

Prepared by and return to:
Harvey E. Oyer, III, ESQ
525 Okeechobee Blvd. Suite 1100
West Palm Beach, FL 33401

**AMENDMENT OF DECLARATION
OF USE AGREEMENT**

by

THE TOWN OF PALM BEACH

and

**PALM BEACH ORTHODOX
SYNAGOGUE, INC.**

_____, 2024

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS AMENDMENT OF DECLARATION OF USE AGREEMENT ("Amended 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 Palm Beach Orthodox Synagogue, Inc., (hereinafter called "PB Synagogue"), which terms "Town" and "PB Synagogue" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

WHEREAS, the Town and PB Synagogue heretofore entered into a Declaration of Use Agreement, dated May 12, 2008, recorded in Official Records Book 22640, Page 0733, of the Public Records of Palm Beach County, Florida (the "Agreement"); and

WHEREAS, the Agreement affected certain land described therein located at 120 N. County Road within the municipal limits of the Town as more particularly described in Exhibit "A" attached hereto (the "Original Synagogue Property"); and

WHEREAS, this Amended Agreement affects the Original Synagogue Property and the additional property acquired by PB Synagogue described in Exhibit "B" attached hereto ("Chey Jean Pierre Property") and made a part hereof (the Original Synagogue Property together with the Chey Jean Pierre Property are collectively hereinafter referred to as the "Property") located at 120-132 N. County Road within the municipal limits of the Town; and

WHEREAS, the Agreement reflected the terms and conditions of a Special Exception / Site Plan Review approved by the Town for the existing synagogue (Special Exception #3-2007 with Site Plan Review), hereinafter referred to as the "Prior Approval"); and

WHEREAS, the Agreement provides that it may be amended by written instrument signed by all parties thereto; and

WHEREAS, on September 5, 2024, PB Synagogue submitted an application for a Special Exception Use / Site Plan Review / Variances (Application Number ZON-24-0055 and COA-24-0022, hereinafter referred to as the "Application") on the Property; and

WHEREAS, the terms and conditions contained in the Agreement are only applicable to the Prior Approval and are hereby repealed and replaced with the terms and conditions in this Amended Agreement as set forth herein; and

WHEREAS, the parties wish to amend the Agreement with this Amended Agreement to reflect the changes approved by the Town as part of the Application approval; and

WHEREAS, the Town Council conditionally approved the Application on _____, 2024 which granted approval of three (3) Special Exceptions for 1) Churches, synagogues or other houses of worship, 2) two-stories in the C-TS zoning district and 3) square footage greater than 3,000 square feet in the C-TS district with Site Plan Review, requiring nine (9) variances due to demolition exceeding 50%, renovations, and building additions, for 1) reduction in the minimum required front yard setback and pedestrian walkway, 2) reduction in the minimum required overall landscape open space, 3) reduction in the minimum front yard landscape open space, 4) increase in the maximum permitted building length, 5) reduction to the on-site parking requirement, 6) elimination of the minimum required number of berths (off-street loading spaces), 7) increase of the maximum permitted gross building area, 8) reduction in the minimum required side yard setback, and 9) reduction in the minimum required rear yard setback for the landmarked property (hereinafter referred to as the "Project"); and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Project is 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 REPRESENTATION OF AUTHORITY

PB Synagogue has full right to enter into this Amended Agreement and to bind the Property and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Property in accordance with the terms and conditions of this Amended 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 Amended Agreement or the consummation of the transactions contemplated herein will not violate any restriction, court order, or agreement to which the Property is subject.

ARTICLE II SYNAGOGUE USE

The synagogue and accessory uses that are the subject of this Amended Agreement shall be as set forth in the Application and approved by the Town Council on _____, 2024 as the same may be amended from time to time (hereinafter referred to as the "Approval").

ARTICLE III CONDITIONS

The Approval shall be based upon the following conditions:

1. The Project was approved for the continued operation of a synagogue with accessory uses as outlined in the Application.
2. The Sunday School accessory use shall be limited as follows:
 - a) Attendees of the Sunday School shall be limited to the family members of the members of the synagogue;
 - b) Sunday School shall only operate on Sundays;
 - c) Sunday School shall not commence before 9:00 a.m. and shall conclude no later than 2:00 p.m.;
 - d) Attendees of the Sunday School shall use a drop-off and pick-up procedure in the internal courtyard area; and
 - e) Sunday School shall not operate at the same time as religious services in the sanctuary / worship hall.
3. PB Synagogue shall not operate any type of school for children (e.g., pre-school, K-12 school) on weekdays. The only permitted school shall be the Sunday School described herein.
4. The dining area accessory use is for the purpose of supporting synagogue and congregation activities. There shall not be separate simultaneous events in both the worship hall and dining area.
5. At all times, no less than 50% of the synagogue members shall consist of individuals who are "town-persons" as defined in the Town's Code. Unless otherwise waived by the Town, PB Synagogue is required to provide proof of town-serving compliance on an annual basis per the Town's code.
6. Special Events shall be limited to no more than 250 people. There shall be no more than three Special Events per month. A Special Event is defined as a member-sponsored function for 100 or more people within the confines of the Property and shall include charitable events, weddings, wedding rehearsal dinners, wedding receptions, bar mitzvahs, bat mitzvahs, and birthday parties ("Special Events"). Only a synagogue member may host a Special Event. One off duty police officer shall be required for all Special Events unless an alternative arrangement is recommended by the Town police. The PB Synagogue is required to maintain records of Special Events and will make such records available to the Town upon request. The PB Synagogue shall be required to keep such records for a period of no less than 12 months.
7. Valet parking is required to be available for synagogue members and guests during all Special Events that exceed 150 people in attendance.

8. The PB Synagogue shall maintain a parking agreement(s) with one or more licensed valet provider for off-site parking locations for use during Special Events. If the valet parking spaces are unavailable for any reason, PB Synagogue shall notify the Town's Director of Planning and Zoning within three business days after the spaces become unavailable.
9. The PB Synagogue shall maintain a parking agreement with one or more off-site parking locations for synagogue use during Saturday religious services. PB Synagogue shall furnish a redacted copy of such agreement to the Town. If the parking spaces become unavailable for any reason, PB Synagogue shall notify the Town's Director of Planning and Zoning within three business days after the spaces become unavailable.
10. The PB Synagogue shall instruct its delivery services to use the commercial loading zones adjacent to the Property on Sunset Avenue. There shall be no synagogue deliveries or vendor services before 7:00 a.m. or after 6:00 p.m.
11. The PB Synagogue shall enter into a Construction Management Agreement with the Town prior to the issuance of the first building permit for the Project.
12. The demolition and construction contemplated by the Approval shall be conducted pursuant to the Construction Management Agreement(s) entered into between PB Synagogue and Town prior to the issuance of a building permit for said demolition or construction.
13. The Town shall have the right to conduct inspections on the buildings and Property on a periodic basis to confirm compliance with this Amended Agreement. Failure to allow an inspection by the Town will constitute a violation of this Amended Agreement.

ARTICLE IV VOLUNTARY AGREEMENT

PB Synagogue agrees to be bound by the terms and conditions in this Amended Agreement.

ARTICLE V 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 PB Synagogue and the PB Synagogue's representative of said violation(s) and the date upon which said violations(s) shall be corrected, PB Synagogue or PB Synagogue'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 Amended 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 Amended 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 Amended Agreement or rescind the approval of the use.

In the event PB Synagogue disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this Amended Agreement, or in the event PB Synagogue disputes any code violation, PB Synagogue 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 Amended 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 Amended 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 VI PROVISIONS TO RUN WITH THE PROPERTY

This Amended Agreement shall run with the Property and shall be binding upon PB Synagogue, and shall terminate upon the termination of PB Synagogue's business tax receipt for operation of a synagogue, or rescission of the Approval. This Amended Agreement shall be recorded by PB Synagogue in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.

ARTICLE VII ENTIRE AMENDED AGREEMENT

This Amended 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 VIII
EFFECTIVE DATE**

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

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

Wherever the word "laws" appears in this Amended 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 Amended 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 Amended 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 Amended 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 Amended 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 Amended Agreement, same shall be deemed stricken from this Amended Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.

This Amended 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]

Signed, sealed, executed, and acknowledged on this ____ day of _____, 2024. In Palm Beach County, Florida.

IN WITNESS WHEREOF

Owner

Witness # 1 Signature

Palm Beach Orthodox Synagogue, Inc.

Witness # 1 Printed Name

Witness # 2 Signature

Witness # 2 Printed Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2024, by _____ who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public –

Notary Seal:
My Commission Expires:

TOWN:

TOWN OF PALM BEACH

By: _____

Kirk Blouin, Town Manager

IN WITNESS WHEREOF

Witness # 1 Signature

Witness # 1 Printed Name

Witness # 2 Signature

Witness # 2 Printed Name

STATE OF FLORIDA

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, as Town Manager of the Town of Palm Beach, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

ATTEST:

Kelly Churney, Acting Town Clerk

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

Joanne M. O'Connor, Town Attorney

EXHIBIT “A”

LEGAL DESCRIPTION:

Lots 178-176 and the South 8.14 Feet of Lot 175, Floral Park, as recorded in Plat Book 2, Page 6, Palm Beach County, Florida Public Records, less the East 15 Feet of County Road Right of Way.

EXHIBIT "B"

LEGAL DESCRIPTION:

A parcel of land bounded by the existing exterior walls of the Richardson Greenfield Securities Building and the West right-of-way line of South County Road, Town of Palm Beach, Florida; said parcel of land being part of Lots 175 and 176, Plat of **FLORAL PARK**, according to the Plat thereof as recorded in Plat Book 2, Page 6, Public Records of Palm Beach County, Florida, and being more fully described as follows:

COMMENCING at the Southeast corner of said Lot 176;

Thence, North 90°00'00" West, along the South line of said Lot 176, a distance of 15 feet to the intersection thereof with the West right of way line of South Country Road and the **POINT OF BEGINNING**;

Thence, continue North 90°00'00" West, along the South line of said Lot 176, a distance of 5 feet, more or less, to the Southeast corner of the said Richardson Greenfield Securities Building;

Thence, continue North 90°00'00" West, along the South face of said building, a distance of 76 feet, more or less, to the Southwest corner of said building;

Thence, Northerly along the West face of said building, a distance of 27.9 feet;

Thence, Easterly along the Northerly face of said building a distance of 5.4 feet;

Thence, Northerly, along the West Face of said building, a distance of 5.3 feet;

Thence, Easterly along the North face of said building, a distance of 74.41 feet, more or less, to the Northeast corner of said building;

Thence continue Easterly along said line, a distance of 5 feet to the West right of way line of said South County Road;

Thence, South 02°45'00" East, along said right of way line a distance of 33.2 feet, more or less, to the **POINT OF BEGINNING**.

The bearings stated herein are based on an assumed North 90°00'00" West, along the South line of Lot 176;

AND

Lots 173 through 176 together with lots 180 through 183, inclusive, Plat of **FLORAL PARK**, as recorded in Plat Book 2, page 6, Public Records of Palm Beach County, Florida.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS

The South 8.14 feet of Lot 175, Less the East 15 feet thereof, and Lot 176, less the East 15 feet thereof, of the Plat of **FLORAL PARK** according to the Plat thereof, as recoded in Plat book 2, Page 6, of the Public Records of Palm Beach County, Florida, being conveyed out by Warranty Deed, recorded in official Records Book 13287, Page 1027, in the Public Records of Palm Beach County, Florida.

AND

LESS AND EXCEPT:

Lots 178 and 179, **FLORAL PARK**, according to the Plat thereof, as recorded in Plat Book 2, Page 6, Public Records of Palm Beach County, Florida, being conveyed out by Warranty Deed, recorded in Official Records Book 11295, Page 435.

AND

Parcel A:

The South 8.14 feet of Lot 175, less the East 15 feet thereof, and Lot 176, less the East 15 feet thereof, **FLORAL PARK**, according to the Plat thereof as recorded in Plat Book 2, Page(s) 6, Public Records of Palm Beach County, Florida.

Parcel B:

Lot 177, **FLORAL PARK**, according to the Plat thereof as recorded in Plat Book 2, Page(s) 6, Public Records of Palm Beach County, Florida, Less the East 15 feet thereof.

Parcel C:

Lots 178 and 179, **FLORAL PARK**, according to the Plat thereof as recorded in Plat Book 2, Page(s) 6, Public Records of Palm Beach County, Florida, Less the East 15 feet thereof.