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Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0499 - 509; (11pgs)

DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
ROYAL 160, LLC

July, 2007

TABLE OF CONTENTS

ARTICLE I	RECITALS.....	2
ARTICLE II	REPRESENTATION OF OWNERSHIP	2
ARTICLE III	CONDOMINIUM HOTEL USES	2
ARTICLE IV	CONDITIONS	2
ARTICLE V	APPLICATION TO CONDOMINIUM UNIT OWNERS	4
ARTICLE VI	VOLUNTARY AGREEMENT	4
ARTICLE VII	REMEDIES FOR VIOLATION	4
ARTICLE VIII	PROVISIONS FOR NOTICE	5
ARTICLE IX	PROVISIONS TO RUN WITH LAND/RECORDING	5
ARTICLE X	ENTIRE AGREEMENT	5
ARTICLE XI	EFFECTIVE DATE	6
ARTICLE XII	MISCELLANEOUS.....	6

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this 30th day of July, 2007 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town"); and Royal 160, LLC (hereinafter called "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 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;

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

WHEREAS, the Heart of Palm Beach Hotel (hereafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Hotel is a valid use which was approved in 1981, but is now non-conforming in several aspects as a result of Code changes since its construction;

WHEREAS, prior to 1997 recorded or live music or entertainment was allowed in hotel dining rooms and restaurants;

WHEREAS, prior to 1997 the Hotel provided recorded or live music or entertainment and is grandfathered to allow recorded or live music or entertainment provided certain conditions are met as identified in this Agreement;

WHEREAS, the Land has a future land use designation of Commercial on the Comprehensive Plan Future Land Use Map;

WHEREAS, the Land is zoned C-B, Commercial Business;

WHEREAS, OWNER filed an application for approval of Site Plan Review #2-2007 with Special Exceptions and Variances ("Application");

WHEREAS, the number of Hotel units is being reduced from 95 to 79 units, dining room indoor and outdoor seating is increasing from an approved 150 seats to 185 seats;

WHEREAS, the function seating is changing from 110 approved seats to 150 seats;

WHEREAS, the Town Council conducted hearings on the Site Plan with Special Exceptions and Variances on January 9, 2007, February 13, 2007, April 10, 2007 and May 7, 2007;

WHEREAS, Owner made numerous revisions to the Site Plan in response to comments from the Town Council, the Architectural Commission, and neighbors;

WHEREAS, the Town Council approved on May 7, 2007, Site Plan Review, Special Exceptions and Variances, subject to the conditions 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;

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 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 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, 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

Owner 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. Neither the execution of this Agreement 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 (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
CONDITIONS

The following conditions are imposed as conditions of the granting the 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 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.
4. 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.
5. Recorded or live music or other entertainment is allowed on the pool deck area between 12:00 Noon 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. Background music is defined as low volume music where a normal conversation could be held over the music. Background music on the pool deck area shall be allowed between the hours of 9:00 a.m. and 7:00 PM.
6. Recorded or live music or entertainment shall be allowed inside the Hotel building from 9:00 a.m. to 11:30 p.m.
7. The function area shall only be allowed 150 seats with recorded or live music or other entertainment between the hours of 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.
8. 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 building(s) 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. 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) 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 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.

ARTICLE V

APPLICATION TO CONDOMINIUM UNIT OWNERS

Owner(s) shall ensure by a legally enforceable document that the condominium hotel unit Owner(s) assume all liability and responsibility as outlined in this Agreement in perpetuity.

ARTICLE VI

VOLUNTARY AGREEMENT

The terms and conditions set forth in the Approval and this Agreement are agreed to voluntarily by Owner(s), Owner(s) agrees to be bound by them, and OWNER(s) waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VII

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 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 VIII **PROVISIONS FOR NOTICE**

For the issuance of any notice regarding the terms of this Agreement, notice shall be provided:

- a. To the Town: Town Manager at Town of Palm Beach Town Hall, 360 South County Road, Palm Beach, Florida, 33480
- b. To the Owner: C/O Robert Matthews, Royal 160 LLC, condominium owners and condominium association manager, 160 Royal Palm Way, Palm Beach, Florida 33480

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

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

ARTICLE X **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 XI
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 XII
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. This Agreement shall be binding upon the parties hereto and upon their successors, assigns, heirs and personal representatives. 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.

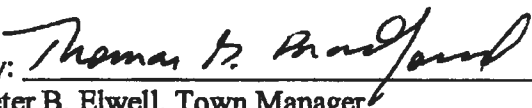
IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above. Signed, sealed and delivered in the presence of:

Signed, sealed and delivered TOWN OF PALM BEACH

in the presence of:

By: 
Jack McDonald, Mayor

By: 
Richard Kleid, President Town Council

By: 
for: Peter B. Elwell, Town Manager

By: [Signature]
Name: Robert Matthews
160 Royal LLC, as President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Jack McDonald, the Mayor 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.



Patricia Gayle-Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Richard Kleid, the President 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.



Patricia Gayle-Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Peter B. 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 and he did not take an oath.



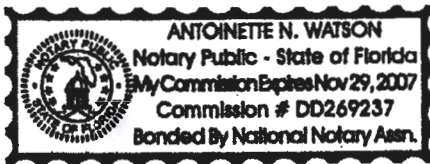
Patricia Gayle-Gordon
Signature of Notary Public
Printed Name of Notary Public

Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 23rd day of July, 2007, by Robert Matthews, 160 Royal LLC, as President. He is personally known to me and he did not take an oath.



Antoinette N. Watson
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

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

By: [Signature]
John C. Randolph, Esquire

RECOMMEND APPROVAL:
7/25/07
[Signature]
Paul Castro, AICP
Zoning Administrator

EXHIBIT A

LEGAL DESCRIPTION

BEING ALL OF 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, PALM BEACH COUNTY PUBLIC RECORDS.



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 1st DAY OF Aug, 2007
SHARON R. BOOK
CLERK & COMPTROLLER
By [Signature]

Prepared by and return to:
Maura Ziska
Kochman & Ziska, PLC
222 Lakeview Ave., Suite 1500
West Palm Beach, FL 33401

CFM 20130005174
OR BK 25694 PG 0633
RECORDED 01/04/2013 12:30:48
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0633 - 641; (9pgs)

AMENDMENT TO DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
160 ROYAL PALM LLC (F/K/A ROYAL 160, LLC)

Dated: December, 2012

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this 28th day of December, 2012 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, formerly 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.

WITNESSETH:

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 ("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 July 11, 2012, approved the special exception portion of the Site Plan Review #6-2012 with Special Exceptions and Variances, which allowed the new Owner to operate the Hotel subject to a condition that the south perimeter landscaping having to be completely installed by September 30, 2012;

WHEREAS, the Town Council on August 15, 2012 granted conditional approval of Site Plan Review #6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exceptions and Variances on the Land;

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;

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 amendment to the Site Plan Review with Special Exceptions and Variances, the 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 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 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 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 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. Neither the execution of this Amendment to the 2007 Agreement, 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 #6-2012 with Special Exceptions and Variances, as amended and approved by the Town Council on July 11, 2012 and August 15, 2012 (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
ADDITIONAL CONDITIONS OF APPROVAL

The following new conditions 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. 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 the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).
2. 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.
3. There shall be no events in the pool deck and grass area between the pool deck and Function Room. Those 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.
4. The air conditioning equipment on the roof of the Function Room shall be screened from the neighbors by a solid parapet wall on the three exterior sides.
5. Except for emergencies, the Function Room 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 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 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.
6. 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.
7. 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:

c/o Glenn F. Straub,
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, of the Public Records of Palm Beach 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, 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:

Bayle-Gordon
Laren Temme

Bayle-Gordon
Laren Temme

Bayle-Gordon
Laren Temme

Maria Zinna
Cara Pore

TOWN OF PALM BEACH

By: Gail L. Coniglio
Gail Coniglio

By: David Rosow
David Rosow, President
Town Council

By: Peter B. Elwell
Peter Elwell
Town Manager

160 ROYAL PALM LLC

By: [Signature] MANAGER
Its Manager/Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21st day of December 2012, by Gail 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)

Patricia Gayle-Gordon

Notary Public-State of Florida

Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21 day of December 2012, by David Rosow, 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 ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

Notary Public-State of Florida

Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28th day of December 2012, 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)

Patricia Gayle-Gordon

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5 day of November, 2012, by Glenn F. Straub on behalf of the company. He is personally known to me or has produced as identification.



(SEAL)

Maura Ziska

Notary Public-State of Florida
Commission Number: _____

RECOMMEND APPROVAL:

11/13/12

Paul Castro

Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph

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.



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 17 DAY OF Jan, 2013

SHARON R. BOCK
CLERK & COMPTROLLER

By [Signature]
DEPUTY CLERK

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS SECOND AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this 13th day of August, 2013 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, formerly 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 ("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 July 11, 2012, approved the special exception portion of the Site Plan Review #6-2012 with Special Exceptions and Variances, which allowed the new Owner to operate the Hotel subject to a condition that the south perimeter landscaping having to be completely installed by September 30, 2012;

WHEREAS, the Town Council on August 15, 2012 granted conditional approval of Site Plan Review #6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exceptions and Variances on the Land;

WHEREAS, the Town Council on January 9, 2013 granted approval of Site Plan Review # 3-2013 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exception and Variances and Site Plan Review # 6-2012 with Special Exception and Variance;

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;

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 second amendment to the Site Plan Review with Special Exceptions and Variances, the 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 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 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 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 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. Neither the execution of this Amendment to the 2007 Agreement, 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 #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 # 3-2013 with Special Exception and Variance, as amended and approved by the Town Council on January 9, 2013 (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 **ADDITIONAL CONDITIONS OF APPROVAL**

The following new conditions 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. 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. 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. 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.
4. 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:

c/o Glenn F. Straub,
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, of the Public Records of Palm Beach 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, 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,

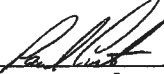
same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

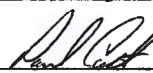
Signed, sealed and delivered
In the presence of:



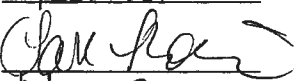
Paul Castro



Paul Castro

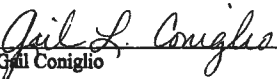


Paul Castro



Nanni Bone

TOWN OF PALM BEACH

By: 

Gail Coniglio

By: 

David Rosow, President
Town Council

By: 

Peter Elwell
Town Manager

160 ROYAL PALM LLC

By: 

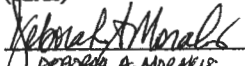
Its: Manager/Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9 day of AUGUST, 2013, by Gail 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)


DEBORAH A. MORAIS

Notary Public-State of Florida

Commission Number: DP966204

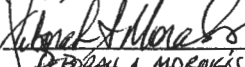


STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13 day of AUGUST, 2013, by David Rosow, 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 or has produced _____ as identification.

(SEAL)


DEBORAH A. MORAIS

Notary Public-State of Florida

Commission Number: DP966204

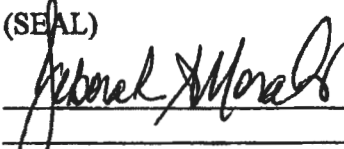


STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9 day of AUGUST, 2013, 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: DD966204



STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 7 day of August 2013, by Glenn F. Straub on behalf of the company. He is personally known to me or has produced _____ as identification.



(SEAL)


Notary Public-State of Florida

Commission Number: EE841098

RECOMMEND APPROVAL:

8/8/13


Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

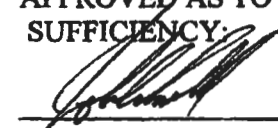

John C. Randolph
Town Attorney

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.



STATE OF FLORIDA - PALM BEACH COUNTY

I hereby certify that the foregoing is a true COPY of the record in my office with redactions, if any as required by law.

THIS 13 DAY OF August, 2013
SHARON R. BOCK
CLERK & COMPTROLLER

By [Signature]
DEPUTY CLERK



PDF
L31.32
SE
VC
PC
PF
JT
DT

ONE NORTH CLEMATIS STREET
SUITE 500
WEST PALM BEACH, FLORIDA 33401
TELEPHONE: 561.832.3300
FACSIMILE: 561.655.1109
www.broadandcassel.com

JACQUELINE S. MILLER
EMAIL: jmill@broadandcassel.com

August 1, 2007

RECEIVED

AUG 01 2007

TOWN OF PALM BEACH
PZB DEPT.

BY HAND DELIVERY

Mr. Paul Castro
Zoning Administration
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Re: Royal 160 LLC

Dear Mr. Castro:

I enclose certified copies of the Construction Management Agreement and Declaration of Use, as filed with the Clerk of Court.

Sincerely,

BROAD AND CASSEL

A handwritten signature in cursive script, appearing to read 'J. Miller', is written over the printed name 'Jacqueline S. Miller'.

Jacqueline S. Miller

JSM/bp
Encls.



CFN 20070367905
OR BK 21987 PG 0510
RECORDED 08/01/2007 10:41:42
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0510 - 516; (7pgs)

Heart of Palm Beach Hotel
Construction Management Agreement

Royal 160 LLC ("Owner") and the Town of Palm Beach, Florida ("Town") enter into the following Agreement on this 30th day of July, 2007.

WHEREAS, Owner owns an existing hotel property located at 160 Royal Palm Way in the Town ("Property"); and

WHEREAS, Owner received approval on May 7, 2007 by the Town Council of Site Plan Review #2-2007 with Special Exceptions and Variances ("Approval") for redevelopment of the Property; and

WHEREAS, Owner and Town entered into a Declaration of Use Agreement on July 30th, 2007, which requires among other things that the parties enter into this Construction Management Agreement.

NOW THEREFORE, Owner and Town agree as follows:

RECITALS

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

CONDITIONS

2. The Owner shall follow the Schedule of Construction as set forth in Exhibit A ("Schedule") attached hereto, however, said Schedule may be modified provided that construction does not exceed the maximum number of day allowed by Code. The construction is approved subject to the following conditions:

A. **Demolition.**

1. Rodent extermination shall be completed prior to the start of demolition by a Florida licensed and bonded exterminator. A written report shall be provided on the extermination to the Town.
2. Removal of debris on an every other day basis shall be required of the contractor. Prior to the issuance of a demolition or construction permit the contractor shall provide the Town with an acceptable plan that identifies the staging area for debris accumulated on the site. Said plan shall provide detailed information on how the contractor will screen the debris staging area from the neighboring property owners and street.

B. **Dust Control During Construction**

Dust control shall be as prescribed by the Town Code of Ordinances.

- C. Property Security. Any security lighting shall be shielded so that it shines downward and does not produce any light or glare which would adversely affect surrounding property owners. Such lighting shall be the minimum necessary to allow security surveillance of the property. In addition, said lighting shall meet all ordinances and laws regarding turtle season nesting.
- D. Worker Parking. Construction workers and project management personnel may park only within the boundaries of the Property. Parking by said persons in the public rights-of-way is prohibited.
- E. Storage Areas. Storage and delivery area plans shall be submitted and approved by the Town prior to the issuance of a demolition or construction permit. Those areas on the Property shall be fenced and screened from view by a six foot high green mesh fence. All construction deliveries shall be conducted on site and not in the public rights-of-way, unless prior approval from the Town's Department of Public Works is obtained. In addition, prior approval shall also be required from the Town Police Department to bring in large deliveries that may block the street or access into the site.
- F. Hours of Construction. Hours of construction shall be governed by Section 42-199 of Town's Code of Ordinances. No construction activity shall be allowed on Saturdays in the Season (except for interior work allowed by the Town Code), on Sundays, or on holidays.
- G. Complaints. If valid noise, odor, dust control or other valid complaints are reported to the Town, the Town may order a cessation or modification of construction activities on the Property, until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a complaint which the Director of Planning, Zoning, and Building believes may be valid, the Director shall notify Owner and obtain Owner's response to the complaint prior to making a determination on the complaint. Owner shall have the right to appeal the Director's determination to the Town Council at the next scheduled Council meeting.
- H. Project Management.
1. The owner's general contractor shall schedule and attend a pre-construction meeting with all of the subcontractors and Town Staff prior to the issuance of a demolition or building permit.
 2. The owner's general contractor shall designate two project managers who can be contacted by the Town with respect to any issues involved with the construction. The name of those persons shall be provided in writing to the Town and shall be updated upon any change. At least one of those project managers shall be on the Property at all times when construction work is being done on the Property.

I. Construction Trailers

1. Construction trailers shall only be for the general contractor and subcontractors. No trailers shall be allowed on the site for sales or Hotel staff unless previously approved by the Town Council.

J. Violations.

1. If the owner fails to complete the construction in the maximum number of days allowed as identified in the Town Code of Ordinances, the Owner shall pay to Town a liquidated amount of \$ 2,000.00 per day for each calendar day past the maximum number of days allowed by the Town Code of Ordinances.
2. In addition to the above, for violations of any of the conditions of this Agreement, Owner shall pay Town a liquidated amount of \$2,000.00 for each day that any of the conditions of this Agreement are violated, which amount shall accrue on a per day basis for each day a violation of this Agreement exists and which shall increase annually beginning one year from the date of this Agreement based upon the Consumer Price Index for South Florida.
3. If valid noise, odor, dust control or other complaints are reported to the Town, the Town may order a cessation or modification of construction activities of the Hotel, until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a noise, odor, dust or other complaint which the Director of the Planning, Zoning and Building Department believes may be valid, the Director shall notify Owner and obtain Owner's response to the complaint prior to making a determination on the complaint. Owner shall have the right to appeal the Director's determination in regard to the remedies described in this section to the Town Council at the next scheduled meeting of the Town Council, which is at least fifteen (15) days subsequent to the date of the notice of appeal for all outstanding amounts imposed by this provision.
4. All outstanding amounts imposed under this provision shall be paid by the Owner prior to the issuance of a certificate of occupancy for any building or structure on the Property.

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:

Signed, sealed and delivered TOWN OF PALM BEACH

in the presence of:

By: [Signature]
Jack McDonald, Mayor

By: [Signature]
Richard Kleid, President Town Council

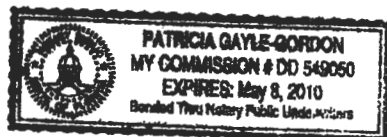
By: [Signature]
for: Peter B. Elwell, Town Manager

By: [Signature]
Name: Robert Matthews
160 Royal LLC, as President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Jack McDonald, the Mayor of The Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and she did not take an oath.



Patricia Gayle-Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Richard Kleid, the President 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.



Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by ~~Peter B. 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 and he did not take an oath.

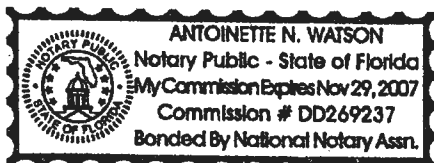


Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 23rd day of July, 2007, by Robert Matthews, 160 Royal LLC, as President. He is personally known to me and he did not take an oath.



Antoinette N. Watson
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

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

By: John C. Randolph

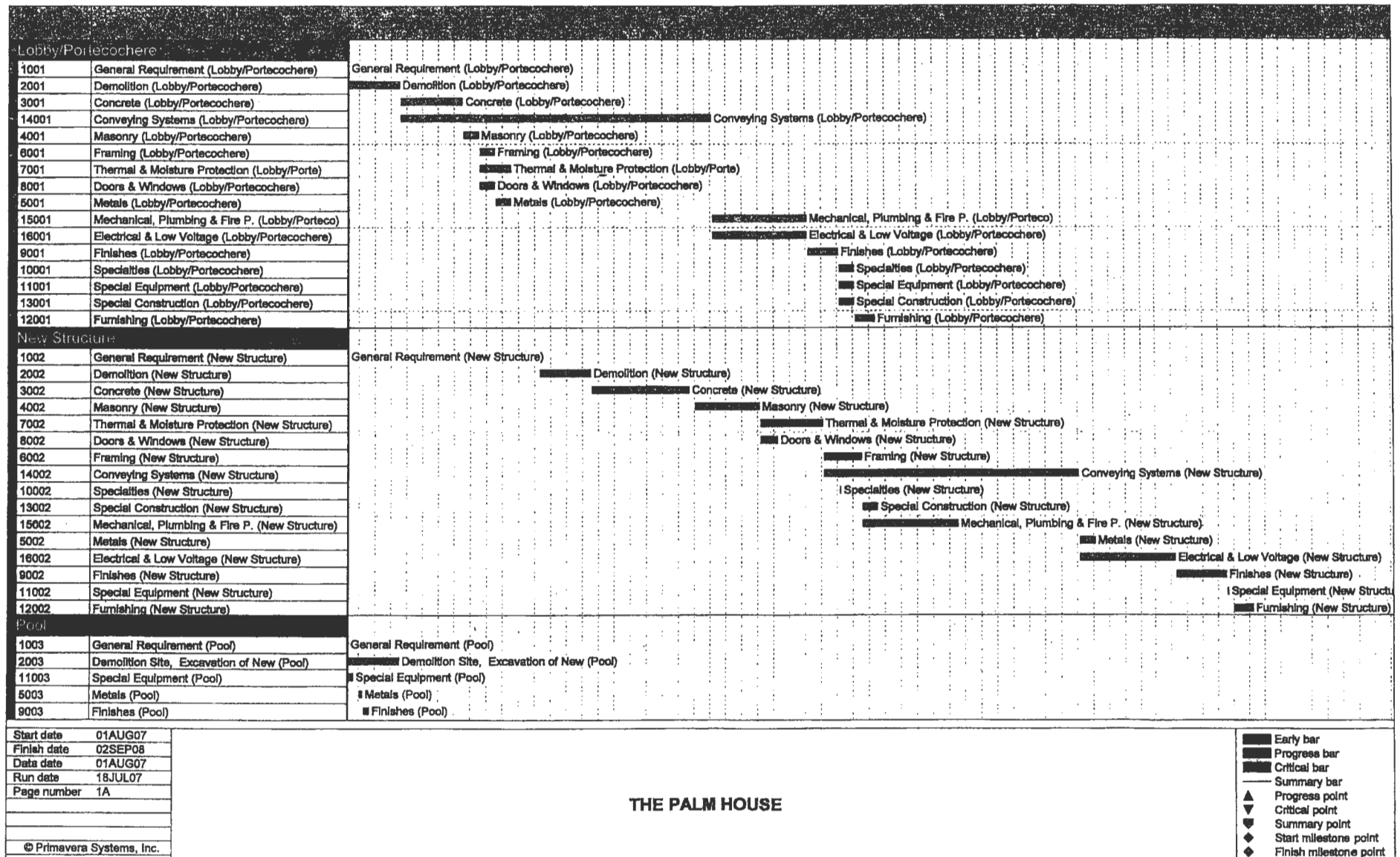
John C. Randolph, Esquire

RECOMMEND APPROVAL:

7/25/07

Paul Castro
Paul Castro, AICP
Zoning Administrator

EXHIBIT A "SCHEDULE"





I hereby certify that the foregoing is a true copy of the record in my office.

THIS 1st DAY OF JULY, 2007

SHARON R. BOCK
CLERK & COMPTROLLER

By *[Signature]*
DEPUTY CLERK

