

CONDITIONAL SETTLEMENT AGREEMENT

This Conditional Settlement Agreement (“Settlement Agreement”) is entered into between the Town of Palm Beach, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (“Town”) and 160 Royal Palm, LLC, a Florida limited liability company, 160 Royal Palm Way, Palm Beach, Florida 33480 (“Owner”) (Town and Owner are hereafter collectively referred to as the “Parties”).

WHEREAS, on July 30, 2007, Town and Royal 160, LLC (“Former Owner”), the prior Owner of the Land, as hereinafter defined, entered into a Declaration of Use Agreement, recorded in the Official Public Records Book 21987, Page 499, of the Public Records of Palm Beach County, Florida (the “Agreement”), and a Heart of Palm Beach Construction Management Agreement, recorded in the Official Records Book 21987, Page 510, of the Public Records of Palm Beach County, Florida (the “CMA”), concerning the conditional use of the land described in Exhibit A to the Agreement (the “Land”) as a hotel and accessory uses consistent with and subject to the conditions for the ‘Approval,’ including, among other conditions, a liquidated amount of \$2,000 per violation per day remedy (the “Violation Assessment”), as specifically set forth in the Agreement;

WHEREAS, the Land is described in **Exhibit A**, attached hereto, it is located within the municipal limits of Town and title to the Land is held by Owner;

WHEREAS, Town and Owner entered into an Amendment to Declaration of Use Agreement made on December 28, 2012 and recorded in the Official Public Records Book 25694, Page 633, of the Public Records of Palm Beach County, Florida (the ‘Amendment’), modifying the Agreement for the conditional use of the Land as a hotel and accessory uses and for operation on the Land of the Palm House Hotel (‘Hotel’) consistent with and subject to the conditions for the ‘Approval’ including, among other conditions, a February 14, 2013 deadline for the completion of construction of the Hotel (the “Completion Deadline”), as more specifically set forth in the Amendment;

WHEREAS, Owner commenced a civil action in December 2012 in the Fifteenth Judicial Circuit of Palm Beach County, Florida, styled *160 Royal Palm, LLC v. Town of Palm Beach*, Case No.: 502012CA023613XXXXMB (the “Litigation”), seeking a declaratory judgment concerning the Completion Deadline, which action remains pending but currently stayed based on the Bankruptcy Action, as hereinafter defined;

WHEREAS, effective February 15, 2013, Town commenced assessment of the Violation Assessment based on Owner’s failure to complete construction of the Hotel by the Completion Deadline, despite Owner’s contention that the Completion Deadline had been extended for two years, as alleged in the Litigation;

WHEREAS, Town and Owner entered into a Second Amendment to Declaration of Use Agreement made on August 13, 2013 and recorded in the Official Public Records Book 26251, Page 78, of the Public Records of Palm Beach County, Florida (the ‘Amendment’)(hereinafter the

“Second Amendment” for clarity), modifying the Agreement for the conditional use of the Land as a hotel and accessory uses and for Owner’s operation on the Land of the Palm House Hotel (‘Hotel’) consistent with and subject to the conditions for the ‘Approval,’ including, among other conditions, the Completion Deadline, as specifically set forth in the Second Amendment;

WHEREAS, in 2014, the Town of Palm Beach Police Department, Code Enforcement Office initiated a code enforcement action, Case # CE-14-1212, 160 Royal Palm Way, 160 Royal Palm LLC, against the Land for unauthorized construction of the Hotel by Owner. Owner failed to satisfy or correct the code enforcement violation resulting in the entry of an Order Assessing Fine and Order Imposing Lien by the Town of Palm Beach Code Enforcement Board of the Town of Palm Beach (“Town Code Enforcement”) in the amount of \$250 a day, commencing January 10, 2015 (the “Code Enforcement Fine”), which is recorded in Official Records Book 27315, page 1368 of the Public Records of Palm Beach County, Florida (the “Code Enforcement Lien”) to enforce compliance with the code enforcement order (the “Code Enforcement Order”) requiring the removal of all unpermitted work done beyond the scope of Owner’s approved variances and building permits and passing all inspections;

WHEREAS, in 2014 construction of the Hotel was terminated and abandoned without completion or compliance with the Code Enforcement Order and the building permit for construction of the Hotel expired;

WHEREAS, on or about December 15, 2014 a civil action was commenced in the Fifteenth Judicial Circuit of Palm Beach County, Florida, styled as *Ryan Black v. Gerry Matthews*, et al, Case No.: 502014CA014846XXXXMB AG (the “Receivership Action”) by Ryan Black, as a member and former managing member of Palm House, LLC, a Delaware limited liability company and the sole member of Owner, seeking appointment of a receiver for Owner;

WHEREAS, on or about July 20, 2015 the court in the Receivership Action entered an Amended Agreed Order on Plaintiff’s Motion to Appoint Receiver (the “Receivership Order”) whereby Cary Glickstein (the “Receiver”) was appointed as Receiver for the real and personal property of Owner, including the Land and the partially constructed Hotel, and directed by the Receivership Order to pursue completion of the Hotel, upon securing construction financing, as approved by Town;

WHEREAS, in November 2015, Receiver applied for and on January 13, 2016, the Town Council granted the Receiver approval of Site Plan # 1-2016 with Special Exception for construction of the Hotel (the “Development Approval”), imposing conditions of approval 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, including, in part, correction of the unauthorized construction underlying the Code Enforcement Lien, which approval was to be further memorialized in a Third Amendment to Declaration of Use Agreement (the “Third Amendment”), which has not been executed nor has the work commenced, as authorized by the Development Approval, by application for a building permit revision;

WHEREAS, in November 2016, the Receiver sought and on December 14, 2016, the Town Council granted the Receiver's request for a conditional, temporary abatement of the Violation Assessment accruing since February 15, 2013, which abatement remains conditionally and temporarily in effect;

WHEREAS, on or about November 17, 2016, the Receiver applied for and the Town Code Enforcement Board granted the Receiver's request for a conditional, temporary abatement of the Code Enforcement Fine accruing since January 10, 2015, which abatement remains conditionally and temporarily in effect. Among the conditions imposed for the continued abatement of the Code Enforcement Fine was payment to the Town of the Code Enforcement Fine amount accruing before the abatement date, which amount was paid in full;

WHEREAS, because the work authorized by the Development Approval could not be commenced within 12 months from the date of Town Council approval, in December 2016, Receiver applied for and in January 2017 the Town Council granted the Receiver's request to extend the Development Approval for one year through January 13, 2018;

WHEREAS, because the work authorized by the Development Approval could not be commenced within 12 months from the date of Town Council approval, in or about December 2017, Receiver applied for and in January 2018 the Town Council granted the Receiver's second request to extend the Development Approval for one year through January 9, 2019;

WHEREAS, on July 3, 2018, an order was entered by the Court in the Receivership Action expanding the Receiver's powers and making the Receiver the sole and exclusive manager of Owner, among other powers;

WHEREAS, on August 2, 2018, Owner, by and through the Receiver as the sole and exclusive manager of Owner ("Manager"), filed a petition for Chapter 11 bankruptcy relief in the United States Bankruptcy Court, Southern District of Florida, West Palm Beach, styled *In re: 160 Royal Palm, LLC*, Case No.: 18-19441-EPK (the "Bankruptcy Action");

WHEREAS, Manager believes the sale of the Land and the Hotel (collectively, the "Property" or "Project") to a qualified buyer is in the best interests of Owner's creditors, Town and interested parties and represents a final opportunity for the Manager to accomplish what the Receiver could not by completion of the Hotel as approved by Town;

WHEREAS, Owner, under the direction of Manager and subject to court approval in the Bankruptcy Action, intends to sell the property to a qualified buyer who will complete construction of the Hotel as approved by Town consistent with the Development Approval, a revised CMA and building permit revision, as described below;

WHEREAS, the Violation Assessment, Code Enforcement Fine, Code Enforcement Order, Code Enforcement Lien and impending expiration of the Development Approval in January 2019 separately and collectively create uncertainty in any prospective buyer's evaluation of the Land and the Hotel for acquisition purposes and that uncertainty materially and adversely affects the marketability of the Property and viability of the Project;

WHEREAS, the Town's interests are furthered by the sale of the Property to a qualified buyer who will complete the Project in accordance with the Development Approval; and

WHEREAS, further to the above objectives, the Parties desire to conditionally compromise and settle all claims, demands, rights, and causes of action with respect to the Violation Assessment and impending expiration of the Development Approval and Owner is simultaneously seeking by a separate conditional settlement agreement with Town Code Enforcement (the "CEB Settlement Agreement") to settle all claims, demands, rights, and causes of action with respect to the Code Enforcement Order, Code Enforcement Fine and Code Enforcement Lien.

NOW THEREFORE, in consideration of the mutual promises, premises and covenants set out in this Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, and upon the terms and subject to the conditions contained herein, the Parties expressly agree and covenant as follows:

Section 1: Incorporation of Recitals

The Parties expressly incorporate the recitals of this Settlement Agreement as a part hereof.

Section 2. Continued Abatement of Violation Assessment.

Town agrees to reinstate, if necessary, and conditionally abate accrual of the Violation Assessment for an abatement period through April 30, 2019. Upon timely payment of the Settlement Amount, as defined in Section 3 below, by a "Qualified Buyer," as defined in Section 7 below, the foregoing abatements shall continue and remain in force and effect conditioned on completion of construction of the Hotel in accordance with the requirements for extension of the Development Approval in Section 4 below.

Section 3: Settlement Amount; Payment

Town agrees to accept payment of \$200,000 (the "Settlement Amount") from a Qualified Buyer, as hereinafter defined, in full and final settlement of the Violation Assessment accruing through April 30, 2019 provided such payment is delivered to Town on or before the earliest of (1) thirty days from the closing on the sale of the Property or (2) December 31, 2018. Payment shall be made in a single payment payable to Town of Palm Beach and delivered to Town at 360 South County Road, Palm Beach, Florida 33480. Timely payment of the Settlement Amount shall be an express condition precedent to the abatement of the Violation Assessment through the abatement period set forth in Section 2.

Section 4: Extension of Development Approval

Upon timely payment of the Settlement Amount, Town agrees to extend the Development Approval through April 30, 2019, provided on or before April 30, 2019 the Qualified Buyer: (i) makes application for and upon Town approval thereafter executes and delivers the Third Amendment consistent with the Development Approval; (ii) makes application for and upon Town approval thereafter executes and delivers a revised CMA consistent with the Development Approval; (iii) makes application for a building permit revision for construction of the Hotel

consistent with the Development Approval; and (iv), if required by Town, concurrent with the Qualified Buyer's application for Third Amendment and revised CMA, and solely to approve the change in ownership of the Land from Owner to the Qualified Buyer, makes application for and receives Town approval for a modification to special exception for construction and operation of the Hotel, consistent with the Development Approval, or as otherwise requested by the Qualified Buyer and approved by the Town.

Section 5: Satisfaction and Discharge of Violation Assessment

Upon timely completion of the Hotel, as provided in the Third Amendment, the revised CMA and building permit revision, the Violation Assessment shall be deemed fully satisfied and discharged. Nothing contained herein shall prevent Town and the Qualified Buyer from agreeing to an alternative protocol for the timing of the satisfaction and discharge of the Violation Assessment.

Section 6. Dismissal of Litigation

On or before closing on the sale of the Property to a Qualified Buyer following entry of a court order approving this Settlement Agreement in the Bankruptcy Action and the execution and delivery of this Settlement Agreement by the Parties, the Litigation shall be dismissed with prejudice.

Section 7: Qualified Buyer

For purposes of this Settlement Agreement, a Qualified Buyer ("Qualified Buyer") shall be the purchaser of the Property pursuant to a fully performed contract and sale approved by court order in the Bankruptcy Action, excluding Owner, Former Owner, Palm House, LLC, any current or former manager or member of Owner, Former Owner or Palm House, LLC, and any other party to the Receivership Action or any other pending civil action in which Owner is a party, other than Town. While this Settlement Agreement is expressly intended for the benefit of a Qualified Buyer, nothing in this Agreement shall prevent Town, in Town's discretion, from extending the benefits conferred under this Settlement Agreement to a buyer who is not a Qualified Buyer hereunder.

Section 8: Conditional Settlement

This Settlement Agreement shall be of no force or effect unless it and the CEB Settlement Agreement are executed and delivered by the respective Parties and approved by a court order duly entered in the Bankruptcy Action. In the event (1) payment of the Settlement Amount is not timely paid to Town; (2) a Third Amendment to Declaration of Use Agreement is not timely executed by and delivered to Town by the Qualified Buyer or (3) construction of the Hotel is not timely completed by the Qualified Buyer in accordance with the Third Amendment, revised CMA and building permit revision, then the Development Approval shall expire. Unless otherwise extended by Town, the Violation Assessment abatement shall terminate and the assessment and fine shall be reinstated as if the abatement had never been granted, less payments received by Town, if any. If the Bankruptcy Action is dismissed before the sale of the Property or if Owner is otherwise prevented or unable to sell the Property to a Qualified Buyer, Owner reserves all of its rights,

claims and defenses as asserted in the Litigation and/or that are or as may be available to Owner in the Bankruptcy Action with regard to the Property, the Violation Assessment, the Code Enforcement Fine and/or the Code Enforcement Lien.

Section 9: No Admission of Liability or Fault

This Agreement is a compromise of a disputed claim and the execution of this Settlement Agreement is not, and should not be construed to be, as an admission of liability or fault on the part of any party, their respective successors, assigns, subsidiaries, affiliates, agents, managers, members, partners, and employees, and by executing this Settlement Agreement the Parties expressly deny any liability or fault.

Section 10: Governing Law

This Settlement Agreement shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Florida.

Section 11: Attorneys' Fees and Costs

In the event of litigation to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-performing party. Except as specifically provided in this Settlement Agreement, the Parties shall bear their own respective attorneys' fees and costs incurred in connection with the Litigation and the negotiation and performance of this Settlement Agreement.

Section 12: Time is of the Essence

Time is of the essence for all dates and time periods expressed herein.

Section 13: Choice of Law and Forum Selection

The Parties agree that this Settlement Agreement is made and entered into in the State of Florida, and shall in all respects be interpreted, enforced and governed under the laws of the State of Florida without applying conflict of laws principles, and shall be subject to the exclusive jurisdiction of the courts of Florida. The sole and exclusive venue for any litigation arising out of, or relating to this Settlement Agreement shall be in Palm Beach, Florida, to the exclusion of any and all other venues.

Section 14: Interpretation of Settlement Agreement

The Parties have been represented by counsel, and have reviewed this Settlement Agreement through their respective attorneys or have had the opportunity to do so. None of the Parties (nor any attorney for any of the Parties) shall be deemed to be the drafter of this Settlement Agreement. Any rule of construction under Florida law requiring that ambiguities be resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement. The Parties further agree that all parts of this Settlement Agreement shall in all cases be construed as a whole according to its fair meaning.

Section 15: Successors and Assigns

This Settlement Agreement shall apply to the Parties, as well as to each of their predecessors, successors and assigns.

Section 16: Declaration of Use Agreement, the Amendment and the Second Amendment

The Declaration of Use Agreement, the Amendment to Declaration of Use Agreement and the Second Amendment to Declaration of Use Agreement remain in full force and effect, subject to further modification by a Third Amendment to Declaration of Use Agreement between Town and a Qualified Buyer, as generally described herein.

Section 17: Authority to Execute Settlement Agreement

Each of the Parties, and those persons executing this Settlement Agreement on behalf of the Parties, warrants to the other that each has full power, authority and capacity to execute this Settlement Agreement. In addition, the Parties warrant and represent that they are the owner of the claims asserted against the other and have not transferred or assigned any claim, in whole or in part.

Section 18: Town Cooperation

In connection with Owner's sale of the Property to a Qualified Buyer as authorized and approved in the Bankruptcy Action, Town agrees to cooperate with the settlement, title or closing agent, Owner and the Qualified Buyer, at no expense to Town, and use its best reasonable efforts to timely review and comply with written requests for information, acknowledgements and confirmations further to Owner's conveyance of title, confirmation of Qualified Buyer status, and verification of the recitals set forth in this Settlement Agreement as of the Closing Date.

Section 19: Headings

All sections, titles or captions contained in this Settlement Agreement are for convenience only and shall not be deemed to be a part of this Settlement Agreement, and shall not affect the meaning or interpretation of this Settlement Agreement.

Section 20: Merger

There have been no written or oral representations made, or relied upon, by the Parties as inducement for the execution of this Settlement Agreement that are not expressly stated herein. The terms of this Settlement Agreement are contractual, not mere recitals, and may be enforced by a court of competent jurisdiction. No changes in or additions to this Settlement Agreement shall be valid, enforceable or recognized, unless made in a writing and signed by all of the Parties.

Section 21: Execution in Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Additionally, the different counterparts of this Settlement Agreement may be executed separately by each signatory, and all such separately executed counterparts, when taken together, shall be treated as and constitute one and the same instrument. Any signature delivered by electronic or facsimile transmission shall be treated in all manner and respect as an original document.

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

SIGNATURES ON FOLLOWING PAGE

Signed, sealed and delivered
in the presence of:

TOWN OF PALM BEACH,

By: _____
Gail Coniglio

By: _____

Town Council

By: _____
Kirk Blouin
Town Manager

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY

John C. Randolph
Town Attorney

160 ROYAL PALM, LLC, a Florida limited
liability company

By: _____
Cary Glickstein, as Manager for 160 Royal
Palm, LLC, and not individually

EXHBIT A

Legal Description for the Land:

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