

# **TOWN OF PALM BEACH**

## **Information for Town Council Meeting on:**

**June 14, 2023**

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To: Mayor and Town Council Members & Town Council

Via: Kirk W. Blouin, Town Manager

From: Wayne Bergman, MCP, LEED-AP, Director PZ&B



Re: Condition of Approval for the Alef Preschool Requiring Return to Town Council Within Six (6) Months

Date: June 14, 2023

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### **STAFF RECOMMENDATION**

Staff recommends that the Town Council modify Condition 10 of the Alef Preschool Declaration of Use Agreement to extend the review of the school operation performance to six (6) months following the opening of the preschool.

### **GENERAL INFORMATION**

Condition 10 of Article IV, of the Declaration of Use Agreement for the Alef Preschool located at 165 Bradley Place stipulated that the applicant shall appear before the Town Council after the end of the school year, at the June 14th, 2023, meeting, to review the operation. As the Alef Preschool renovations to convert from the previous private club to a preschool are not complete, the Alef Preschool has not opened and therefore a review of the operation has not been conducted. However, as the Condition of Approval required an appearance before the Town Council, the item has been placed on the agenda and the applicant will be present.

Attachments: Amended Declaration of Use Agreement  
Amended Agreement for Unity of Title and Other Restrictions  
Hold Harmless Agreement

cc: James Murphy, Assistant Planning Director  
Jennifer Hofmeister-Drew, Planner III, AICP

**DECLARATION OF USE AGREEMENT**

**by**

**THE TOWN OF PALM BEACH**

**and**

**ALEF PRESCHOOL**

**MAY 2023**

Prepared by and return to:  
Harvey E. Oyer, III, Esquire  
Shutts & Bowen LLP  
525 Okeechobee Boulevard, Suite 1100  
West Palm Beach, FL 33401  
(561) 650-8517

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## **DECLARATION OF USE AGREEMENT**

This Declaration of Use Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the Town of Palm Beach, a Florida municipality, with an address of 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town") and Alef Preschool of Palm Beach Inc, with an address of 165 Bradley Place, Palm Beach, Florida 33480 (hereinafter called "Alef Preschool"), which terms "the Town" and "Alef Preschool" will include and bind the successors and assigns of the parties.

### **RECITALS:**

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 Alef Preschool is a private academic preschool which is a Special Exception use in the C-TS Zoning District; and

WHEREAS, the Town Council conditionally approved Application Number ZON-22-132 for a Special Exception with Site Plan Review and Variance ("Application") on November 15, 2022 which approved the Special Exception with Site Plan Review to open the Alef Preschool at the above referenced location, together with a Variance to reduce the parking requirement from 80 off-street parking spaces to 76 off-street parking spaces; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Application is conditioned upon the representations made herein and all the conditions herein imposed.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

### **AGREEMENT**

#### **ARTICLE I**

#### **RECITALS**

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

#### **ARTICLE II**

#### **AUTHORITY**

The Alef Preschool has full right to enter into this Agreement and 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 Alef Preschool or the Land are subject.

### ARTICLE III

#### PRESCHOOL USE

The private academic preschool use that is the subject of this Agreement shall be as set forth in the Application submitted to the Town for Special Exception with Site Plan Review and Variance, and approved by Town Council on November 15, 2022, as the same may be amended from time to time (hereinafter referred to as the “Approval”). The set of plans which are part of the Application, and as identified on sheet drawings A001.1, A002.1, A100.1, LP1, EL1, and A200 prepared by MP Design & Architecture, Inc., dated September 2, 2022, may not be deviated from unless prior Special Exception approval is granted by the Town Council.

### ARTICLE IV

#### CONDITIONS

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

1. The maximum number of students shall not exceed 68 students.
2. The drop-off and pick-up times shall be staggered as follows:
  - a. Drop-off occurs over a 90 min. period from 7:45AM to 9:15AM, evenly divided over three separate 30-minute periods.
  - b. Pick-up occurs over two separate periods: a 30 min. period from 12:15PM to 12:45PM and a 45 min. period from 2:45 PM to 3:30PM.
3. A minimum of 40% of the students shall be picked up no later than 12:45PM.
4. If the Alef Preschool vacates the Land or there is a rescission of the Approval by the Town Council, the Alef Preschool shall be responsible for the following:
  - a. Obtaining any required permits for the reconstruction of the parking spaces removed for the playground and the one-way drive aisle accessed from Park Avenue connecting to the Land; and
  - b. The reconstruction of the parking spaces removed for the playground and the one-way drive aisle accessed from Park Avenue connecting to the Land.
5. A satisfactory site management plan related to the flow of traffic, parking, and pedestrians shall be submitted to the Town Public Safety staff for their review and approval.
6. Vehicular traffic related to the Alef Preschool operation shall be prohibited on Park Avenue.
7. The Alef Preschool shall install two (2) shade trees on the proposed playground.
8. The proposed artificial turf on the playground is not approved. The asphalt on the east parking lot where the playground will be located shall be removed and replaced with grass.

9. The Alef Preschool is required to meet the Town serving requirements of the Town code. Commencing at the start of the second year of operations of the Alef Preschool and at the beginning of each school year thereafter, the Alef Preschool shall submit evidence to the Town demonstrating that not less than 50% of the students of the Alef Preschool are town persons.

10. The Alef Preschool shall appear before the Town Council ~~after the end of the school year, at the June 14th, 2023 meeting~~ six (6) months following the opening of the preschool, to review the operation.

11. Alef Preschool shall not have a vehicular drop-off line, pick-up line, or vehicular queuing. All vehicles must park for drop-off and pick-up on-site and faculty shall not park in the designated parent drop-off parking spaces.

12. The new hedge to be installed on Park Avenue shall be planted and maintained at no less than nine (9) feet in height.

13. Alef Preschool shall not have more than eight (8) special events per year and notification of all such special events shall be provided, in advance, to the neighboring property owners.

14. Alef Preschool shall not sell or assign its school to another party, the provisions of this Agreement being specific to Alef Preschool.

15. Alef Preschool shall ensure that its student contracts, parent handbooks, website, and other similar written material clearly state that parents shall not use Park Avenue during student drop-off or pick-up. Alef Preschool shall require all parents to sign an acknowledgement that they will not use Park Avenue during student drop-off or pick-up.

16. Alef Preschool shall plant a clusia hedge along the east property line planted at nine (9) feet in height and ultimately maintained at no less than fifteen (15) feet in height, while leaving the existing areca palms on the east property line in place.

## ARTICLE V

### VOLUNTARY AGREEMENT AND HOLD HARMLESS

The Alef Preschool 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 Alef Preschool of said violation(s) and the date upon which said violation(s) shall be corrected, Alef Preschool or Alef Preschool's successor or assigns shall pay to the Town a liquidated amount of \$2,000.00 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 Alef Preschool. The Town Council may, upon a finding of violation, alter this Agreement or rescind the Approval of the use.

In the event Alef Preschool 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 Alef Preschool disputes any code violation, Alef Preschool 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 ALEF PRESCHOOL

This Agreement shall NOT run with the Land and shall be binding upon the Alef Preschool only and shall terminate upon the termination of the Alef Preschool's lease and/or business tax receipt, or rescission of the Approval by the Town Council. This Agreement shall be recorded by the Alef Preschool 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 paragraph 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:

THE TOWN OF PALM BEACH

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Danielle H. Moore, Mayor

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Margaret Zeidman, Council President

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Kirk Blouin, Town Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

ALEF PRESCHOOL OF PALM BEACH INC

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Danielle H. Moore, the Mayor of the Town of Palm Beach, a Florida municipality, on behalf of the municipality. 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 \_\_\_\_\_, 2023, by Margaret Zeidman, the Council President of the Town of Palm Beach, a Florida municipality, on behalf of the municipality. 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 \_\_\_\_\_, 2023, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipality, on behalf of the municipality. 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 \_\_\_\_\_, 2023, by Shneur Z. Levitin, on behalf of Alef Preschool of Palm Beach Inc. He 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

RECOMMENDED APPROVAL:

By: \_\_\_\_\_  
John C. Randolph, Esquire

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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.

**AMENDED AGREEMENT FOR UNITY OF TITLE AND OTHER RESTRICTIONS**  
**("AGREEMENT")**

This Agreement, dated this 20<sup>th</sup> day of DECEMBER, 2022, by and between BILTMORE GALLERIA, LLC, a Florida limited liability company ("Property Owner"), and the TOWN OF PALM BEACH, a Florida municipality ("Town").

**WITNESSETH:**

In consideration of Town Council granting to Property Owner the approval of Application Number ZON-22-132 for a Special Exception with Site Plan Review to allow a 3,038 square foot private preschool in the Commercial-Town Serving (C-TS) zoning district, together with a Variance from the off-street parking requirements to eliminate required surface parking spaces and convert it into a playground area (the "Request"), on November 15, 2022, and for other good and valuable consideration received from the Town, the Property Owner agrees to restrict the use of the real property described in Exhibit "A" attached hereto ("Property") by the conditions listed below which shall be covenants running with the land unless and until such time as the same shall be released or modified in writing by the Town:

1. The Property shall be considered as one plot and parcel of land and no portion of said plot or parcel of land shall be sold, transferred, assigned or mortgaged separately but rather only in its entirety as one plot and parcel of land.
2. The Property Owner shall record this Agreement at its own expense in the Records of Palm Beach County and shall thereafter file this Agreement in the Office of the Town Clerk in and for the Town.

## HOLD HARMLESS AGREEMENT

The undersigned, as an authorized signatory for the applicant, Alef Preschool, has been advised by the Town and understands that in the event the applicant proceeds with the project as approved by the Town while litigation is pending in regard to said matter, applicant is proceeding at its own risk, understanding that if the litigation by Plaintiffs is successful in favor of Plaintiffs that applicant may have to remove any and all improvements made and cease operation of the Preschool as approved by the Town. In this regard, in consideration for the Town issuing a permit to applicant to proceed, the undersigned, on behalf of the entity known as the Alef Preschool hereby agrees to save, defend, and hold harmless the Town, its officers, employees, representatives and assigns from any and all claims, damages, costs or fees resulting from the undersigned applicant moving forward with the permitting, construction and operation of the Alef Preschool while litigation is pending in regard to this matter which litigation may result in a judgment in favor of the Plaintiffs.

Candice Back  
Witness

3 [Signature]  
Rabbi Zalman Levitin on behalf of  
the Alef Preschool

Tatiana Gonzalez  
Witness

STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 14<sup>th</sup> day of February, 2023, by Rabbi Zalman Levitin (name and title of position), who is personally known to me or who has produced FL Driver License (type of identification) as identification.

[Notary Seal]



Kelly M. Churney  
Notary Public  
Printed Name: Kelly M. Churney  
My Commission Expires: 5/9/24