

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

CH HOTEL LLC

_____ **2020**

Prepared by and return to:

Maura A. Ziska, Esquire

Kochman & Ziska PLC

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2020 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called "Town") and CH HOTEL LLC, 155 Hammon Avenue, Palm Beach, Florida 33480 (hereinafter called "Hotel"), which terms "Town" and "Hotel" 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 "Hotel Location") is located within the municipal limits of the Town; and

WHEREAS, the Hotel Location falls within the Town's R-D(2) Zoning District; and

WHEREAS, The Hotel desires a Special Exception use at the Hotel Location; and

WHEREAS, the Town Council conditionally approved Zoning Application Number Z-20-00281 on October 14, 2020 which granted the Hotel special exception approval to allow relocation of the previously held events on the West side of the ballroom building to the new East garden area; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exception and Site Plan 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 OWNERSHIP**

The Hotel 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 Hotel or Land are subject.

ARTICLE III
EAST GARDEN USE

The East Garden use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as Z-20-00281 and approved by the Town Council on October 13, 2020, as the same may be amended from time to time (hereinafter referred to as the "Approval").

ARTICLE IV
CONDITIONS

The approval to use the east garden area shall be based upon the following conditions:

- 1) All outdoor events in the ~~Eeast~~ garden area shall be concluded by 10:00 p.m. ~~Load out and clean up can and will occur thereafter.~~
- 2) There shall be a maximum capacity of 175 people per event.
- 3) The only amplified music allowed shall be background music played via the hotel's custom-designed installed in-ground sound system that governs volume.
- 4) ~~No D.J.s with external sound equipment shall be allowed to perform in the East Garden.~~ are prohibited. Music shall be allowed in the east garden area in accordance with 3, 5 and 6 of this Article.
- 5) When live musicians perform, the groups are not to exceed four instruments; no ~~live~~ drums or percussion shall be allowed in the ~~Garden~~ east garden area. The use of all live instruments shall end no later than 9:00 p.m.
- 6) A microphone will be allowed only for an officiant or for an individual making remarks. Microphone use shall end no later than 9:00 p.m.
- 7) The ~~Eeast~~ doors of the ballroom building shall ~~not~~ remain ~~propped open during ballroom events.~~ closed during events. During said events, doors shall be used for ingress and egress.
- 8) A privacy landscape buffer shall be installed and maintained on the East property line. Said landscape buffer shall include a six-foot-high, white vinyl fence and a continuous Podocarpus hedge. These attributes were agreed to by the neighbors at 129 Hammon Avenue.
- 9) If there are more than three verified complaints regarding noise or activities beyond the scope of this Agreement in the east garden 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
- 10) ~~9)~~ The applicant shall come back to the Town Council at their regular May 2021 meeting on May 12, 2021 to address the conditions of approval and determine if any modifications are required to further mitigate any negative impacts by the use of the

~~East Garden area, as substantiated by Town of Palm Beach Code Enforcement Director of Planning, Zoning and Building.~~

ARTICLE V
VOLUNTARY AGREEMENT AND HOLD HARMLESS

The Hotel 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 Hotel and the Hotel's representative of said violation(s) and the date upon which said violations(s) shall be corrected, Hotel or Hotel'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 Hotel 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 Hotel disputes any code violation, Hotel 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 ~~HOTEL~~ LAND/RECORDING

~~This Agreement shall NOT run with the Land and shall be binding upon the Hotel only and shall terminate upon the termination of the Hotel's business tax receipt for~~

~~operation of a cooperative hotel, or rescission of the Approval. This Agreement shall be recorded by the Hotel in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.~~

This Agreement shall run with the Land and shall be binding upon the Hotel and their respective heirs, legal representatives, successors and assigns. This Agreement shall be recorded by the Hotel 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

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 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: _____
Gail Coniglio, Mayor

Print Name: _____

By: _____
Margaret Zeidman, President

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

Print Name: _____

HOTEL:

CH HOTEL LLC

Print Name: _____

By: _____
Its: _____

Print Name: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by GAIL COGNILIO, 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 _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by MARGARET ZEIDMAN, 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 _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, 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 FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, the _____ of CH HOTEL LLC, a Florida limited liability 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: _____

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

By: _____
John C. Randolph, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel I

Beginning at a point on the North line of First Street (now Hammon Avenue) as shown on a map of VILLA MARINE, recorded in Plat Book 2, page 98, in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, 147 feet West of the Southwest corner of Lot 6, Block 1 of said VILLA MARINE; thence run West on the North line of said First Street 60 feet; thence run North 140 feet; thence run East 60 feet; thence run South 140 feet to the point of beginning.

Parcel II

A tract of land in Section 26, Township 43 South, Range 43 East, in the Town of Palm Beach, Florida, bounded and described as follows:

Beginning at a point on the South line of First Street (also known as Hammon Avenue) if projected Westerly as said street is shown on the Plat of VILLA MARINE which is recorded in the office of the Clerk of the Circuit Court of Palm Beach County, Florida, in Plat Book 2, page 98, which point is 350 feet West of the Northeast corner of Lot 1, Block 2, as shown on said plat of VILLA MARINE, running thence Southerly along a line that is parallel with the East line of said Block 2 a distance of 110 feet, thence Westerly along a line that is parallel with the South line of said First Street a distance of 3.06 feet; thence Southerly along a line that is parallel with the East line of said Block 2 a distance of 30 feet; thence Westerly along a line that is parallel with the South line of said First Street a distance of 46.74 feet; thence Northerly along a line that is parallel with the East line of said Block 2 a distance of 140 feet to the south line of said First Street; thence Easterly along the south line of said First Street, a distance of 49.8 feet to the point of beginning.

Parcel III

Beginning at a point on the South boundary of First Street (also known as Hammon Avenue) 50 feet West of the Northwest corner of Lot 6 of Block 2 of VILLA MARINE, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for said County in Plat Book 2, page 98, and running, thence South 140 feet; thence run West 53.06 feet, thence North 30 feet; thence East 3.06 feet, thence North 110 feet to the South line of said First Street, thence East along the South line of First Street 50 feet to the point of beginning.

Parcel IV

Beginning at a point in the south line of First Street if projected westerly by the plat of VILLA MARINE which point is 350 feet west of the northeast corner of Lot 1 of Block 2 of Villa Marine, according to the plat of said Villa Marine, which is recorded in the office of the Clerk of the Circuit Court of Palm Beach County, Florida, in Plat Book 2, Page 98: Thence southerly 140 feet parallel to the east line of said Block 2: Thence westerly parallel to the south line of said First Street 379.6 feet to the east line of the county road; Thence northerly along the east line of the county road 140 feet, more or less, to an intersection of the south line of First Street if

projected westerly by said plat of Villa Marine: Thence easterly on the south line of First Street as aforesaid, 386.7 feet, more or less, to the point of beginning, EXCEPTING THEREFROM the easterly 49.80 feet thereof.

PARCEL 1:

A parcel of land situate, lying and being in the county of Palm Beach, State of Florida, to wit:

BEGINNING at a point in the northerly right of way line of Hammon Avenue (formerly First Street) at a distance of 306 feet westerly from, when measured along the north line of said Hammon Avenue, the southwest corner of Lot 6 of Block 1 of VILLA MARINE, according to plat of said subdivision on file in the office of the Clerk of the Circuit Court, in and for said County, in Book 2 of Plats at page 98: thence continue westerly, along the north line of said Hammon Avenue, a distance of 29.42 feet; thence northerly at right angles to the north line of said Hammon Avenue, a distance of 32 feet; thence westerly, parallel to the north line of said Hammon Avenue, a distance of twenty-three (23) feet; thence northerly, at right angles to the preceding course, a distance of 108.33 feet, more or less, to a point in the south line of Block 17, of ROYAL PARK ADDITION, according to the revised map thereof on file in the office of the Clerk of the Circuit Court, in and for said County, in Plat Book 4 at page 1; thence easterly along the south line of said Block 17 of ROYAL PARK ADDITION, a distance of 55.56 feet, more or less, to a point in a line parallel to and 306 feet westerly from, when measured along the south line of said Block 17 of ROYAL PARK ADDITION, the west line of said Lot 6 of Block 1 of VILLA MARINE; thence southerly along said last described parallel line, a distance of 140.32 feet, more or less, to the point of beginning.

PARCEL 2:

A parcel of land situate, lying and being in the County of Palm Beach, State of Florida, to wit:

BEGINNING at a point on the North line of First Street as shown on the Plat of VILLA MARINE recorded in Plat Book 2 at page 98, Palm Beach County Records 250 feet West of the Southwest corner of Lot 6 in Block 1 of said Plat; thence West along said North line of First Street 50 feet; thence North 140 feet, more or less, to the South line of ROYAL PARK; thence East along said South line of ROYAL PARK 50 feet; thence South 140 feet more or less, to the point of beginning, being Lots 17 and 18 of Block 1 of VILLA MARINE Plat if said Plat were extended Westerly.

ALSO: A right of way or easement 6 feet wide by 140 feet along the East side of Lot 19, the said lot being numbered according to an extension of Plat of VILLA MARINE recorded in Plat Book 2 at page 98, Palm Beach County Records over land described as follows: BEGINNING at a point on the North line of First Street as shown on Plat of VILLA MARINE, 300 feet West of the Southwest corner of Lot 6 of Block 1 of said Plat; thence run West 6 feet; thence North 140 feet to the South line of ROYAL PARK; thence East along said South line 6 feet; thence South 140 feet, more or less, to the point of beginning.

PARCEL 3:

COMMENCING at a point on the North line of First Street, as shown on the map of VILLA MARINE, recorded in Plat Book 2, page 98, in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, 207 feet west of the southwest corner of Lot 6, Block 1, of said VILLA MARINE, aforesaid, thence run west along the North line of First Street 43 feet, thence run North 140 feet more or less; thence run East 43 feet, thence run South 140 feet, more or less, to the point of beginning.

PARCEL 1:

A parcel of land in Section 26, Township 43 South of Range 43 East, Palm Beach County, Florida, and within the corporate limits of the Town of Palm Beach, Florida, more particularly described as follows:

Beginning at a point on the east line of the County Road, where said line would be intersected by the north line of First Street, if projected westerly by plat of VILLA MARINE, as recorded in Plat Book 2, page 98, in the office of the Clerk of the Circuit Court of Palm Beach County, Florida; thence East on the North line of First Street, 109 feet; thence North 140 feet, more or less, to the south line of ROYAL PARK ADDITION; thence West, along the said South line of ROYAL PARK ADDITION, to the intersection of the east line of the County Road; thence southeasterly, along the east line of the County Road, to the point of beginning:

PARCEL 2:

Beginning at a point in the northerly right of way line of Hammon Avenue (formerly First Street) at a distance of 306 feet westerly from, when measured along the north line of said Hammon Avenue, the southwest corner of Lot 6 of Block 1 of VILLA MARINE, according to plat of said subdivision on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Book 2 of Plats at page 98; thence continue westerly, along the north line of said Hammon Avenue, a distance of 29.42 feet to the point of beginning and the southeast corner of the parcel herein described; thence northerly at right angles to the north line of said Hammon Avenue, a distance of 32 feet; thence westerly parallel to the north line of said Hammon Avenue, a distance of 23 feet; thence northerly, at right angles to the preceding course, a distance of 108.33 feet, more or less, to a point in the south line of Block 17 of ROYAL PARK ADDITION, according to the revised map thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 4 at page 1; thence westerly, along the south line of said Block 17 of ROYAL PARK ADDITION, a distance of 19.86 feet, more or less, to a point in the east line of property described in deed recorded in Deed Book 715, page 71 of the Public Records of Palm Beach County, Florida; thence southerly, parallel to the west line of Lot 6 of Block 1 of VILLA MARINE, and along the east line of said property described in said deed recorded in Deed Book 715, at page 71, a distance of 140.38 feet, more or less, to a point in the north line of said Hammon Avenue and the southeast corner of said property described in said deed recorded in Deed Book 715, at page 71; thence easterly, along the north line of said Hammon Avenue, a distance of 46 feet to the point of beginning.