



Donald J. Lunny, Jr., Esq.
donald.lunny@brinkleymorgan.com

One Financial Plaza
100 SE 3rd Avenue, 23rd Floor
Fort Lauderdale, Florida 33394
(954) 522-2200
(954) 522-9123 Facsimile

2255 Glades Road, Suite 414E
Boca Raton, FL 33431
(561) 241-3113
(561) 241-3226 Facsimile

www.brinkleymorgan.com

Please reply to Fort Lauderdale

November 6, 2020

Queenester Nieves
Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, FL. 33480

Via Federal Express

Re: The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Town Clerk Nieves:

This Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida. Because our client continues to be very concerned with aspects of proposed Palm House Hotel that will likely increase activity and noise in the rear and east of the Hotel, and expand buildings and structures that are already non-conforming, our client is reluctantly constrained to continue to take steps to preserve various positions to challenge such development's approval. Our client hopes that with the changes requested in this correspondence, the Application can be made more acceptable to her and the other adjacent single-family properties which will be affected by the proposed development.

Since the October 28, 2020 Town Architectural Commission ("ARCOM") Meeting was so close in time to the Town's consideration of the proposed development's variances and special exceptions, Part 1 of this letter is an Appeal of the ARCOM October 28, 2020 Decision, Part 2 of this letter is directed towards the Town Commission's November 13, 2020 consideration of the development's variances and special exceptions; Part 3 of this letter is directed at the proposed Third Amendment to Declaration of Use Agreement; and Part 4 of this letter is directed to some remaining aspects of the Site Plan.

Part 1.
Appeal of 10/28/2020 ARCOM Decision for Major Project
Application No. B-063-2020 REV 2

Please consider Part 1 of this letter an Appeal of ARCOM's October 28, 2020 decision ("ARCOM Decision") with respect to The Palm House Hotel ("Applicant") Application No. B-063-2020 REV 2 ("Application"). We have enclosed a Trust Account Check made payable to the Town of Palm Beach for the required fee for this Appeal. While the Town has the video recordings of the September 25, 2020 ARCOM Meeting and the October 28, 2020 ARCOM Meeting, Application No. B-063-2020, Application No. B-063-2020 REV 2, our correspondence dated September 23, 2020, and our correspondence of October 26, 2020, it is our view that such entire record of the proceedings may not be needed by the Town Commission for purposes of the Appeal, and so unless the Town Commission otherwise requires such full record, or we direct you to prepare same; we think the Exhibits included in this Part should be sufficient for the Appeal's purposes.

The reasons for the Appeal are as follows:

1. This proposed development should not be reviewed in a "piecemeal fashion."

The ARCOM Decision results in the development being considered in a "piecemeal fashion," and thus the Town Commission's review of the Application will also be "piecemeal" in nature. Specifically, ARCOM has not approved the Application's landscape plans, and is requiring the proposed landscape plans along the southern and east property lines to be returned to ARCOM for further review. Our client raised concerns with the overall feasibility of the Application's landscape plans at the initial ARCOM hearing of September 25, 2020 and asked that the landscape plans be reviewed. When the application was revised and presented to ARCOM on October 28, 2020, our client pointed out that the landscape plans detailing the proposed landscape buffer and screening (See Exhibit 1, Application Plan Sheet A-121) was not drawn to scale. Further, in light of the Survey included with the initial application (see Exhibit "2") the Applicant did not own enough land South and East of the Hotel improvements and within its Property to accommodate the proposed plantings. (See Exhibit "3", Application Plan Sheet A-122). Thus, the Application's illustrated landscape buffers and screening in these areas is not feasible. We believe that this observation motivated ARCOM to require the proposed landscape buffers and screening to be re-evaluated and brought back to ARCOM for consideration.

Landscape buffers and screening are very important to both improve aesthetics and reduce adverse secondary effects that arise from locating a highly intense commercial development adjacent to single-family residential homes. Indeed Sec. 134-129(5) of the Town's Code provides that for a Site Plan to be approved:

"...the [t]own [c]ouncil shall make a finding that the approval of the site plan ... will not adversely affect the public interest and certify that the specific zoning requirements governing the individual use have ...been met and that further, satisfactory provision and an arrangement has ...been made concerning the following matters, where applicable....

(5) Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property's boundaries.
..."

Further, a Project's proposed landscape buffers and screening are often considered in determining whether to grant various development orders such as the variances and special exceptions that are also requested for the overall Project.

We would encourage the Town Commission to vacate the ARCOM Decision, and remand the Application to ARCOM, so that when ARCOM's review of the Application is *entirely* complete, the Town Commission can then consider the Project instead of addressing this important major development in a piecemeal fashion.

2. ARCOM erred in approving the new full-service bar and restroom building.

The Application proposes a new full-service bar and restroom building which is located contiguous to and West of the expanded Function Room. (See Exhibit "4", Application Plan Sheet 1-104). Prior approved plans showed chemical storage and pool equipment area where this new full-service bar and restroom building are proposed (see Plan Sheets A-200 and A201, attached as Composite Exhibit "5"). The Exhibit "4" Application Plan Sheet No. A-104 clearly shows that this Bar/Restroom building is located within the rear yard setback area established by the CB Zoning District regulations. Therefore, its proposed location is contrary to the Town's Code.

Additionally, the expanded Function Room building is non-conforming to the Town's regulations, any addition or expansion of the Function Room must comply with the Town Code's rear yard setback requirements. In relevant part, Subsection 134-416(d) of the Town's Code states as follows:

“(d) It is further the intent that, by the provisions of this chapter or by amendments that may be adopted, there may exist buildings or structures which were lawful before this chapter was adopted or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments thereto. It is the intent of this chapter to permit these nonconforming buildings and structures to exist until they are voluntarily removed, removed by abandonment, or otherwise removed as required by this chapter, but not to encourage their survival. Such nonconforming buildings and structures are allowed to be enlarged, expanded or extended, provided that said enlargement, expansion or extension meets all of the lot yard and bulk regulations for the zoning district in which the building or structure is located and provided that said enlargement, expansion or extension is not used as grounds for adding other buildings or structures prohibited elsewhere, in the same district.” (Emph. Suppl).

Further, Sec. 134-417 of the Town’s Code states as follows:

“A building or structure which is nonconforming with any of the lot, yard and bulk, regulations may be enlarged, expanded or extended to occupy a greater area of land provided that the enlargement, expansion or extension complies with all lot, yard and bulk regulations for the zoning district in which the building or structure is located. This section shall not apply to a building or structure which is demolished by more than 50 percent, as provided for in section 134-419(1), in preparation for any proposed enlargement, expansion, or extension of a building or structure.”

In approving the location of the Bar/Restroom Building, it is our client’s contention that ARCOM did not *satisfy* Sec. 18-205 (a) (9) of the Town’s Code which indicates that in order for ARCOM to approve a proposed project, it must determine that:

“(9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.”

Thus, the ARCOM Decision to approve this new Full-Service Bar and Restroom Building should be REVERSED on Appeal.

3. ARCOM erred in approving other structures in the rear yard setback area.

Other aspects of the proposed development's structure are also in the rear yard setback, such as the pool water fountain feature and the expansion of the Function Room to enclose more interior space.

There was no Town Staff Report prepared for the ARCOM hearing, however, our client learned at the October 28, 2020 ARCOM hearing; that the currently proposed fountain is *smaller* than what was previously approved, and provided this remains the case, our client will no longer object to same; however, if this is not the case, our client will continue to object to same.

Similarly, our client requested that significant efforts to sound-proof the Function Room's enclosed space be included in the Town's approval, and upon receiving a confirmation that this will be required *and provided*, our client will not object to the increase in the Function Room's enclosed space as also being an expansion to a nonconforming building that is prohibited by the Town's Code. The rationale for not objecting to the increase in the Function Room's enclosed space is that, hopefully, the resulting *indoor* activity will become very noise controlled.

Wherefore, our client would respectfully request that the Town Commission reverse or vacate the ARCOM Decision, and remand the Application to ARCOM for proceedings consistent with any instructions in the Town Commission's ruling if any, and further, our client would request any other relief the Town Commission may determine proper and appropriate.

Part 2. Comment on the Requested Variances and Special Exceptions

1. The Variances should be denied because they are "Self Created."

Our review of the Town's variance law would cause an objective reader to doubt whether sufficient grounds for granting a variance are present in this case. The Palm Beach County Property Appraiser records discloses that the applicant, LR Palm House LLC, a Delaware Limited Liability Company, obtained a Debtor in Possession Deed to the site on May 15, 2019, which is *after* the 2016 Town conditional development approvals. A copy of the Deed is attached as Exhibit "6".

The Exhibit "2" Application Survey prepared by Wallace Surveying Corporation discloses that The Palm House Hotel property is uniformly rectangular, having a 300' x

200' dimension. Thus, the real property on which The Palm House Hotel sits has no irregular contours or shape which would support a variance request. Moreover, the dimensions of the Applicant's Property *more than satisfies* the C-B Zoning District's minimum lot area, lot width, and lot depth requirements (*See* Sec. 134-1308 (1), (2), (3) Town Code).

Given that the Applicant acquired the development *after* the 2016 Town approvals, and given that the Applicant's real property is not irregular and more than satisfies the Town's C-B District minimum dimensional requirements, any claimed "hardship" for the requested Variances should be viewed as "*self-created*" in as much as a *developed site* was acquired by the Applicant simply put, Application results from the Applicant's desire to change things. A "self-created" hardship cannot be the basis for granting a Zoning Variance. The Variances should be denied.

2. The Town's Zoning Regulations do not authorize the Town Commission to grant a Special Exception for the Palm House Hotel.

The Application states that Special Exceptions are needed for the Site Plan to be approved. Our review of the Town's Special Exception law would cause an objective reader to doubt whether the Town Commission can grant Special Exceptions in this case. Sec. 134-229 (1) of the Town Code reads as follows:

"The requirements for granting a special exception use under this chapter are as follows:

- (1) The use is a permitted special exception use as set forth in article VI of this chapter."

The Town's C-B District Regulations define the applicable Special Exception Use in Section 134-1304 (a) (5) as follows:

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-B commercial district are as follows:
 - (5) Hotels at a maximum of 26 units per acre.

Our review of the Application's Survey discloses that The Palm House Hotel property is rectangularly shaped, with dimensions of 300.00' X 200.00 feet. Thus, the Applicant's Property is 60,000 SF in area, or $(60,000 \div 43,560 =) 1.376$ acres in size. The CB Zoning District regulations *as applied to the Applicant's Property* limit the Town Council's authority to grant a Special Exception to a Hotel having a maximum of 36 units. Since

the Applicant's hotel is not a listed special exception use in the Town's CB Zoning District's regulations, the requested Special Exceptions cannot be granted.

PART III

The Draft 3rd Amendment to Declaration is not sufficient to mitigate potential adverse secondary effects of the Hotel.

1. In 2012, the historical digest received by our client for the zoning application discloses that the Town Commission conditioned its approval of the development orders it then granted to indicate in Condition 4 that *"The pool deck area shall be allowed only background music and light live music with the speaker system directed to the North. There shall be no music on the abutting grass area."* The Amendment to Declaration of Use Agreement recorded in Official Records Book 25694 at page 0633 indicates in Article IV, Paragraph 3 that there will be *no events* on the pool deck, the grass area will remain *"passive,"* and music on the pool deck will be only background or light live music with the speaker system directed to the North. (See Exhibit "7" for the Amendment to Declaration of Use Agreement). The proposed, draft Third Amendment to Declaration and Use Agreement indicates that *"Pre-function events will be allowed on both the pool deck and the grass area"*. While the proposed Third Amendment does not allow music in the grass area, it has no restrictions whatsoever on other forms of amplified sound. Our client would request that the Third Amendment be revised in this regard to:
 - a. Add the words *"noise controlled, passive"* before the words *"pre-function events"* for the grass area;
 - b. Prohibit such *"pre-function events"* on the pool deck;
 - c. Restrict the hours of noise controlled, passive pre-function events in the grass area to reasonable hours (from 10:00 am to 7:00 pm.)
 - d. State that there will be no *outdoor* music (live or recorded), no *outdoor* live entertainment, and no *outdoor* amplified sound permitted anywhere on the Land, with the exception of *background* live or *background* recorded music which will be permitted on the pool deck from 9:am to 7:00 PM. "Background live or recorded music" is defined music having a low enough volume that normal conversation can be held over the music. Background live music shall have speakers for same directed to the North.
2. The Applicant has represented to ARCOM that there will be no rooftop guest access to the Hotel or the Function Room; however, these restrictions have been *removed* from the proposed Third Amendment to Declaration of Use Agreement. Once removed, they will

no longer be considered a restriction or condition of Project approval. The Declaration of Use Agreement should clearly state: *“No hotel guests, or other social or leisure activity or entertainment of any kind will be permitted on the roofs of the hotel, the function room, or other accessory buildings”*.

3. Generally, the Declaration of Use Agreement refers to a “function area” and our client would request the more precise term “Function Room” be used instead.

Part IV. Other Site Plan Comment

1. Our client objects to the Function Service Building and Bar/Restroom Building.

- A. The Application now includes a “Function Service Building” which is contiguous to a portion of the East building face of the Function Room. (See Exhibit “4,” Plan Sheet A-104) Our client objects to this expansion to the Function Building, as it increases the activity of the Site along the East property line. The Function Service Building’s supportive activities (especially activities related to cleanup and removal of Function Room Events) will likely be after dark, and both noise and vehicle light will be caused by loading area activities (from vehicles turning in the loading area shown on the Site Plan, or being used to transport equipment, furnishings, food, and beverages into either the Function Room or Function Service Building).
- B. Our client has objected to the Function Room Bar/Restroom Facility Section 1 of this letter as being an expansion to a nonconforming building. We were informed by ARCOM that “use issues” were within the Town Commission’s purview. Additional reasons supporting our client’s objection to these areas are set forth herein.

The Hotel is currently a non-conforming *use*, and Sec. 134-387 of the Town’s Code provides:

“Sec. 134-387. - Extension or expansion.

No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of adoption or amendment of this chapter, except as may be granted by variance under section 134-201. No such nonconforming use shall be relocated in whole or in part to any portion of a lot or parcel except the location occupied by such use at the effective date of adoption or amendment of this chapter.”

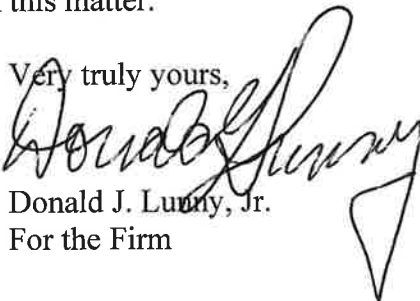
The Town should not allow the nonconforming use to expand by granting Variances for the Function Service Building or the Function Room Full-Service Bar and Restroom Building, since the hardships are “self-created.”

Correspondence to Mr. Nieves
Town of Palm Beach Town Clerk
Re: The Palm House Hotel
November 6, 2020
Page 9 of 9

2. Our client shares the Zoning Administrator's concerns as expressed in the Town Staff's 11/2/2020 Staff Report.
 - A. The Function Room Seats should remain restricted to 150 dining room seats. Granting additional seating, and removing dining room seating as requested, increases the intensity of the non-conforming use in the rear and eastern portion of the Property. As stated above, our client is very concerned with additional improvements and activity in these areas of the Property.
 - B. The more than doubling of outside seating is problematic, as again, this increases the intensity of an existing non-conforming use. Our client would request that the amount of outside seating not exceed prior approvals. In view of the above, our client would request that the Town Commission not approve the Full-Service Bar and Restroom Building, not approve the Function Service Building, and limit outdoor seating as suggested. Additionally, our client would request whatever other relief the Town Commission may deem proper.
 - C. Our clients comment in support of Staff's concerning the Declaration and the so called "Pre-function" events are set forth in Part III of this letter above.

Conclusion

Please ensure that a copy of this correspondence and its Exhibits are given promptly to the Mayor and Members of the Town Commission. We wish to thank the Town for its consideration of this matter. Finally, we reserve the right to raise additional objections and legal and factual arguments in connection with these matters should it become appropriate to do so as we continue to learn about and participate in this matter.

Very truly yours,

Donald J. Lunny, Jr.
For the Firm

Cc w/encl: (Via E-mail):
Mr. Wayne Berman;
John C. Randolph, Esq.
Maura Ziska, Esq.

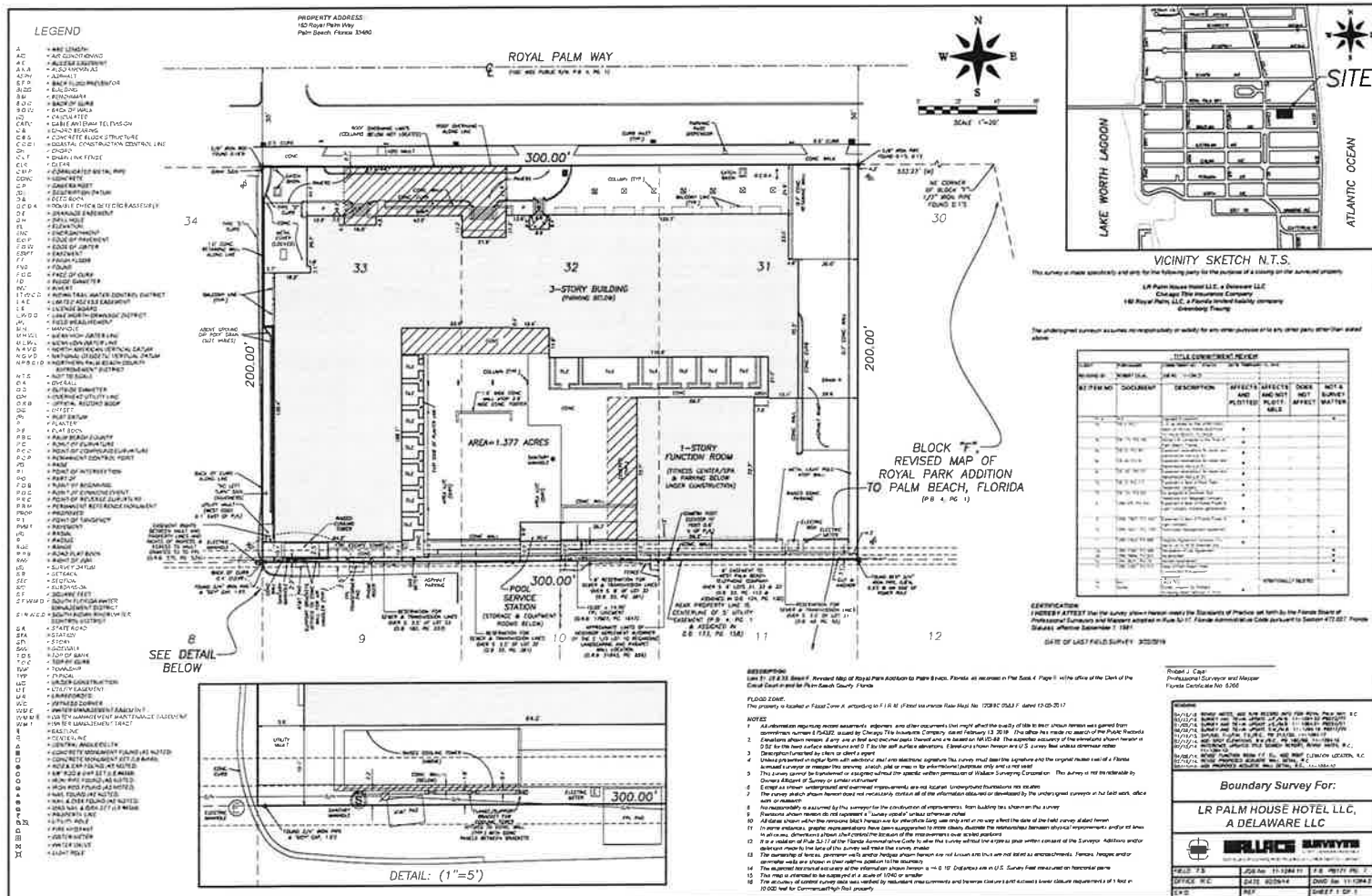
LANDSCAPE PLANTING PLAN



Area (SF)	Landscape Designation
4172	Front Yard (East Side)
242	Front-cochere
97	E Entry Planting Area
173	W Entry Planting Area
733	W Property Line Planting Strip
998	E Property Line Planting Strip
93	New Planter - East Drive (A)
116	New Planter - East Drive (B)
1,697	S Property Line Planting Strip
669	Event Lawn
669	Pool Deck Planters
133	W Larai Hedges (dividers)
119	E Larai Hedges (dividers)
85	E Larai Southern Hedges
85	Yve Area for Trellis
\$N15	TOTAL LANDSCAPE AREA



OVERALL SOUTH ELEVATION - WITH PROPOSED LANDSCAPE SCREENING



PLANT SCHEDULE

PALMS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Ado mer	6	<i>Adontia neri</i>	Christmas Palm	25 gallon	5' clear trunk, single	As shown	Non-Native	8 feet	4 feet	25 feet	8 feet	Pool deck planting
Coc nuc	18	<i>Cocos nucifera</i>	Coconut Palm	B&B	10' clear trunk, single	As shown	Non-Native	15 feet	8 feet	60 feet	20 feet	Street planting replacement palms
Hyd ver	14	<i>Hyophorbe verschaffeltii</i>	Spindle Palm	25 gallon	5' clear trunk, single	As shown	Non-Native	7 feet	3 feet	25 feet	8 feet	Pool deck planting
Pho dec	1	<i>Phoenix dactylifera</i>	Date Palm	B&B	8' clear trunk, single	As shown	Non-Native	12 feet	4 feet	70 feet	20 feet	Perimeter plantings
Rav mad	8	<i>Ravenea madagascariensis</i>	Traveler's Palm	25 gallon	3' clear trunk, multi-stem	As shown	Non-Native	6 feet	4 feet	30 feet	18 feet	South border screen planting
Roy reg	1	<i>Roystonea regia</i>	Royal Palm	B&B	10' clear trunk, single	As shown	Native	15 feet	8 feet	60 feet	20 feet	Perimeter plantings

TREES

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Cit spi	3	<i>Citharexylum spinosum</i>	Fiddlewood	3 gallon	24"	As shown	Native	24 inches	18 inches	20 feet	15 feet	Perimeter plantings
Gym luc	3	<i>Gymnanthes lucida</i>	Crabwood	3 gallon	24"	As shown	Native	24 inches	18 inches	20 feet	15 feet	Perimeter plantings

SHRUBS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Cit mey	18	<i>Citrus x meyeri</i>	Meyer Lemon	2 quart	12"	As shown	Non-Native	12 inches	8 inches	6 feet	3 feet	For use in pots at pool deck
Ham pat	30	<i>Hamelia patens 'Compacta'</i>	Dwarf Firebush	3 gallon	18"	24" O.C.	Native	18 inches	12 inches	4 feet	3 feet	Perimeter plantings
Ill flo	20	<i>Illicium floridanum</i>	Florida Anise	3 gallon	24"	36" O.C.	Native	24 inches	18 inches	12 feet	8 feet	Perimeter plantings
Lan inv	20	<i>Lantana involucrata</i>	Wild Sage	1 gallon	12"	36" O.C.	Native	12 inches	6 inches	4 feet	3 feet	Pool deck planters
Mus acu	18	<i>Musa acuminata 'Dwarf Cavendish'</i>	Dwarf Banana	1 gallon	12"	As shown	Non-Native	12 inches	8 inches	6 feet	4 feet	For use in pots at pool deck
Myr cer	65	<i>Myrica cerifera</i>	Wax Myrtle	1 gallon	12"	24" O.C.	Native	12 inches	8 inches	6 feet	3 feet	Lanai hedges
Plu aur	28	<i>Plumbago auriculata 'Imperial Blue'</i>	Blue Plumbago	1 gallon	12"	48" O.C.	Non-Native	12 inches	8 inches	6 feet	8 feet	Perimeter plantings
Psy lig	35	<i>Psychotria ligustrifolia</i>	Bahama Coffee	1 gallon	12"	24" O.C.	Native	12 inches	8 inches	4 feet	4 feet	Pool deck planters and Lanai hedges
Sur mar	8	<i>Suriana maritima</i>	Bay Cedar	3 gallon	18"	As shown	Native	18 inches	12 inches	10 feet	8 feet	Perimeter plantings

VINES

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Big cap	10	<i>Bignonia capreolata</i>	Crossvine	1 gallon	12"	12" O.C.	Native	NA	NA	NA	NA	Trellis planting
Bou gla	6	<i>Bougainvillea glabra</i>	Bougainvillea	1 gallon	12"	12" O.C.	Non-Native	NA	NA	NA	NA	Trellis planting
Lon sem	10	<i>Lonchocarpus sempervirens</i>	Coral Honeysuckle	1 gallon	12"	12" O.C.	Native	NA	NA	NA	NA	Trellis planting
Tra jas	15	<i>Trachelospermum jasminoides</i>	Star Jasmine	1 gallon	12"	12" O.C.	Non-Native	NA	NA	NA	NA	South border screen plant

PERENNIALS AND GROUNDCOVERS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Hel deb	370	<i>Helianthus debilis</i>	Beach Sunflower	1 gallon	6"	24" O.C.	Native	6 inches	6 inches	18 inches	18 inches	For use in groundcover areas
Lan dep	352	<i>Lantana depressa</i>	Weeping Lantana	1 gallon	8"	24" O.C.	Native	8 inches	6 inches	24 inches	48 inches	For use in groundcover areas
Sto lae	312	<i>Stokesia laevis</i>	Stokes Aster	1 gallon	6"	24" O.C.	Native	6 inches	6 inches	18 inches	18 inches	For use in groundcover areas

NATIVE PLANT CALCULATIONS

Landscape Designation	Area (SF)	Native Area (SF)	Plants designated for Native Area
Front Yard (East Side)	2472	1600 - 64%	Hel deb, Lan dep & Sto lae
New Planter - East Drive (A)	93	93 - 100%	Hel deb
New Planter - East Drive (B)	116	116 - 100%	Hel deb
S. Property Line Planting Strip	1697	1018 - 60%	Roy reg, Cit spi, Gym luc, Ham pat, Ill flo, Lan inv, Sur mar, Lan dep
Pool Deck Planters	669	669 - 100%	Hel deb, Lan dep & Sto lae
W. Lanai Hedges (dividers)	133	133 - 100%	Psy lig
E. Lanai Hedges (dividers)	119	119 - 100%	Myr cer
E. Lanai Southern Hedges	85	85 - 100%	Myr cer
Vine Area for Trellis	85	85 - 100%	Big cap & Lon sem
Total Native Area		3918 SF	

Total Native Area (3918 SF) is 44% of Total Landscape Area (8815 SF)*see Planting Plan for total landscape area tabulation

LANDSCAPE PLANTING SCHEDULE

A122



The Palm House Hotel
160 Royal Palm Way



EXHIBIT 3

COOPER CARRY

License No. ALJ2000466
R-043-2020
OCTOBER 30TH, 2020 12:50:00PM

LOTS 31, 32 AND 33, BLOCK F, REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 1, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

ISSUE	REQUIRED/ALLOWED	PROCESSED
USE	HOTEL	NO CHANGE
LOT AREA	15,000 SF MIN.	NO CHANGE
WIDTH	100 SF MIN.	NO CHANGE
DEPTH	150 SF MIN.	NO CHANGE
DENSITY	25 UPA MAX.	32.7 UPA
GUEST ROOMS	79 GUEST ROOMS	79 GUEST ROOMS

FRONT YARD	12 FT OF HEIGHT OVER 15 FT	NO CHANGE	24 FT OF HEIGHT OVER 24 FT	NO CHANGE
SIDE YARD	15 FT + 1 FT/TEACH 3 FT OF HEIGHT OVER 15 FT	18 FT	5.7 FT + 1 FT/TEACH 3 FT OF HEIGHT OVER 15 FT	28.8 FT AT EAST NO CHANGE
REAR YARD	15 FT + 1 FT/TEACH 2 FT OF HEIGHT OVER 15 FT	23.8 FT	10 FT	NO CHANGE

[illegible]

LANDSCAPE AREA	30% (16,068 SF) MIN.	14.6% (8,013 SF)
FRONT YARD	35% (6,300 SF) MIN.	35.6% (3,154 SF)
NATIVE VEGETATION	25% (4,500 SF) MIN.	30.0% (2,645 SF)

FEMA

FLOOD ZONE

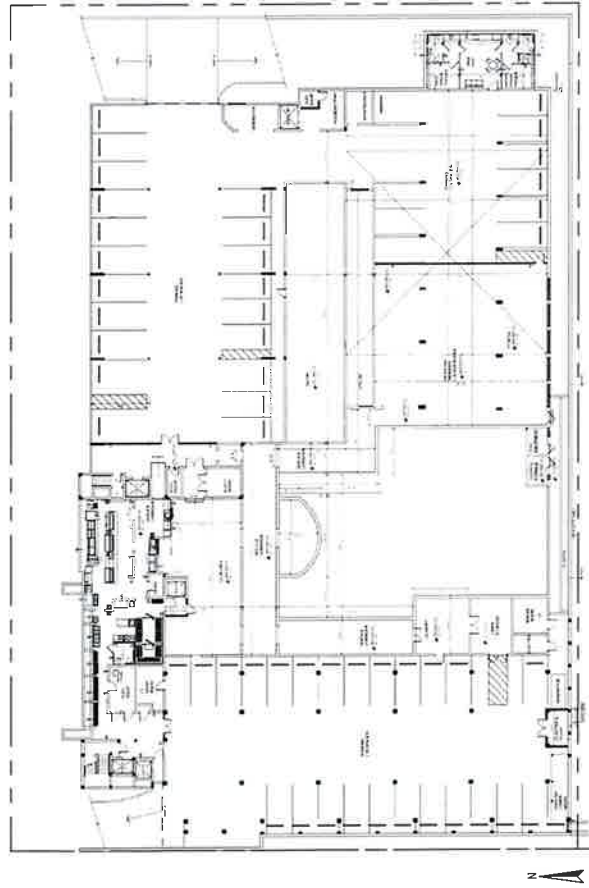
ZONE X - AREA OF MINIMAL FLOOD HAZARD

ITEM	APPROXIMATE	PRODUCED
QUEST ROOMS	19 ROOMS	19 ROOMS
PARKING (ON SITE)	62 SPACES	62 SPACES
ADA TRAINING	*	(INCLUDES 3 A.C. 1 W.A.)
LOBBY LEVEL, PANIC ROOM	65 SEATS	34 SEATS - INTERIOR
LOBBY LEVEL, LOCOM	*	34 SEATS - EXTERIOR
PRICE PER SEAT \$600		
(1907 USED)		

[illegible]

BUILDING	FIRE & LIFE SAFETY	2017 Florida Green Code - Building, 7 th Edition (FPGC)	2017 International Building Code - Building, 10 th Edition (IBC)
		2015 International Building Code - Building, with amendments	2015 International Building Code - Existing Building Code, 3 rd Edition (EBICC)
ENERGY	FIRE & LIFE SAFETY	2017 Florida Fire Prevention Code, 7 th Edition (FFPC)	2015 NFPA 101 - Life Safety Code, with amendments (NFPA - 101)
		2015 NFPA 701 - Life Safety Code, with amendments (FFPC - 101)	2017 Florida Building Code - Energy Conservation, 6 th Edition (FEEC)
ACCESSIBILITY	FIRE & LIFE SAFETY	2015 International Building Code - Accessible, 6 th Edition (IBC)	2015 International Building Code - Accessible, 6 th Edition (IBC)
		2010 ADA Standards for Accessible Design, 2010 ADAAG and 2010 ADAAG	2017 Florida Building Code - Electrical, 6 th Edition (FEEC)
MECHANICAL	FIRE & LIFE SAFETY	2017 Florida Building Code - Mechanical, 6 th Edition (FMEC)	2015 Florida Building Code - Mechanical, 6 th Edition (FMEC)
		2015 International Mechanical Code, with amendments	2017 International Mechanical Code, 6 th Edition (FIMC)
PLUMBING	FIRE & LIFE SAFETY	2017 Florida Building Code - Plumbing, 6 th Edition (FPEC)	2015 Florida Building Code - Plumbing, 6 th Edition (FPEC)
		2015 International Plumbing Code, with amendments	2017 International Plumbing Code, 6 th Edition (FIPC)
ELEVATOR	FIRE & LIFE SAFETY	2017 Florida Building Code - Elevator, 6 th Edition (FEEC)	2015 Florida Building Code - Elevator, 6 th Edition (FEEC)
		2015 ASME A17.1-2013 American National Standard for Safety Code for Elevators and Escalators	2017 ASME A17.1-2013 American National Standard for Safety Code for Elevators and Escalators





LOWER LEVEL FLOOR PLAN - APPROVED
(SPR SE 001-2016 PREPARED BY DAVID MILLER & ASSOCIATES, P.A.)

NON-CONFORMING DEFICIENCIES	PROPOSED CORRECTIONS
1 Demolish partially constructed elevator extension to rooftop above second floor dining room & lobby to the "Sunset" deck.	1 Demolish elevator shaft extension to the north roof deck. Patch roof to match existing. No assembly space at rooftop.
2 Complete construction of Function Room and Pool area consistent with plans previously approved by the Town of Palm Beach.	2 Construct new pool, pool deck and amenities as designed on the proposed improvement plans, for Town of Palm Beach approval.
4 Demolish partially constructed walkway, stairs and elevator access to roof above Function Room.	4 Demolish elevator shaft, elevated stair and walkway. Patch roof to match existing. No assembly space at rooftop.
5 Demolish approximately 1,140 SF of office space in area and restore previously approved service corridor and laundry space.	5 Retain 1,140 square foot of new office space for hotel staff and administration.
6 Demolish partially constructed enclosure of portions of the Basement Garage on both east and west side of the property and restore 5 required off-sheet parking spaces.	6 Demolition to restore required parking spaces. Retain small area inaccessible for parking as outdoor storage.
8 Demolish partially constructed wall in basement parking area which was built to expand the basement Function Room Kitchen and restore required parking.	8 Demolition to restore required parking spaces.
11 Eliminate two pool area structures and relocate pool structure which includes service bar to previously approved location. The pool area will be restored as previously approved.	11 Demolish noncompliant pool area structures. Construct new pool support structures as designed on the proposed improvement plans, for Town of Palm Beach approval.

LOWER LEVEL FLOOR PLAN

A200



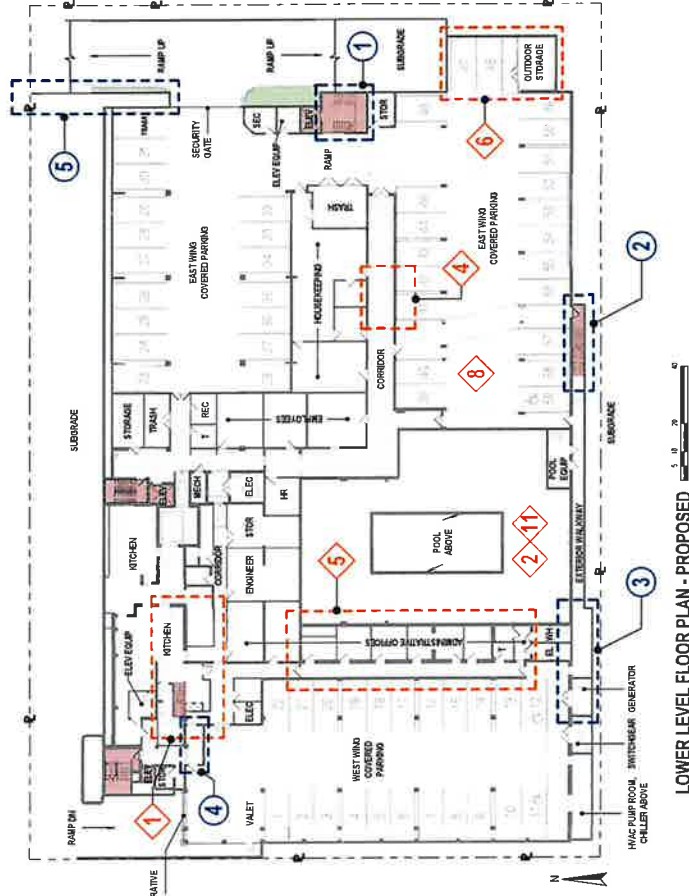
The Palm House Hotel
1001 Royal Palm Way



COOPER CARRY

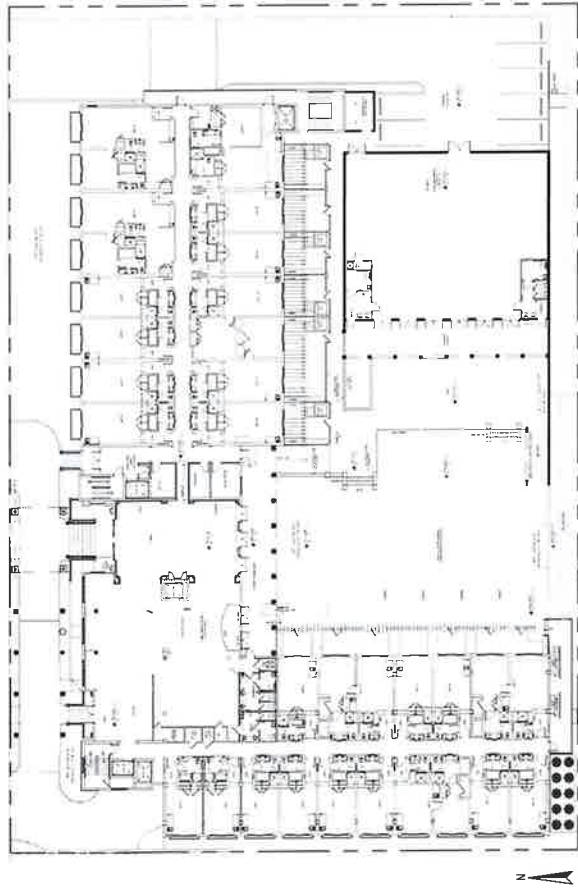
License N° AX20000496 B-003-2020
OCTOBER 28TH, 2020 7:30-00289

EXHIBIT 5

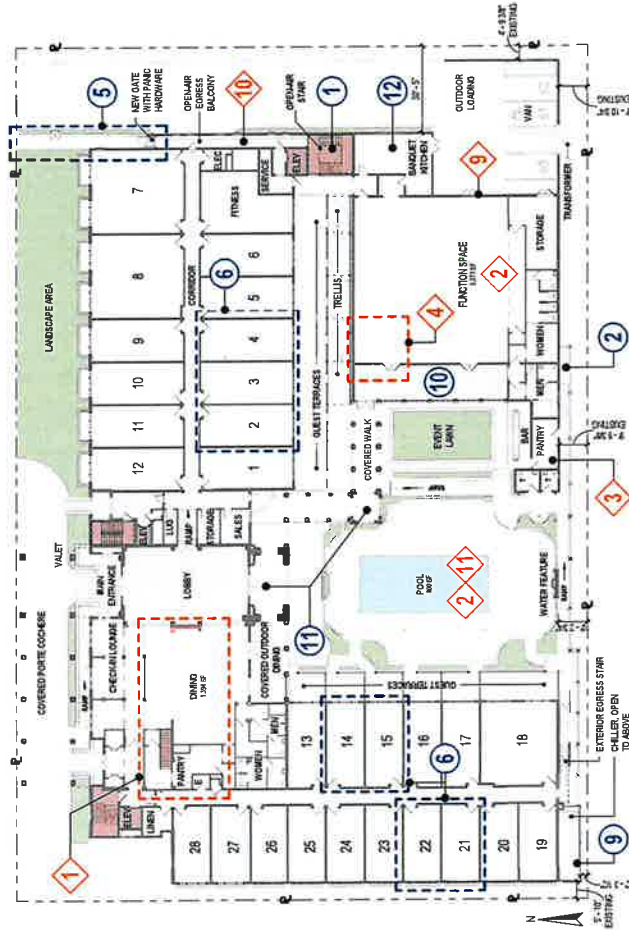


LOWER LEVEL FLOOR PLAN - PROPOSED

PROPOSED IMPROVEMENTS
1 Extend open-air stair to basement for life safety egress from basement and parking.
2 Extend retaining wall and exterior walkway near south property line for life safety egress and allow for staff access to the pool deck.
3 Replace existing 250KW 480/277 volt natural gas generator in like size, capacity and location. Construct rated enclosure for required fire separation from parking and egress path of travel overhead.
4 Enclose portion of parking area to provide fire separated egress path from southwest portion of parking and mechanical spaces.
5 Construct new exterior retaining walls, stair and walkway for improved life safety egress path to public way (Royal Palm Way).



FIRST LEVEL FLOOR PLAN - APPROVED
(SPR SE 001-2016 PREPARED BY DAVID MILLER & ASSOCIATES, P.A.)



FIRST LEVEL FLOOR PLAN - PROPOSED

NON-CONFORMING DEFICIENCIES		PROPOSED CORRECTIONS	
1	Demolish partially constructed elevator extension to rooftop above second floor dining room & lobby to the "Sunset" Deck.	1	Demolish elevator shaft extension to the north roof deck. Patch roof to match existing. No assembly space at rooftop.
2	Complete construction of Function Room and Pool area consistent with plans previously approved by the Town of Palm Beach.	2	Construct new pool, pool deck and amenities as designed on the proposed improvement plans, for Town of Palm Beach approval. Complete construction of Function Room.
3	Demolish partially constructed bathrooms on west side of Function Room and complete construction in area immediately adjacent to the Southwest corner of the Function Room.	3	Demolish bathroom building and construct new single-use toilets for pool, pool service party and full-service bar adjacent to new event lawn.
4	Demolish partially constructed walkway, stairs and elevator access to roof above Function Room.	4	Demolish elevator shaft, elevated stair and walkway. Patch roof to match existing. No assembly space at rooftop.
9	Construct opening on the east side of the Function Room wall which was going to be an unauthorized stage.	9	Infill opening at east side of Function Room and finish to match adjacent exterior walls.
10	Remove infill framing at exterior walkways on east elevation.	10	Enclose existing, partially complete open-air egress balcony with new exterior walls and railings.
11	Eliminate two pool area structures and relocate pool structure which includes service bar to previously approved location. The pool area will be restored as previously approved.	11	Demolish noncompliant pool area structures. Construct new pool support structures as designed on the proposed improvement plans.

PROPOSED IMPROVEMENTS			
1	Extend existing open-air stair to basement for improved life safety egress from basement spaces and parking.	9	Replace existing chiller, construct new screen walls to height of new equipment.
2	Extend retaining wall and exterior walkway near south property line for life safety egress and allow for staff access to the pool deck.	10	Enclose existing open-air covered walkway at Function Room to create conditioned prefunction.
5	Construct new exterior retaining walls, stair and walkway for improved life safety egress path to public way (Royal Palm Way).	11	Reconfigure exterior facade facing new proposed pool deck. Provide covered walkway from Hotel Lobby to Function Room.
6	Convert existing guest rooms as shown on the proposed improved plans to provide 79 keys total.	12	Enclose area with new exterior walls and roof for new banquet prep kitchen adjacent to Function Room.

(Exhibit "5")
Cont



Prepared by, Record and Return To:
Marcia H. Langley, Esq.
Greenberg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

Property Tax Folio No.: 50-43-43-23-05-026-0310

306554332AMNC

DEBTOR-IN-POSSESSION DEED

THIS DEBTOR-IN-POSSESSION DEED is made on May 15, 2019, by **160 ROYAL PALM LLC**, a Florida limited liability company (the "Grantor"), whose address is 1118 Waterway Lane, Delray Beach, FL 33483, and **LR PALM HOUSE LLC**, a Delaware limited liability company (the "Grantee"), whose address is 185 W. Broadway, Suite 101, Jackson, WY 83001.

(Whenever used herein the terms "Grantor" and "Grantee" shall be construed to include all parties to this instrument and their successors and assigns and shall include singular, plural, masculine, feminine, or neuter as required by context.)

WITNESSETH:

Grantor, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, remise and quit-claim to Grantee forever, all the right, title, interest, claim and demand which Grantor has in and to the following described land and all improvements located thereon, situated in Palm Beach County, Florida (the "Property"):

Lots 31, 32, and 33, Block F, Revised Map of Royal Park Addition to Palm Beach, Florida, according to the Plat thereof, as recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida;

TO HAVE AND TO HOLD the same together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, IN Aequity and claim whatsoever of Grantor, either in law or equity, to the use and benefit of Grantee forever.

SUBJECT TO taxes for the year 2019 and thereafter not yet due and payable, and all matters of record in the Official Records of Palm Beach County, Florida, without reimposing same.

This Debtor-in-Possession Deed is being executed in accordance with the Order: (I) *Granting Expedited Motion Seeking Approval of Procedures for Amended Sale Process and* (II) *Scheduling Final Hearing to Consider Approval of Sale of Assets Free and Clear of Liens, Claims and Encumbrances* (the "Procedures Order") (Document No. 619) and *Order Approving*

Sale of Assets to LR U.S. Hotels Holdings LLC Free and Clear of All Liens, Claims and Encumbrances (the "Sale Order") (Document No. 651) entered on March 12, 2019 in Case 18-19441-EPK in the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division. The Grantee is a wholly-owned assignee of LR U.S. Hotels Holdings LLC. Pursuant to paragraph 9 of the Sale Order, the Grantor has satisfied the requirements under 11 U.S.C. § 363(f) for transferring the Property. The undersigned signatory for Grantor is executing this Debtor-in-Possession Deed solely as the court appointed manager of Grantor, and not individually.

IN WITNESS WHEREOF, Grantor has executed this Debtor-in-Possession Deed as of the date above.

Signed, sealed and delivered in the presence of:

GRANTOR:

160 ROYAL PALM, LLC, a Florida limited liability company

By: Cary D. Glickstein, Manager

Print Name: Marcia L. [Signature]
Print Name: DOLORES C. COTT

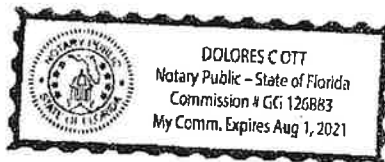
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 14th day of May, 2019, by Cary D. Glickstein, as Manager of 160 ROYAL PALM, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or produced FL DRIVER'S LICENSE for identification.

[NOTARIAL SEAL]

Notary: Dolores C. Cott
Print Name: DOLORES C. COTT
Notary Public, State of Florida
My commission expires: _____

ACTIVE 42404854v1





CFN 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)

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

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:

Boyle-Gordon
Karen Temme

Boyle-Gordon
Karen Temme

Boyle-Gordon
Karen Temme

Maria Zisna
Cane Hole

TOWN OF PALM BEACH

By: Gail L. Coniglio
Gail Coniglio

By: David Rosow
David Rosow, President
Town Council

By: Peter 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.

This is not a certified copy