

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

363 COCOANUT ROW PROPCO, LLC

**Prepared by and return to:
M. Timothy Hanlon, Esq.
Alley, Maass, Rogers & Lindsay, P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
(561) 659-1770**

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this ____ day of _____, 2023 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 363 COCOANUT ROW PROPCO, LLC, a Delaware limited liability company (hereinafter called "Owner"), which terms "Town" and "Owner" 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, LPC approved COA-23-002 on January 18, 2023, for the interior and exterior renovation of an existing landmarked four-story hotel structure including alterations to the facades, a reduction of rooms from 57 to 41, the reconstruction of historic door and window locations and associated hardscape/landscape and rooftop projections requiring height variances for rooftop allowances. LPC also unanimously determined that the five proposed variances will not cause negative architectural impact.

WHEREAS, by Application ZON-23-019 (the "Application"), Owner sought approval of the Town Council for three special exceptions, site plan approval, vesting parking rights and five variances as listed in Exhibit "B" attached hereto and made a part hereof to permit the renovation of the landmarked building on the Land and the continued operation of a hotel, pool, food and beverage service and a nightclub on the Land under the name "The Vineta" (all of said operations shall be referred to in this Agreement as the "Hotel") (all zoning relief requested and approved by Town Council pursuant to Application ZON-23-019 shall be referred to in this Agreement as the "Zoning Relief"); and

WHEREAS, the Town Council at its April 4, 2023 meeting conditionally approved all of the Zoning Relief, conditioned on the execution and recordation of this Declaration of Use Agreement.

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

AUTHORITY

Owner has full right to enter this Agreement and to bind 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 transaction contemplated hereby will violate any restrictions, court order or agreement to which Owner is subject.

ARTICLE III

CONDITIONS

The Town Council approval of the Zoning Relief is based upon the following conditions:

1. The project was approved for the continued operation of a nonconforming hotel with accessory dining, lounge, pool and nightclub uses. The following licenses shall be required to be applied for, reviewed and approved annually:

- a. Hotel (41 rooms)
- b. Pool
- c. Main Hotel Restaurant (66 indoor seats)
- d. Nightclub (SF and located in main dining room indoors only)
- e. Outdoor café seating (32 courtyard seats)
- f. Indoor Pool Café (37 seats)
- g. Outdoor café seating (pool deck 16 seats open specifically to hotel guests)
- h. Bar Lounge (37 seats)

2. Regarding the number of seats open to the public (non-hotel guests) for food and/or beverage service in the Hotel, the numbers, configuration and hours of use shall be limited to those described in Exhibit "C" attached hereto, which reflect the following seat numbers:

- a. Main Hotel Restaurant and Nightclub (66 seats);
- b. Courtyard next to main Hotel Restaurant (32 seats);
- c. Indoor Bar Lounge (37 seats);
- d. Poolside Restaurant Lounge (37 seats);
- e. Outside poolside food and beverage seats (specifically for hotel guests)(16 seats); and
- f. Pool lounges.

As stated in the hour-by-hour seating chart attached as part of Exhibit "C," -no more than 135 seats for food and beverage service to the public shall be open at any given time: (the "135 seat Limitation"). A copy of the approved seating plan shall be maintained on site at all times and made available for inspection by the Town, on request. Notwithstanding the foregoing, during inclement weather, seats may be moved from the outside courtyard area to indoor restaurant and bar areas as long as the ~~hour-by-hour maximum number of 135 seat limitations described in Exhibit "C"~~ Limitation is not exceeded. See An example of a seating chart during inclement weather is attached as part of Exhibit "C" attached hereto (the "Inclement Weather Seating Chart Example"), but the seats may be rearranged inside the Hotel during inclement weather as long as the 135 seat Limitation is not exceeded; provided, however, see Section 16 regarding contingent future increases in seat numbers and operating hours. The 16 seats adjacent to the pool café as part of the approved Special Exception for outdoor café seating and the additional recreational seating options around the pool deck area are not included in the hour-by-hour seating limitations because they are designated specifically for hotel guest use.

3. The Owner or operator of the Hotel shall maintain a parking agreement for the use of a combined total of fifty (50) off-site valet parking spaces at 440 Royal Palm Way and 340-350 Royal Palm Way (or other alternative location and/or number acceptable to the Owner and reviewed and approved by Town Staff). No valet parking shall be permitted on any of Australian Avenue, Brazilian Avenue, Chilean Avenue or Peruvian Avenue. The routes to be taken by valet parkers are shown on Exhibit "D." Owner shall furnish a redacted copy of such agreement to the Town.

4. Valet parking is required to be available for hotel guests and food and beverage guests during all hours that the hotel is open to the public for food and beverage service.

5. The Hotel operation shall include off-site parking (in West Palm Beach) of fifty (50) parking spaces for employee and excess parking ("Employee Parking"). The Employee Parking plan shall include a shuttle bus operated by Hotel representatives and agents throughout the day and evening to bring employees to and from the Hotel to the Employee Parking facility.

6. As shown in the hour-by-hour seating plan, all food and beverage service shall close to the public no later than midnight. For purposes of this Agreement, the term "close to the public" shall specifically not apply to food and beverage service in specific rooms that offer services at a given time only to hotel guests, employees, owners of the property, owners of the hotel operator and guests of hotel guests.

7. Only background music shall be permitted in the pool area until 6:00 p.m. and the courtyard until 10:00 p.m. Only ambient music shall be permitted in the pool or courtyard area. In addition, when the courtyard restaurant closes to the public at 10:00

p.m., the five double doors leading to the main Hotel Restaurant shall remain closed for the rest of the evening.

8. There shall be no more than four events per month, and all events shall comply with the required opening and closing hours for each service area as shown in Exhibit "C," and the events shall be subject to the seat limitations in the hour-by-hour seating plan. An event is defined as an organized function for more than 40 or more people within the Hotel such as wedding receptions, birthday parties and religious or other celebrations. The number of valet parkers shall be increased on an "as needed" basis for each event.

9. The Hotel shall obtain and maintain a valet parking permit for one valet stand. An appropriate number of valet parking attendants shall be on duty to meet the demand from day to day and season to season. The number of valet parkers may be modified by the Town's Police Department if it is determined that either more or fewer valet parkers are required to manage the Hotel's parking. The valet operator shall use software to track the locations and driving speed of the valet parkers, which data shall be reviewed periodically by the Hotel operator to ensure compliance by the valet parkers with applicable laws and this Agreement.

10. All trash shall be stored in the indoor trash room inside the southeast corner of the Hotel daily and not taken to the outdoor rubbish receptacle in the parking area north of the building until after 8:00 a.m. the following day.

11. Commercial delivery services will be instructed to use the delivery location at either the south door of the kitchen or through the north side by the pool deck and not in front of the Hotel on Coconut Row.

12. State-of-the-art exhaust vents and scrubbers shall be installed and maintained on the roof as approved by the Town and shall have them cleaned on a regular basis consistent with manufacturer's recommendations.

13. At least two "street legal" golf carts shall be used to shuttle valet parkers to and from the valet parking garages and the Hotel.

14. Prior to the issuance of any building permit, copies of the signed lease agreements regarding the Hotel's right to use the parking lots at 440 Royal Palm Way and 340/350 Royal Palm Way (or any other off-site parking lot acquired by the Hotel for its use), including any amendments thereto, will be provided to the Town to confirm the Hotel's right to use and the termination provisions thereof. The agreements may be redacted to exclude economic terms and/or other terms unrelated to the Hotel's right to use the parking lots.

15. The Owner or operator of the Hotel shall provide an affidavit of compliance each year at the time of renewal of the business tax receipt.

16. After the first season (December through April), the Owner and operator shall return to the Town Council to review compliance with conditions imposed in this Agreement, which Town Council meeting shall take place during the months of either April or May (subject to deferral by Town Council to other months). If the Hotel is in compliance with the conditions of this Agreement described in this Article III at such time, then Owner may request additional seats and expanded operating hours to be determined in the reasonable discretion of Town Council. The Hotel shall not under any circumstances, including the loss of its parking or valet stand facilities, apply for any revisions to this agreement to allow valet parking on Australian Avenue, Brazilian Avenue, Chilean Avenue or Peruvian Avenue. Any future requested revisions to this Agreement will require at least 30-day notice to all property owners within a 1,000 foot radius. Any initial Town Council hearing regarding a requested revision(s) to this Agreement will only be conducted in the months of January through April, but deferrals by the Town Council may extend to other months.

ARTICLE IV **VOLUNTARY AGREEMENT**

Owner agrees to be bound by the terms and conditions in this Agreement, and Owner waives any legal objection it might otherwise have to said terms and conditions or part thereof.

ARTICLE V **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 Owner of said violation(s) and the date upon which said violation(s) shall be corrected, Owner 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 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 of the written notice of violation.

2. In addition to the above, 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, 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 VI

PROVISIONS TO RUN WITH THE LAND

This Agreement shall run with the Land but shall be binding upon the Owner and Owner's successors and assigns for only so long as a hotel is operated by Owner or Owner's agents on the Land.

ARTICLE VII

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 VIII

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 IX

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 day are stated in terms of Eastern time, i.e. whichever of Eastern Standard time or Eastern Daylight time is in effect at a given time.

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 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 here from 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.

Signatures Appear on the Following Pages

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

Witnesses:

Town of Palm Beach, a municipal corporation

Print Name: _____

By: _____
Daniel Hickox Moore, Mayor

Print Name: _____

Print Name: _____

By: _____
Margaret Zeidman, Town Council President

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

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

By: _____
John C. Randolph, Esquire

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH) :SS

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023 by Daniel Hickox Moore, as Mayor of the Town of Palm Beach, a municipal corporation, who () is personally known to me or () has produced _____ as identification.

(Signature)

(Type or Print Name)

My Commission Expires: _____

(Notary Seal)

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH) :SS

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023 by Margaret Zeidman, as Town Council President of the Town of Palm Beach, a municipal corporation, who () is personally known to me or () has produced _____ as identification.

(Signature)

(Type or Print Name)

My Commission Expires: _____

(Notary Seal)

STATE OF FLORIDA)
) :SS
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023 by Kirk Blouin, as Town Manager of the Town of Palm Beach, a municipal corporation, who () is personally known to me or () has produced _____ as identification.

(Signature)

(Type or Print Name)

My Commission Expires: _____

(Notary Seal)

363 Cocoanut Row Propco, LLC, a Florida
limited liability

Print Name: _____

By: _____
Name: _____
Its: _____

Print Name: _____

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH) :SS

The foregoing instrument was acknowledged before me by means of ☐ physical
presence or ☐ online notarization, this ____ day of _____, 2023 by
_____, as _____ of 363 Cocoanut Row Propco, LLC,
who () is personally known to me or () has produced _____
as identification.

(Signature)

(Type or Print Name)
My Commission Expires: _____

(Notary Seal)

EXHIBIT "A"
Legal Description

Lots 1 through 6, Block 6, Revised Map of Royal Park Addition to Palm Beach, Florida, according to the map or plat thereof, as recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"
Zoning Relief
SPECIAL EXCEPTIONS / SITE PLAN

1. Section 134-226, 134-227 and 134-326. Special exception and site plan approval to permit the following non-conforming uses: hotel with reduction of rooms from 57 to 41;
2. Restaurant, nightclub and swimming pool with 197 combined seats.
3. Section 134-2106. Special exception to permit outdoor café seating.

VARIANCES

1. A variance to modify a nonconforming hotel use to permit the expansion of the restaurant, nightclub and pool area uses with a total of 172 combined seats not to exceed a maximum seating capacity of 135 seats at any given hour and the closing time of all dining establishments shall be restricted to no later than midnight (12:00am).
 - *This variance was approved at the April 04, 2023 Town Council Development Review hearing.*
2. A variance to exceed the maximum allowable height for new rooftop construction specifically to replace an elevator and stair bulkhead on the rooftop of a nonconforming four-story building with a height of 47.6 ft in lieu of the 23.5 ft maximum building height allowed.
 - *This variance was approved at the February 15, 2023 Town Council Development Review hearing.*
3. A variance to exceed the maximum allowable height for new rooftop construction specifically a rooftop trellis on a nonconforming third floor of a nonconforming four-story building with a height of 33'0" in lieu of 23'6" maximum height and 26'6" maximum building height permitted.
 - *This variance was approved at the March 15, 2023 Town Council Development Review hearing.*
4. A variance to exceed the maximum allowable height for the installation of rooftop air conditioning units (five) at a height of 108" (9') above the maximum height permitted in lieu of the 48" (4') maximum height allowed.
 - *This variance was approved at the March 15, 2023 Town Council Development Review hearing.*
5. A variance to exceed the maximum allowable height for a roof top commercial kitchen exhaust scrubber at a height of 84" (7') above the maximum height permitted in lieu of the 36" (3') maximum height allowed.
 - *This variance was approved at the March 15, 2023 Town Council Development Review hearing.*

OTHER

The existing building has parking credits for 57 rooms and 113 dining seats and 4 existing on-site surface spaces. The application received final approval on 04-04-23 which permitted 41 rooms and 172 seats and 4 on-site surface spaces to remain, leaving the balance of any remaining parking credits for future use appropriate under the 'principle of equivalency' for evaluating off-street parking requirement; up to 197 food and beverage seats is hereby vested and shall run with the property without the need for future variances to expand or from parking requirements.

EXHIBIT "C"
Allowable Seat Limits and Hours of Operation
For Food and Beverage Service to the Public

EXHIBIT "D"
Valet Parking Routes
Employee Shuttle Bus Routes