

**EXHIBIT B**

**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~~ the use of said property as 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 Condominium special exception and variance approvals to have a gym at the nonconforming Condominium Hotel Property; and

WHEREAS, as a condition of approval the Hotel Condominium is required to enter into a Declaration of Use Agreement to control the use of the gym; 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~~ the use of a gym in the property described in Exhibit A is based upon the following conditions:

- 1) No sale of memberships are allowed for use of 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~~ from 6:00 a.m. to 11:00 p.m., 7 days a week.
- 4) The gym facility shall be controlled by the Hotel Condominium management and access to the gym shall be from an electronically controlled fob 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~~ spa services allowed in the subject gym described herein.

### VOLUNTARY AGREEMENT AND HOLD HARMLESS

The ~~Esplanade~~ Hotel Condominium 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~~ Hotel Condominium through its authorized representative of said violation(s) and the date upon which said violations(s) shall be corrected, ~~owner~~ the Hotel Condominium or owner's ~~its~~ 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~~ Hotel Condominium 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~~ Hotel Condominium disputes any code violation, ~~they~~ it 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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