

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

CARRIAGE HOUSE PROPERTIES PARTNERS LLC

_____, 2022

Prepared by and return to:

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**AMENDED AND RESTATED
DECLARATION OF USE AGREEMENT**

THIS AMENDED AND RESTATED DECLARATION OF USE AGREEMENT (“Agreement”) is made and entered into this ____th day of _____, 2022 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called “Town”) and CARRIAGE HOUSE PROPERTIES PARTNERS LLC., 264/270 South County Road, Palm Beach, Florida 33480 (hereinafter called “Club”), which terms “Town” and “Club” will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

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

WHEREAS, the Club Location falls within the Town’s C-TS Zoning District; and

WHEREAS, The Club desires a Special Exception use at the Club Location; and

WHEREAS, the Town Council conditionally approved Zoning Application Number Z-18-00149 on February 13, 2019 which granted the Club special exception approval to open a private club at the Club Location and a second special exception approval to allow off-site supplemental shared parking for 68 night-time parking spaces (after 6:00 p.m.) at 230/240 Royal Palm Way, Palm Beach, Florida; and

WHEREAS, the Town and Club heretofore entered into a Declaration of Use Agreement dated March 19, 2019; and

WHEREAS, the Town Council on October 12, 2022 granted approval of ZON-22-109 to allow outdoor café dining with 63 seats in the courtyard. The Town Council modified the prior conditions of approval as part of the approval as set forth in this Amendment.

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

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

ARTICLE I
RECITALS

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

ARTICLE II
REPRESENTATION OF OWNERSHIP

The Club has full right to enter into this Agreement and to bind the Land and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. The execution of this Agreement or the consummation of the transactions contemplated herein will not violate any restriction, court order or agreement to which the Club or Land are subject.

ARTICLE III PRIVATE CLUB USE

The private club use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as Z-18-00149 and approved by the Town Council on February 13, 2019 as the same may be amended from time to time (hereinafter referred to as the "Approval").

ARTICLE IV CONDITIONS

The approval shall be based upon the following conditions:

- 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.
- 6) There shall be no outside 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 than 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 230/240 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 2 off duty police officers on New Year’s Eve, unless an alternative arrangement is recommended by the Town police. A minimum of 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 Ave., Seaspray Ave., Seabreeze Ave., and Clarke Ave., 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 valet stand. A minimum of 4 valets shall be on duty from 6:00 p.m. to closing Thursday to Saturday and a minimum of 3 valets shall be on duty from 6:00 p.m. to closing Sunday to Wednesday. The number of valets may be modified by the Police Department should it be determined that more or fewer valets are required to manage the Club parking. Valets will not be permitted to park vehicles in Phipps Plaza or on Seaview Ave., Seaspray Ave., Seabreeze Ave., and/or Clarke Ave.
- 18) After 6:00 p.m., all vehicular pick-up and drop-off of 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 Ave., Seaspray Ave., Seabreeze Ave., and/or Clarke Ave. 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 Ave., Seaspray Ave., Seabreeze Ave., and/or Clarke Ave. Employees shall be required to present proof of day time parking to the Club administrative staff. The Club shall be required to keep such employee parking records for a period of 12 months and make such available to the Town for confidential review upon request.
- 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 Ave., Seaspray Ave., Seabreeze Ave. and/or Clarke Ave. The Club shall instruct its delivery services to use the commercial loading zones at the corner of Seaview Ave. and South County Road. Delivery services will be instructed not to park in Phipps Plaza or on Seaspray Ave., Seabreeze Ave., and/or Clarke Ave. There shall be no Club deliveries or vendor services before 8:00 a.m.
- 24) The Club shall provide state of the art 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 270 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 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 2

years following the date of Club opening with the 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 Ave, Seaspray Ave., Seabreeze Ave., and/or Clarke Ave. 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 occur.

ARTICLE V VOLUNTARY AGREEMENT AND HOLD HARMLESS

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

ARTICLE VI REMEDIES FOR VIOLATION

1. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this Agreement or any other provision in the Town Code of Ordinances, and upon notice in writing from the Town to the Club and the Club's representative of said violation(s) and the date upon which said violations(s) shall be corrected, Club or Club's successor or assigns shall pay to the TOWN a liquidated amount of \$2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to the owner. The Town Council may, upon a finding of violation, alter this Agreement or rescind the approval of the use.

In the event Club disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this Agreement, or in the event the Club disputes any code violation, Club may appeal the determination of the Director of the Planning, Zoning and Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days following the written notice of violation.

2. The Town shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the Town's code enforcement procedures; (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County for the State of Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non-performance of this Agreement, or any of its covenants, agreements, terms or conditions, the Town shall be entitled to recover its costs, expenses and reasonable attorney's fees insofar as the Town prevails, either before or as a result of litigation, including appeals.

ARTICLE VII
PROVISIONS TO RUN WITH THE CLUB

This Agreement shall NOT run with the Land and shall be binding upon the Club only and shall terminate upon the termination of the Club's business tax receipt for operation of a private club, or rescission of the Approval. This Agreement shall be recorded by the Club in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.

ARTICLE VIII
ENTIRE AGREEMENT

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

ARTICLE IX
EFFECTIVE DATE

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

ARTICLE X
MISCELLANEOUS

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

All references in this Agreement to times of a day are stated in terms of Eastern Time, i.e. whichever of Eastern Standard Time or Eastern Daylight Time may be in effect at the time. The word "day" in this Agreement means any period beginning when the time of day is midnight and ending on the next later occasion when the time of day is midnight.

This Agreement may not be amended except by written instrument signed by all parties hereto.

Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof.

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

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

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

Signed, sealed and delivered
In the presence of:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

THE TOWN OF PALM BEACH:

By: _____
Danielle Hickox Moore, Mayor

By: _____
Margaret Zeidman, President

By: _____
Kirk Blouin, Town Manager

CLUB:

CARRIAGE HOUSE PROPERTIES
PARTNERS LLC

Print Name: _____

Print Name: _____

By: _____
Its: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by Danielle Hickox Moore, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and she did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by Margaret Zeidman, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and she did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by _____, on behalf of CARRIAGE HOUSE PROPERTIES PARTNERS LLC. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

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

By: _____
John C. Randolph, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

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