

Prepared by and return to:
James M. Crowley, Esq.
Gunster
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401

FIRST AMENDMENT TO AMENDED AND RESTATED 1979 AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED 1979 AGREEMENT (“Amendment”), is made and entered into this _____ day of _____, 2023, between TOWN OF PALM BEACH, a Florida municipal corporation, 360 S. County Road, Palm Beach, Florida 33480 (“Town”) and RPP PALM BEACH PROPERTY LP, 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467 (“RPP”).

WITNESSETH

WHEREAS, On March 6, 1979, Town and Poinciana Properties, Ltd., a Virginia Limited Partnership authorized to do business in Florida (“Partnership”) entered into an agreement (“1979 Agreement”) concerning Town Variance No. 39-78 affecting the real property more particularly described in Exhibit “A” attached hereto (the “Property”); and

WHEREAS, On May 12, 1980 the Property was purchased from Partnership by Sidney Spiegel, Trustee (“Trustee”); and

WHEREAS, On May 12, 1980, the Town and Trustee entered into an Amendment to Agreement (“First Amendment”); and

WHEREAS, On January 27, 1984, the Town and Poinciana executed a Second Amendment to Agreement, extending the single matinee performance permission from July 1, 1983 through March 31, 1984; on August 2, 1984, the Town and Poinciana executed a Third Amendment to Agreement, extending the single matinee performance permission from July 1, 1984 through March 31, 1985; on July 25, 1985, the Town and Poinciana executed Fourth Amendment to Agreement, extending the single matinee performance permission from December 1, 1985 through March 31, 1986; on July 21, 1986, the Town and Poinciana executed a Fifth Amendment to Agreement, extending the single matinee performance permission from December 1, 1986 through April 12, 1989; on July 10, 1989, the Town and Poinciana executed a Sixth Amendment to Agreement, extending the single matinee performance permission from December 1, 1989 through April 13, 1990; on November 5, 1990, the Town and Poinciana executed a Seventh Amendment to Agreement, extending the single matinee performance permission from December 1, 1990, through April 12, 1991; on June 12, 1991, the Town and Poinciana executed an Eighth Amendment to Agreement, extending the single matinee performance permission from beginning from December 3, 1991 through April 30, 1992; on October 15, 1992, the Town and Poinciana executed a Ninth Amendment to Agreement, extending the single matinee performance permission from December 3, 1992 through April 30, 1993; on June 25, 1993, the Town and Poinciana executed a Tenth Amendment to Agreement, extending the single matinee performance permission from December 3, 1993 through April 30, 1994; on August 9, 1994, the Town and Poinciana executed an Eleventh Amendment to Agreement, extending the single matinee performance permission from November 15, 1994 through April 1, 1995; on November 14, 1995, the Town and Poinciana

executed a Twelfth Amendment to Agreement, extending the single matinee performance permission from November 29, 1995 through April 1, 1996; on October 14, 1996, the Town and Poinciana executed Thirteenth Amendment to Agreement, extending the single matinee performance permission from December 1, 1996 through April 1, 1997; on October 3, 1997, the Town and Poinciana executed a Fourteenth Amendment to Agreement, extending the single matinee performance permission from December 23, 1997 through April 5, 1998; on September 9, 1998 the Town and Poinciana executed a Fifteenth Amendment to Agreement, extending the single matinee performance permission from November 11, 1998 through April 7, 1999; on September 8, 1999 the Town and Poinciana executed a Sixteenth Amendment to Agreement, extending the single matinee performance permission from December 1, 1999 through April 30, 2000; on January 19, 2001 the Town and Poinciana executed a Seventeenth Amendment to Agreement, extending the single matinee performance permission from December 6, 2000 through February 28, 2001; on August 22, 2001, the Town and Poinciana executed an Eighteenth Amendment to Agreement, extending the single matinee performance permission from December 12, 2001 through April 24, 2002; and on April 15, 2003, the Town and Poinciana executed a Nineteenth Amendment to Agreement, extending the single matinee performance permission from December 3, 2002 through April 14, 2003 (collectively, the “Subsequent Amendments”); and

WHEREAS, on August 26, 2014 RPP acquired the ground lease for the Property; and

WHEREAS, on March 9, 2022, the Town Council did, after public notice and public hearing, approve Zoning Application ZON-21-018 (the “Application”), which authorized, among other things, the redevelopment of portions of the Property (the “Project”); and

WHEREAS, RPP made application for and received from the Town Council, after public notice and public hearing on April 13, 2022, permission to amend the 1979 Agreement (the “Amended and Restated 1979 Agreement,” recorded in Official Records Book 33632, Page 0396 of the Public Records of Palm Beach County, Florida; and

WHEREAS, on February 15, 2023, the Town Council did, after public notice and public hearing, approve application number ZON-23-035, authorizing the expansion of the retail store known as Marissa Collections on the condition that 2 of the “vested and unused” parking spaces described in Section 9 of the Amended and Restated 1979 Agreement be assigned for purposes of satisfying additional parking demand; and

WHEREAS, on December 13, 2023, the Town Council did, after public notice and public hearing, approve application number ZON-24-003, authorizing a restaurant called “Tutto Mare” to occupy the restaurant space that was previously reviewed for traffic and parking impacts in connection with the Application, and which reduced the previously-approved seating for the restaurant space from 220 seats to 200 seats, resulting in a net gain of 7 equivalent parking spaces.

IT IS THEREFORE AGREED:

(1) The above recitals are true and correct and are incorporated herein and made a part hereof.

(2) The Parties agree that Section 9 of the Amended and Restated 1979 Agreement is modified as follows:

Parking shall remain as shown on the plans approved by the Town Council during its review of the Application and shall be calculated at one space per 300 square feet of leasable area. The total number of parking spaces provided for all existing development, including that development authorized by the Application, is 679. The assignment of the ~~45~~ 50 vested and unused parking spaces shall require review and approval by the Town Council at a public meeting

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the day and year first above written.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Signed, sealed and delivered
In the presence of:

TOWN OF PALM BEACH

Print Name: _____

By: _____
Danielle Moore, Mayor

Print Name: _____

By: _____
Margaret Zeidman, Town Council President

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

Print Name: _____

RPP PALM BEACH PROPERTY LP

Print Name: _____

By: Samantha Perry David, Under the Power
of Attorney for SIDNEY SPIEGEL, as
Successor Trustee under the provisions of a
certain Trust Agreement dated October 25,
1984 and known as trust No. 31520371, as
amended and Island Properties of Palm
Beach, Inc., a Florida Corporation

Print Name: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2023, by Danielle Moore, 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.

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 President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She 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 municipal corporation, on behalf of the corporation. 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 _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ 2023, by _____, on behalf of RPP PALM BEACH PROPERTY LP. He/She 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

By: _____
John C. Randolph, Esquire