

A G R E E M E N T

THIS AGREEMENT, made and entered into this 6 day of March, 1979, by and between the TOWN OF PALM BEACH (hereinafter referred to as the "Town"), and POINCIANA PROPERTIES, LTD., a Virginia Limited Partnership, authorized to do business in Florida (hereinafter referred to as "Partnership").

W I T N E S S E T H:

WHEREAS, Partnership made an application for variance No. 39-78 with respect to the property known as the Royal Poinciana Plaza on Coconut Row in the Town of Palm Beach located on land situate, lying and being in the Town of Palm Beach, Palm Beach County, Florida, more particularly described on the sheet attached hereto as Exhibit A; and

WHEREAS, after public notice and a public hearing on the Partnership application, the Town Council of the Town of Palm Beach granted said variance No. 39-78 with modifications of the original plan at its meeting of February 13, 1979 subject to the following conditions; and

WHEREAS, Partnership suggested and volunteered some of said conditions and by this agreement does hereby covenant and agree with TOWN that the conditions hereinafter set forth have become binding obligations on the part of Partnership, and upon its successors and assigns.

NOW, THEREFORE, know all men by these presents that in consideration of the premises hereinbefore set forth and for other

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THIS INSTRUMENT WAS PREPARED BY
✓ ELWYN L. MIDDLETON
Attorney at Law
205 WORTH AVE., PALM BEACH, FLORIDA 33480

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good and valuable considerations, the parties do hereby agree as follows:

1. The granting of variance No. 39-78 is contingent upon and subject to compliance by Partnership with the following conditions, to wit:

~~A. Immediately upon the complete execution of this agreement, Partnership shall simultaneously execute a stipulation with the Town to dismiss the legal action against the TOWN for "Declaratory Judgment and Injunctive Relief" filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida No. 76-508-CA (L) 01-B Civil Division and thereafter, stipulation shall be filed and the action shall be dismissed with prejudice.~~

~~B. Upon completion of the modified construction proposed to the Council, the buildings and the property shall conform to the requirements of the Zoning Code of TOWN except as to the number and size of non-conforming parking spaces then existing in the Royal Poinciana Plaza and the size of the spaces now existing (and to be added upon demolition of the "Slat House" and to be added as shown in "shaded blocks" on plans) which will continue to be used. No other non-conformity will be permitted.~~

C. Upon completion of the project, there will be over 16% of landscape open space, as defined by the Zoning Code of TOWN and determined by the Building Official. After construction is completed and certificate of occupancy is issued

there shall be no conversion of any landscaped areas to paved areas without approval of the Town.

~~D. All landscaping must be approved on-site by Honorable Thomas Mettler, a member of the Town Council, before a certificate of occupancy is granted. In granting such approval said Town Council member will be looking for substantial conformity with both Town Ordinance requirements and with the plans submitted (and to be submitted) and on file with the Building Official. However, the parking spaces which could have been provided in the northeast corner of the property and along the perimeter roads on the east boundary of the property will be eliminated as directed by the Town Council which will add to the number of non-conforming parking spaces permitted.~~

E. Creation of Unity of Title to prohibit the separate conveyance of any portion of Royal Poinciana Plaza.

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

A. In the event of the demise of the historic Mysore Fig Tree, ~~that area within the curb around the base of the tree will be maintained in its entirety as an open landscaped space.~~

B. ~~There shall be no construction of any new buildings in the Royal Poinciana Plaza after completion of construction of Building B (located in the northwest corner of the Plaza) contemplated under~~

~~variance No. 39-78 herein, however, this shall not prohibit construction of alterations or renovations of any buildings in the Plaza which does not increase number of square feet in said buildings. The compromise plan as finally granted by the Town provides for the destruction of all but approximately 2,400 sq. ft. of the easterly portion of the present "old playhouse building a/k/a Slat House" (located in the southeast corner of the Plaza) and conversion of this area to landscaped parking spaces of the same size as those now in the Plaza. The plans for renovation of the easterly portion of the present "old playhouse building a/k/a Slat House" shall be approved by the Architectural Commission of the Town of Palm Beach. Building A as proposed in the variance application shall not be constructed but shall remain as landscaped parking area.~~

~~C. It will not object to or contest by legal action any zoning which precludes further development of any nature in the Plaza and further it will not instigate or participate in legal action to repeal current zoning ordinance.~~

~~D. It will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but 10% of total square footage of said retail shops from remaining open after 6:00 p.m.~~

~~E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and~~

for lectures or other special events. ~~The current lessee has agreed that there will be only one matinee performance during the business week (Monday-Friday) beginning with July 1, 1979 through June 30, 1983. Upon entering into a new lease, i.e. after June 30, 1983, it will permit no theater matinees during the week but only on weekends. This will not preclude the use of the theater for lectures or other special events on the weekends during the remainder of the year when theater productions are not being presented.~~

F. It will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the "Poinciana Theater" for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser.

G. It will not allege economic hardship as a basis to abrogate any of the terms of this agreement.

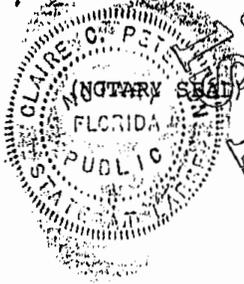
3. The above conditions shall be construed to be covenants and restrictions running with the land and shall be in full force and effect so long as the structure currently known as the Royal Poinciana Plaza continues to be in existence and is located upon the above-described premises. However, none of the above shall bind Partnership or any subsequent owners of the Royal Poinciana Plaza to this agreement or the current zoning ordinance if at some future date that ordinance is revised as it applies to the plaza and thereby provides for further development possibilities.

4. Upon any breach of the above covenants and conditions by Partnership or its successors and assigns, TOWN shall have all

STATE OF FLORIDA)
 : SS
COUNTY OF PALM BEACH)

Before me the undersigned authority personally appeared JAMES COMINS, General Partner of Poinciana Properties, Ltd., a Virginia Limited Partnership, known to me to be the individual described in and who executed the foregoing agreement, and acknowledged before me that he executed the same for the purposes herein expressed.

Witness my hand and official seal this 16th day of March 1979.



Claire C. Petersen
Notary Public in and for the
State and County aforesaid

My Commission Expires:

Notary Public, State of Florida at Large
My Commission Expires Dec. 22, 1979
Bonded by American Fire & Casualty Co.

Not a certified copy

DESCRIPTION

On the north by the southerly right-of-way line of Royal Poinciana Way; on the east by the westerly right-of-way line of Coconut Row; on the west by the Waters of Lake Worth; on the south by the following described line;

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Coconut Row, as said streets are described in deed recorded in Deed Book 814, page 477 and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Coconut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of $23^{\circ}-53'-30''$; thence northerly along the arc of said curve, a distance of 137.44 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 59.62 feet to the point of beginning of the herein described south line; thence westerly making an angle from south-west to west of $66^{\circ}-14'-30''$, a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of a curve to the northeast, having a radius of 65.03 feet and a central angle of $85^{\circ}-42'-16''$, a distance of 97.28 feet; thence northwesterly, a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein described curve, and having a radius of 90.03 feet and a central angle of $102^{\circ}-55'-30''$ and 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature, of a curve concave to the west, having a radius of 513.29 feet and a central angle of $15^{\circ}-35'-22''$; thence northerly along the arc of said reverse curvature, a distance of 97.62 feet to a point in a line parallel with and 461.2 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the Waters of Lake Worth and the end of the herein described southerly line.

Excepting, however, so much of a nearly rectangular area of land, together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing described parcel of land, and which nearly rectangular area of land has a southerly boundary of 208.44 feet, an easterly boundary of 71.2 feet, a northerly boundary of 190.74 feet plus 12.08 feet on two different courses coinciding with the south line of the "east approach of Flagler Memorial Bridge", and having a westerly boundary of 71.88 feet coinciding with the west face of an existing concrete bulhead within the Waters of Lake Worth, and all as such nearly rectangular area of land and riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company to Town of Palm Beach, dated September 11, 1939, recorded in Deed Book 592, page 478 of the Public Records of Palm Beach County, Florida.