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By DSR at 12:57 pm, Apr 08, 2022

Prepared by and return to:
Maura Ziska
Kochman & Ziska, PLC
222 Lakeview Ave., Suite 1500
West Palm Beach, FL 33401

SECOND AMENDMENT TO DECLARATION OF USE AGREEMENT

by
THE TOWN OF PALM BEACH
and
PALM BEACH DAY ACADEMY, INC.

Dated _____2022

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS AMENDMENT TO DECLARATION OF USE AGREEMENT (“Amendment”) is made and entered into this ____ day of _____, 2022 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the “Town”); and PALM BEACH DAY ACADEMY, INC., formerly known as Palm Beach day School, Inc., 241 Seaview Avenue, Palm Beach, Florida 33480 hereinafter the (“Academy”), which terms “Town” and “Academy” will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

W I T N E S S E T H:

WHEREAS, the Town and Academy heretofore entered into a Declaration of Use Agreement made on May 9, 2000 and recorded in Official Records Book 11866, Page 671, of the Public Records of Palm Beach County, Florida, and amended on June 2, 2008 and recorded in Official Records Book 22684, Page 1054 of Palm Beach County, Florida; and

WHEREAS, the Town Council on _____, 2022 granted approval of COA-22-026 and ZON-22-070 to allow the installation of a surface parking lot for 34 cars, new parking gate and ground lighting, to replace a portion of the west lawn. The Town Council imposed additional conditions as part of the approval as set forth in this Amendment.

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

AMENDMENT TO DECLARATION OF USE

The Declaration of Use Agreement dated May 9, 2000 and recorded in Official Records Book 11866, Page 671, of the Public Records of Palm Beach County, Florida is hereby amended as follows:

ARTICLE IV - CONDITIONS OF APPROVAL:

Paragraph 2 is deleted in its entirety

Paragraph 3 is deleted in its entirety

Paragraph 6 is deleted in its entirety

Paragraph 7 is deleted in its entirety

Paragraph 10 is deleted in its entirety

Paragraph 12 is deleted in its entirety

Paragraph 16 is deleted in its entirety

ARTICLE III

PARKING LOT CONDITIONS

ARTICLE III

REMEDIES FOR VIOLATION

Upon determination by the Director of the Planning, Zoning, and Building Department of the Town that the auditorium and gymnasium simultaneously being used as public assembly, and upon notice in writing from the Town to the Academy of such violation and the date, if any, upon which such violation shall be corrected, the Academy shall pay to the Town a liquidated amount of \$2,000.00 for each day such violation. Such liquidated amount shall accrue on a per day basis for each day that the violation exists. In addition, in the event that the violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning, and Building Department, this Amendment may be reconsidered by the Town at a future meeting of the Town Council upon 30 days notification to the Academy. In addition to the above, the Town shall have all remedies available at law or in equity in order to enforce the terms and conditions of this Amendment, including but not limited to (a) the Town's code enforcement procedures; (b) all remedies otherwise offered in the Town's Code of Ordinances; (c) injunctions specific to 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 Amendment. Additionally, in the event of any breach, default, or non-performance of this Amendment, or any of its covenants, agreements, terms, or conditions, the Town shall be entitled to recover its costs, expenses, and reasonable attorneys' fees in so far as the Town prevails, either before or as a result of litigation, including appeals.

ARTICLE IV

PROVISIONS FOR NOTICE

For the issuance of any notice regarding the terms of this Amendment, notice shall be provided.

To the Town Manager:

The Town of Palm Beach, Town Hall
360 S. County Road
Palm Beach, FL 33480

To the Academy:

c/o Fanning Hearon, Head of School
241 Seaview Avenue
Palm Beach, FL 33480

ARTICLE V

PROVISIONS TO RUN WITH LAND/RECORDING

This Amendment shall run with the Land and shall be binding upon the Academy and its respective legal representatives and successors and assigns. This Amendment shall be recorded by the Academy in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Amendment shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

ARTICLE VI

ENTIRE AGREEMENT

This Amendment represents the entire agreement between the parties as to the subject matter set forth in this Amendment and may not be amended except by written agreement executed by both parties.

ARTICLE VII

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. This Amendment 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. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom 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.

Except as modified by this Amendment, all the terms and conditions of the aforesaid Declaration remain in full force and effect.

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:

TOWN OF PALM BEACH

By: _____
Gail Coniglio

By: _____
David Rosow, President
Town Council

By: _____
Peter Elwell
Town Manager

PALM BEACH DAY ACADEMY, INC.

By: _____
Its: President

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph
Town Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of July, 2011, by Gail Coniglio, of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of July, 2011, by David Rosow, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of July, 2011, by Peter Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of July, 2011, by _____, President of Palm Beach Day Academy, Inc., on behalf of the company. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida

Commission Number: _____