

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this ___ day of _____, 2020 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and LR PALM HOUSE LLC, formerly known as ROYAL 160, LLC and 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.

WITNESSETH:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement, dated July 30, 2007 and recorded in Official Records Book 21987, Page 499, and an Amendment to the Declaration of Use Agreement, dated December 28, 2012 and recorded in Official Records Book 25694, Page 633, and further amended in the Second Amendment to the Declaration of Use Agreement, dated August 13, 2013 and recorded in Official Records Book 26251, Page 78, all in the Public Records of Palm Beach County, Florida ("Agreement");

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;

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

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;

WHEREAS, the Town Council on October 9, 2020, approved the Site Plan Revise with Special Exception and Variances number Z-20-00__ to modify the previously approved Site Plan Review #16-2016 with Special Exception, which allowed the new Owner to operate the Hotel subject to the modified conditions, which modified previous conditions of approval;

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

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;

WHEREAS, in approving the Site Plan Review with Special Exceptions and Variances, the modifications to the previous conditions of approval 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 Site Plan Review 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 Agreement is hereby amended 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 amendment to the 2007 Declaration of Use Agreement, as amended, 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 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 Amendment will not violate any restrictions, court orders or agreements 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 and as set forth in the applications previously submitted to, and approved by, the Town (hereinafter referred to as the "Approvals"). 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 **MODIFICATIONS TO PREVIOUS CONDITIONS OF APPROVAL**

The following modifications to previous conditions of approval are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances contained in Z-20-00289 and are required to be met as conditions of the continued operation of the Hotel.

DECLARATION OF USE DATED JULY 30, 2007

1. Paragraph 3 shall be amended as follows:

~~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 the back balcony terrace). In addition, The first floor dining room is approved for 65 88 indoor seats with the ability to relocate 16 and 36 outdoor seats facing the new pool deck 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 hours room service.~~

2. Paragraph 7 shall be amended as follows:

~~The function area shall only be allowed 150 200 seats with recorded or live music or other entertainment between the hours of 12:00 Noon and 11:30 PM. 12:00 AM. 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.~~

3. Paragraph 8 shall be deleted in its entirety as follows:

~~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.~~

AMENDMENT TO DECLARATION OF USE DATED DECEMBER 28, 2012

1. Paragraph 1 shall be amended as follows:

~~The proposed 14 15.16 foot tall parapet wall between the proposed function room and the proposed employee pool service building west wing of the hotel shall have a water feature that runs the length of the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).~~

2. Paragraph 3 shall be amended as follows:

~~There shall be no Pre-function events in the pool deck and grass area between the pool deck and Function Room shall be allowed. These areas shall remain passive. 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 played on the~~

abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement.

3. Paragraph 5 shall be deleted in its entirety as follows:

~~Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the sundeck from 7:00 PM to 9:00 AM so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire rescue accessibility shall be provided by know boxes and an elevator override system. The access points to the stairs leading to the sundeck on the Function Room shall be designed to be completely isolated from the ground floor with a full door and other separation to ensure that when they are locked there is no access to the sundeck.~~

4. Paragraph 7 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 with the exception of the 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, include the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

SECOND AMENDMENT TO DECLARATION OF USE DATED AUGUST 13, 2013

1. Paragraph 1 shall be deleted in its entirety as follows:

~~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.~~

2. Paragraph 2 shall be deleted in its entirety as follows:

~~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) the 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) except for emergencies, the Hotel elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Hotel sundeck 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.~~

3. Paragraph 4 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 with the exception of the 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.~~

ARTICLE V **PROVISIONS FOR NOTICE**

For the issuance of any notice regarding the terms of the Agreement and this Amendment, 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:

LR Palm House LLC
160 Royal Palm Way
Palm Beach, FL 33480

ARTICLE VI **PROVISIONS TO RUN WITH LAND/RECORDING**

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

ARTICLE VII **ENTIRE AGREEMENT**

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499 and Amendment to the Agreement as recorded in Official Records Book 25694, Page 633 and Second Amendment to the Agreement as recorded in Official Records Book 26251, Page 78, of the Public Records of Palm Beach County between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499 and Official Records Book 25694, Page 633 and Official Records Book 26251, Page 78 of the Public Records of Palm Beach County, remain in full force and effect.

ARTICLE VIII **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 Amendment 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. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement,

same shall be deemed stricken herefrom and 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:

TOWN OF PALM BEACH

By: _____
Gail Coniglio, Mayor

By: _____
Maggie Zeidman, President
Town Council

By: _____
Kirk Blouin
Town Manager

LR PALM HOUSE LLC

By: _____
Its: Manager/Member

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Maggie Ziedman, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, the _____ of LR Palm House LLC, a Florida limited liability company, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

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.