



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

SPECIAL TOWN COUNCIL MEETING

AGENDA

TOWN COUNCIL CHAMBERS

MONDAY, OCTOBER 13, 2014

1:00 PM

- I. CALL TO ORDER AND ROLL CALL
Mayor Gail L. Coniglio
Robert N. Wildrick, President
William J. Diamond, President Pro Tem
Richard M. Kleid
Michael J. Pucillo
Penelope D. Townsend
- II. PLEDGE OF ALLEGIANCE
- III. APPROVAL OF AGENDA
- IV. HISTORY OF THE PALM HOUSE PROJECT
[John Page, Director of Planning, Zoning, and Building]
- V. PROCEDURES FOR CONTINUED REVIEW
OF APPLICANT'S REQUESTS FOR SITE PLAN REVIEW
WITH SPECIAL EXCEPTIONS AND VARIANCES.
[John C. Randolph, Town Attorney]

VI. **CONSIDERATION OF APPLICATION FOR SITE PLAN REVIEW #12-2014 WITH SPECIAL EXCEPTIONS AND VARIANCES** The application of Gregory S. Kino, Esq., 160 Royal Palm, LLC; relative to property commonly known as 160 Royal Palm Way (“The Palm House”); described as Being all of Lots 31, 32 and 33, Block F, ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the C-B Zoning District. The following approvals are requested:

1. The Applicant is requesting a modification of the site plan which requires approval from the Town Council. The following is a list of the proposed changes to the approved hotel plan:
 - a. Reintroduction of a rectangular shaped pool (26 x 48) previously approved by the Town Council from curvilinear design decision by prior owner.
 - b. Addition of a 75 square foot men's restroom on the pool deck and reduction of previously approved employee pool service building by 75 square feet to provide for women's pool restroom.
 - c. Relocation of 573 square feet of interior Function Room restrooms to Function Room exterior west elevation to serve the Function Room and elimination of water wall.
 - d. Reduction of pool cabanas from four to three and their relocation from the west to the south wall in pool area.
 - e. Redesign of pool deck and abutting Function Room court area with landscape, hardscape, and planters.
 - f. Reintroduction of private spa deck on Function Room roof (with addition of balustrade parapet) previously approved sundeck by the Town Council but relocated by prior owner.
 - g. Addition of enclosed elevator and two stairways to proposed Function Room private spa roof deck as required by Building Code.
 - h. Addition of 1,483 square foot for finishing kitchen, “green room” and speaker area on the east side of the previously approved Function Room (no change in approved seats for Function Room).
 - i. Reintroduction of an awning to connect main hotel and Function Room previously approved by the Town Council but eliminated by prior owner.

- j. Addition of awnings over existing room balconies on north elevation, second floor, and interior east pool courtyard elevation, 3rd floor.
- k. Redesign of main lobby/dining area on first floor (no additional seats).
- l. Redesign of second floor dining area and restrooms with 39 additional dining seats proposed to be relocated to third floor deck pursuant to special exception request.
- m. Conversion of one third floor hotel unit located next to the second floor dining area to a private dining room (no additional seats – relocation of 12 previously approved seats from second floor dining area).
- n. Enclosure of a stairway and relocation and enclosure of a stairway, both previously approved, to third floor deck.
- o. Addition of enclosed passenger elevator and enclosure of previously approved service elevator to third floor deck.
- p. Addition of 80 square foot enclosed storage room to be attached to proposed stairway enclosure and bar/beverage station with 410 square feet of decorative, open trellis on third floor deck.
- q. Addition of 1,132 square feet to and 39 dining seats on third floor deck (to total of 66 outdoor seats previously approved for second floor north and south dining terraces and pool dining area).
- r. Design change to front door (north), west restaurant and east egress doors.
- s. Enclosure of first through third level exterior access corridors on most eastern elevation, above garage entrance.
- t. Addition of second floor wall opening on north elevation for second floor dining service bar to serve north dining terrace.
- u. Addition of awning over doors and dining area on north dining terrace.
- v. Change of building color to custom pink hue.
- w. Redesign and reduction of basement main kitchen by 100 square feet.
- x. Modify the previously approved 7,964 square foot spa/salon/fitness area in basement level to add 1,006 square feet for a total of 8,960 square feet which requires a 10 parking space reduction in the basement.

- y. Add a 6,719 square foot Premier Guest Service Area in the basement level to be utilized by hotel guests, which requires a 2 parking space reduction in the basement.
 - z. Addition of 3,804 square feet of back of house space to basement level and change of such uses for hotel administrative offices on the west side of the basement level, kitchen coolers/freezers, employee break room, restrooms and housekeeping and relocation of laundry/linen to east side of basement level, which requires a 4 parking space reduction in the basement.
2. Request special exception approval for modifications to approved condominium hotel and expansion/modification of hotel accessory uses, including addition of 1,006 square feet of basement level spa/salon/fitness area and 6,719 square feet of hotel lounge, business center, guest recreation and services area (“Premier Guest Service Area”) to primarily serve hotel guests; addition of 3,804 square feet for back of house support services in the basement level and change of such uses to administrative offices, employee break room, restrooms, housekeeping, and kitchen coolers/freezers; addition of 75 square feet for pool deck restrooms; addition of 573 square feet for exterior Function Room bathrooms; change of use to pool deck and adjacent Function Room courtyard area to allow for pre-function events; redesign and reduction of main kitchen by 100 square feet; addition of 1,483 square feet for Function Room finishing kitchen, “green room” and speaker area; reintroduction of previously approved function room sundeck to private spa deck on roof; addition of 39 dining seats to interior second floor restaurant and relocation of those seats to the previously approved third floor deck; and conversion of one hotel room to a private dining room and relocation of 12 previously approved second floor interior restaurant dining room seats to such room.
3. Request special exception approval to permit outdoor dining with a maximum of 39 seats on the previously approved third floor deck and addition of three bar/beverage stations customarily associated with a hotel use: one on the third floor deck, one to serve the second floor north dining terrace and one portable station for the Function Room courtyard area for pre-function events (total approved outside seating in other areas is 66 seats). Total outdoor seating proposed to be 105 seats.

4. The following variances are being requested in order to construct the proposed project:
- a. A variance request to permit construction of an addition to the basement level (for area not below existing building footprint) to allow for back of house space, expanded spa and Premier Guest Service Area which increases lot coverage to 71%, in lieu of the 66.4% existing and the 50% maximum lot coverage allowed by Code.
 - b. A variance request to allow a basement addition to extend further outside the confines of the existing building foot print which is not permitted by code.
 - c. A variance request to allow a landscaped open space of 12.2% in lieu of the 12.7% existing and the 30% minimum required by the Code.
 - d. A variance request for a front yard setback of 7.66 feet in lieu of the 29.54 foot minimum front yard setback required to install a retractable awning which covers the second floor doors and the previously approved outdoor seating area on the north dining terrace.
 - e. A variance request for a 10 foot rear yard setback in lieu of the 15 feet required to relocate previously approved pool cabanas.
 - f. A variance request for a 10 foot rear yard setback in lieu of the 15 foot minimum required for the location of a men's restroom to service the pool area.
 - g. A variance request for a 10 foot rear yard setback in lieu of the 15 foot minimum required to construct an addition to the east side of the previously approved Function Room.
 - h. A variance request for the non-conforming hotel to not provide an additional required loading space for commercial deliveries based on the additional accessory commercial square footage of 7,864 proposed for the hotel.
 - i. A variance request to allow changes to the use of the 1,881 square foot third floor deck as Town Code provides for a two story limitation. The prior variance limited the use of the third floor deck to a private spa deck and there is a proposed change of use associated with that variance to allow for the addition of 39 outdoor dining seats, a bar/beverage station customarily associated with hotel uses (with 410 square feet of decorative, open trellis), 80 square foot enclosed storage room and 1,132 square foot expansion of deck area.
 - j. A variance request for height and overall height to allow a 410 square foot open trellis on the third floor deck associated with the proposed outdoor dining area. The variance request is for the height of the trellis on the third floor to be 41 feet high in lieu of the 25 foot maximum allowed which is 16 feet over the maximum

building height of 25 feet and the maximum overall height of 41 feet in lieu of the 30 foot maximum allowed.

- k. A variance request of 68 off-street parking spaces for the proposed addition of the finishing kitchen, “green room” and speaker area for the Function Room, the increase in spa square footage, the loss of parking spaces resulting from the addition of the Function Room addition, the additional back of house space to serve the hotel, the additional 39 dining seats and the Premium Guest Services Area located in the basement level.

[Attorney: Gregory S. Kino]

[Architectural Commission Recommendation: Implementation of the proposed variances related to the architecture will not cause negative architectural impacts to the subject property. Carried 6-1]
Deferred from the September 10, 2014, Town Council Meeting.

VII. PROPOSED AMENDMENT OF DECLARATION OF USE
AGREEMENT OUTLINING PROPOSED MODIFICATIONS TO THE
TERMS AND CONDITIONS OF PREVIOUS AGREEMENTS BETWEEN
THE TOWN OF PALM BEACH AND PALM HOUSE OWNERS.
[John S. Page, Director of Planning, Zoning and Building]

VIII. ANY OTHER MATTERS

IX. ADJOURNMENT

PLEASE TAKE NOTE:

The progress of this meeting may be monitored by visiting the Town’s website (www.townofpalmbeach.com) and clicking on “Meeting Audio” in the left column. If you have questions relative to this feature, please contact the Office of Information Systems (561) 227-6315.

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 Special Town Council Meeting on: October 13, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Site Plan Review No. 12-2013 with Special Exceptions and Variances, and
Review of the Proposed Restatement of the Declaration of Use Agreement, Palm House
Hotel, 160 Royal Palm Way

Date: October 9, 2014

STAFF RECOMMENDATION

Staff requests Town Council direction regarding Site Plan Review #12-2014 with Special Exceptions and Variances for the Palm House, 160 Royal Palm Way, as last discussed on September 10, 2014.

Approval of any element(s) of the pending application would trigger corresponding amendments to the previously approved Declaration of Use Agreement. The Applicant has submitted a Draft in add/delete format.

GENERAL INFORMATION

The Town Council granted 160 Royal Palm LLC initial site plan, special exceptions, and variances approval for the Palm House condo hotel in 2007. Owners subsequently proposed, and the Council subsequently approved, additional site plan review changes, special exceptions and variances in 2012 and 2013. Those approvals are outlined in the attached Exhibit A.

The project remains unfinished, approximately twenty months past the Town-mandated and extended completion date of February 14, 2013. The extended deadline dates and the late fee associated with not meeting the construction deadline are set forth in Exhibit B.

A recent ownership/management change, coupled with unauthorized physical changes and newly proposed alterations, prompt this latest request for site plan review, special exceptions, and variances. Unauthorized and unapproved changes to the Palm House are outlined in Exhibit C.

The Town Council considered the pending zoning application at its September 10, 2014 meeting. As presented at said meeting, the new plans propose additional building lot coverage and intensification of the site, coupled with increased demand for off-street parking and a net decrease in off-street parking provided on the subject property. After lengthy discussion, the Palm House's attorney, Greg Kino, offered to withdraw the request for a rooftop deck on the

Function Room Building (including removal of an elevator, walkway and stairway to the rooftop) and to eliminate the proposed/expanded spa in the Hotel basement, replacing that spa with the parking which originally existed prior to the 2007 Town approvals.

On September 10, the Council deferred action on this matter to a Special Town Council meeting on October 13, 2014 to reconsider the proposed application and necessary revisions to the draft Declaration of Use Agreement. In the interim, the applicant was required to modify the plans and address several issues raised at the Council meeting, including working with staff on a draft Declaration of Use Agreement.

A number of issues raised at the September 10 meeting remain unresolved to date. They are as follows:

1. Provide a letter from the City of West Palm Beach that there is adequate potable water capacity for the project. Applicant has produced a document from the City of West Palm Beach Code of Ordinances stating that capacity is based on the number of rooms in a hotel, but staff has requested confirmation in writing from the City.
2. Provide the Town's Public Works Department with the sewer capacity analysis from a licensed engineer. Per Code, that analysis must be reviewed and approved by Public Works and accepted by the Director of Planning, Zoning and Building.
3. Provide the Town Attorney with waiver language regarding pending litigation on the financial penalty for not meeting the construction completion deadline (as discussed at the Council meeting) from both the Applicant and Mr. Straub. The Council requested such waivers, completed to the satisfaction of the Town Attorney, prior to October 13.
4. Provide the Town with ownership and control information.
5. Provide the Town with information regarding the applicant's intentions with abutting residential lots on Brazilian Avenue directly behind the Hotel.

REVISED DECLARATION OF USE AGREEMENT

The applicant's attorney, Greg Kino, has drafted a proposed Third Amendment to Declaration of Use Agreement in redline add/delete format which he is calling a "Restatement of the Declaration of Use Agreement" for the Palm House (See Exhibit D). Staff has reviewed that document and has met with Mr. Kino. We were unable to resolve any of our differences related to the proposed Agreement. Staff does not recommend the Council approve the Agreement in its present form. Staff believes the proposed conditions in the Agreement to be unacceptable. The Draft Declaration of Use Agreement does not protect the abutting single-family residential neighborhood to the South; creates more off-street parking problems; does not adequately address the construction delay; and has the potential to place much more late night noise and traffic onto Royal Palm Way and the surrounding residential areas during peak season. The proposed Agreement modifies the existing conditions of approval as follows:

- Provides a construction completion date extension to April 1, 2015 which does not include the “Premier Guest Services” and spa and fitness areas in the basement.
- Provides for reciprocal costs, expenses and reasonable attorneys’ fees to the prevailing party, in the event of any breach, default or non-performance of the Agreement or any of its covenants, agreements, terms or conditions (previous language referred to the Town only).
- Extends the hours of operation for all existing inside and outside commercial uses and creates extended hours for new outside commercial uses (new Function Room pool deck, Function Roof deck and third floor bar and lounge above the second floor dining room).
- Provides for no limited hours of operation or conditions of approval for the “Premier Guest Services” area (given the website information, provides no provision prohibiting a private club as provided for in the Code).
- Provides for 88 additional seats to the Function Room if off-site, off-island valet shuttle service for 100 off-street vehicles can be provided (not part of the zoning application request, not permitted).
- Proposes more outside dining seats on the front balcony and less seating on the back balcony terrace.
- Adds the Function Room deck, elevator, stairs and walkway for use in conjunction with the spa for sunning/massage services and pre or post Function Room events with background music. Although Mr. Kino verbally offered to eliminate all use of the Function Room deck (including the elevator, stairs and walkway) as discussion was concluding at the Council meeting, the proposed Restatement of the Declaration of Use Agreement and plans call for its active use.
- Adds the use of the third floor deck above the second floor dining room for a bar and lighted lounge area with background music (that area was a passive deck for sunning and lounging with no events of any kind and no live or recorded music).
- Converts the pool deck grass area to a Function Room courtyard for pre and post Function Room events including food and beverage service with background or light live music.
- Eliminates the fourteen foot high wall and water feature (replacing with bathroom and pergola at that location).
- Provides provision for notice to “c/o Gordon Campbell Gray.”
- Provides for spa hours of operation. Although Mr. Kino verbally offered to eliminate the entire spa and replace with basement parking as discussion was concluding at the Council

meeting, the proposed Restatement of the Declaration of Use Agreement and plans call for its construction and use.

- The Premier Guest Services and fitness areas may be permitted to operate on a 24-hour basis.
- Additional landscape material to completely screen the back of the hotel from adjacent property not owned by owner. (This may effect adjacent Brazilian Avenue properties.)

The proposed “Restatement of the Declaration of Use Agreement” should be renamed the “Third Amendment to Declaration of Use Agreement” as this would be an amendment to the Second Agreement for this property. The proposed Agreement is drastically different than previous conditions of approval (draft Agreement attached as Exhibit D). The Agreement proposes more Function Room seating than the Council can approve at this time (not submitted or advertised as part of the pending application) and off-site, off-Island parking that staff does not recommend. The proposed new hours of operation for the approved or requested accessory commercial uses within the condominium hotel extend earlier and later than the existing Second Amendment to Declaration of Use Agreement. Those amendments to the operation hours already in the Agreement are not part of the application request and cannot be changed at this time. Staff also cannot support the hours of operation of the new commercial areas as they are a drastic change in the hours previously approved. In addition, given the pending legal action against the Town, serious consideration should be given to the proposed construction time extension, and the “Remedies for Violation” provisions that are no longer included in the Draft.

SPECIAL CONSIDERATIONS

1. ARCOM has required, and the applicant has agreed, that the medjool date palms planted in the front street swale of the hotel be replaced with coconut palms, in keeping with the established character of the 100 block of Royal Palm Way. Staff recommends the Council make this a condition of any approvals.

2. As recently as Wednesday, October 8, Town staff recognized that the exterior walkways on three floors of the east facing elevation were being framed for enclosure. That work is part of the present site plan modification request. It has never been previously authorized. PZB posted the red-tag STOP WORK order affecting that portion of the work immediately.

TOWN ATTORNEY REVIEW

The draft “Restatement of the Declaration of Use Agreement” was reviewed by Town Attorney John C. Randolph for legal form and sufficiency. He concurs with staff that the Council should address the construction time extension and the remedies for violation that are missing from the proposed Agreement.

cc: Thomas Bradford, Deputy Town Manager
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Paul Castro, Zoning Administrator

EXHIBIT A: ZONING APPROVALS

2007 Site Plan Review #2-2007 with Special Exceptions and Variances

The Site Plan Review with Special Exception approval for a condominium hotel with expansion of hotel's accessory uses was to construct 1,500 square foot expansion of spa facility; 3,000 square foot function room building in lieu of existing tent facility and replacement of the existing second floor function space with a 4,160 total square foot dining room including outdoor seating on two balconies. Special exception approval was also granted to permit outdoor dining on the front and back second floor balconies. Site plan approval included granting expansion of an existing hotel within a nonconforming building a 1,940 square foot porte-cochere/covered drop off; relocation of the loading dock from the front facade to under the west wing of guest rooms; relocation and construction of a new lobby; renovation of guestrooms (net reduction of units: 95 to 79); infill of the walls of the balconies; a new 2,160 square foot loggia in the back pool area of the building fronting the swimming pool; and adoption of exclusively valet parking for the site.

The following variances were conditionally approved:

1. A variance request to permit construction of porte-cochere/covered drop off with front set back of .34 feet, in lieu of 34.72 foot minimum required front yard setback required by Code.
2. A variance request to permit construction of relocated curb cut and porte-cochere/covered drop off, expansion of existing spa and construction of permanent function space, which increases lot coverage to 66.4%, in lieu of the 61.4% existing lot coverage and the 50% maximum lot coverage allowed by Code.
3. A variance request to permit construction of relocated curb cut and porte-cochere/covered drop off, expansion of the existing spa and construction of permanent function space, with overall landscape space of 23% overall landscaped space (no change from existing), in lieu of the 30% minimum overall landscaped space required by Code.
4. A variance request to accommodate new mansard roofing design and material, to permit overall building height of 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code.
5. A variance request to accommodate new mansard roofing design and material to permit building height of 34.61 feet from zero datum (no change from existing) in lieu of 25 feet maximum building height allowed by Code.
6. A variance request to have two architectural tower features in lieu of the two (2) maximum tower features allowed by Code.
7. A variance request for two (2) of the architectural tower features and four dormer windows with front yard setbacks of 24.5 feet and 24.88 feet in lieu of the 39.72 foot minimum front yard setback required by Code.
8. A variance request for two (2) architectural towers, 5 feet maximum in height, with an overall building height of 40.27 feet, in lieu of the 35 feet maximum overall building height allowed by Code for the towers.
9. A variance request to construct a 3,000 total square foot function room to replace current tent facility, with a 10.0 feet rear yard setback, in lieu of 28.88 foot minimum rear yard setback required by Code.
10. A variance request to accommodate new mansard roof design and materials with a 5.8 feet side yard setback (no change from existing) at western property line, in lieu of the 19.72 foot minimum side yard setback required by Code.

11. A variance request to allow outdoor dining room seating on the front and back outside balconies where said use is required by Code to be entirely within the principal building.
12. A variance to allow a marquee wider than the entry way and with support closer than eighteen inches to the face of the curb.
13. A variance request to construct 9,100 square feet of additional improved space, without providing the one additional loading berth required by Code.
14. A variance request to provide 67 off street parking spaces, in lieu of 97 existing spaces and the 147 required by Code.
15. A variance request to allow required parking to be stacked in a method which requires the movement of another vehicle in order to move another vehicle.

The conditions of approval were that the applicant enter into a Construction Management Agreement and a Declaration of Use Agreement which incorporates the following conditions and fines for violations of those agreements.

1. All parking at the Hotel shall be valet parking managed pursuant to a valet parking permit plan approved by the TOWN Police Chief. If it is determined by the TOWN Police Chief that the valet parking operation at the Hotel is not working properly, the TOWN has the right to require measures as deemed necessary, including additional valet parking personnel or special duty officer(s), to resolve the issue(s).
2. The second floor dining room area is approved for a total 120 seats with the ability to relocate 50 of those seats to the second floor balcony patios (a maximum of 25 seats on the front balcony and 25 seats on back balcony terrace). In addition the first floor dining room is approved for 65 seats with the ability to relocate 16 seats outdoors on the covered pool loggia. The dining room may serve meals to the public and hotel guests in the dining rooms from 5:00 AM to 1:00 AM. Outside dining shall only be allowed from 9:00 AM to 10:00 PM on the covered pool loggia. However, seating for patrons for dining on the covered pool loggia shall not occur after 9:00 PM. Outside dining shall only be allowed from 6:00 AM to 11:00 PM. on the second floor dining room balconies. However, seating for patrons for dining on the second floor outside dining shall not occur after 9:00 PM. This shall not preclude 24 hour room service.
3. Pool hours and pool side beverage service shall be allowed only between the hours of 9:00 AM and 9:00 PM. Pool side food service shall be allowed only between the hours of 11:00 AM and 7:00 PM.
4. Recorded or live music or other entertainment is allowed between 12:00 PM and 8:30 PM. However, no recorded or live music, or other entertainment of any kind shall be permitted outside the Hotel building outside of those hours except background music as provided below. Recorded or live music or entertainment shall be allowed inside the Hotel building from 9:00 a.m. to 11:30 p.m. This shall not preclude low volume background music on the pool deck area between the hours of 9:00 a.m. and 12:00 p.m.
5. The function area shall only be allowed 150 seats with recorded or live music or other entertainment between the hours of 12:00 PM and 11:00 PM. No sooner than one year from the date of the certificate of occupancy, the applicant may apply for a special exception for a maximum of 50 additional seats in the function area.
6. The upper deck sun deck on top of the function room shall only be used for sunning or lounging. There shall be no events of any kind or live or recorded music provided on said sun deck.
7. All newly constructed lights in the Parking Lot shall be low level so that they shine downward and do not produce any light or glare which would adversely affect surrounding properties.
8. The building(s) shall be equipped with a fire alarm and suppression system as approved by the Fire Marshall.

9. The Hotel OWNER(s) shall provide a minimum of 30 employee parking spaces and an employee shuttle service from December 1st through April 30th at an off-site location(s) within 15 minutes average driving time from the Hotel. This location shall not be within the Town limits unless specifically allowed for in Chapter 134, Zoning, ARTICLE IX ,OFF-STREET PARKING AND LOADING, of the TOWN Code of Ordinances. If the Hotel proposes to provide the off-site parking location outside the TOWN's jurisdiction, the OWNER(s)all inform the TOWN in writing of the location(s) of said parking. It shall be the responsibility of Hotel(s) OWNER to ensure that the off-site parking location is allowed within the jurisdiction being proposed for said parking arrangement. It shall be the Hotel OWNER(s) responsibility to immediately inform the TOWN in writing of the loss of said parking area and make arrangements for the necessary approval(s) for alternate location(s). Failure to ensure that the off-site location is allowed by the jurisdiction in which said parking is located, or the loss of said parking may result in a reduction in dining room seating. That determination will be made by the TOWN Council at the earliest TOWN Council meeting after the TOWN becomes aware of the situation.
10. The demolition and construction contemplated by the Approval shall be conducted pursuant to a Construction Management Agreement entered into between Hotel OWNER(s) and TOWN prior to the issuance of a building permit for said construction. That agreement shall address, among other things, phasing, worker parking, materials delivery and storage, construction hours, demolition, noise, dust, rodent control, security, project management, coordination with the TOWN, and a construction schedule. The TOWN Manager is authorized to execute that agreement on behalf of the TOWN.
11. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this agreement *or* any other provision in the Town Code of Ordinances, and upon notice in writing from the TOWN to OWNER or OWNER's representative of said violation(s) and the date upon which said violation(s) shall be corrected, owner or owner's successors or assigns shall pay to the TOWN a liquidated amount of \$ 2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the TOWN Council at a future meeting upon thirty days notification to the owner. The TOWN Council may, upon a finding of violation, alter this agreement or rescind the approval of the use. In the event owner disputes the determination of the Director of Planning, Zoning & Building Department of the violation of the conditions of this agreement, or in the event the owner disputes any code violation, owner may appeal the determination of the Director of *the* Planning, Zoning & Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days of the written notice of violation.
12. In addition to the above, the TOWN shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the TOWN's code enforcement procedures; (b) all remedies otherwise offered in the TOWN's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County for the State of Florida. In the event the TOWN is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non performance of this Agreement, or any of its covenants, agreements, terms or conditions, the TOWN shall be entitled to recover its costs, expenses and reasonable attorneys' fees insofar as the TOWN prevails, either before or as a result of litigation, including appeals.
13. The applicant is required to provide acceptable Town-serving documentation each year at the time of renewal of the business tax license. Your client will not be required to begin submitting this required documentation until the hotel opens for occupancy.

14. The applicant shall close an existing median cut, and design and build a new median cut on the 100 block of Royal Palm Way to improve the traffic circulation for the hotel parking operation. In order to accomplish this condition, your client is required to coordinate with the Public Works Department and its traffic consultant to design and build those median improvements. While the Town has received and is reviewing the building permit application and plans for the hotel improvements, to date, staff has not received any correspondence or plans regarding the required roadway median improvements. Please be advised that one of the requirements in obtaining a certificate of occupancy for the hotel and its amenities is the completion of the roadway median improvement portion of the project.

2012 Site Plan Review #6-2012 with Special Exceptions and Variances

The condominium hotel was approved to modify the originally approved plan with the following list of the changes that were conditionally approved:

1. Elimination of two pool structures and relocation of a pool structure which includes service bar.
2. Relocation of pool restrooms to inside of Function Room.
3. Elimination of the mansard roof on the east elevation and keep the existing mansard roof on the east guest wing elevation in lieu of the parapet that was previously shown on the plans.
4. Relocation of pool equipment and storage to under pool service building.
5. South perimeter landscaping, cabanas and pool terrace.
6. Addition of plunge pools to the pool terrace area.
7. Addition of interior floor above lobby to total 1,486 square feet of which 500 square feet is dining area.
8. Addition of parapet to connect east stair tower to existing approved parapet.
9. Addition of elevator to be shown on roof plan of function room roof where previously not shown.
10. Replace solid parapet on function room with balustrade railing and change the roof pitch.
11. Increase height of doors in main lobby overlooking pool deck by 3 feet.
12. Add a 12 foot tall hedge with a 42 inch rail on south side of proposed swimming pool to run length of pool deck area.
13. Add pergola on south elevation and extend balconies on north, south and east elevations.
14. Add service corridors and expansion of kitchen and laundry room which totals approximately 5,493 square feet in basement.
15. Shift location of approved function room 25 feet to the east and add back 4 of the 6 parking spaces that are lost.
16. Decrease size of spa/fitness area from 7,325 square feet to 5,948 square feet which eliminates the need for 2 parking spaces that were lost.
17. Complete the Function Room shell (interior space drywall, all life safety features, minimum electric and floor slab) by February 14, 2013.

The following variances were conditionally approved:

1. To allow a new parapet roofing design and material to be 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code in the C-B Zoning District.
2. To allow the elimination of 7 off-street parking spaces required due to the additional 986 square feet created above the lobby for additional dining and kitchen and the basement kitchen prep facilities (no increase in number of seats).

3. To increase the height of the parapet wall above the parking deck to be 14 feet in lieu of the 5 foot maximum allowed and the 3.5 feet existing. The 14 foot high parapet wall is to run from the relocated service bar (with no openings on the south side) to the wall of the Function Room.

The conditions of approval are as follows:

1. The proposed 14 foot tall parapet wall between the proposed function room and the proposed service bar shall have a water feature that runs the length of the wall. Said water feature shall be operational as determined by the Town Council as outlined in the proposed Declaration of Use Agreement.
2. The service bar shall remain for the use of only the hotel staff. Service shall not be provided to hotel guests. In addition, no chairs shall be allowed for hotel guests at the service bar.
3. The pool deck area and abutting grass area between the pool deck and proposed Function Room to the east shall remain passive and no events shall be held in those areas.
4. The pool deck area shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north. There shall be no music on the abutting grass area. The hours shall be as identified in the original Declaration of Use Agreement.
5. The air conditioning equipment on the proposed Function Room roof shall be screened from the neighbors by a solid parapet wall.
6. The Function Room elevator and stairwells shall not be accessible from 7:00 p.m. to 9:00 a.m. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system.
7. Additional landscape material to completely screen the back of the hotel from the neighbors shall be required and maintained on the south perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.
8. These new conditions of approval shall be incorporated into the Declaration of Use Agreement.

2013 Site Plan Review #3-2013 with Special Exception and Variance

Site plan review with special exception and variance application was approved. The approved variance allows a third story addition to create the sundeck over the second floor dining room where only two stories are allowed. The following is a list of the changes that were conditionally approved:

1. Relocation of the roof top sundeck on the proposed Function Room, including the removal of the two stairwells and elevator going to that area. The sundeck was allowed to be relocated on top of the second floor roof above the lobby dining room. This approval includes required stairs and an elevator to the new proposed sundeck area and physical separation of the proposed sundeck from the south ten feet of the building. In addition, other roof areas that are not part of the approved new sundeck area shall also have a structural separation from the new sundeck. The previous conditions of approval for the sundeck on the Function Room apply to this new sundeck area.
2. Relocation of the air conditioning equipment from the Function Room roof to the northeast corner of the surface parking lot as identified on the plans.
3. Elimination of the outside stairs to the spa area.
4. Modification of the service double doors on the east side of the proposed Function Room.
5. Modification to create a niche on only the west end of the proposed water wall between the Function Room and the outside service area building on the south side of the subject property.

The Council denied the sliding doors on the west entrance to the Function Room, the niche on the east side of the water wall, and the bar area abutting the south doors from the lobby dining room leading out to the outside seating area.

The conditions of approval are that the east and south boundary of the subject property shall be screened in a manner which is approved by the neighbors to the east. In addition, the relocated air conditioning equipment shall also be fully screened by a wall and landscape material. Said screening shall be maintained in perpetuity. The applicant was required to come back to the February 13, 2013 Town Council meeting for approval of a second amendment to the Declaration of Use Agreement which addresses all of the proposed modifications changing the Agreement. All other conditions of approval in the Declaration of Use Agreement remain valid.

EXHIBIT B: CONSTRUCTION DEADLINES

August 1, 2007	Beginning Construction Date
September 2, 2008 extended to February 1, 2011	Completion date with administrative extensions based on the Construction Management Agreement.
August 30, 2010	Two year time extension based on Senate Bill 1752
July 10, 2012	Second two year time extension based on House Bill 503 was denied
August 15, 2012	Council granted a time extension as part of Site Plan Review, Special Exceptions, and Variances to February 14, 2013 to complete everything except the shells for the Function Room, Spa and Second Floor dining room. Those were to come back later for Town Council approval and permits.

The late fee, as outlined in the Declaration of Use Agreement, for not meeting the completion deadline of February 14, 2013 is \$1,212,000 as of October 13, 2014.

EXHIBIT C: WORK OUTSIDE OF THE SCOPE OF APPROVAL

The following changes have been made at the Hotel, yet are not within the scope of previous zoning approvals. No Town “Certificate of Occupancy” has been issued, nor is the Council obligated to approve such changes.

- Demolition and excavation of the pool, pool deck and grass area on the west side of the Function Room where the new “Concierge Guest Services” is proposed on the plans. Said area was approved as a service corridor and unexcavated area around the pool.
- Construction of new bathrooms building on the west side of the Function Room as identified on the proposed plans.
- Construction of new walkway, stairs and elevator to the Function Room roof. Approved as only roof.
- Construction of approximately 1,140 square foot of new office space. Said space is where office use is proposed on the proposed plans and where only a service corridor and laundry room are approved.
- Enclosure of portions of the basement garage on both the east and west sides of the property eliminating 5 required off-street parking spaces. Said spaces are where an elevator, reception area, kitchen and employee break room are identified on proposed plans.
- Construction of a new elevator going from the basement to the roof deck over the second floor lobby dining room as identified on the proposed plans.
- Construction of the new third floor private dining space in the east wing overlooking the second floor dining room, and eliminating two electric closets as identified in the proposed plans.
- Combining two existing condo-hotel rooms on the third floor creating a single room as identified on the proposed plans.
- Construction of partial wall where the new Function Room kitchen is located on the proposed plans.
- Construction of new stairs from the basement kitchen area to the lobby dining room as shown on the proposed plans.
- Construction of new stairs, elevator and dining area on the second floor dining room as identified on the proposed plans.

- Redesign of the mezzanine dining room stairs as identified in the proposed plans.
- Opening on the east side of the Function Room wall identified as the stage on the proposed plans in the application.
- Change from 78 condo-hotel units to 76 units. Two rooms have already been combined but it appears that four of the third floor units on the east wing of the hotel could be combined on an as needed basis.
- As recently as Wednesday, October 8, Town staff recognized that the exterior walkways on three floors of the east facing elevation were being framed for enclosure. That work is part of the present site plan modification request. It has never been previously authorized. PZB posted the red-tag STOP WORK order affecting that portion of the work immediately.

EXHIBIT D

Prepared by and return to:
Gregory S. Kino, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401
Will Call Box No. 69

**RESTATEMENT OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
160 ROYAL PALM LLC**

Dated: October 13, 2014

RESTATEMENT OF DECLARATION OF USE AGREEMENT

THIS RESTATEMENT OF DECLARATION OF USE AGREEMENT (“Restatement”) is made and entered into this 13 day of October, 2014 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the “Town”); and 160 ROYAL PALM LLC, (formally known as ROYAL 160, LLC), 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the (“Owner”), which terms “Town” and “Owner” will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

W I T N E S S E T H:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement made on July 30, 2007 and recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach County (“2007 Agreement”); and

WHEREAS, the land described in Exhibit “A” attached hereto and made a part hereof (hereinafter referred to as “Land”) is located within the municipal limits of the Town; and

WHEREAS, title to all of the Land is held by the Owner; and

WHEREAS, the Palm House Hotel (hereinafter referred to as the “Hotel”) is located and operated on the Land at 160 Royal Palm Way in the Town; and

WHEREAS, the Town Council on July 11, 2012, approved the special exception portion of the Site Plan Review #6-2012 with Special Exceptions and Variances; and

WHEREAS, the Town Council on August 15, 2012 granted conditional approval of Site Plan Review No. 6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exception and Variances on the Land and memorialized the conditions of such approval in that Amendment of Declaration of Use Agreement recorded in Official Records Book 25694, Page 633 of the Public Records of Palm Beach County (“Amendment to 2007 Agreement”); and

WHEREAS, the Town Council on January 9, 2013 granted approval of Site Plan Review No. 3-2013 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exception and Variances and Site Plan Review No. 6-2012 with Special Exception and Variance recorded in Official Records Book 26251, Page 78 of the Public Records of Palm Beach County (“Second Amendment to 2007 Agreement”); and

WHEREAS, the Town Council on October 13, 2014 granted approval of Site Plan Review No. 12-2014 with Special Exceptions and Variances which amended Site Plan Review No. 3-2013 with Special Exception and Variances which amended Site Plan Review No. 6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exception and Variances; and

WHEREAS, the conditions of approval are set forth herein and the approval of this Agreement on the basis of the Owner's application and the testimony on behalf of the Owner; and

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions and variance requests; and

WHEREAS, in approving the Site Plan Review No. 12-2014 with Special Exceptions and Variances, the conditions of approval previously approved and set forth in the Amendment to 2007 Agreement and Second Amendment to 2007 Agreement as modified, and reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest;

WHEREAS, all of the representations made herein are true and accurate and the approval of the amended Site Plan with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property Owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the 2007 Agreement, Amendment to 2007 Agreement and Second Amendment to 2007 Agreement are hereby amended, restated and modified as follows:

ARTICLE I **RECITALS**

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

ARTICLE II **REPRESENTATION OF OWNERSHIP**

Owner has full right to enter into this Restatement to the 2007 Agreement, Amendment to 2007 Agreement and Second Amendment to 2007 Agreement and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Restatement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Restatement, nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Owner or the Land are subject.

ARTICLE III
CONDOMINIUM HOTEL USES

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the TOWN for Site Plan Review No. 2-2007 with Special Exception and Variances, as amended and approved by Town Council on May 7, 2007, and as amended by Site Plan Review No.6-2012 with Special Exceptions and Variances, as amended and approved by the Town Council on July 11, 2012 and August 15, 2012, and as amended by Site Plan Review No. 3-2013 with Special Exception and Variance, as amended and approved by the Town Council on January 9, 2013 and as amended by Site Plan Review No. 12-2014, as amended and approved by the Town Council on October 13, 2014 (hereinafter referred to as the "Approval"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV
RESTATED CONDITIONS OF APPROVAL

The following new and restated conditions from the 2007 Agreement, Amendment to 2007 Agreement and Second Amendment to 2007 Agreement are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances and are required to be met as conditions of the continued operation of the Hotel:

1. All parking at the Hotel shall be valet parking managed pursuant to a valet parking permit plan approved by the Town Police Chief.
2. If it is determined by the Town Police Chief that the valet parking operation at the Hotel is not working properly, the Town has the right to require measures as deemed necessary, including additional valet parking personnel or special duty officer(s), to resolve the issue(s).
3. The second floor dining room area is approved for a total ~~420~~159 seats with the ability to relocate 50 of those seats to the second floor balcony patios (a maximum of ~~253~~5 seats on the front balcony and ~~25~~15 seats on back balcony terrace) and with the ability to relocate 39 of those seats to the third floor roof deck. In addition, the first floor dining room is approved for 65 seats with the ability to relocate ~~46~~35 seats outdoors on the covered pool loggia. The dining rooms may serve meals to the public and hotel guests in the dining rooms from 5:00 AM to ~~4:00~~2:00 AM. Outside dining shall only be allowed from ~~95:00~~9:00 AM to ~~10:00~~11:00 PM on the covered pool loggia. However, seating for patrons for dining on the covered pool loggia shall not occur after ~~9:00~~10:00 PM. Outside dining shall only be allowed from 6:00 AM to ~~11:00 PM~~2:00 AM on the second floor south dining room balconyies and from 9:00 AM to 2:00 AM on the second floor north

dining room balcony. However, seating for patrons for dining on the second floor outside dining balconies shall not occur after ~~9:00 PM~~ 12:00 midnight. This shall not preclude 24 hour room service.

4. Pool hours and pool side beverage service shall be allowed only between the hours of ~~9:00 AM~~ and ~~9:00~~11:00 PM. Pool side food service shall be allowed only between the hours of ~~11:00 AM~~ and ~~7:00~~11:00 PM.

5. ~~There shall be no events in the pool deck and grass area between the pool deck and Function Room. Those areas shall remain passive. Pre and post Function Room events are permitted in the Function Room courtyard with food and beverage service from 9:00 AM to 11:00 PM.~~ The pool deck area and Function Room courtyard shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north in accordance with Condition 6. ~~There shall be no music played on the abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement~~

6. Recorded or live music or other entertainment is allowed on the pool deck area and Function Room courtyard between ~~12:00 Noon~~11:00 AM and ~~8:30~~11:00 PM. However, no recorded or live music, or other entertainment of any kind shall be permitted outside the Hotel building in those areas outside of those hours except background music as provided below. Background music is defined as low volume music where a normal conversation could be held over the music. Background music on the pool deck and Function Room courtyard area shall be allowed between the hours of 9:00 ~~AM a.m.~~ and ~~7:00~~11:00 PM.

7. Recorded or live music or entertainment shall be allowed inside the Hotel building from 9:00 ~~AM a.m.~~ to ~~11:30 p.m~~1:00 AM.

8. The ~~f~~Function area ~~Room~~ shall only be allowed 150 seats with recorded or live music or other entertainment between the hours of ~~9:00 AM and 1:00 AM~~12:00 Noon and 11:30 PM. ~~No sooner than one year from the date of the certificate of occupancy, the applicant may apply for a special exception with variance for a maximum of 50 additional seats in the function area. Upon proof satisfactory to the Town that it has secured off-site parking outside the Town in accordance with Condition 10 below, the Function Room seating may be increased to a maximum of 238 seats.~~

~~9. The upper deck sun deck on top of the function room shall only be used for sunning or lounging. There shall be no events of any kind or live or recorded music provided on said sun deck.~~

9. All newly constructed lights in the Parking Lot shall be low level so that they shine downward and do not produce any light or glare which would adversely affect surrounding properties.

10. The buildings shall be equipped with a fire alarm and suppression system as approved by the Fire Marshall.

11. The Hotel Owner(s) shall provide a minimum of 30 employee parking spaces and an employee shuttle service from December 1st through April 30th at an off-site location(s) within 15 minutes average driving time from the Hotel. The Hotel Owner shall provide a minimum of 100 parking spaces and valet shuttle service within 4 minutes average driving time from the Hotel. These locations shall not be within the Town limits unless specifically allowed for in Chapter 134, Zoning, ARTICLE IX, OFF-STREET PARKING AND LOADING, of the Town Code of Ordinances. If the Hotel proposes to provide the off-site parking location outside the Town's jurisdiction, the Owner(s) shall inform the Town in writing of the location(s) of said parking. It shall be the responsibility of Hotel(s) Owner to ensure that the off-site parking location is allowed within the jurisdiction being proposed for said parking arrangement. It shall be the Hotel Owner(s) responsibility to immediately inform the Town in writing of the loss of said parking area and make arrangements for the necessary approval(s) for alternate location(s). Failure to ensure that the off-site location is allowed by the jurisdiction in which said parking is located, or the loss of said parking may result in a reduction in Function Room or dining room seating. That determination will be made by the Town Council at the earliest Town Council meeting after the Town becomes aware of the situation.

12. The demolition and construction contemplated by the Approval shall be conducted pursuant to a Construction Management Agreement entered into between Hotel Owner(s) and Town prior to the issuance of a building permit for said construction. That agreement shall address, among other things, phasing, worker parking, materials delivery and storage, construction hours, demolition, noise, dust, rodent control, security, project management, coordination with the Town, and a construction schedule. The Town Manager is authorized to execute that agreement on behalf of the Town.

13. The Town shall have the right to check the seating in the Hotel on a periodic basis. Failure to allow a check will constitute a violation of this Agreement.

~~14. The proposed 14 foot tall parapet wall between the proposed function room and the proposed employee pool service building shall have a water feature that runs the length of wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 am).~~

14. The employee pool service building shall be only for the use of the Hotel staff and will not be used by Hotel guests to order or consume food and/or beverages. There shall be no chairs for Hotel guests at the employee pool service building.

15. The air conditioning equipment on the roof of the Function Room addition shall be screened from the neighbors by a solid parapet wall on the ~~three exterior~~ east and south sides.

16. The Function Room roof deck may be permitted to be used in conjunction with the spa for sunning/massage services and pre and post-Function Room events from 9:00 AM to 9:00 PM. There shall be no music permitted except background music as defined in Condition 6. Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the ~~sundeck~~ Function Room roof deck from ~~7:00~~ 9:00 p.m. to 9:00

a.m. so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system. The access points to the stairs leading to the ~~sun-deck~~ Function Room roof deck shall be designed to be completely isolated from the ground floor full door and other separation to ensure that when they are locked there is no access to the ~~sundeck~~roof deck.

17. Additional landscape material to completely screen the back of the Hotel from ~~the neighbors~~any adjacent property not owned by Owner shall be required and maintained on the south perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.

~~18. The air conditioning equipment previously approved to be located on the roof of the Function Room shall be relocated to the planters on the east side of the Function Room and are required to be screened from the neighbors.~~

18. ~~The previously approved activity and restrictions for the roof top of the Function Room shall be transferred to the roof top area above the Hotel lobby on the third floor of the hotel. The following restrictions now apply to the roof top of the Hotel in lieu of the roof top of the Function Room: (a) sundeck shall only be used for sunning or lounging; (b) there shall be no events of any kind or live or recorded music provided on said sundeck; (c) e~~The third floor roof deck shall be permitted to be used for a pre and post dining lounge between the hours of 12:00 noon to 2:00 AM with a maximum of 39 seats. Only background music as defined in Condition 6 shall be permitted. Except for emergencies, the Hotel elevator and stairwells shall not be accessible to the ~~sundeck~~roof deck from ~~7:00 p.m. 2:00 a.m.~~ to ~~9:00 a.m. 12:00 noon~~ so as not to allow hotel guests and employees on the ~~Hotel sundeck~~roof deck during those hours. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system. There shall be a barrier constructed to the satisfaction of the Town which precludes access to the roof top of the Hotel to the west, east and south of the ~~sundeck~~third floor roof deck.

19. Additional landscape material to completely screen the east property line of the Hotel from the neighbors shall be required and maintained in perpetuity on the east perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.

20. All construction must be completed by ~~February 14, 2013~~April 1, 2015 with the exception of the Premier Guest Services and spa/fitness areas in the basement level which shall have all egress and life safety features in place and active. function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.

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21. The Premier Guest Services and fitness areas may be permitted to operate on a 24 hour basis.
22. The spa may operate between the hours of 9:00 AM to 10:00 PM.

ARTICLE V **REMEDIES FOR VIOLATION**

1. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this agreement or any other provision in the Town Code of Ordinances, and upon notice in writing from the Town to Owner or Owner's representative of said violation(s) and the date upon which said violation(s) shall be corrected, owner or owner's successors or assigns shall pay to the Town a liquidated amount of \$2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this Agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to the Owner. The Town Council may, upon a finding of violation, alter this Agreement or rescind the approval of the use. In the event Owner disputes the determination of the Director of Planning, Zoning & Building Department of the violation of the conditions of this Agreement, or in the event the Owner disputes any code violation, owner may appeal the determination of the Director of the Planning, Zoning & Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days of the written notice of violation.

2. In addition to the above, the Town shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the Town's code enforcement procedures (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County for the State of Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non-performance of this Agreement, or any of its covenants, agreements, terms or conditions, the Town-prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees ~~insofar as the Town prevails~~, either before or as a result of litigation, including appeals.

ARTICLE VI **PROVISIONS FOR NOTICE**

For the issuance of any notice regarding the terms of the Restatement, notice shall be provided.

To the Town Manager:

The Town of Palm Beach, Town Hall
360 S. County Road
Palm Beach, FL 33480

To the Owner:

c/o Gordon Campbell Gray
Campbell Gray Hotels
160 Royal Palm Way
Palm Beach, FL 33480

ARTICLE VII
PROVISIONS TO RUN WITH LAND/RECORDING

This Restatement shall run with the Land and shall be binding upon the Owner and its respective legal representatives and successors and assigns. This Restatement shall be recorded by the Owner in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Restatement shall be superior to any subsequent mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

ARTICLE VIII
ENTIRE AGREEMENT

This Restatement, as identified herein, represents the modifications to and restatement of the 2007 Agreement, as recorded in Official Records Book 21987, Page 499, Amendment to the 2007 Agreement as recorded in Official Records Book 25694, Page 633, and the Second Amendment to 2007 Agreement as recorded in Official Records Book 26251, Page 78 of the Public Records of Palm Beach between the parties and may not be amended except by written agreement executed by both parties. This Restatement therefore is the controlling document binding the Land for its use for the Hotel.

ARTICLE IX
MISCELLANEOUS

Wherever the word "laws" appears in this Restatement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Restatement may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Restatement and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Restatement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Restatement, same shall be deemed stricken here from and this Restatement shall continue in full force and effect as if such invalid provision were never a part hereof. This Restatement shall be governed by and construed in accordance with the laws of the State of Florida.

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IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

Signed, sealed and delivered
In the presence of:

| _____
| _____
| _____
| _____
| _____
| _____

TOWN OF PALM BEACH

By: _____
Gail [L.](#) Coniglio

By: _____
Robert [N.](#) Wildrick, President
Town Council

By: _____
Peter Elwell
Town Manager

160 ROYAL PALM LLC

By: _____
Its: Manager/Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____,
| 2014, by Gail L. Coniglio, Mayor of the Town of Palm Beach, a Florida municipal corporation,
on behalf of the corporation. She is personally known to me or has produced
_____ as identification.

(SEAL)

Notary Public – State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____,
| 2014, by Robert N. Wildrick, the President of the Town Council of Palm Beach, a Florida
municipal corporation, on behalf of the corporation. He is personally known to me or has
produced _____ as identification.

(SEAL)

Notary Public – State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Peter Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public – State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, its Manager/Member, on behalf of the company. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public – State of Florida
Commission Number: _____

RECOMMENDED APPROVAL:

_____, _____

Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph
Town Attorney

Exhibit "A"

Legal Description of the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida.

Thomas O. McCarthy
140 Brazilian Avenue
Palm Beach, Florida 33480

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

Re: Objection to Requests by the "Palm House" Hotel

Dear Mayor and Town Council Members:

As the owner of nearby property located at 140 Brazilian Avenue I was upset by the Town Council's approach in dealing with the "new" owners of the Palm House Hotel located at 160 Royal Palm Way at its September 10, 2014 meeting. As you know, for years the Town went back and forth with the prior owner (now apparently the "mortgage holder") of the Palm Hotel to come up with an approved set of plans which the Town Council believed represented a fair balance between protecting the Town and its residents, while at the same time resulting in a design and operation which would allow the owner of the Property to build a quality product which fit in with the surrounding neighborhood. Instead, after dragging its feet, the prior owner broke its commitment to the Town by failing to abide by the agreed upon construction time table. To add insult to injury, instead of constructing what the Town actually approved, the prior and/or present owner of the Hotel has made a series of unapproved alterations which serve to intensify the use of the Hotel and clearly adversely affect surrounding property owners such as myself.

Now, after years of delay, it appears that the prior "owner" has transferred the property to a straw man and brought in a salesman, in the form of Mr. Gordon Campbell Gray, to make the argument that all of the Town's hard work (which was ignored by the prior owner) constitutes nothing more than "past mistakes" which can be easily rectified by granting the "new" owner a long laundry list of its dream site plan modifications and variances, which it claims will give the Town a "superior product." As a resident of the Town and a nearby property owner who will be directly affected by the actions of the "new owner" I find this approach offensive.

As you can imagine, given the short distance of my property from the Hotel, the primary focus of my concerns and objections center on the noise which will necessarily be created by the addition of 39 roof top dining seats on the third floor as well as the "reintroduction" (which to me means asking again for that which you have already been told you cannot have) of a private spa deck on the "Function Room" roof. Each of these items was requested and turned down previously by the Town for a reason, which was to protect the rights of the nearby neighbors. Noise travels a long distance on a still night and even farther when the wind blows from the right direction.

Nevertheless, the “new” owner of the Hotel is asking for the same relief which was previously denied despite the fact that nothing has changed since the last request, except for the default by the prior owner of the Hotel and the Town’s frustration with the failure of the Hotel to be completed. Given that the Town Council’s prior decision to turn down such requests was well reasoned, in order to be consistent, the Council should once again deny any and all relief outside of its prior approvals, especially as to outside dining, the expanded use of the “spa deck,” or any other use which would allow unnecessary noise to permeate the surrounding neighborhood. To do otherwise, would provide every property owner in the Town with a road map to get what it wants; simply fail to follow the Town Council’s instructions, frustrate the Town because the project is not complete, build what you really want, and then ask again to get approval for what you were denied. Clearly, this should not become the zoning pattern in the Town. As a result, each of the Hotel’s requests should be denied.

Similarly, the Town should refuse to provide the Hotel with any parking variance(s). Parking variances will necessarily cause parking to spill over into the surrounding neighborhood, especially during the early morning hours when permit parking does not apply. Furthermore, while the Town apparently provided the “prior” owner with at least one parking variance based upon the facts which were presented at the time, parking variances should not be fungible or able to merely be traded for the intensification of use elsewhere on a particular property. As a result, a variance which may have been appropriate in another area of the Hotel should not be used to offset the additional parking requirements which come from an additional 39 outside dining seats, the creation of a “Premium Guest Services Area” or any other amenity which requires additional parking. Furthermore, my understanding is that such intentional intensification of use by the “new” owner of the Hotel which creates the need for additional parking cannot be the basis for any “hardship” required for the granting of a parking variance.

Finally, although I have been told by several individuals that “it will never happen,” I am extremely concerned by even the suggestion that the “new” owner of the Hotel has purchased those empty lots facing Brazilian Avenue with the intention of creating either surface or underground parking to service the hotel. This worry is all the more heightened by the recent construction of a wooden stairway (see attached picture) leading from one of the lots over the wall and onto the Hotel property, which has since been removed. My understanding is that the lots located on Brazilian Avenue are residential in nature cannot become commercial property without a change in the Town’s Comprehensive Plan and a change in zoning as well. Nevertheless, I would like to Town Council to disavow the “new” owner of the Hotel of even the notion that the lots could be used to service the Hotel.

In light of the above, I would urge the Town Council to deny any and all approvals for outside dining, the use of the spa deck, or any other activity which would result in noise from the Hotel being carried over into the abutting neighborhood. Likewise, I would request the Town Council deny any requests for parking variances especially since any such requests appear to be from the direct actions of the “new” owner of the Hotel.

Mayor and Town Council

October 9, 2014

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Unfortunately, I will be out of the country when this issue is discussed by the Town Council on October 13, 2014. As a result, I have retained John Eubanks, of the law firm of Breton, Lynch, Eubanks & Suarez-Murias P.A., to follow up on and further address this issue with the Town Council in my absence.

Very truly yours,


Thomas O. McCarthy

cc: John R. Eubanks, Jr.
John Page, Director of Planning, Zoning and Building
Peter Elwell, Town Manager
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John C. ASkip@ Randolph, Esq.
Town Clerk, Town of Palm Beach

