



TOWN OF PALM BEACH
Planning, Zoning & Building Department
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PLANNING, ZONING, & BUILDING DEPARTMENT
PZ&B Staff Memorandum: Town Council Development Review

TO: Town of Palm Beach Mayor and Council

FROM: Wayne Bergman, MCP, LEED-AP
Director PZ&B

SUBJECT: ZON-22-109 264-270 S COUNTY RD

MEETING: OCTOBER 12, 2022

ZON-22-109 264-270 S COUNTY RD—SPECIAL EXCEPTION REQUEST WITH SITE PLAN REVIEW. The applicant, Carriage House Properties Partners, LLC (Joshua Levy, Director) has filed an application requesting Town Council review and approval for Special Exception Request with Site Plan Review to allow for outdoor café seating (62 seats) within a private courtyard in conjunction to an existing private club/restaurant. Additionally, the applicant is seeking special consideration to amend the Declaration of Use prematurely before the allocated restrictive 2-year time frame in order to activate outdoor seating.

Applicant: Carriage House Properties Partners, LLC (Joshua Levy, Director)
Professional: SpinaORourke + Partners
Representative: Maura Ziska

THE PROJECT:

The applicant has submitted plans, entitled "outdoor seating for: CARRIAGE HOUSE", as prepared by **SpinaORourke + Partners** dated September 2, 2022, to request approval by the Town Council to amend the approved site plan and certain conditions of approval specified within a Declaration of Use Agreement (DOU).

The subject property, located at the corner of Phipps Plaza and South County Road, is addressed at 264/270 South County Road and consists of approximately 0.28 acres. The property has a Future Land Use designation of Commercial with a compatible Zoning classification of Commercial-Town Serving (C-TS).

On March 19, 2019, the owners of the Carriage House and the Town of Palm Beach entered into a DOU that granted a Special Exception (SE) Approval to allow a private club at the Carriage House subject to 31 Conditions of Approval. One of conditions formed an off-site shared parking arrangement for use at 230 and 240 Royal Palm Way.



264 S County

270 S County

230/240 Royal Palm
Way

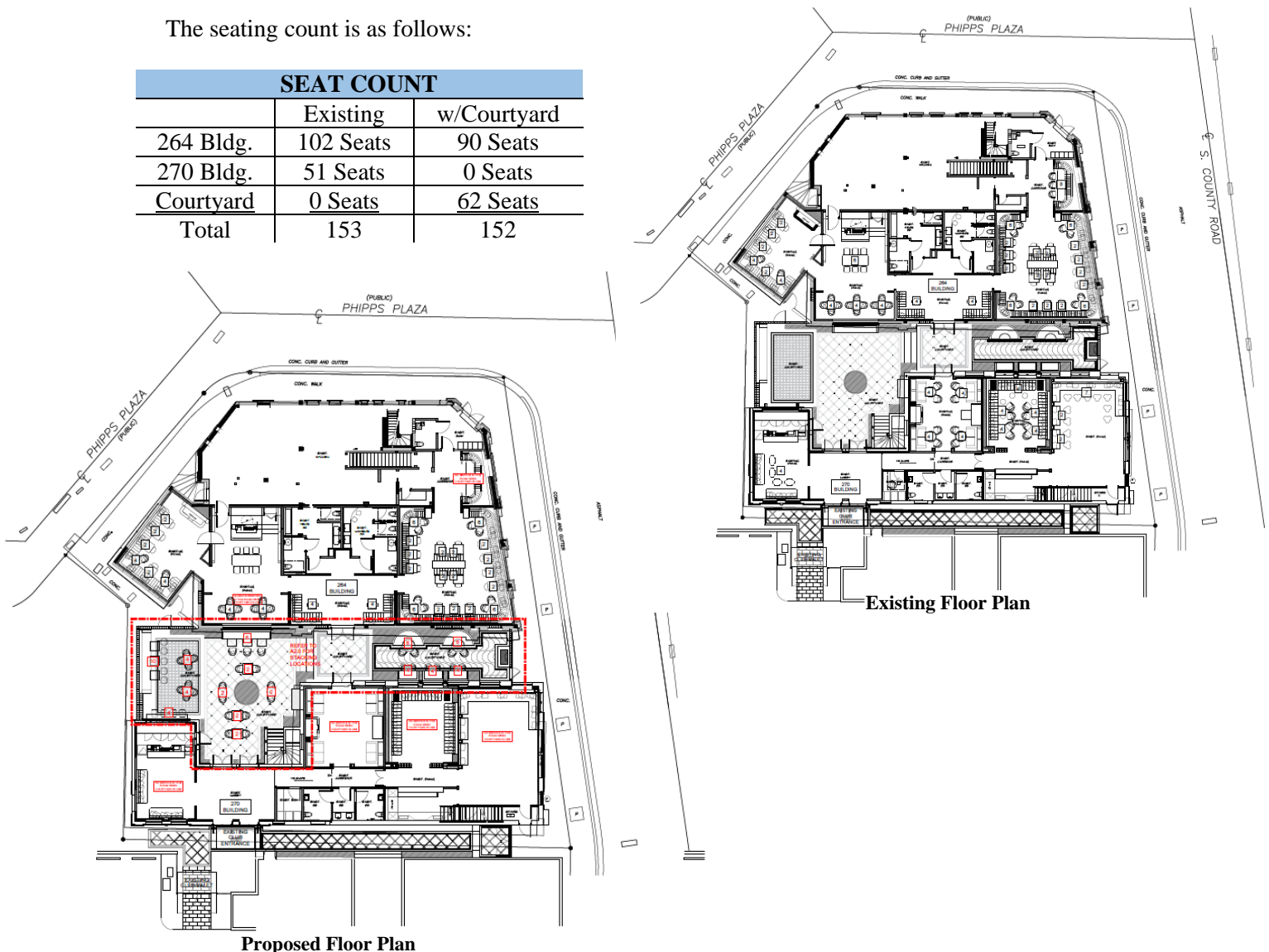
The current application seeks to amend the site plan and Conditions 6, 30, and 31 of the DOU related to outside dining and music in the courtyard and to the period of time following the opening of the Club in which amendments to the DOU can be considered by the Town Council. The only exception to this restriction is limited to parking.

While the DOU states that no revision(s) to the DOU can be made for a period of two (2) years following the date of Club opening, the applicant has cited the request is a result of the extenuating circumstances with the global pandemic, where dining outdoors is viewed by many patrons to be safer and more desirable. It is due to this worldwide state of affairs that the application has been placed on an agenda. It must be noted that the applicant has adhered to the 45-day notice to all property owners within a 750-foot radius, as required in Condition 31.

The scope of the subject application is a request to allow 62 dining seats to be relocated periodically into the Club's interior courtyard that will not be visible from any public way. When the courtyard is open for outside dining, no dining service will be available in the 270 South County Road Building. As such, there is no increase in the number of seats with the subject proposal. Additionally, no modifications to the exterior of the buildings are proposed.

The seating count is as follows:

SEAT COUNT		
	Existing	w/Courtyard
264 Bldg.	102 Seats	90 Seats
270 Bldg.	51 Seats	0 Seats
Courtyard	0 Seats	62 Seats
Total	153	152



STAFF ANALYSIS:

History of the Application

The request for outside seating has been requested twice at the subject location, though under a different owner and operation. In 1993, the owner of the former restaurant, 264 The Grill, petitioned for outside seating but was denied (SE-28-93). Fifteen years later, in 2008, the restaurateur was granted a Special Exception, pursuant to SE-7-2008, to transfer eight (8) indoor seats to the courtyard to allow for a limited outside seating area.

The current application for outdoor seating at the subject property was initiated by Maura Ziska, the project representative, on behalf of the Carriage House Club in July 2022. At that time, staff denied the request due to the language specified in Condition 6 of the DOU. Additionally, it was communicated that pursuant to the timing requirements found in Condition 31 of the DOU, the Club is prohibited from requesting any revisions to the DOU within two (2) years following the date of the Club opening and during the months of June through December. These matters were discussed with the Town Attorney, and it was decided that whether in the form of an appeal, or in the form of an application, the two (2) matters would be heard by the Town Council.

Zoning

Below is a summary of the subject application with regards to Zoning Code compliance and variance request.

Site Data			
Zoning District	Commercial Town Serving C-TS	Lot Size (SF)	12,290 SF
Future Land Use	Commercial	Outdoor Seating Area (SF)	1,500 SF
		Interior Restaurant / Assembly Area	264 Bldg. – 5,428 SF 270 Bldg. – 4,730 SF
Total Parking per Declaration of Use Agreement dated March 2019	68	Flood Zone	AE-6 and X
Year of Construction	1930	Architect	Addison Mizner
Surrounding Properties/Zoning			
North	Office Plaza/C-TS/		
South	Royal Palm Way Plaza/C-TS		
East	Wells Fargo Bank and Plaza/C-TS		
West	Multifamily units/R-C		

SPECIAL EXCEPTION (1): Code Sec. 134-1109(3) and (14) Commercial-Town Serving. Special exception uses to allow private social, swimming, golf, tennis and yacht clubs; and outside cafe seating for restaurants, retail specialty food including private, social, swimming, golf, tennis and yacht clubs, respectively.

SPECIAL EXCEPTION CRITERIA SEC. 134-229

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.
- (2) The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.
- (3) The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
- (4) The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.
- (5) The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.
- (6) The use will comply with all elements of the comprehensive plan.
- (7) The use not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.
- (8) Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- (9) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.
- (10) Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.
- (11) Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.
- (12) In all districts except the C-OPI district, and also with the exception of hotel, motel and timeshare uses, the proposed special exception use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. The town may in the future require the applicant to demonstrate to the satisfaction of the town council that the special exception use is continuing to be town-serving.
- (13) If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter.
- (14) The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations

SPECIAL EXCEPTION (2): Code Sec. 134-2106(b). Standards and criteria for special exception and outdoor cafe permit application review. The section provides the criteria and conditions required to be met for approval of outdoor cafe seating on private property not within a street sidewalk:

- Sec. 134-2106 (b) Criteria and conditions required to be met for approval of outdoor cafe seating on private property not within a street sidewalk:
 - 1) Outdoor cafe seating is not allowed to increase the capacity of a restaurant, dining room, retail specialty food including the sale of prepared food for takeout only, or private, social, swimming, tennis or yacht club. The exception is that a specialty foods use, including sale of prepared foods for takeout only that is under 2,000 square feet in gross leasable area may request up to eight [additional] outdoor cafe seats over the inside capacity provided that the seating meets the conditions herein.
 - 2) Bars/lounges and nightclubs are not permitted to have outdoor cafe seating.
 - 3) Outdoor cafe seating is restricted to boundary lines of the property on which the business owned by the applicant is located.
 - 4) All tables, chairs, umbrellas, mist sprayer, space heaters or other customarily usual outdoor cafe seating furniture shall be located in such a manner that a minimum four foot-wide unobstructed pedestrian path is maintained at all times.
 - 5) No objects shall be permitted around the perimeter of an outdoor cafe seating area occupied by tables and chairs that would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path.
 - 6) An outdoor cafe seating area on private property shall only be allowed to have low-level, background music that does not exceed the maximum noise decibel requirements in sections 42-226 through 42-228 if approved by the town council as part of the special exception application approval.
 - 7) No wait stations shall be allowed outside on a street sidewalk. All wait stations on private property shall not be visible from a sidewalk or street.
 - 8) All kitchen equipment used to service the outdoor cafe seating shall be located within a building.
 - 9) All outdoor cafe seating furniture, including all accessory appurtenances including but not limited to approved space heaters, misters and portable umbrellas that are located within the outdoor seating area shall be stored inside a building after close of business.
 - 10) All outdoor cafe seating furniture, including the tables, chairs, awnings and space heater equipment shall be aesthetically and architecturally pleasing and approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.
 - 11) The area covered by an outdoor cafe seating permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times and clear of any trash or refuse by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation and again at the close of each business day, or as may otherwise be determined by the director.
 - 12) Areas associated with the outdoor cafe seating shall not count toward any maximum square footage limitations.

SITE PLAN REVIEW: Code Sec. 134-227: Town council authorization, compliance and site plan review required. Special exception uses and their related accessory uses or any expansion, enlargement, or modification of an existing special exception use or any physical expansion of an existing special use or facility shall be permitted only upon authorization by the town council.

Proposed Amendments to the Conditions of Approval

Provided below is the list of 31 Conditions of Approval for the DOU between the Carriage House and the Town of Palm Beach. The subject application seeks to amend the Conditions that are shown in strike through and underline:

1) The Club shall be located in the 264 building and the first floor of the 270 building. The hours of operation will be 11:00 a.m. until 12:00 a.m. (closing time), Sunday through Wednesday and 11:00 a.m. until 12:30 a.m. (closing time), Thursday through Saturday. All members and guests will be required to exit the Club by closing time.

2) There shall be no use by the Club of the second floor of the 270 building except for storage, office, or residential use. There shall be no use by the Club of the buildings at 236 or 238 Phipps Plaza.

3) The main entrance to the Club shall be through the 270 building; either from the valet access or South County Road. The door located at the corner of South County Road and Phipps Plaza will only serve as a fire-exit door.

4) No single room or space in the Club, shall exceed 1,500 square feet in size.

5) There shall be no dance floor or amplified live music, with the number of musicians limited to three (3).

6) There shall be no outside ~~dining or~~ music except background music in the courtyard. The balconies and roof of the Club's buildings shall not be used for any type of Club activity.

7) The Club will install hurricane/ impact windows and doors as well as adequate soundproofing to block all interior noise from the Club being heard outside.

8) The main entrance exterior doors shall be revolving or double doors designed to prevent sound escaping from the Club when opened.

9) There will be no dinner reservations made earlier then 6: 15 p.m.

10) The maximum membership shall be 232 people regardless of designation and whether or not dues paying. At least 50% of the Club members shall consist of individuals who are " townpersons" as defined Town' s Code. Members are limited to natural persons and expressly exclude corporations or other entities. Use of a single membership is limited to an adult, that person' s spouse or significant other, and that person' s adult children under the age of 30. Guests must be accompanied by a member when present at the Club. The Club is required to provide proof of town-serving compliance on an annual basis and per the Town' s code.

11) The maximum occupancy shall not exceed 100 people until 6:00 p.m. and 225 people after 6: 00 p.m. except when there is an event as defined in Paragraph 14 below in which case the maximum occupancy shall not exceed 250 people after 6: 00 p.m. The Club will return to Town Council after

a period of six months of operation to review the aforementioned occupancy limits. Maximum occupancy shall include Club employees. All guests and members must register at the Club upon entry and the occupancy registry will be made available for inspection by the Town upon request.

12) Valet parking is required from 6: 00 p.m. until closing. The valet stand and car service and taxi drop off and pick up shall be located in the parking lot at 205 Royal Palm Way. Should the Club lose the right to operate a drop off and pick up stand at 205 Royal Palm Way for any reason, the Club will be required to provide an alternative location that is approved by the Town Council, provided, however, that 230 and 240 Royal Palm Way shall be an acceptable alternative valet pick up and drop off for a maximum of 90 days, or as may be extended by the Town Council. There shall be no valet stand on South County Road, in Phipps Plaza, or on Seaview Ave.

13) The Club must provide off-street parking with a parking lot capacity of at least 68 vehicles accessible to Club valet services, members, guests, and employees from 6: 00 p.m. to close. Club's valet services shall use the off-street parking lot to park member and guest vehicles. There shall be no parking of member or guest vehicles in the 205 Royal Palm Way parking lot.

14) No events shall be allowed prior to 6:00 p.m. After 6:00 p.m., no events of more than sixty (60) people shall be allowed. There shall be no more than 1 event per month. An event is defined as an organized member sponsored function for 40 or more people within the confines of the Club property itself. Said events shall include, but are not limited to, charitable events, rehearsal dinners, wedding receptions, bar mitzvahs, Hanukkah, Christmas or birthday parties. Only a Club member may host an event and 1 off duty police officer shall be required for all events unless an alternative arrangement is recommended by the Town police. The Club is required to maintain records of events and will make such available to the Town upon request. The Club shall be required to keep such records for a period of 12 months.

15) The Club shall be allowed to remain open until 2:00 a.m. on New Year's Eve. The Club will be required to hire two (2) off duty police officers on New Year's Eve unless an alternative arrangement is recommended by the Town police. A minimum of six (6) valets shall be required for events and on New Year's Eve. Maximum occupancy for New Year's Eve shall be 250.

16) It is the intent of this Agreement to preserve the residential character of the neighborhood and to not allow members and guests of the Club to park on Phipps Plaza, Seaview Avenue, Seaspray Avenue, Seabreeze Avenue, and Clarke Avenue, which shall be enforced through the rulebook of the Club, which will not only state that prohibition, but also include penalties. All Club members will be instructed to a) use the Club provided valet when visiting the Club after 6:00 p.m. and b) instruct their guests to use the Club provided valet when visiting the Club after 6:00 p.m. The Club will issue periodic reminders to Club members of this policy.

17) The Club shall obtain and maintain a valet parking permit for one (1) valet stand. A minimum of four (4) valets shall be on duty from 6: 00 p.m. to closing Thursday to Saturday and a minimum of three (3) valets shall be on duty from 5:00 p.m. to closing Sunday to Wednesday. The number of valets may be modified by the Police Department should it be determined that more or fewer valets are required to manage the Club parking. Valets will not be permitted to park vehicles in Phipps Plaza or on Seaview Avenue, Seaspray Avenue, Seabreeze Avenue, and/or Clarke Avenue.

18) After 6: 00 p. m., all vehicular pick- up and drop- off all Club members, guests and employees, (including car services, taxis and private vehicles) must occur at the same location as the valet pick

up and drop off stands provided that car services and taxis may drop off and pick up on South County Road. Club Members, valets, and employees will be instructed that vehicular pick-up and drop-off of Club members, guests and employees is expressly prohibited from occurring at the 264 South County Road building entrance/ exit. The only exception to the forgoing is that in the event the valet stand is not operating at 205 Royal Palm Way, Club members and guests who are transported to and from the Club by Club- operated golf carts may be dropped off and picked up at the 264 South County Road or 270 South County Road entrance. In this case, Club-operated golf carts shall be expressly prohibited from driving within the circle of Phipps Plaza, or driving on Seaview Avenue, Seaspray Avenue, Seabreeze Avenue, and/ or Clarke Avenue unless giving a member or guest a ride home who is a resident of one of these streets. The Club will issue periodic reminders to Club members, valets, and employees of this policy.

19) Club employees who drive to work after 6:00 p.m. shall be required to park in the off-street parking lot secured by the Club as detailed in paragraph 13 above or a parking lot or garage at an alternative off-street location. Club employees who drive to work prior to 6:00 p.m. shall be required to park in the Esplanade or Apollo parking lots or a parking lot or garage at an alternative off-street location. Employees will be prohibited from parking in Phipps Plaza or on Seaview Avenue, Seaspray Avenue, Seabreeze Avenue, and/ or Clarke Avenue. Employees shall be required to present proof of daytime parking to the Club administrative staff. The Club shall be required to keep such employee parking records for a period of 12 months and make such available to the Town for confidential review upon request.

20) The lunch seating shall be limited to 67 seats. The total seats after 6:00 p.m. shall not exceed 153.

21) The Club shall not add lighting to either the 205 Royal Palm Way or 230/240 Royal Palm Way parking lots.

22) All trash shall be stored inside the Club and will not be taken to the dumpster until after 8:00 a.m. the following day.

23) The Club shall instruct its delivery services to function without using Phipps Plaza, Seaview Avenue, Seaspray Avenue, Seabreeze Avenue and/ or Clarke Avenue. The Club shall instruct its delivery services to use the commercial loading zones at the corner of Seaview Avenue and South County Road. Delivery services will be instructed not to park in Phipps Plaza or on Seaspray Avenue, Seabreeze Avenue, and/ or Clarke Avenue There shall be no Club deliveries or vendor services before 8: 00 a.m.

24) The Club shall provide state of an exhaust vents and scrubbers and shall have them cleaned on a weekly basis.

25) The Club shall purchase two (2) "street legal" golf carts to aid in valet operations.

26) The Club shall commit to pay a minimum of \$300,000 to beautify Phipps Park according to a plan approved by the Town.

27) The Club shall not use Phipps Plaza Park for any Club purposes.

28) Club shall enter into a Construction Management Agreement prior to the issuance of a building permit. Such Agreement shall include a Construction Staging/Logistics Plan which provides for any temporary laydown/storage area and construction dumpster to be located within the Courtyard between the 264 and 274 buildings. Upon commencement of construction, the Club and/ or their general contractor will provide Construction Communications via e- mail to the residents of Phipps Plaza, no less than once a week, which include a schedule of the upcoming construction anticipated for the next week. The Club will provide the cellular phone number of the foreman of the project. Only one delivery truck shall drive through the circle at one time. Normal ingress and egress will not be impeded during construction.

29) Prior to the issuance of any building permit, copies of the signed lease agreements regarding the Club' s right to use the parking lots at 205 Royal Palm Way and 230 Royal Palm Way (or any other off-site parking lot acquired by the Club for its use), including any amendments thereto, will be provided, confidentially, to the Town attorney to confirm the Club's right to use and the termination provisions thereof. The agreements may be redacted to exclude economic terms or other terms unrelated to the Club' s right to use the parking lots.

30) There will be no smoking, drinking, or loitering by Club employees within the outdoor courtyard between the 264 and 270 South County buildings or in the outdoor areas surrounding the Club, including Phipps Plaza Park. In addition, the Club will use its best efforts to control the use of the courtyard by Club members and guests so as not to disturb the surrounding residential neighborhood.

31) Club shall return to the Town Council after six (6) months of operation during the period from November 1 through April 30 to review the list of conditions and compliance. The Club is prohibited from seeking revision(s) to this Agreement for a period of two (2) years following the date of Club opening with the ~~sole~~ exception of a requested relocation of the valet stand and/ or parking facility or a request for outdoor dining in the courtyard. The Club shall not under any circumstances, including the loss of its parking or valet stand facilities, apply for any revisions to this agreement to allow parking in Phipps Plaza, or on Seaview Avenue, Seaspray Avenue, Seabreeze Avenue, and/ or Clarke Avenue Any future requested revisions to this Agreement will require at least 45-day notice to all property owners within a 750-foot radius. Any Town Council hearing regarding a requested revision(s) to this Agreement will only be conducted between the months of January and May unless extenuating circumstance occurs.

WRB:JGM:JHD