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DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

OLD GUARD SOCIETY, INC.

August 2017

**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**

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this 3rd day of August, 2017 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 OLD GUARD SOCIETY, INC., 165 Bradley Place, Palm Beach, Florida 33480 (hereinafter called "the Club"), which terms "the Town" and "the Club" 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") is located within the municipal limits of the Town; and

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

WHEREAS, the Town Council conditionally approved Special Exception Number 9-2016 with Site Plan Review and Variance on April 12, 2017 which approved the Special Exception with Site Plan Review to open the Club at the above referenced location and a the Variance to eliminate the requirement for ten (10) additional off-street parking spaces based on the principle of equivalency calculation; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exception with Site Plan Review and Variance 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 LEASE

The Club 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. Neither the execution of this Agreement nor the consummation of the transactions contemplated

herein will violate any restriction, court order or agreement to which the Club or the Land are subject.

ARTICLE III

PRIVATE CLUB USE

The use (the Club) that is the subject of this Declaration of Use shall be as set forth in the application submitted to the Town for Special Exception Number 9-2017 with Site Plan Review and Variance and approved by Town Council on April 12, 2017 as the same may be amended from time to time (hereinafter referred to as the "Approval"). The set of plans which are part of Special Exception Number 9-2017 with Site Plan Review and Variance conditional approval, and as identified on sheet drawings A000 and A100 prepared by MP Design & Architecture, Inc., stamp dated February 24, 2017, may not be deviated from unless prior Special Exception approval is granted by the Town Council.

ARTICLE IV

CONDITIONS

The approval to allow the Club to operate is based upon the following conditions:

- 1) Hours shall be limited from 10:00 a.m. to 7:00 p.m. Monday through Saturday.
- 2) The maximum membership shall be 100 people.
- 3) The maximum number of members and guests from 10:00 a.m. to 7:00 p.m. shall not exceed 20 people.
- 4) Evening events shall be allowed from 5:00 p.m. to 11:00 p.m. The number of evening events shall be limited to one time per calendar month from November 1st to May 1st with the exception of December during which the Club can have a maximum of two (2) events that month.
- 5) Valet parking is required for all night events. A valet parking permit from the Police Department shall be required and the valet stand shall be located on the subject property and not on any surrounding streets.
- 6) No music shall be allowed.
- 7) The Club shall be responsible to obtain a building permit to remove the kitchen if the Club vacates the subject property.

ARTICLE V

VOLUNTARY AGREEMENT AND HOLD HARMLESS

The Club agrees to be bound by the terms and conditions in this Agreement, and Tenant 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 Club and the Club'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 owner 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 owner disputes any code violation, owner 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 CLUB

This Agreement shall NOT run with the Land and shall be binding upon the Club only and shall terminate upon the termination of the Club's lease and/or business tax receipt, or rescission of approval by the Town Council. This Agreement shall be recorded by the Club in

the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Agreement shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

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.

This Agreement may not be amended except by written instrument signed by all parties hereto.

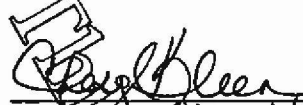
Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this 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.


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:



Print Name: Cheryl Klean

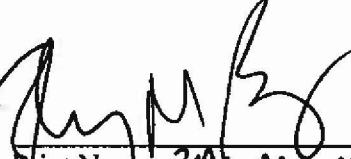

Print Name: PATRICIA GAYLE GORDON



Print Name: Cheryl Klean


Print Name: PATRICIA GAYLE GORDON


Print Name: Cheryl Klean


Print Name: PATRICIA GAYLE GORDON

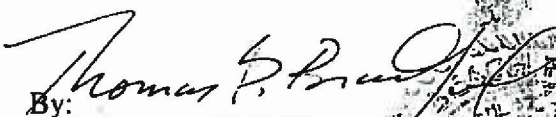

Print Name: Theresa M. Bar


Print Name: CRISTEN DANKNER

THE TOWN OF PALM BEACH

By: 
Gail Coniglio, Mayor


By: 
Richard Kleid, President

By: 
Thomas Bradford, Town Manager



THE CLUB

OLD GUARD SOCIETY, INC.

By: 
Its: President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3rd day of August 2017, 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.



GWENDOLYNN B. PEIRCE
MY COMMISSION # FF 992935
EXPIRES: May 16, 2020
Bonded Thru Budget Notary Services

Gwendolynn B. Peirce
Signature of Notary Public

Gwendolynn B. Peirce
Printed Name of Notary Public

Commission Expires: May 16, 2020

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3rd day of August 2017, by Richard Kleid, the President of the Town Council 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.



GWENDOLYNN B. PEIRCE
MY COMMISSION # FF 992935
EXPIRES: May 16, 2020
Bonded Thru Budget Notary Services

Gwendolynn B. Peirce
Signature of Notary Public

Gwendolynn B. Peirce
Printed Name of Notary Public

Commission Expires: May 16, 2020

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3rd day of August 2017, by Thomas Bradford, 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.



GWENDOLYNN B. PEIRCE
MY COMMISSION # FF 992935
EXPIRES: May 16, 2020
Bonded Thru Budget Notary Services

Gwendolynn B. Peirce
Signature of Notary Public

Gwendolynn B. Peirce
Printed Name of Notary Public

Commission Expires: May 16, 2020

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 11TH day of July 2017, by Brian Smith, on behalf of Old Guard Society, Inc. He/She is personally known to me and he did not take an oath.



Signature of Notary Public

HECTOR H. ALZATE

Printed Name of Notary Public

Commission Expires: 05/18/2020

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

By: _____

John C. Randolph, Esquire

RECOMMEND APPROVAL:

7/14/17
Paul Castro
Paul Castro, AICP
Zoning Administrator

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 35, 36 and 37, BUNGALOW 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 7, Page 26.

This is not a certified copy