

EXHIBIT A

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

PALM BEACH HOTEL CONDOMINIUM ASSOCIATION, INC.

AUGUST 2018

Prepared by and return to:

Maura A. Ziska, Esquire

Kochman & Ziska PLC

222 Lakeview Avenue, Suite 1500

West Palm Beach, FL 33401

(561) 802-8960

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this ____ day of _____, 2018 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called “the Town”) and PALM BEACH HOTEL CONDOMINIUM ASSOCIATION, INC, 235 Sunrise Avenue, Palm Beach, Florida 33480 (hereinafter called “the Hotel Condominium”), which terms “the Town” and “the Hotel Condominium” will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

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

WHEREAS, The Gym is a Special Exception use in the C-TS Zoning District; and

WHEREAS, the Town Council conditionally approved Zoning Application Number Z-18-00108 on August 15, 2018 which granted the Hotel special exception approval to have a gym at the Property; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exception 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:

CONDITIONS

The approval to allow the Hotel Condominium to have a gym is based upon the following conditions:

- 1) No sale of memberships are allowed for the gym.
- 2) Only hotel condominium owners and guests staying at the hotel are allowed the use of the gym.
- 3) The hours of use are 24 hours a day, 7 days a week.
- 4) The gym facility shall be controlled by the management and access to the gym shall be from an electronically controlled faub system.
- 5) There shall be no permanent massage or other types of services allowed in the gym space unless accompanied by an owner or guest.

VOLUNTARY AGREEMENT AND HOLD HARMLESS

The Esplanade 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.

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 Esplanade's representative of said violation(s) and the date upon which said violations(s) shall be corrected, owner or owner'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 the Esplanade 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 Esplanade disputes any code violation, they 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.

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.

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.

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.

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 herefrom and 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.

-This space intentionally left blank-

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: _____
Gail Coniglio, Mayor

Print Name: _____

By: _____
Danielle Moore, President

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

Print Name: _____

PALM BEACH HOTEL CONDOMINIUM
ASSOCIATION, INC.

Print Name: _____

By: _____
Its: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2018, by Gail Coniglio, 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 _____ 2018, by Danielle Moore, 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 _____ 2018, 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 _____ 2018, by _____, on behalf of PALM BEACH HOTEL CONDOMINIUM ASSOCIATION, INC.. He/She 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

Condominium Units C-23, C-24, C-25 and C-26 of the PALM BEACH HOTEL CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 3464, Page 200, and any amendments thereto, of the Public Records of Palm Beach County, Florida.

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