

**DECLARATION OF USE AGREEMENT**

by

**THE TOWN OF PALM BEACH**

and

**CHURCHILL CIGAR COMPANY**

Aug. 22<sup>nd</sup>, 2023

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

**RECEIVED**

**AUG 24 2023**

TOWN OF PALM BEACH  
PZB DEPARTMENT

329 WORTH AVE #6

B-22-96803

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## **DECLARATION OF USE AGREEMENT**

THIS DECLARATION OF USE AGREEMENT ("Agreement") is made and entered into this 22<sup>nd</sup> day of August, 2023 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called "Town") and CHURCHILL CIGAR COMPANY, 329 Worth Avenue, Palm Beach, Florida 33480 (hereinafter called "Bar/Lounge"), which terms "Town" and "Bar/Lounge" 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 "Bar/Lounge Location") is located within the municipal limits of the Town; and

WHEREAS, the Bar/Lounge Location falls within the Town's C-WA Worth Avenue Zoning District; and

WHEREAS, The Bar/Lounge desires a Special Exception use at the Bar/Lounge Location; and

WHEREAS, the Town Council conditionally approved Zoning Application Number ZON-23-046 on June 14, 2023 which granted the Bar/Lounge Special Exception approval to allow a change of use from retail to Bar/Lounge with a 12-seat lounge/bar with the service of beer, wine and liquor at the existing Lounge Location (a/k/a Churchill Cigar Co. retail space); 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 Bar/Lounge 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 Bar/Lounge or Land are subject.

### ARTICLE III BAR/LOUNGE USE

The Bar/Lounge space use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as ZON-23-046 and approved by the Town Council on June 14, 2023, as the same may be amended from time to time (hereinafter referred to as the "Approval").

### ARTICLE IV CONDITIONS

The approval shall be based upon the following conditions:

- 1) The door to the Bar/Lounge shall remain closed at all times unless being used for access.
- 2) The Bar/Lounge shall close at 10:00 PM.
- 3) The Bar/Lounge shall return to Town Council in May, 2024 to review the operation of the business and the above conditions of approval or any other issues that may arise.

### ARTICLE V VOLUNTARY AGREEMENT AND HOLD HARMLESS

The Bar/Lounge 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 Bar/lounge and the Bar/Lounge's representative of said violation(s) and the date upon which said violations(s) shall be corrected, Bar/Lounge or Bar/Lounge'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 Bar/Lounge 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

Bar/Lounge disputes any code violation, Bar/Lounge 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 BAR/LOUNGE

This Agreement shall NOT run with the Land and shall be binding upon the Bar/Lounge only and shall terminate upon the termination of the Bar/Lounge's business tax receipt for operation of a cooperative bar/lounge, or rescission of the Approval. This Agreement shall be recorded by the Bar/Lounge 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.

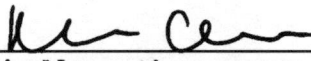
In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken from this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.


This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

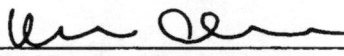
IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

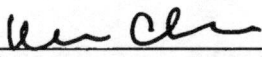
Signed, sealed and delivered  
In the presence of:


  
Print Name: Deborah Jones

  
Print Name: Katherine deClare

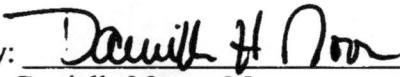
  
Print Name: Deborah Jones

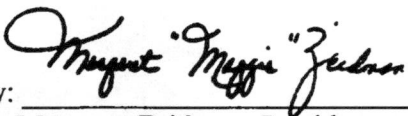
  
Print Name: Katherine deClare

  
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Print Name: Deborah Jones

THE TOWN OF PALM BEACH:

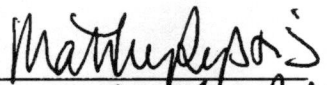
By:   
Danielle Moore, Mayor

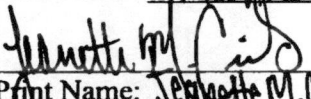
By:   
Margaret Zeidman, President

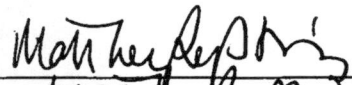
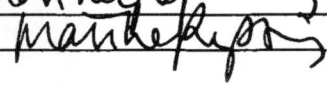
By:   
Kirk Blouin, Town Manager

BAR/LOUNGE:

CHURCHILL CIGAR COMPANY

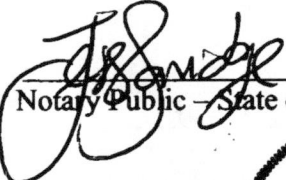
  
Print Name: Matthew Reptis

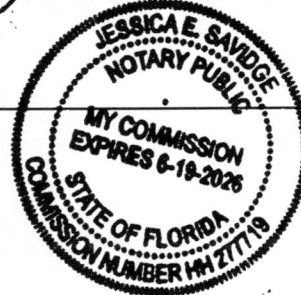
  
Print Name: Jeanette M. Mills

By:   
Its: 

STATE OF FLORIDA                    )  
  ) ss.  
COUNTY OF PALM BEACH         )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 20<sup>th</sup> day of April, 2023, by DANIELLE MOORE, 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 PALM BEACH         )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 22<sup>nd</sup> day of August, 2023, 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: \_\_\_\_\_

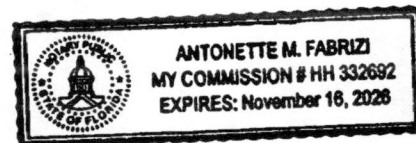




EXHIBIT "A"

LEGAL DESCRIPTION

Condominium Parcels II, IV, V, VI and VII, Via Roma. A Commercial Condominium according to the Declaration as recorded in Official Records Book 4930, Page 1761, and any amendments thereto, of the Public Records of Palm Beach County, Florida.

I hereby certify the foregoing is a true copy of the record in my office  
with redactions, if any as required by law as of this day, 08/23/2023.  
Joseph Abruzzo, Clerk of the Circuit Court & Comptroller Palm Beach County, Florida  
By: Deputy Clerk

*Melina Quiroz*

Melina Quiroz

