

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

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, is made and entered into this _____ day of _____, 2022, between TOWN OF PALM BEACH, a Florida municipal corporation, 360 S. County Road, Palm Beach, Florida 33480 (“Town”) and RPP PALM BEACH PROPERTY LP, 340 Royal Poinciana Way, Palm Beach, Florida 33480 (“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, 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, after public notice and public hearing, permission to amend the Agreement as set forth below.

IT IS THEREFORE AGREED:

(1) The above recitals are true and correct.

(2) The 1979 Agreement, the First Amendment, and the Subsequent Amendments are hereby amended, superseded, and consolidated into this Amended and Restated Agreement, and in the event of any conflicts between this Amended and Restated Agreement and the 1979 Agreement, the First Amendment, and/or the Subsequent Agreements, this Amended and Restated Agreement shall control.

(3) Any terms, provisions, covenants, restrictions, or other requirements contained within the 1979 Agreement, the First Amendment, and/or the Subsequent Agreements which are not included in this Amended and Restated Agreement are hereby terminated.

(4) The granting of the Application is contingent upon and subject to compliance by RPP with the following conditions:

A. Upon completion of the Project, there will be over 16% of landscaped open

space, as defined by the Zoning Code of the Town and determined by the building official. After construction is completed and a certificate of occupancy is issued there shall be no conversion of any landscaped areas to paved areas without approval of the Town.

B. The unity of title prohibiting the separate conveyance of any portion of the Royal Poinciana Plaza shall not be terminated without the consent of the Town.

(5) Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza RPP (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 (the “Mysore Tree”), the quantity of landscaped open space that exists within the curb surrounding the Mysore Tree shall be maintained at the Property, but may be relocated to other portions of the Property subject to any necessary permits or approvals required by the Town code.

B. RPP will not instigate or participate in legal action to repeal the current zoning ordinance.

C. RPP will continue to lease the theater space only for use as a theater of the performing and/or visual arts and for lectures and other special events.

D. RPP will include a restrictive clause in any contract of sale of the Property whereby the purchaser agrees to prohibit use of the theater space for any purpose other than as set forth in paragraph C above and that said restriction shall be contained in the deed of conveyance to purchaser.

E. RPP will not allege economic hardship as a basis to abrogate any of the terms of this Amended and Restated Agreement.

(6) 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, no one of the above shall bind RPP 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.

(7) Upon any breach of the above covenants and conditions by RPP or its successors and assigns, Town shall have all the rights and remedies allowed by law to require strict compliance with said covenants and conditions.

(8) This Amended and Restated Agreement shall inure to and be binding upon the successors and assigns of the parties hereto. This agreement may be changed only by written amendment executed by the Town and RPP or its successors and assigns.

(9) 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.

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]

TOWN OF PALM BEACH

By: _____

Kirk Blouin, Town Manager

ATTESTED BY:

Queenester Nieves, Town Clerk

RPP PALM BEACH PROPERTY, LP

By: _____

Samantha Perry David, President