as Successor Trustee of the Trust pursuant to the provisions of Paragraph 6 of the Trust.

NOW, THEREFORE, NORTHERN TRUST BANK OF FLORIDA, N.A., hereby resigns as Trustee of the Trust and in consideration of the Release and Discharge received from the Beneficiaries of the Trust, hereby agrees to convey title to the property held in the Trust to SIDNEY SPIEGEL as Successor Trustee of the Trust.

IN WITNESS WHEREOF, the NORTHERN TRUST BANK OF FLORIDA, N.A. has executed this Resignation as of the 22 day of January, 1993.

NORTHERN TRUST BANK OF FLORIDA, N.A.,
as trustee as aforesaid

By: [Signature]
its [Signature]

RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.

RELEASE AND DISCHARGE
AND
DESIGNATION OF SUCCESSOR TRUSTEE

NORTHERN TRUST BANK OF FLORIDA, N.A.,
as Trustee under Land Trust Agreement
Dated October 25, 1984, as amended,
and known as Trust Number 31520371 ("the Trust")

WHEREAS, the undersigned, as a beneficiary of the above-captioned Trust, hereby acknowledges receipt of the resignation of NORTHERN TRUST BANK OF FLORIDA, N.A., as Trustee of the Trust and hereby designates SIDNEY SPIEGEL as Successor Trustee of the Trust and, in addition, the undersigned:

1. Does hereby release and discharge the NORTHERN TRUST BANK OF FLORIDA, N.A., individually and as Trustee as aforesaid for or on account of any matter or thing done, permitted or omitted to be done, in and about the execution of the Trust;

2. Does hereby agree to assume and pay all taxes and any other liabilities or obligations which may hereafter be asserted against the NORTHERN TRUST BANK OF FLORIDA, N.A., individually or as Trustee as aforesaid to the extent that the property so conveyed and delivered to the Successor Trustee would be liable if it had remained in the hands of NORTHERN TRUST BANK OF FLORIDA, N.A.;

3. Does hereby indemnify and hold harmless NORTHERN TRUST BANK OF FLORIDA, N.A., individually and as Trustee as aforesaid from and against any and all liability, loss, or expense which it may incur, including legal fees and expenses, by reason of its acting as Trustee of the Trust.

4. Does hereby agree to cause NORTHERN TRUST BANK OF FLORIDA, N.A. as Trustee as aforesaid to be dismissed as a party to any and all litigation with respect to the above-captioned trust and will cause SIDNEY SPIEGEL, as successor Trustee of the trust, to be substituted in lieu of NORTHERN TRUST BANK OF FLORIDA, N.A. with respect to any and all such litigation.

This release and discharge may be signed in counterparts, each of which shall be considered an original.

RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.

ORB 7620 Pa 1034

Witness the hand and seal of the undersigned this 22 day of January, 1993.

Signed in the presence of:

Ray Duke
Lisa Souriniller

Norman Smith
Beverly Morris

Ray Duke
Lisa Souriniller

Ray Duke
Lisa Souriniller

Ray Duke
Lisa Souriniller

Beneficiaries

S.S.I.L. INC

By: Sidney Spiegel
Sidney Spiegel, President

SIBLIN & ASSOCIATES, LTD.

By: Herbert Siblin
Herbert Siblin, President

Collateral Assignees

LINDISFARNE INVESTMENTS LIMITED

By: Sidney Spiegel
Sidney Spiegel, President

PANCAN INC.

By: Sidney Spiegel
Sidney Spiegel, President

CRAWMET INVESTMENTS CORPORATION

By: Sidney Spiegel
Sidney Spiegel, President

RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.

Return to (enclose self-addressed stamped envelope)

Name

Address

Property Appraiser Parcel Identification (folio) Number(s):

ORB 7620 Pg 1035
RECORD VERIFIED DOROTHY H WILKEN
CLERK OF THE COURT - PB COUNTY, FL

EXHIBIT "D"

**ACCEPTANCE OF SUCCESSOR TRUSTEESHIP OF THE
LAND TRUST AGREEMENT DATED OCTOBER 25, 1984,
AS AMENDED**

WHEREAS, NORTHERN TRUST BANK OF FLORIDA, N.A. has resigned as trustee of the above-captioned land trust and the beneficiaries of the above-captioned land trust by instrument dated January 22, 1993 have designated SIDNEY SPIEGEL as successor trustee of the land trust agreement; and

WHEREAS, the undersigned, SIDNEY SPIEGEL, has indicated his willingness to accept the successor trusteeship of the trust;

NOW, THEREFORE, SIDNEY SPIEGEL, hereby accepts the successor trusteeship of that certain land trust agreement dated October 25, 1984, as restated on February 7, 1987 and subsequently amended as of May 31, 1988. SIDNEY SPIEGEL hereby agrees to cause NORTHERN TRUST BANK OF FLORIDA, N.A. as trustee as aforesaid to be dismissed as a party to any and all litigation with respect to the above-captioned trust and will cause SIDNEY SPIEGEL, as successor trustee of the trust, to be substituted in lieu of NORTHERN TRUST BANK OF FLORIDA, N.A.

IN WITNESS WHEREOF, SIDNEY SPIEGEL, has executed this Acceptance as of the 22 day of January, 1993.

Signed in the presence of:

[Signature]
[Signature]

[Signature: Sidney Spiegel]
SIDNEY SPIEGEL, as successor trustee as aforesaid
c/o Royal Poinciana Plaza
P.O. Box 11
Palm Beach, Florida 33480

Del Frisco's: Private dining to boost holiday bookings

October 16, 2012 | By [Ron Ruggless](#)

Reflecting general improvements in consumer sentiment, Del Frisco's Restaurant Group Inc., with three higher-end concepts, is anticipating strong holiday private-dining bookings, executives said in an earnings call with analysts Tuesday.

DEL FRISCO'S
RESTAURANT GROUP

The Southlake, Texas-based operator of the Double Eagle Steak House, Sullivan's Steakhouse and Del Frisco's Grille brands on Tuesday posted a net loss of \$2.4 million, or 12 cents per share, on sales of \$47.9 million in the third quarter, which ended Sept. 4 and included expenses from the company's initial public offering on Aug. 1. That compared to a net loss of \$1.8 million, or 10 cents per share, on sales of \$41.3 million in the third quarter 2011.

Executives expressed confidence in upcoming November-December holiday bookings. "We feel pretty confident in our December to this point compared with last year," said Mark Mednansky, chief executive of Del Frisco's. Between 60 and 70 percent of private dining reservations come in mid-November to Dec. 1, he added.

RELATED

- [Hot Concepts 2012: Del Frisco's Grille](#)
- [Newly public Del Frisco's posts 2Q profit increase](#)
- [More restaurant industry finance news](#)

The company intends to ramp up private dining, which represents about 14 percent of current sales. "We've hired a corporate-wide private dining salesperson for the first time in this company's history to spearhead this effort," Mednansky said. Private dining provides higher check averages per guest and higher margins compared to regular dining guests, he said.

The higher-end concepts had seen softness in sales in the post-third quarter September period, Mednansky said, but added: "We're encouraged in that we've seen some acceleration in moving out of

September."

Thomas J. Pennison Jr., chief financial officer, said the company expects to end the fiscal year with a 3.5-percent to 4-percent increase in total same-store sales. For the third quarter, it reported a combined -store same-store sales increase of 3.5 percent, which included a 5.3 percent increase at Del Frisco's Double Eagle and a 1.4 percent bump at Sullivan's. Same-store sales in third quarter 2011 had increased 11.9 percent.

Two promotions helped sales in the third quarter, including the "Power Couple" promotion at Del Frisco's that featured a steak and lobster dinner for two for \$99, and a summer three-course dinner for two at Sullivan's for \$79. It was the second year for both promotions, Mednansky said, and they ran about a week longer than in 2011. Pennison said the 2012 version saw a 30-percent increase in the use of the value promotions.

As of Sept. 4, Del Frisco's Restaurant Group owned and operated 32 restaurants across 18 states, including nine Del Frisco's, 19 Sullivan's and four Del Frisco's Grilles. During the third quarter, the company opened one Del Frisco's Grille in Washington, D.C., and closed one Sullivan's in Dallas.

This past weekend, the company opened a fifth Del Frisco's Grille in Atlanta, and the company plans to debut four to five more of that concept in 2013. It currently has units in Dallas; New York City; Phoenix, Ariz.; and Washington, D.C.

"It's a great back-fill in markets where we already have a Double Eagle or Sullivan's," Mednansky said of the Del Frisco's Grille Concept, adding that it also serves as a "scout" concept to see if one of the two higher end brands might work in a market.

"We're learning a lot with the Grille," Mednansky added. "I'd say the Atlanta décor package is closer to a true prototype for future growth. ... The bar is a huge component of the Grille, and the bar is perfectly situated in this location."

The remaining unit DFRG will open this year is a Double Eagle Steak House in Chicago, which will occupy 24,000 square feet and include a 46-foot-tall wine tower, Mednansky said.

"In our estimation, our three concepts together target a much broader customer base than just fine dining," he said, "and therefore provide us with much more white-space opportunity" for growth.

Contact Ron Ruggless at ronald.ruggless@penton.com.
Follow him on Twitter: [@RonRuggless](#)

[Post a Comment](#)

BY STEVE COOMES

Five years ago, Mark Mednansky, chief executive of Del Frisco's Restaurant Group Inc., which includes 19 higher-end Sullivan's Steakhouse units and nine Del Frisco's Double Eagle Steak House units, wondered aloud to his team, "When our regulars aren't here eating with us, where are they?"

Mednansky knew few people would be able to eat at DFRG's 28 premium steakhouses nightly, but his hunch was his customers were not homebodies who only visited his places.

"We figured they were at Brio [Tuscan Grille] or P.F. Chang's



[China Bistro], exciting venues that cost less than our concepts but still were polished and upscale," he said.

The brands owned by DFRG, a Southlake, Texas-based company that recently began trading on Nasdaq, were known chiefly for their premium beef and fine wines, assets that Mednansky and his team wanted to maintain in a scaled-down concept that was more affordable and casual.

"Not everyone wants to make a special occasion of going out to dinner, especially a business traveler who wants a good meal, but wants to relax," he said. "We wanted to create a place where, if that guy wants it, he can have that good steak, but also a place where he can have a great burger or flatbread if he wants only that, and

pair either with a fine Bordeaux."

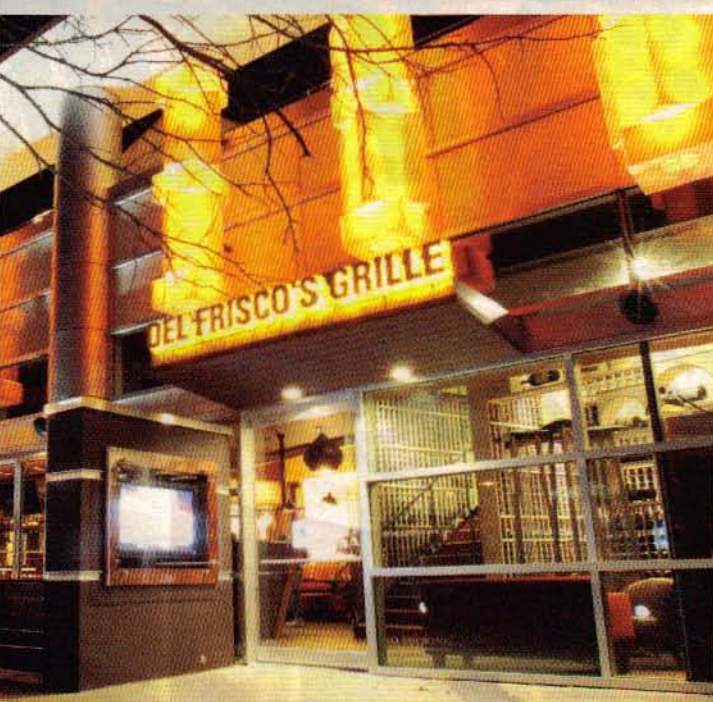
Five years that Mednansky said "seemed like endless menu tasting" and working with designers and architects yielded Del Frisco's Grille in 2011. Now a four-unit concept with a trim yet varied menu and an equally lean but still eyebrow-raising wine list, each Grille has a 7,500-square-foot floor plan that includes seats for about 260 and ample standing room around the bar.

"Our customers like to socialize in a bar that's a fun and very beautiful setting," Mednansky said, adding that about 38 percent of total revenue is generated through beverage transactions. "It's three- to four-people deep every night around our bars."

In making the food less formal,

Nestlé
PROFESSIONAL
Bever

*Ketchum Global I



CONCEPT:

Del Frisco's Grille

OWNER: Del Frisco's Restaurant Group Inc.

HEADQUARTERS: Southlake, Texas

MARKET SEGMENT: upscale casual

NO. OF UNITS: 4

STATES WHERE

LOCATED: Arizona; Washington, D.C.; New York; Texas

SYSTEMWIDE SALES: estimated \$16 million-\$24 million

AVERAGE UNIT

VOLUME: \$4 million-\$6 million

AVERAGE CHECK: \$53

YEAR FOUNDED: 2011

TARGET MARKETS:

Boston; Dallas-Fort Worth; Houston; Nashville, Tenn.; Palm Beach, Fla.

METHOD OF GROWTH/

FUNDING: company owned

WEBSITE:

<http://delfriscosgrille.com>



Del Frisco's Restaurant Group chief executive Mark Mednansky, above left, said Del Frisco's Grille aims to give customers a high-quality yet affordable experience. Chef Thomas Dritsas, above right, developed trendy and shareable dishes, such as Ahi Tacos, left, for the concept.



ads complement the mix, alongside comfort items like Veal Meatloaf, Chicken Schnitzel, and, of course, big beef and seafood items transferred from sister concepts.

Dritsas said the final lineup was the product of constant collaboration among DFRG's many chefs.

"A lot of people contributed their ideas, many of which were features that had sold successfully in our other brands," he said, referring to those restaurants' nightly specials. "Taking what we already knew from our steakhouses and putting that into a ca-

sual concept played a big hand in diversifying the menu."

The average check is \$53, which compares with about \$110 at a traditional Del Frisco's. Even with a build-out cost of about \$3.25 million and placement in high-demand locations, Mednansky said he expects Del Frisco's Grille to deliver a return on investment in as little as two to three years.

Overlooking Manhattan's Rockefeller Center, the first Grille opened in August 2011 and tallied \$5.5 million in sales from October of that year to March 2012. Its second location, in Dallas, rang up \$1.9 million in sales in the first quarter of 2012.

The concept's positioning of

affordable luxury is correct for the times and is properly targeted toward increasingly educated diners, said Dennis Lombardi, a consultant with WD Partners in Dublin, Ohio.

"Premium casual seems to be one of the better-performing subsegments right now, partly because it provides more opportunities for frequency than high-end dining does," Lombardi said. "I think the whole variation on a theme of what's worked well for them already is very good. I give it better than equal odds of doing well." ■

vice president and corporate chef Thomas Dritsas aimed for shareable, trendy dishes such as Ahi Tacos, Lollipop Chicken Wings, Deviled Eggs, an assortment of flatbread pizzas and Two-Fisted Sandwiches easily split at the table. Three protein-centered entrée sal-



The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen - Of Counsel

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E-Mail: jeubanks@blesmlaw.com

1209 North Olive Avenue
West Palm Beach, FL 33401-3515
Phone: (561) 721-4000
Facsimile: (561) 721-4001

November 6, 2012

Via E-mail and Hand Delivery

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: Survey Says - 579 "Pre-Taking" Parking Spaces in the Plaza

Dear Mayor and Town Council:

Recently there has been an interest by the Town in discovering exactly how many parking spaces are presently in the Plaza¹, and how many existed prior to the Florida Department of Transportation ("FDOT") Order of Taking dated January 22, 2010 ("Order of Taking").² Within its Zoning Application ("Application") and its presentations at the August 15, 2012 and October 10, 2012 Town Council Meetings, Del Frisco's Restaurant Group ("Del Frisco's") has taken the position that there are 729 parking spaces at the Plaza subsequent to "losing 41 parking spaces" as a result of the Order of Taking.³ The Long-term Lessee of the Plaza, Sterling Palm Beach LLC ("Sterling") has also taken the position that there are 729 "post-taking" parking spaces at the Plaza. The problem with these statements is that they are demonstrably false.

A. 2008 Sterling Survey Shows only 579 "Pre-Taking" Parking Spaces

At the October 10, 2012 Town Council Meeting former Town Planning Administrator Tim Frank testified that he walked the Plaza and counted 656 parking spaces. Town resident Bill Cooley testified that he (and his dog) walked the Plaza the prior Sunday and counted 659 parking spaces. Both numbers are far shy of the 729 spaces claimed by the Applicant and Sterling to exist, much less the 770 (i.e. 729 existing + 41 "lost" spaces) which the Applicant and Sterling claim existed prior to the Order of Taking.

¹ Once again, the Town Council need not even address the myriad of issues and arguments regarding parking if it finds that the Application is not Town Serving.

² A copy of the Order of Taking is attached hereto as Exhibit "A."

³ See, e.g., Statement of Harvey Oyer, Esq. at August 15, 2012 Town Council that "[p]ost taking, meaning post condemnation, there will be 729 spaces available in the entire plaza."

Even more telling, however, is the fact that Sterling knows there were never 770 parking spaces at the Plaza. In conjunction with its leasing of the Plaza in March of 2008,⁴ Sterling commissioned a Topographic Survey ("Survey") of the Plaza which was performed by Associated Land Surveyors, Inc., and included a "Parking Tabulation."⁵ As set forth clearly within the Surveyor's notes, at the bottom of the Survey, as of March 12, 2008, (almost two years before the FDOT Order of Taking), there were 574 Regular Parking Spaces and 5 Handicap Spaces for *a total of 579 parking spaces at the Plaza*.⁶ As such, at the time of its leasing the Plaza, Sterling was well aware of the fact that the available parking in the Plaza was never even close to 770 parking spaces.

B. Bulk of Parking Spaces "Lost" Belonged to the Town, Not Sterling

Furthermore, neither Sterling nor Del Frisco's⁷ ever "lost 41 parking spaces." Instead, both the Sterling Survey as well as the FDOT Survey⁸ of the property "taken", consisting of Parcel 100 (belonging to the Town) and 101 (which belonged to Spiegel with a long-term lease interest by Sterling), and even the aerial depiction⁹ of these Parcels, clearly shows that the bulk of the "41 parking spaces lost" never belonged to Sterling in the first place. Instead they belonged to the Town. A count of the spaces contained in Parcel 100 which was owned by the Town, demonstrates that at least 21 of the 41 spaces alleged to have been "lost" belonged to the Town, not Spiegel or Sterling.

⁴ A copy of the front page of the redacted Ground Lease of the Plaza provided to the Town by Sterling, a copy of which is attached hereto as Exhibit "B", shows an effective date of March 31, 2008.

⁵ A reduced copy of the Survey is attached hereto as Exhibit "C." The Survey was originally filed with the Town in support of Sterling's Application for Certificate of Appropriateness in conjunction with Sterling's attempt to redevelop the Plaza. Notably, on its face, the Survey is Certified to Sterling Palm Beach LLC.

⁶ An expanded portion of the Surveyor's Notes is attached hereto as Exhibit "D."

⁷ Inexplicably, Del Frisco's claims *its* "loss of 41 parking spaces" is a hardship, which is impossible given that Del Frisco's has no ownership interest in either Parcel 100 or 101 which were subject to the Order of Taking. Moreover, the Order of Taking took place more than two and a half years prior to the filing of Del Frisco's Application. As a result, Del Frisco's was well aware of the taking, and reduction of parking, *prior* to proposing the tearing out office space and replacing it with the more intensive use of restaurant space. As such, the FDOT Order of Taking cannot be the basis for a legal claim of hardship.

⁸ A reduced copy of the FDOT Survey of Parcels 100 and 101 initially dated October 31, 2007, finalized on February 4, 2008 and "checked" on February 13, 2008 is attached hereto as Exhibit "E." Once again, both Spiegel and Sterling clearly knew of this Survey as it was dated before Sterling's Survey, and Parcel 100 was even noted as "Not Included" in the Sterling Survey. A blow up of that portion of the Sterling Survey exempting out Parcel 100 is attached hereto as Exhibit "F."

⁹ A copy of the FDOT aerial of Parcels 100 and 101 is attached hereto as Exhibit "G."

Once again, this information is not news to either Spiegel or Sterling. As far back as August 22, 2003, in response to questioning by Spiegel of the Town's ownership of Parcel 100, the Town provided him with a package of documentation¹⁰ including:

1. A survey dated April 26, 2000 prepared by W.L. Fish and Company illustrating the boundaries of the Town's parcel¹¹;
2. A print-out from the Palm Beach County Property appraiser's office noting the Town of Palm Beach as property owner;
3. A copy of the Deed to the Town demonstrating the ownership of Parcel 100;
4. A copy of the Deed transferring ownership of the Plaza to Spiegel, which excepted out Parcel 100.

Again, it can clearly be seen from the W.L. Fish survey that there were 21 "illegal" parking spaces within the Plaza which were located on the Town's property (Parcel 100). Therefore, neither Sterling nor Del Frisco's ever "lost 41 parking spaces."

C. "Re-Striping" of Parking in 2010

Knowing that the Plaza was well short of the parking required in the Plaza, and facing a Code Enforcement action (CE#10-587)¹², Sterling agreed to "re-stripe" the South side of the parking in the Plaza¹³ to capture as many parking spaces available, including "triple stacking" parking on the south side of the Plaza bordering the Mysore Fig tree and the Palm Beach Towers. The result is a maze of parking spaces which while now being striped as "triple stacked," there is: a) no access to the middle parking spaces; b) insufficient (and in some case no) backing and turning space; and c) no valet to assist in parking in the "triple stacked" area. Nevertheless, "technically" the number of parking spaces in the Plaza increased from 579 found in the Sterling Survey to the 656 counted by Mr. Frank.

¹⁰ A copy of the package of all of these items is attached hereto as Composite Exhibit "H."

¹¹ The W.L. Fish survey clearly shows that there were 21 "illegal" parking spaces in Parcel 100 which belongs to the Town.

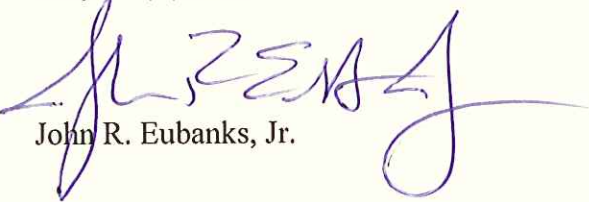
¹² Code Enforcement Case #10-587 was really a follow up and continuation of Code Enforcement Case # 08-2566 for illegally striping the Plaza without a permit or site approval which had been delayed due to Sterling's request to redevelop the Plaza.

¹³ Sterling's re-striping appears to be loosely based upon a 1999 parking Site Plan. However, such Plan is no longer valid in that: a) it included Parcel 100 which belonged to the Town, which (as detailed above) the Town confirmed in 2003 was, in fact, not part of the Plaza; and b) includes Parcel 101 as well, which has since been taken as part of the Order of Taking by the FDOT. As such, it is physically impossible for the Plaza to be striped in the manner set forth in the 1999 Site Plan.

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
November 6, 2012
Page 4

In the end, clearly: a) prior to the FDOT Order of Taking, there were only 579 parking spaces at the Plaza; b) there are not presently 729 spaces in the Plaza; b) there never were 770 parking spaces in the Plaza; c) the bulk of the spaces "lost" due to the Order of Taking came from the Town's Parcel (100), not that of Spiegel/Sterling; and most importantly, d) both Sterling and Del Frisco's were well aware of this situation prior to Del Frisco's filing of its Application. Consequently, the sheer fact that Del Frisco's Application, as well as its presentations, rely upon improper and incorrect parking numbers and assertions should result in the denial of its Application.

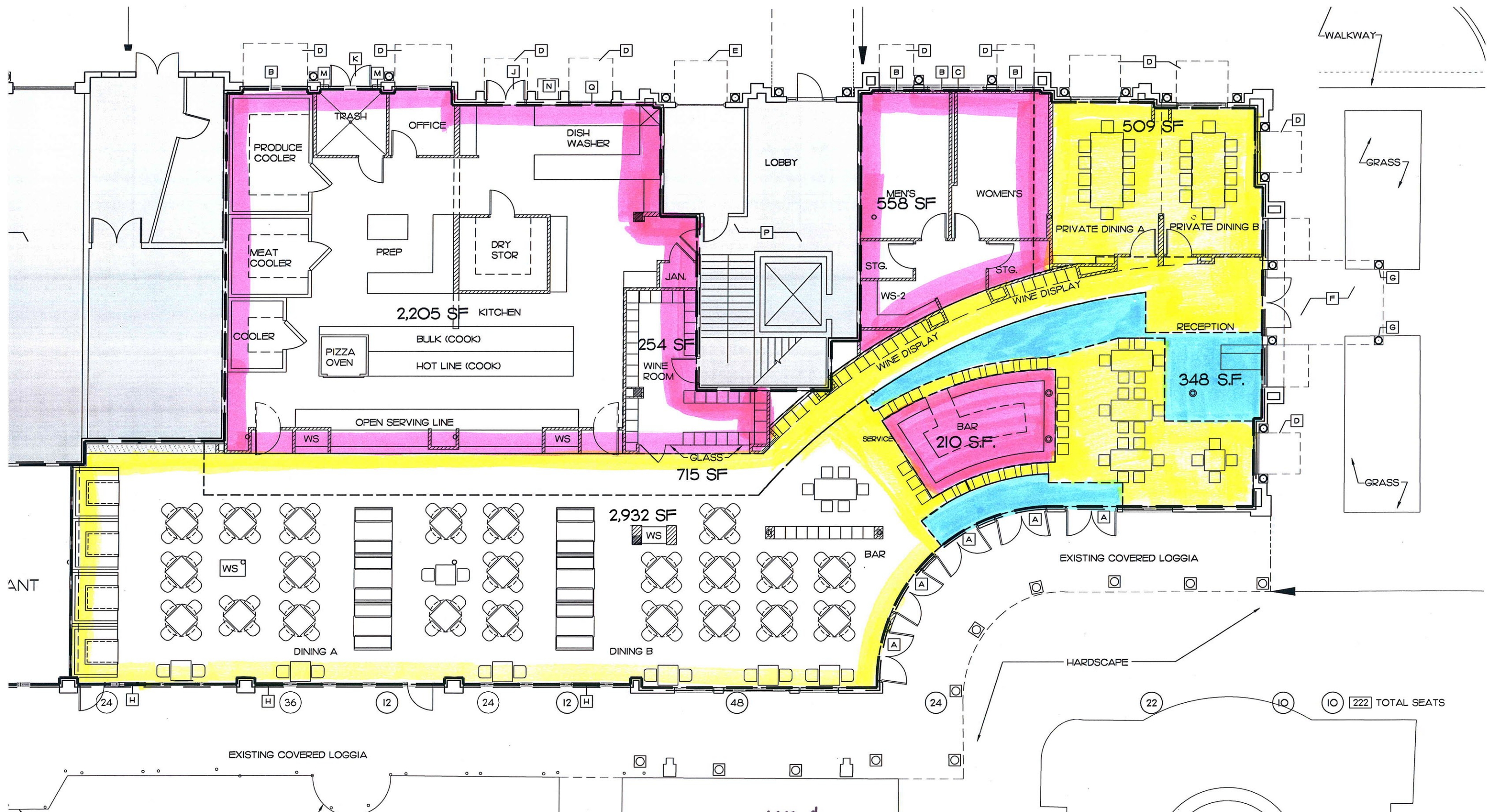
Very truly yours,



John R. Eubanks, Jr.

Enclosures

cc: John Page, Director of Planning, Zoning and Building
Peter Elwell, Town Manager
Paul Castro, Zoning Administrator
John C. "Skip" Randolph, Esq.
Town Clerk, Town of Palm Beach
John Grosskopf, General Manager Palm Beach Towers
Henry Goldsmith, President of Board of Palm Beach Towers Condominium



18 MAY 2012

REVISED 3 October 2012

DEL FRISCOS- Royal Poinciana Plaza

ANALYSIS OF REQUIRED PARKING

APPROACH B

USING SEATS AT 1 CAR/3 SEATS FOR ALL DINING/BAR SEATING + CIRCULATION AREA & 1/300 SF FOR KITCHEN/WINE/RESTROOMS/ INSIDE BAR & 1/45 SF FOR PERIMETER OF BAR & WAITING AREA

SPACE			AREA	SEATS	PARKING RATIO	PARKING SPACES REQ'D
OPEN STANDING AREA	OPEN STANDING SPACE AT & AROUND ENTIRE BAR AREA & RECEPTION AREA		370	-	45	8.22
RESTAURANT & BAR SEATING, PRIVATE DINING+ CIRCULATION			4,135	222	3	74.0
OTHER SUPPORT SPACE (KITCHEN / RESTROOMS / INSIDE BAR)			3,227		300	10.76
TOTALS			7,732	222		93.0
LESS PARKING REQ'D FOR RETIRED 2ND FL AREA			2,589		300	8.6
BALANCE REQUIRED						84.3
LESS CARS ALLOCATED TO RETAIL			7,732		300	25.8
BALANCE NEW CARS NEEDED						58.6

SEATING	SEATS
OPEN STANDING AREA - RECEPTION	-
DINING	178
BAR	24
PRIVATE A & B	20
TOTAL	222

ORIGINAL

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIVIL ACTION NO.: 502009CA035248 AN

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Petitioner,

-vs-

Parcels No.: 100 / 101

TOWN OF PALM BEACH, a
Florida municipal corporation, et al.,

Defendants.

RECEIVED
DISTRICT 4
JAN 25 AM 10:03
CLERK OF COURT
Palm Beach County, Florida

ORDER OF TAKING

THIS CAUSE coming on to be heard by the Court, and it appearing that proper notice was first given to all the Defendants and to all persons having or claiming any equity, lien, title, or other interest in or to the real property described in the Petition that the Petitioner would apply to this Court on the 22nd day of January, 2010, for an Order of Taking, and the Court being fully advised in the premises, upon consideration, it is, therefore,

ADJUDGED:

1. That the Court has jurisdiction of the subject matter of and the parties to this cause;
2. That the pleadings in this cause are sufficient, and the Petitioner is properly exercising its delegated authority;

[Signature]
1/22/2010

3. That each Estimate of Value filed in this cause by the Petitioner was made in good faith and based upon a valid appraisal;

4. That upon the payment of the deposit hereinafter specified into the Registry of this Court, all right, title or interest specified in the Petition as described herein shall vest in the Petitioner;

Item/Segment No. 4124892
(Section No. 93060-2527)
(04-30-08)

Fee Simple Right of Way

Parcel No. 100 State Road A-1-A Palm Beach County Description

A portion of land lying South of and adjacent to State Road A-1-A (Royal Poinciana Way) in Government Lot 1, Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Northwest Corner of Tract 13, BREAKERS ROW PLAT NO. 1 - REPLAT, according to the plat thereof, as recorded in Plat Book 46, Page 188, of the Public Records of Palm Beach County, Florida; thence North $88^{\circ}54'30''$ West along the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way) and its extension, as shown on the Florida Department of Transportation Right of Way Map for Item/Segment No. 4124892, Section No. 93060-2527, a distance of 603.57 feet; thence North $01^{\circ}05'30''$ East along said Southerly Existing Right of Way Line, a distance of 10.00 feet; thence North $88^{\circ}54'30''$ West continuing along said Southerly Existing Right of Way Line, a distance of 34.75 feet to the POINT OF BEGINNING; thence South $00^{\circ}06'10''$ East, a distance of 49.66 feet; thence South $82^{\circ}43'52''$ West, a distance of 149.45 feet; thence North $88^{\circ}58'37''$ West, a distance of 62.24 feet; thence North $06^{\circ}04'30''$ East, a distance of 71.88 feet to a point on said Southerly Existing Right of Way Line for State Road A-1-A (Royal Poinciana Way); thence South $88^{\circ}11'30''$ East along said Southerly Existing Right of Way Line, a distance of 12.08 feet; thence South $88^{\circ}54'30''$ East continuing along said Southerly Existing Right of Way Line, a distance of 190.74 feet to the POINT OF BEGINNING.

Containing 13,146 square feet, more or less.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 100	State Road A-1-A	Palm Beach County	Description
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(Continued from Previous Page)

OWNED BY: TOWN OF PALM BEACH, a Florida municipal corporation

ENCUMBERED BY: EASEMENT, and all subsequent supplements thereto, recorded in O.R. Book 3722, Page 1952, Public Records of Palm Beach County, Florida, in favor of: FLORIDA POWER AND LIGHT COMPANY, a Florida corporation.

Item/Segment No. 4124892
(Section No. 93060-2527)
(07-09-09)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

A portion of land lying in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Northwest Corner of Tract 13, BREAKERS ROW PLAT NO. 1 - REPLAT, according to the plat thereof, as recorded in Plat Book 46, Page 188, of the Public Records of Palm Beach County, Florida; thence North 88°54'30" West along the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way) and its extension, as shown on the Florida Department of Transportation Right of Way Map for Item/Segment No. 4124892, Section No. 93060-2527, a distance of 603.57 feet; thence continue along said Southerly Existing Right of Way Line for State Road A-1-A (Royal Poinciana Way) for the next three (3) calls: (1) North 01°05'30" East, a distance of 10.00 feet; thence (2) North 88°54'30" West, a distance of 225.49 feet; thence (3) North 88°11'30" West, a distance of 12.08 feet to a point on the Southerly Bulkhead Line for the Intracoastal Waterway as shown on said map; thence South 06°04'30" West along said Bulkhead Line, a distance of 67.55 feet to the POINT OF BEGINNING; thence continue South 06°04'30" West, a distance of 4.33 feet; thence South 88°58'37" East, a distance of 62.24 feet; thence South 82°43'52" West, a distance of 135.89 feet; thence North 07°00'31" East, a distance of 25.10 feet; thence South 88°06'53" East, a distance of 70.00 feet to the POINT OF BEGINNING.

Containing 1,637 square feet, more or less.

AND

A portion of land lying South of and adjacent to State Road A-1-A (Royal Poinciana Way) in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

(Continue on the next page)

Item/Segment No. 4124892
(Section No. 93060-2527)
(07-09-09)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

Commence at the Northwest Corner of Tract 13, BREAKERS ROW PLAT NO. 1 - REPLAT, according to the plat thereof, as recorded in Plat Book 46, Page 188, of the Public Records of Palm Beach County, Florida; thence North 88°54'30" West along the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way) and its extension, as shown on the Florida Department of Transportation right of Way Map for Item/Segment No. 4124892, Section No. 93060-2527, a distance of 383.56 feet to the POINT OF BEGINNING; thence South 01°05'30" West, a distance of 20.00 feet; thence North 88°54'30" West, a distance of 120.00 feet; thence South 82°43'52" West, a distance of 135.16 feet; thence North 00°06'10" West, a distance of 49.66 feet to a point on the Southerly Existing Right of Way Line for said State Road A-1-A (Royal Poinciana Way); thence continues along said Southerly Existing Right of Way line for the next three (3) calls:
(1) South 88°54'30" East, a distance of 34.75 feet; thence
(2) South 01°05'30" West, a distance of 10.00 feet; thence
(3) South 88°54'30" East, a distance of 220.01 feet to the POINT OF BEGINNING.

Containing 6,751 square feet, more or less.

All together containing 8,388 square feet, more or less.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: MEMORANDUM OF GROUND LEASE, and all subsequent supplements thereto, recorded in O.R. Book 22551, Page 401, Public Records of Palm Beach County, Florida, in favor of: STERLING PALM BEACH, LLC, a Florida limited liability company.

EASEMENT, and all subsequent supplements thereto, recorded in O.R. Book 3722, Page 1952, Public Records of Palm Beach County, Florida, in favor of: FLORIDA POWER AND LIGHT COMPANY, a Florida corporation.

UNRECORDED LEASE in favor of ADVANCED MENTAL HEALTH CARE, INC., a Florida corporation.

UNRECORDED LEASE in favor of ALATA PALM BEACH, INC., a Florida corporation.

UNRECORDED LEASE in favor of ALLEY, MAASS, ROGERS & LINDSAY, P.A., a Florida Corporation.

UNRECORDED LEASE in favor of ALPHABET SOUP, LLC, a Florida limited liability company,

UNRECORDED LEASE in favor of ANGELO'S OF PALM BEACH, INC., a Florida corporation.

UNRECORDED LEASE in favor of CONNIE BEAUDOIN.

UNRECORDED LEASE in favor of BG STRATEGIC ADVISORS, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of BOCA NURSING SERVICES, INC., a Florida corporation.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: NOTICE OF COMMENCEMENT recorded in O.R. Book 22904, Page 1259, Public Records of Palm Beach County, Florida, in favor of BUCKEYE PLUMBING, INC., a Florida corporation,

UNRECORDED LEASE in favor of CHIROPRACTIC CARE OF PALM BEACH, INC., a Florida corporation.

UNRECORDED LEASE in favor of D'AMBROSIO MANAGEMENT COMPANY, INC., a Florida corporation.

UNRECORDED LEASE in favor of Dr. SUSAN LEE, LCSW.

UNRECORDED LEASE in favor of EDGARDO ARTURO GRANDE, DMD, P.A., a Florida dissolved corporation.

UNRECORDED LEASE in favor of EDWARD, INC., a Florida corporation.

UNRECORDED LEASE in favor of FLORIDA INSTITUTE FOR RECOVERY AND SEX THERAPY, INC., a Florida corporation.

UNRECORDED LEASE in favor of FRANCIS P. CONROY, D.M.D., P.A., a Florida corporation.

UNRECORDED LEASE in favor of GRAND PRIX IHM, INC., a Florida corporation.

UNRECORDED LEASE in favor of HILLSTONE RESTAURANT GROUP, INC., a Delaware corporation.

UNRECORDED LEASE in favor of HOME OFFICE TRANSPORT, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of INNKEEPERS USA LIMITED PARTNERSHIP, a Virginia Limited Partnership.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: UNRECORDED LEASE in favor of ISLAND HOSPITALITY. FLORIDA MANAGEMENT, INC., a Florida corporation.

UNRECORDED LEASE in favor of ISLAND HOSPITALITY MANAGEMENT II, INC., a Florida corporation.

UNRECORDED LEASE in favor of ISLAND HOSPITALITY MANAGEMENT, INC., a Florida corporation.

UNRECORDED LEASE in favor of ISLAND MEDICAL CARE, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of JUST FOR YOU EXERCISE & RESOURCE CENTRE, INC., a Florida corporation.

UNRECORDED LEASE in favor of LAVANDE PB, INC., a Florida corporation.

UNRECORDED LEASE in favor of LAYNE D. NISENBAUM, D.O., P.A., a Florida corporation.

UNRECORDED LEASE in favor of MARTHA A. GOTTFRIED, INC., a Florida corporation.

UNRECORDED LEASE in favor of MCCARTY CONSULTING, LLC, a Florida Limited Liability Company.

UNRECORDED LEASE in favor of METTLER, SHELTON, RANDOLPH, CARROLL & STERLACCI, P.L., a Florida limited liability company.

UNRECORDED LEASE in favor of MIRSKY REALTY GROUP, LLC, a Florida limited liability company.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions of a certain Trust Agreement dated October 25, 1984, and known as Trust No. 31520371

ENCUMBERED BY: UNRECORDED LEASE in favor of MURPHY REID, LLP, a Florida limited liability partnership.

UNRECORDED LEASE in favor of NRT NEW YORK, LLC, a Delaware limited liability company.

UNRECORDED LEASE in favor of PALISADE CAPITAL MANAGEMENT, LLC, a New Jersey limited liability company.

UNRECORDED LEASE in favor of PARK AVENUE MORTGAGE GROUP OF FLORIDA, INC., a Florida corporation.

UNRECORDED LEASE in favor of POINCIANA MANAGEMENT, INC., a Florida corporation.

NOTICE OF COMMENCEMENT recorded in O.R. Book 23327, Page 1233, Public Records of Palm Beach County, Florida, in favor of PRIME MECHANICAL SERVICES, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of ROYAL PET GROOMING, INC., a Florida corporation.

UNRECORDED LEASE in favor of SBZZ PALM BEACH, LTD., a Florida limited partnership.

UNRECORDED LEASE in favor of SIDNEY KOHL.

UNRECORDED LEASE in favor of STERLING RETAIL SERVICES, INC., a Florida corporation.

UNRECORDED LEASE in favor of SOTHEY'S INTERNATIONAL REALTY, INC., a Michigan corporation.

Item/Segment No. 4124892
(Section No. 93060-2527)

Fee Simple Right of Way

Parcel No. 101 State Road A-1-A Palm Beach County Description

(Continued from Previous Page)

OWNED BY: SIDNEY SPIEGEL, as Successor Trustee, under the provisions
 of a certain Trust Agreement dated October 25, 1984, and
 known as Trust No. 31520371

ENCUMBERED BY: UNRECORDED LEASE in favor of SUNTRUST BANK, a
 Georgia corporation.

UNRECORDED LEASE in favor of THE FITNESS EDGE, INC.,
a Florida corporation.

UNRECORDED LEASE in favor of THE MANHATTAN
MORTGAGE CO., INC., a New York corporation.

UNRECORDED LEASE in favor of THE MICHAEL R.
MCCARTY RESTAURANT GROUP, LLC., a Florida limited
liability company.

UNRECORDED LEASE in favor of THE STERLING
ORGANIZATION, LLC, a Florida limited liability company.

UNRECORDED LEASE in favor of THE TREE OF LIFE
FOUNDATION INTERNATIONAL, INC., a Florida not for profit
corporation.

UNRECORDED LEASE in favor of TOOJAY'S PALM BEACH,
LLC, a Florida limited liability company.

5. That the deposit of money will secure the persons lawfully entitled to the compensation which will be ultimately determined by final judgment of this Court;

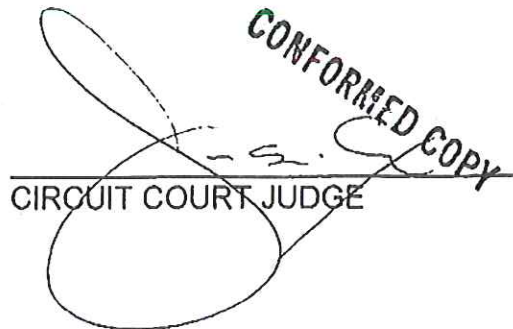
6. That the sum of money to be deposited in the Registry of the Court within twenty (20) days of the entry of this Order shall be in the amount of:

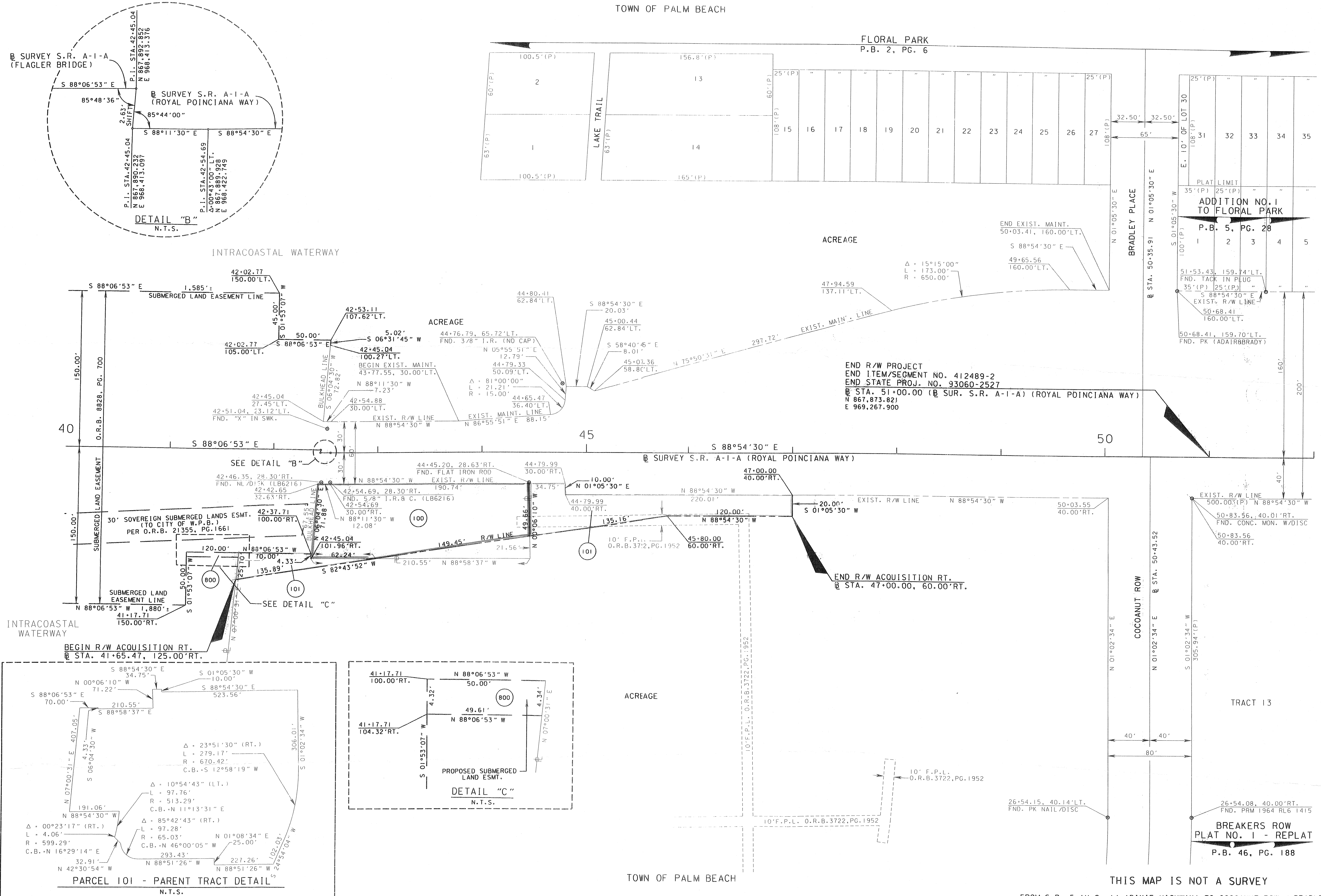
Parcel 100	\$1,046,900.00
Parcel 101	<u>\$1,158,200.00</u>
TOTAL	<u>\$2,205,100.00</u>

7. That on deposit as set forth above and without further notice or Order of this Court, the Petitioner shall be entitled to possession of the property described in the Petition.

8. The taking is pursuant to the eminent domain power of Petitioner, without the consent and over the objection of Sterling Palm Beach, LLC, on behalf of itself and on behalf of Sidney Spiegel, et al, Island Properties of Palm Beach, Inc., Sterling Retail Services, Inc., The Sterling Organization, LLC, and Hillstone Restaurant Group, Inc.. In the event compensation is submitted for jury determination, the jury will be advised that the Court determined the Petitioner may condemn the properties involved in this action.

DONE AND ORDERED this 22 day of January, 2010, in the State of Florida, County of Palm Beach.


CONFIRMED COPY
CIRCUIT COURT JUDGE



THIS MAP IS NOT A SURVEY

FROM S.R. 5 (U.S. 1) (DIXIE HIGHWAY) TO COCOANUT ROW / BRADLEY PLACE

FLORIDA DEPARTMENT OF TRANSPORTATION
SURVEYING AND MAPPING

APPROVED BY  DATE 04/30/08
DISTRICT RIGHT OF WAY SURVEYOR

[illegible]

FED. PROJ. NO. N/A

STATE ROAD NO. A-1-A

SECTION 93060-2527

PALM BEACH COUNTY

MAPS PREPARED BY: KIMLEY-HORN AND ASSOCIATES, INC., LB #696	DATA SOURCE: SEE SHEET 1 SCALE: 1" = 40'
ITEM/SEG. NO. 412489-2	SHEET 6 OF 8