

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

PBTAK, LLC (d/b/a Taboo)

May ____, 2024

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2024 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called "Town") and PBTAK, LLC (hereinafter called "Restaurant"), which terms "Town" and "Restaurant" 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 "Restaurant Location") is located within the municipal limits of the Town; and

WHEREAS, the Restaurant Location falls within the Town's C-WA Worth Avenue Zoning District; and

WHEREAS, The Restaurant desires a Special Exception Use for the Restaurant at the Restaurant Location; and

WHEREAS, the Town Council conditionally approved Application Number ZON-24-002 on March 13, 2024 which granted the Restaurant Special Exception approval to allow the restaurant use; and

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 AUTHORITY

PBTAK, LLC 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 Restaurant or Land are subject.

ARTICLE III RESTAURANT USE

The Restaurant use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as ZON-24-002 and approved by the Town Council on March 13, 2024 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 Restaurant use is to be located at 219-221 Worth Avenue, Palm Beach, Florida, 33480. The main entrance to the Restaurant shall be on Worth Avenue.
- 2) No Restaurant guests, or other social or leisure activity or entertainment of any kind will be permitted on the roof of the Restaurant.
- 3) The Restaurant shall be allowed to have 213 seats.
- 4) The Restaurant shall have hours of operation to be 11:30 a.m. to 11:00 p.m. Sunday through Wednesday, and 11:30 a.m. through 1:00 a.m. Thursday through Saturday with last meal orders to be cut off by 10:30 p.m. All guests will be required to exit the Restaurant by closing time.
- 5) The Restaurant shall be allowed to remain open until 2:00 a.m. on New Year's Eve. The Restaurant 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 four (4) valets shall be required on New Year's Eve. The maximum occupancy on New Year's Eve shall be 220 people.
- 6) The Restaurant shall provide state of the art exhaust vent(s) and scrubber(s) and shall have them cleaned on a weekly basis.
- 7) The Restaurant shall be allowed to have background music and a piano and piano player. The Restaurant shall not have amplified music, a DJ, or a dance floor.
- 8) The Restaurant is required to have valet parking and shall obtain and maintain a valet parking permit for their valet stand on Worth Avenue. A minimum of four (4) valets

shall be on duty from 6:00 p.m. until closing. 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 Restaurant parking. Valet parking shall be operated in accordance with the valet circulation plan prepared by Kimley Horn and attached hereto as Exhibit "B".

- 9) All parking at the Apollo Parking Lot shall be valet managed with a valet parking permit approved by the Town Police Chief. Valet parking shall not be permitted on Worth Avenue. If it is determined by the Town Manager, or his/her designee, that the valet parking operation at the Restaurant 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 Restaurant.
- 10) The Restaurant will ~~use their best efforts to~~ have their employees park "off-island" or in Town in a designated parking garage or a designated parking lot, that allows such parking- and in the parking lot behind the Restaurant on Peruvian Avneue. The location of the employee parking will be given to the Director of the Planning, Building and Zoning Department upon their request.
- 11) The Restaurant shall instruct its delivery services to use the commercial loading zones on Worth Avenue and/or in the 220 Peruvian parking lot behind the Restaurant.
- 12) All trash shall be stored in the indoor trash room inside the Restaurant daily and not taken to the outdoor rubbish receptacle until after 8:00 a.m. the following day.
- 13) Any violation of the noise ordinance as verified by a Town official shall be deemed a violation of this Agreement.
- 14) The Restaurant shall not add any new lighting to the parking lot located at 220 Peruvian Avenue, unless approved by the requisite Town official.
- 15) The Restaurant shall at all times be continually maintained with the upmost standards of a first-class restaurant 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.
- 16) 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.

- 17) 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.~~
- 18) Maintenance or other actions reasonably required by the Town to meet the forgoing Maintenance Provisions in Paragraphs 10-12 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.
- 19) The Restaurant 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. ~~and the hours or operation.~~
- 20) If there are more than three verified complaints in any two consecutive months regarding noise or activities beyond the scope of this Agreement, the Restaurant ~~shall cease operation and the applicant~~ shall return to the next regularly scheduled Town Council meeting to address said complaints.
- 21) 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.

- 22) The Restaurant shall provide an affidavit of compliance each year at the time of renewal of the business tax receipt.

ARTICLE V VOLUNTARY AGREEMENT

The Restaurant 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

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 Restaurant's representative of said violation(s) and the date upon which said violations(s) shall be corrected, Restaurant 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 Restaurant. The Town Council may, upon a finding of violation, alter this Agreement or rescind the approval of the use.

In the event the Restaurant disputes the determination of the Director of Planning, Zoning and Building Department of a violation of the conditions of this Agreement, or in the event the Restaurant disputes any code violation, the Restaurant 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.

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 prevailing party shall be entitled to recover its costs, expenses, and reasonable

attorney's fees, either before or as a result of litigation, including appeals.

**ARTICLE VII
PROVISIONS TO RUN WITH
THE RESTAURANT**

This Agreement shall not run with the Land and shall be only be binding upon the Restaurant. If the Restaurant is no longer operating, this Agreement shall terminate upon the termination of the Restaurant's business tax receipt for operation of a restaurant. This Agreement shall be recorded by the Restaurant 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.

Signed, sealed and delivered
In the presence of:

THE TOWN OF PALM BEACH:

Print Name: _____

By: _____
Danielle Moore, Mayor

Print Name: _____

By: _____
Barbara Lindsay, President

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

Print Name: _____

RESTAURANT:

PBTAK, LLC

Print Name: _____

By: _____
Toney Lopez, CFO

Print Name: _____

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2024, by DANIELLE MOORE, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2024, by BARBARA LINDSAY, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2024, by KIRK BLOUIN, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2024, by Tony Lopez, the Chief Financial Officer of PBTAK, LLC, a _____ limited liability company, on behalf of the company, who is personally known to me or who has produced _____ as identification.

Notary Public – State of _____

Notary Seal: _____

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

By: _____
Joanne O'Connor, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 20, 21 and 34 through 37, Block 15, ROYAL PARK ADDITION, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 4, Page 1.

PCN: 50-43-43-23-05-015-0340

AND

PCN: 50-43-43-23-05-015-0200

EXHIBIT "B"

VALET PLAN