

TOWN OF PALM BEACH

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building



Re: Declaration of Use Agreement Template

Date: August 23, 2023

FOR YOUR INFORMATION

As recently discussed, attached is a DRAFT Declaration of Use Agreement (“DOUA”) template. This was created by merging numerous DOUA’s together. I categorized the conditions based upon the best examples I found in recent agreements proposed and/or executed between the Town and restaurants, bars, clubs, and hotels. This template, once refined and reduced, could be provided to applicants as part of their First Submittal application. It could be completed by the applicant and returned prior to the Town Council meeting.

Having a DOUA prepared in advance may save the applicants and Town Council time in the future.

This DRAFT DOUA still needs further review and editing with Skip Randolph’s assistance.

**DECLARATION OF USE
AGREEMENT**

by

THE TOWN OF PALM BEACH

and

_____, 202_____

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 202__ by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called "Town") and [Name & Address] (hereinafter called "_____"), which terms "Town" and "_____" 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 "_____" attached hereto and made a part hereof (hereinafter referred to as the "Land" or "_____ Location") is located within the municipal limits of the Town; and

WHEREAS, the _____ Location falls within the Town's _____ Zoning District; and

WHEREAS, The _____ desires a Special Exception Use / Site Plan Review / Variances at the _____ Location; and

WHEREAS, the Town Council conditionally approved Application Number _____ on _____, 202__ which granted the _____; and

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

WHEREAS, _____.

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 AUTHORITY**

The [Name, Type of Use] has full right to enter into this Agreement and to bind the [Space, Building, 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 [Space, Building, Land] are subject.

**ARTICLE III
[TYPE OF] USE**

The _____ use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as [File Number] and approved by the Town Council on _____, 202__ 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 [Check those Conditions that are applicable and propose language and metrics to complete each Condition checked]:

[CONTINUED NONCONFORMING USE / ACCESSORY USES:]

- _____The project was approved for the continued operation of a [Name, Type of Use] with accessory _____ uses. The following licenses shall be required to be applied for, reviewed, and approved annually: _____

[OCCUPANCY / MEMBERSHIP:]

- _____The maximum membership shall be _____ people regardless of designation and whether or not dues paying. At least 50% of the members shall consist of individuals who are "town-persons" as defined in the Town's Code. [Name, Type of Use] is required to provide proof of town-serving compliance on an annual basis and per the Town's code.
- _____The maximum occupancy shall not exceed _____ people until _____ p.m. and _____ people after _____ p.m. except when there is an event as defined below in _____

which case the maximum occupancy shall not exceed _____ people after _____ p.m. The [Name, Type of Use] will return to Town Council after a period of _____ months of operation to review the aforementioned occupancy limits. Maximum occupancy shall include _____ employees. All guests and members must register at the _____ upon entry and the occupancy registry will be made available for inspection by the Town upon request.

[HOURS:]

- _____ The [Name, Type of Use] shall be located at [Location]. The hours of operation will be _____ to _____ [and _____ to _____]. All members and guests will be required to exit the [Name, Use] by closing time.
- _____ The [Name, Type of Use] shall be allowed to remain open until _____ on New Year's Eve. The [Name, Type of Use] will be required to hire _____ off duty police officers on New Year's Eve, unless an alternative arrangement is recommended by the Town police. A minimum of _____ valets shall be required for events and on New Year's Eve. Maximum occupancy for New Year's Eve shall be _____ persons.
- _____ The _____ room is approved for _____ seats and an additional _____ seats are approved for dining at the _____. The dining room may serve meals to the public and hotel guests from _____ to _____. Outside dining shall be allowed from _____ to _____ on the _____. These restrictions shall not preclude 24-hour room service.
- _____ Pool Hours shall be from _____ to _____ and Poolside beverage and food service shall be allowed between _____ **and** _____.
- _____ The hours of operation for the [Name, Type of Use] will be from _____ to _____, _____ day through _____ day [and _____ to _____, _____ day and/through _____ day.
- _____ As shown in the hour-by-hour seating plan, all food and beverage service shall close to the public no later than _____. For purposes of this Agreement, the term "close to the public" shall specifically not apply to food and beverage service in specific rooms that offer services at a given time only to hotel guests, employees, owners of the property, owners of the hotel operator and guests of hotel guests.

[FOOD & BEVERAGE SERVICE / NUMBER OF SEATS:]

- _____ There will be no dinner reservations made earlier than _____ p.m.

- _____ The lunch seating shall be limited to _____ seats. The total seats after 6:00 p.m. shall not exceed _____.
- _____ The _____ room is approved for _____ seats and an additional _____ seats are approved for dining at the _____. The dining room may serve meals to the public and hotel guests from _____ to _____. Outside dining shall be allowed from _____ to _____ on the _____. These restrictions shall not preclude 24-hour room service.
- _____ As stated in the hour-by-hour seating chart (the “hour-by-hour seating plan”) attached as part of Exhibit “____,” no more than _____ seats for food and beverage service to the public shall be open at any given time. A copy of this Agreement and the approved hour-by-hour seating plan shall be maintained on site at all times and made available for inspection by the Town, on request by a Town official. Notwithstanding anything to the contrary in this Agreement, during inclement weather, seats may be moved from the outside areas to indoor restaurant and bar areas as long as the _____ seat limitation is not exceeded.

[BUILDING:]

- _____ The main entrance to the [Name, Type of Use] shall be through _____.
- _____ No single room or space in the [Name, Type of Use], shall exceed _____ square feet in size.
- _____ The _____ doors of the _____ building can be used during outdoor events for ingress and egress, however, said doors shall not remain propped open.
- _____ The _____ doors shall remain closed after _____ p.m. and shall only be used after _____ p.m. for emergency purposes.
- _____ No [Name, Type of Use] guests, or other social or leisure activity or entertainment of any kind will be permitted on the roof of the [Name, Type of Use], the function room roof, or other accessory building roofs.
- _____ The [Name, Type of Use] shall provide state of the art exhaust vents and scrubbers and shall have them cleaned on a weekly basis.

[NOISE:]

- _____ Any violation of the noise ordinance as verified by a Town official shall be deemed a violation of this Agreement.

- _____The Owner shall construct and maintain the [Name, Type of Use] so as to achieve and preserve the Minimum Sound Transmission Rating (STC) as identified in Exhibit "_____."

[MUSIC / SOUND / D.J.'S:] :

- _____There shall be no dance floor or amplified live music, with the number of musicians limited to _____.
- _____There shall be no outside dining or music. The balconies and roof of the [Name, Type of Use]'s buildings shall not be used for any type of _____ activity.
- _____The [Name, Type of Use] will install hurricane/impact windows and doors as well as adequate soundproofing to block all interior noise from the _____ being heard outside.
- _____The main entrance exterior doors shall be revolving, or double doors designed to prevent sound escaping from the [Name, Type of Use] when opened.
- _____The only amplified music allowed in the _____ area shall be background music played via the [Name, Type of Use] custom-designed sound system that governs volume.
- _____No D.J.s with external sound equipment shall be allowed to perform in the _____ area. Vocal performances shall only be acoustical and not amplified.
- _____When live musicians perform in the _____ area, the groups are not to exceed four instruments; no live drums or percussion shall be allowed. The use of all live instruments shall end no later than _____ p.m.
- _____In the _____ area a microphone will be allowed only for an officiant or for an individual making remark. Microphone use shall end no later than _____ p.m.
- _____Recorded or live music or entertainment shall be allowed inside the [Name, Type of Use] building from _____ to _____, except New Years Eve where recorded or live music or entertainment shall be allowed until _____.
- _____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 [Specify Location] from _____ to _____.

"Background live or background recorded music" is defined as music having a low enough volume that normal conversation can be held over the music. Background live or background recorded music shall have speakers for same directed inward to the property.

- _____ Only ambient, background music shall be permitted in the _____ area until _____ and the _____ until _____.
- _____ Inside the main [Restaurant, Bar, Lounge, Nightclub, Private Club], live and recorded music (including, without limitation, music played by a DJ) is permitted, but no subwoofers or electric guitars shall be permitted. Intended examples of permitted music inside the restaurant and nightclub are vocalists, jazz musicians, string quartets and similar styles of musicians. Operator shall take such steps to prevent music being played from being heard by neighbors outside the [Name, Type of Use].

[PARKING:]

- _____ It is the intent of this Agreement to preserve the residential character of the neighborhood and to not allow members and guests of the [Name, Type of Use] to park on residential streets.
- _____ After [Specify Time of Day], all vehicular pick-up and drop-off of all [Name, Type of Use] 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 [Specify Location]. [Name, Type of Use] Members, valets, and employees will be instructed that vehicular pick-up and drop-off of [Name, Type of Use] members, guests and employees is expressly prohibited from occurring at [Specify Other Locations].
- _____ [Name, Type of Use] employees who drive to work shall be required to park in the off- street parking lot at [Specify Location].
- _____ Prior to the issuance of any building permit, copies of the signed lease agreements regarding the [Name, Type of Use]'s right to use the parking lots at [Specify Locations] (or any other off-site parking lot acquired by the [Name, Type of Use] for its use), including any amendments thereto, will be provided, confidentially, to the Town attorney to confirm the [Name, Type of Use]'s right to use and the termination provisions thereof. The agreements may be redacted to exclude economic terms or other terms unrelated to the [Name, Type of Use]'s right to use the parking lots.
- _____ The Owner shall provide a minimum of _____ employee parking spaces and an employee shuttle service from _____ to _____ at an off-site location(s) within 15 minutes average driving time from the [Name, Type of Use]. This location shall not be within the Town limits unless specifically allowed for in Chapter 134 Zoning.

- _____ Off-Street Parking and Loading, of the Town Code of Ordinances. The Owner shall inform the Town in writing of the off-site parking location(s) outside the Town's jurisdiction. It shall be the Owner's responsibility to immediately inform the Town in writing of the loss of said parking area and make arrangements for the necessary approval(s) for alternate locations(s). Failure to insure that the off-site location is allowed by the jurisdiction in which said parking is located, or the loss of said parking may result in a reduction in dining room seating. That determination will be made by the Town Council at the earliest Town Council meeting after the Town becomes aware of the situation.
- _____ The [Name, Type of Use] operation shall include off-site parking (in [Specify Location]) of _____ parking spaces for employee and excess parking ("Employee Parking"). The Employee Parking plan shall include a shuttle bus operated by [Name, Type of Use] representatives and agents throughout the day and evening to bring employees to and from the [Name, Type of Use] to the Employee Parking facility.

[VALET SERVICES:]

- _____ Valet parking is required from _____ until closing. The valet stand and car service and taxi drop off and pick up shall be located in the parking lot at _____. Should the [Name, Type of Use] lose the right to operate a drop off and pick up stand at _____ for any reason, the [Name, Type of Use] will be required to provide an alternative location that is approved by the Town Council.
- _____ The [Name, Type of Use] must provide off-street parking with a parking lot capacity of at least _____ vehicles accessible to valet services, members, guests, and employees. The [Name, Type of Use]'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 at [List Other Locations].
- _____ The [Name, Type of Use] shall obtain and maintain a valet parking permit for their valet stand. A minimum of _____ valets shall be on duty from _____ to _____; and from _____ to _____; and a minimum of _____ valets shall be on duty from _____ to closing at _____. 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 [Name, Type of Use] parking.
- _____ The [Name, Type of Use] shall purchase "street legal" golf carts to aid in valet operations.
- _____ Valet parking shall be operated in accordance with the valet circulation plan dated _____, 202____, prepared by _____, which shows a regular maximum queuing of _____ total cars.

- _____ All parking at the [Name, Type of Use] shall be valet managed with a valet parking permit approved by the Town Police Chief. Valet parking shall not be permitted on [Specify Locations]. If it is determined by the Town Manager, or his designee, that the valet parking operation at the [Name, Type of Use] is not working properly, the Town has the right to require measures as deemed necessary, including additional valet parking personnel or special duty officer(s), to resolve the issue(s). Further, the Town Council has the ability to place on their monthly agenda a discussion and resolution of any confirmed parking problem and/or requested parking revision, made by either the Town or the Owner, for a period of three (3) years, which will begin on the date the certificate of occupancy is issued for the [Name, Type of Use].
- _____ The Owner or operator of the [Name, Type of Use] shall maintain a parking agreement for the use of a combined total of _____ off-site valet parking spaces at [Specify Location(s)] (or other alternative location and/or number acceptable to the Owner and reviewed and approved by Town Staff). Owner shall furnish a redacted copy of such agreement to the Town. Only the underground garages at such facilities shall be used after 6:00 p.m. If the reserved valet parking spaces become unavailable, either the Owner or Operator shall notify the Director of Planning and Zoning within three business days after the spaces become unavailable.
- _____ Valet parking is required to be available for [Name, Type of Use] guests and food and beverage guests during all hours that the [Name, Type of Use] is open to the public for food and beverage service.

[DELIVERIES:]

- _____ The [Name, Type of Use] shall instruct its delivery services to function without using [Specify locations]. The [Name, Type of Use] shall instruct its delivery services to use the commercial loading zones at [Specify Location]. There shall be no [Name, Type of Use] deliveries or vendor services before 8:00 a.m.
- _____ Off-Street Parking and Loading, of the Town Code of Ordinances. The Owner shall inform the Town in writing of the off-site parking location(s) outside the Town's jurisdiction. It shall be the Owner's responsibility to immediately inform the Town in writing of the loss of said parking area and make arrangements for the necessary approval(s) for alternate locations(s). Failure to ensure that the off-site location is allowed by the jurisdiction in which said parking is located, or the loss of said parking may result in a reduction in dining room seating. That determination will be made by the Town Council at the earliest Town Council meeting after the Town becomes aware of the situation.
- _____ Commercial delivery services will be instructed to use the delivery location at _____.

[GARBAGE:]

- _____ All trash shall be stored inside the [Name, Type of Use] and will not be taken to the dumpster until after 8:00 a.m. the following day.
- _____ All trash shall be stored in the indoor trash room inside the [Name, Type of Use] daily and not taken to the outdoor rubbish receptacle until after 8:00 a.m. the following day.

[LIGHTING:]

- _____ The [Name, Type of Use] shall not add lighting to [Specify Location] parking lots.
- _____ All lights in the Parking lot shall be low level so that they shine downward and do not produce any light or glare which would adversely affect surrounding properties.

[OUTDOOR & SPECIAL EVENTS:]

- _____ No events shall be allowed prior to _____, no events of more than _____ people shall be allowed. There shall be no more than _____ events per month. An event is defined as an organized member sponsored function for 40 or more people within the confines of the [Name, Type of Use] 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 [Name, Type of Use] 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 [Name, Type of Use] is required to maintain records of events and will make such available to the Town upon request. The [Name, Type of Use] shall be required to keep such records for a period of 12 months.
- _____ All outdoor events in the _____ area shall be concluded by _____ p.m.
- _____ The _____ area shall have a maximum capacity of _____ people per event.
- _____ There shall be no more than four events per month, and all events shall comply with the required opening and closing hours for each service area as shown in Exhibit “____,” and the events shall be subject to the seat limitations in the hour-by-hour seating plan. An event is defined as an organized function for more than 40 or more people within the [Name, Type of Use] such as wedding receptions, birthday parties and religious or other celebrations. The number of valet parkers shall be increased on an “as needed” basis for each event.

[SCREENING:]

- _____ A privacy landscape buffer shall be installed and maintained on the _____ property line. Said landscape buffer shall include a _____.

[UTILITY EASEMENT:]

- _____ Prior to the issuance of a building permit, the property owner voluntarily commits to either provide a recorded utility easement or an easement agreement satisfactory to the Town that ensures a recorded easement will be granted, if necessary, to underground utilities in the area.

[MAINTENANCE:]

- _____ Maintenance Provisions:

_____ The [Name, Type of Use] shall at all times be continually maintained with the upmost standards of a first-class hotel and will comply with all ordinances, rules and regulations of the Town of Palm Beach, Palm Beach County, and State of Florida, (and each of the foregoing governmental entity's respective districts, departments, and agencies) as to maintenance, health, and safety standards.

_____ All buildings and improvements shall be maintained in a first-class condition, especially as to the exterior appearance. Painting and other exterior maintenance shall be periodically performed as reasonably required. No excessive and/or unsightly mildew, rust deposits, dirt, graffiti, or deterioration shall be permitted to accumulate on any building or other improvement. The glass in windows and in glass sliding doors shall not be cracked or broken. Building openings shall not be boarded up. Foundations, exterior walls, and roofs shall be weather-tight and shall be maintained in good repair. All appurtenances to any structure, such as awnings, shutters, doors, rails, and light fixtures shall be securely attached and in working condition, and shall not be broken, hanging loose, or falling away from the structure. All walls and fences shall be maintained in good repair and in an upright condition and shall be free from graffiti, or broken, cracked, or leaning sections, or loose component pieces.

_____ All landscaping within the Land shall be regularly maintained with proper horticultural and arboricultural practices, including without limitation such replanting and, as is from time to time necessary, mowing, trimming, fertilization, and weed, insect, and disease control. All dead or diseased sod, trees, plants, shrubs, or flowers shall be

promptly replaced.

_____ Maintenance or other actions reasonably required by the Town to meet the forgoing Maintenance Provisions in Paragraph 21 shall be commenced and completed within a commercially reasonable time period as determined by the Town Director of Planning, Zoning, and Building Department within the exclusive reasonable exercise of his or her discretion, and a failure to maintain or take other curative action as so reasonably required shall be subject to being treated by the Town as a violation of the terms and conditions of this Agreement. The Maintenance Provisions of this Declaration of Use Agreement provide the Town with supplemental means to assure that the buildings and improvements on the Land are maintained and shall not create any obligation on the Town (or its officials, officers, or employees) to conduct such maintenance or enforce the Maintenance Provisions of this Declaration of Use Agreement. Further, the Maintenance Provisions of this Declaration of Use Agreement shall not prevent the Town from enforcing any building or structure maintenance or appearance law or regulation the Town may currently enforce, or that may from time to time become applicable in the future.

[CONSTRUCTION MANAGEMENT AGREEMENT:]

- _____ The [Name, Type of Use] shall enter into a Construction Management Agreement prior to the issuance of a building permit.
- _____ The demolition and construction contemplated by the Approval shall be conducted pursuant to the Construction Management Agreement(s) entered into between the [Name, Type of Use] Owners and Town prior to the issuance of a building permit for said demolition or construction.

[RETURN TO TOWN COUNCIL:]

- _____ [Name, Type of Use] shall return to the Town Council after _____ months of operation during the period from November 1 through April 30 to review the list of conditions and compliance. The [Name, Type of Use] is prohibited from seeking revision(s) to this Agreement for a period of _____ years following the date of _____ opening with the sole exception of a requested relocation of the valet stand and/or parking facility. Any future requested revisions to this Agreement will require at least 45 days 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.
- _____ If there are more than three verified complaints regarding noise or activities

beyond the scope of this Agreement in the _____ area, the use of the subject area shall cease and the applicant shall return to the next regularly scheduled Town Council meeting to address said complaints.

- _____ No sooner than three (3) months from the date of certificate of occupancy, the Owner or Town can come back to the Town Council to determine if the seating is working and to address any issues.
- _____ After the first and second seasons (December through April), the Owner and Operator shall return to the Town Council to review compliance with conditions imposed in this Agreement, which Town Council meeting shall take place during the months of either April or May of 2025 and April or May of 2026 (subject to deferral by Town Council to other months). If the [Name, Type of Use] is in compliance with the conditions of this Agreement described in this Article III, then Owner may at the Town Council compliance review meetings in 202____ and/or 202____ request [Additional seats, expanded hours of operation, etc.].

[COMPLIANCE:]

- _____ The Town shall have the right to conduct inspections on the Buildings and Land on a periodic basis to ascertain compliance with this Agreement. Failure to allow an inspection by the Town will constitute a violation of this Agreement.
- _____ The Owner or operator of the [Name, Type of Use] shall provide an affidavit of compliance each year at the time of renewal of the business tax receipt.

**ARTICLE V
VOLUNTARY AGREEMENT AND HOLD
HARMLESS**

The _____ 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 _____ and the _____ 's representative of said violation(s) and the date upon which said violations(s) shall be corrected, _____ or _____ '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 _____ 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 _____ disputes any code violation, _____ 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 [LAND, OWNER, TENANT]**

This Agreement shall run with the [Land, Owner, Tenant] and shall be binding upon the _____ [and shall terminate upon the termination of the _____ 's business tax receipt for operation of a private _____, or rescission of the Approval]. This Agreement shall be recorded by the _____ 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 PROVISIONS**

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 Standard 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.

[Signatures, Notary, and Exhibits to follow]