

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

CARRIAGE HOUSE PROPERTIES PARTNERS LLC

JANUARY 2019

Prepared by and return to:

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this ____ day of _____, 2019 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called "Town") and CARRIAGE HOUSE PROPERTIES PARTNERS LLC., 264/270 South County Road, Palm Beach, Florida 33480 (hereinafter called "Club"), which terms "Town" and "Club" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

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

WHEREAS, The Club is a Special Exception use in the C-TS Zoning District; and

WHEREAS, the Town Council conditionally approved Zoning Application Number Z-18-00149 on January 9, 2019 which granted the Club special exception approval to open a private club at 264/270 South County Road in Palm Beach, Florida and a second special exception approval to allow off-site supplemental shared parking for 68 night-time parking spaces (after 6 p.m.) at 230/240 Royal Palm Way, Palm Beach, Florida; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exceptions are conditioned upon the representations made herein and all of the conditions herein imposed; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed 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**

The Club has full right to enter into this Agreement and to bind the Land and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Land in accordance with the terms and conditions of this Agreement. 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. The execution of this Agreement or the consummation of the transactions contemplated herein will not violate any restriction, court order or agreement to which the Club or Land are subject.

ARTICLE III
PRIVATE CLUB USE

The Club use that is the subject of this Declaration shall be as set forth in the application submitted to the Town as Z-18-00149 and approved by the Town Council on January 9, 2019 as the same may be amended from time to time (hereinafter referred to as the “Approval”).

ARTICLE IV
CONDITIONS

The approval to allow the Club to operate is based upon the following conditions:

- 1) The Club shall be located in the 264 building and the first floor of the 270 building with the hours of operation to be 11:00 a.m. until 12:30 a.m. seven days a week. All patrons will be required to exit the Club within 30 minutes of close.
- 2) The Dining Room size nor any other room shall not exceed 1,500 square feet.
- 3) There shall not be a dance floor.
- 4) The maximum membership shall be 232 people regardless of designation and whether or not dues paying. At least 50% of the Club members shall consist of individuals who are “townpersons” as defined Town’s Code. Members are limited to natural persons and expressly exclude corporations or other entities. Use of a single membership is limited to an adult, that person’s spouse or significant other, and that person’s adult children under the age of 30. Guests must be accompanied by a member when present at the Club. The Club is required to provide proof of town-serving compliance on an annual basis and per the Town’s code. The Club shall not be required to provide names of Members when providing proof of town-serving compliance.
- 5) The maximum occupancy shall not exceed 100 people until 6:00 p.m. and 250 people after 6:00 p.m. Maximum occupancy shall include Club employees. All guests and members must register at the Club upon entry and the occupancy registry will be made available for inspection by the Town upon request.
- 6) Valet parking is required from 6:00 p.m. until closing. The valet stand drop off and pick up shall be located in the parking lot at 205 Royal Palm Way, provided, however, should the Club lose the right to operate a valet drop off and pick up stand at 205 Royal Palm Way, the valet stand drop off and pick up shall be located at 230 Royal Palm Way or such other location to be agreed upon by the Director of the Planning, Zoning and Building or the Town Council. There shall be no valet stand on South County Road, in Phipps Plaza, or on Seaview Ave.
- 7) The Club must provide off-street parking with a parking lot capacity of at least 68 vehicles accessible to Club valet services, members, guests, and employees from 6:00 p.m to close. Club’s valet services shall use the off-street parking lot to park member and guest vehicles. There shall be no parking of member or guest vehicles in the 205 Royal Palm Way parking lot.

- 8) No events shall be allowed prior to 6:00 p.m. After 6:00 p.m. no events of more than ninety (90) people shall be allowed. There shall be no more than 12 events per year, nor more than 1 event per month. An event is defined as an organized member sponsored function for 40 or more people including charitable events, rehearsal dinners, wedding receptions, bar mitzvahs, Hanukkah, Christmas or birthday parties. Only a Club member may host an event and 1 off duty police officer shall be required for all events unless an acceptable alternative arrangement is agreed to by the Town police. The Club is required to maintain records of events and will make such available to the Town upon request. The Club shall be required to keep such records for a period of 12 months.
- 9) The Club shall be allowed to remain open until 2:00 a.m. on New Year's Eve. The Club will be required to hire 2 off duty police officers on New Year's Eve, unless an acceptable alternative arrangement is agreed to by the Town police. A minimum of 6 valets shall be required for events and on New Year's Eve.
- 10) Club members (who are non-Phipps Plaza residents) will be instructed not to park in Phipps Plaza or on Seaview Ave, Seaspray Ave, Seabreeze Ave, and Clarke Ave when visiting the Club. All Club members will be instructed to a) use the Club provided valet when visiting the Club after 6:00 p.m and b) instruct their guests to use the Club provided valet when visiting the Club after 6:00 p.m.; the Club will issue periodic reminders to Club members of this policy.
- 11) The Club shall obtain and maintain a valet parking permit. A minimum of 4 valets shall be on duty from 6:00 p.m to closing Thursday to Saturday and a minimum of 3 valets shall be on duty from 6:00 p.m to closing Sunday to Wednesday. The number of valets may be modified by the Police Department should it be determined that more or less valets are required to manage the Club parking. Valets will be instructed not to park in Phipps Plaza or on Seaview Ave, Seaspray Ave, Seabreeze Ave, and Clarke Ave.
- 12) After 6:00 p.m., all vehicular pick-up and drop-off of Club members, guests and employees (including car services) must occur at the same location as the valet pick up and drop off stands provided that car services may drop off and pick up on South County Rd. in the current commercial loading zone. Club Members, valets, and employees will be instructed that vehicular pick-up and drop-off of Club members, guests, and employees is expressly prohibited from occurring at the 264 S. County Rd. building entrance / exit. The only exception to the forgoing is that in the event the valet stand is not operating at 205 Royal Palm Way, Club members and guests who are transported to and from the Club by Club-operated golf carts may be dropped off and picked up at the 264 S. County Rd. or 270 S County Rd entrance. In this case, Club-operated golf carts shall be expressly prohibited from driving within the circle of Phipps Plaza. The Club will issue periodic reminders to Club members, valets, and employees of this policy.
- 13) Club employees who drive to work after 6:00 p.m. shall be required to park in the off-street parking lot secured by Club as detailed in condition 7 above or a parking lot or garage at an alternative off-street location. Club employees who drive to work prior to 6:00 p.m. shall be required to park in the Esplanade or Apollo parking lots or

a parking lot or garage at an alternative off-street location. Employees will be explicitly instructed not to park in Phipps Plaza or on Seaview Ave, Seaspray Ave, Seabreeze Ave, and Clarke Ave. Employees shall be required to present proof of day time parking to the Club administrative staff. The Club shall be required to keep such employee parking records for a period of 12 months and make such available to the Town for confidential review upon request.

- 14) The lunch seating shall be limited to 67 seats. The total seats after 6:00 p.m. shall not exceed 153.
- 15) The Club shall not add lighting to either the 205 Royal Palm Way or 230 Royal Palm Way parking lots.
- 16) All trash shall be stored inside the Club and will not be taken to the dumpster until after 8:00 a.m.
- 17) The Club shall instruct its delivery services to only use the commercial loading zones at the corner of Seaview Ave. and South County Road. Delivery services will be instructed not to park in Phipps Plaza or on Seaview Ave, Seaspray Ave, Seabreeze Ave, and Clarke Ave. There shall be no Club deliveries before 8:00 a.m.
- 18) The Club shall provide state of the art exhaust vents and scrubbers and shall have them cleaned on a weekly basis.
- 19) The roof of the Club's buildings shall not be used for any type of Club activity.
- 20) The Club shall purchase two (2) "street legal" golf carts to aid in valet operations.
- 21) The Club shall commit to pay an amount up to \$300,000 to beautify Phipps Park according to a plan approved by the Town. The Club's use of Phipps Plaza Park shall be subject to the Town's rules and guidelines governing private use of public Town parks.
- 22) Club shall enter into a Construction Management Agreement prior to the issuance of a building permit.
- 23) Prior to receiving a certificate of occupancy, copies of the signed lease agreements regarding the Club's right to use the parking lots at 205 Royal Palm Way and 230 Royal Palm Way (or any other off-site parking lot acquired by the Club for its use), including any amendments thereto, will be provided, confidentially, to the Town attorney to confirm Club's right to use. The agreements may be redacted to exclude economic terms or other terms unrelated to the Club's right to use the parking lots.
- 24) Club shall return to the Town Council after 6 months of operation during "season" to review the list of conditions and compliance. The Club is prohibited from seeking a revision(s) to this Agreement for a period of 1 year following the date of Club opening. Any future requested revision to this Agreement will require at least 45 day notice to all property owners within a 750 foot radius. Any Town Council hearing

regarding a requested revision(s) to this Agreement will only be conducted between the months of December and May.

ARTICLE V VOLUNTARY AGREEMENT AND HOLD HARMLESS

The Club agrees to be bound by the terms and conditions in this Agreement and waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VI 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 the Club and the Club's representative of said violation(s) and the date upon which said violations(s) shall be corrected, Club or Club's successor 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 Club disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this Agreement, or in the event the Club disputes any code violation, Club may appeal the determination of the Director of the Planning, Zoning and Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days following the written notice of violation.

2. 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 attorney's fees insofar as the Town prevails, either before or as a result of litigation, including appeals.

ARTICLE VII PROVISIONS TO RUN WITH THE CLUB

This Agreement shall NOT run with the Land and shall be binding upon the Club only and shall terminate upon the termination of the Club's business tax receipt, or rescission of

approval by the Town Council. This Agreement shall be recorded by the Club in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.

ARTICLE VIII
ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties as to its subject matter and it may not be amended except by written agreement executed by both parties.

ARTICLE IX
EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which this Agreement is executed by the last party to sign the Agreement.

ARTICLE X
MISCELLANEOUS

Wherever the word “laws” appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities.

This Agreement 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 Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof.

In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken from this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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:

THE TOWN OF PALM BEACH:

Print Name: _____

By: _____
Gail Coniglio, Mayor

Print Name: _____

Print Name: _____

By: _____
Danielle Hickox Moore, President

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

CLUB:

CARRIAGE HOUSE PROPERTIES
PARTNERS LLC

Print Name: _____

By: _____
Its: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2019, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and she did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2019, by Danielle Hickox Moore, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2019, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2019, by _____, on behalf of CARRIAGE HOUSE PROPERTIES PARTNERS LLC. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE TOWN OF
PALM BEACH

By: _____
John C. Randolph, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

Lots K and L, PHIPPS PLAZA, according to the Plat thereof as recorded in Plat Book 20, Page(s) 72, of the Public Records of Palm Beach County, Florida.