

✓✓✓

DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
THE PALM BEACH DAY SCHOOL

Dated: June, 2000

Dated: June, 2000

TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE I	
REGITALS	2
ARTICLE II	
REPRESENTATION OF OWNERSHIP	2
ARTICLE III	
SCHOOL USES	3
ARTICLE IV	
CONDITIONS OF APPROVAL	3
ARTICLE V	
UNITY OF TITLE	5
ARTICLE VI	
PARKING EASEMENT OR FEE INTEREST	5
ARTICLE VII	
VOLUNTARY AGREEMENT	6
ARTICLE VIII	
REMEDIES FOR VIOLATION	6
ARTICLE IX	
PROVISIONS TO RUN WITH LAND/RECORDING	6
ARTICLE X	
ENTIRE AGREEMENT	7

ARTICLE XI

EFFECTIVE DATE 7

ARTICLE XII

MISCELLANEOUS 7

EXHIBIT "A"

THE LAND 12

This is not a certified copy

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this 9th day of May, 2000 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and the PALM BEACH DAY SCHOOL, INC., 241 Seaview Avenue, Palm Beach, Florida (hereinafter the "Day School"), which terms "Town" and "Day School" 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 the "Land") is located within the municipal limits of the Town; and

WHEREAS, title to all of the Land is held by Day School; and

WHEREAS, the Day School has been in operation at its current location for over 75 years;

WHEREAS, the Land is zoned R-B, Low Density Residential, and schools are special exception uses within such zoning category; and

WHEREAS, Day School submitted applications for Site Plan Review #3-99 with Special Exceptions, Site Plan Review with Variances #4-99, and Site Plan Review #17-99 with Special Exception and Variances for certain physical improvements to the Day School located at 241 Seaview Avenue and for an increase in the student cap (hereinafter the "Applications"); and

WHEREAS, the Town Council of the Town of Palm Beach, subsequent to review and public hearings, did grant approval of said Applications, with certain revisions and subject to certain conditions on March 11, 1999, September 17, 1999, and March 14, 2000 (hereinafter the "Approvals"); and

WHEREAS, the Approvals provided for the construction of a two-story art studio, or gymnasium, stabilized parking on the west play field, additional on-street and on-site parking, and an increase in the student cap; and

WHEREAS, the approval of March 11, 1999 provides that the conditions reflected in said approval shall be identified in a Declaration of Use Agreement between the Town and The Day School; and

WHEREAS, the Town and the Day School hereby intend to fulfill the requirement for a Declaration of Use Agreement; and

WHEREAS, in approving the Special Exceptions, Site Plan, and Variances, the conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, as well as to insure that said use shall not be adverse to the public interest; and

WHEREAS, all of the representations made herein are true and accurate and the granting of the Special Exceptions, Site Plan approvals, and Variances are conditioned upon the representations made herein and all of the conditions herein imposed.

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

Day School 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. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Day School or the Land are subject.

ARTICLE III

SCHOOL USES

The use of the Land shall be for school uses in compliance with all of the information and exhibits included in the application, not inconsistent with the terms and conditions set forth in the Approvals as reflected herein. Any usages not specifically set forth in the Approval are excluded from the Town's approval of the Plan pursuant to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV

CONDITIONS OF APPROVAL

The Town's approvals are further subject to the following conditions.

1. The height of the gymnasium at the top of the tie beam (joist bearing point) shall be reduced to 33 feet and the overall peak height of the tower element shall be reduced to 45 feet (the Landmarks Commission shall evaluate whether the tower feature is an appropriate architectural element) as measured from 5.5 feet NGVD.
2. When the school uses the west play field for parking, it shall be required to use valet services for parking on the field.
3. There shall be no lighting erected in the west play field.
4. The School shall construct a concrete block wall stuccoed and painted white on both sides at a height of 7 feet along the west boundary of the School property. That wall shall be set back from the west property line the distance necessary to ensure that the footers remain on the School property or 2 feet east of said property line, whichever is greater. The School shall landscape both sides of the wall. The School's landscape architect shall meet with the two abutting property owners in regard to the selection of the plant material on their side of the wall. The School shall install a fence 10 feet east of the wall. Any fences or walls

which are located along the north and south boundaries of the properties abutting the west end of the west play field may be extended and connected to the wall. In addition, the School shall enter into an agreement with the Town to ensure that if work within the easement requires the removal of all or a portion of the wall and/or landscaping on the north side of the subject property that the School shall be responsible for replacing said material.

5. There shall be no vehicle entrance at the west end of the play field.
6. Parking on the play field shall be limited to a maximum of 12 school events per year.
7. Prior notice shall be given to the owner of the property at 235 Coconut Row of major events which will occur at the School and which may generate a significant amount of traffic and parking.
8. The School shall provide traffic control at the east and west ends of Seaview Avenue during major events at the School.
9. The School shall participate in a meeting, or meetings, between the Town Recreation Department and the Palm Beach Public School to address parking and traffic management on Seaview Avenue.
10. No School buses shall be parked on the north school parcel.
11. The School shall by August 1, 2000 develop and submit to the Town for review, a program to promote car pooling and the use of bus transportation by students at the school, shall evaluate with Palm Tran the possible transportation of students by public transit, and shall evaluate the staggering of arrival and dismissal times.
12. The student cap may be increased over five years from 310 to 360 students at a rate not to exceed 10 new students in any one year, except that if fewer than 10 students are added in a particular year, the remainder may be carried over to a subsequent year(s) in addition to the 10 otherwise allowed for that subsequent year(s).
13. A unity of title, acceptable to the Town, between the northern and southern parcels of land occupied by the School shall be recorded in the official records of Palm Beach County.

14. The applicant shall provide a curb on the west property line of the gymnasium where the buses are to be parked so that storm water drainage does not discharge onto the tennis courts on the abutting property to the west.
15. The fence for the tennis court shall be higher than the buses that are to be parked next to the fence and said fence shall have a wind screen on both sides of the fence to be provided by the applicant in perpetuity to ensure said buses are screened from the view on the tennis courts.
16. The applicant shall use the six parking spaces at the west end of the school buildings on the north side of Seaview Avenue only for school administration and staff. The applicant shall close those parking spaces when not being used for school related activities.

ARTICLE V

UNITY OF TITLE

The Land, described in Exhibit A, shall be considered as one (1) parcel and no portion thereof may be sold, transferred, devised or assigned except in its entirety, either voluntarily or involuntarily, by operation of law or otherwise as long as a school is operated on the Land, unless said unity of title is released by the Town or otherwise modified by agreement between the Day School and the Town. This provision shall not preclude the dedication of right-of-way for road improvements required by a governmental authority or utility easements. Said unity of title shall be satisfactory to the Town Attorney as to form and content, and shall be recorded in the Official Records of Palm Beach County, Florida.

ARTICLE VI

PARKING EASEMENT OR FEE INTEREST

The Day School shall provide an easement or fee interest to the Town on the north side of Seaview Avenue along the west play field for a width of up to six feet to facilitate the creation of on-street parking ("Parking Area"). In addition, the Day School shall pay for the construction of said on-street parking. Town shall be responsible for the management, maintenance, and repair of said on-street parking. Said parking shall be constructed at the time of the demolition of the houses, and the grading and stabilization of the playfield on the west side of the Day School campus. Said easement or fee interest shall be recorded by Day School at Day School's expense in the Official Records of Palm Beach County, Florida. If the school use is abandoned and the Land adjacent to the

Parking Area is returned to residential use, the Town shall reconvey Town's interest in the Parking Area to Day School.

ARTICLE VII

VOLUNTARY AGREEMENT

The terms and conditions set forth in the Approval and this Agreement are agreed to voluntarily by the Day School, Day School agrees to be bound by them, and Day School waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VIII

REMEDIES FOR VIOLATION

The Town and Day School 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 in the Code of Ordinances through the Code Inspector, Code Enforcement Officer, and Code Enforcement Board; (b) the Town may initiate action to revoke the occupational license pursuant to applicable provisions of the Town Code, (c) all remedies otherwise offered in the Town's Code of Ordinances; and (d) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County or 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 prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees either before or as a result of litigation, including appeals.

ARTICLE IX

PROVISIONS TO RUN WITH LAND/RECORDING

This Agreement shall run with the Land and shall be binding upon the Day School and Town and their respective heirs, legal representatives and successors. This Agreement shall be recorded by Day School in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Agreement shall be superior to any

mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

ARTICLE X

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 XI

EFFECTIVE DATE

The Effective Date of this Agreement shall be the last day upon which the last required signature by a party is affixed hereto.

ARTICLE XII

MISCELLANEOUS

1. 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.
2. This Agreement may not be amended except by written instrument signed by all parties hereto.
3. 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.
4. This Agreement shall be binding upon the parties hereto and upon their successors, assigns, heirs and personal representatives.
5. 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.

6. 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:

Cheryl A. Jones

Nancy P. Beyer

W. L. Linn

Nancy P. Beyer

Thomas D. Dyer

Stacy L. Engle

Dorothy A. Jacobs

Mya J. Mayne

TOWN OF PALM BEACH

By: Lesly S. Smith
Lesly Smith, Mayor

By: Jack McDonald
Jack McDonald, President
Town Council

By: Robert J. Doney
Robert Doney
Town Manager

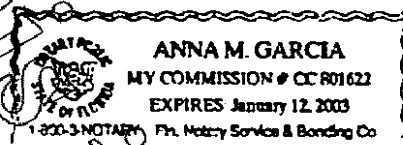
THE PALM BEACH DAY SCHOOL, INC.

By: William M. Matthews
William M. Matthews
President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13 day of June, 2000, by Lesly Smith, 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.



Anna M. Garcia
Signature of Notary Public

Anna M. Garcia
Printed Name of Notary Public

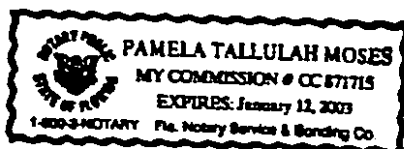
Commission No.: CC 801622

Commission Expires: 1/12/03

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13th day of June, 2000, by Jack McDonald, the President 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.



Pamela Tallulah Moses
Signature of Notary Public

Pamela Tallulah Moses
Printed Name of Notary Public

Commission No.: CC 871715

Commission Expires: 1/12/03

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13th day of June, 2000, by Robert Doney, 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.



Terri N. Bayard
Signature of Notary Public

TERRI N. BAYARD
Printed Name of Notary Public

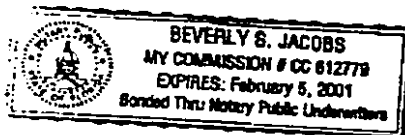
Commission No.: CC900300

Commission Expires: 1/6/01

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5th day of June, 2000, by William M. Matthews, the President of The Palm Beach Day School, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced his Florida Driver's License Number _____ as identification and he did not take an oath.



Beverly S. Jacobs
Signature of Notary Public

Printed Name of Notary Public

Commission No.: _____

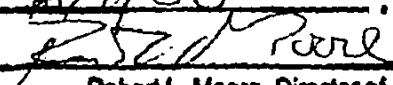
Commission Expires: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
TOWN OF PALM BEACH

By:


John C. Randolph
Town Attorney

RECOMMEND APPROVAL:

 .19


Robert L. Moore, Director of
Planning, Zoning & Building


Zoning Administrator

This is not a certified copy

EXHIBIT "A"THE LAND

Parcel 1 (South side of Seaview Avenue)

A parcel of land in Section 22, Township 43 South, Range 43 East, in the Town of Palm Beach, Palm Beach County, Florida, more particularly described as follows:

Beginning at a point on the North line of Block A, ROYAL PARK ADDITION to Palm Beach, Florida, in accordance with the Revised Map thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 4, Page 1, said point being 700 feet East of the intersection of the North line of said ROYAL PARK with the East line of Cocoanut Row as now laid out and established, run thence Northerly parallel to and 450 feet from the East line of the property conveyed by E. W. Histed and Lena Belle Histed to State Tax School District No. 1, a corporation, by Warranty Deed dated December 29, 1920 and recorded in Deed Book 143, at Page 428, Palm Beach County Records, to the South line of Sea View Avenue as now laid out and in use; run thence East along the South line of Sea View Avenue a distance of 135.02 feet, more or less, to the west line of the ten foot Private Drive shown on the west side of Lots 2 and 3 of THE PLAZA, according to the plat thereof on file and of record in Plat Book 18, at Page 62, Palm Beach County, Florida Public Records; thence southerly along the west line of said Private Road to the point of intersection with the north line of said ROYAL PARK ADDITION; thence West along the North line of said ROYAL PARK ADDITION, a distance of 119.09 feet, more or less, to the point of beginning.

TOGETHER WITH:

A tract of land in Government Lot 3, Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, and more particularly described as follows, to wit:

BEGINNING at the Northeast Corner of Lot 14, Block A, ROYAL PARK ADDITION, as recorded in Plat Book 4, Page 1, Palm Beach County Records; thence run westerly along the North line of said ROYAL PARK ADDITION for a distance of 7.97 feet to a point; thence run Northerly at right angles to the North line of said ROYAL PARK ADDITION for a distance of 73.91 feet to a point; thence turn an angle of $6^{\circ} 09'$ measured from the preceding course to the East and run Southeasterly for a distance of 74.30 feet to the POINT OF BEGINNING.

LESS AND EXCEPT:

Being a tract of land in Government Lot 3, Section 22, Township 43 South, Range 43 East, Town of Palm Beach, Palm Beach County, Florida, and more particularly described as follows, to wit:

Commencing at the Northeast corner of Lot 14, Block A, Royal Park Addition, as recorded in Plat Book 4, Page 1, Palm Beach County Records; thence turn an angle from the North line of said Royal Park Addition $83^{\circ} 51'$ measured from West to North and run along a line for a distance of 74.36 feet to the POINT OF BEGINNING of the following described Parcel; thence

continue along the same course for a distance of 74.36 feet to a point in the South line of Sea View Ave. as shown on the plat of Poinciana Park 3rd Addition, recorded in Plat Book 8, Page 72, Palm Beach County Records, thence turn an angle of 83° 51' measured from South to East and run along said South Right-of-Way line of Sea View Ave. for a distance of 7.97 feet to a point; thence run southerly at right angles to said South Right-of-Way line of Sea View Ave. for a distance of 73.91 feet to the POINT OF BEGINNING.

Parcel 2 (South side of Seaview Avenue)

The tract of land in Section 22, Township 43 South, Range 43 East bounded as follows:

Begin at the point of intersection of the South line of Seaview Avenue, a public street in the Town of Palm Beach, Florida, with the West line of THE PLAZA, according to the Plat thereof on file and of record in Plat Book 18 at Page 62, Palm Beach County Public Records, and run thence southerly along the west line of THE PLAZA eighty (80) feet; thence easterly at right angles to the first course ten (10) feet; thence northerly parallel to the first course eighty (80) feet to the South line of said Seaview Avenue; thence Westerly along the South line of Seaview Avenue ten (10) feet to the Point of Beginning, said parcel being the Northerly eighty (80) feet of the area designated as "Private Road" on said plat of THE PLAZA.

and

The east ninety-five (95) feet of Lot Two (2) of THE PLAZA, according to the Plat thereof on file and of record in Plat Book 18 at Page 62, Public Records of Palm Beach County, Florida

Parcel 3 (North side of Seaview Avenue)

Lots 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750 and 752, POINCIANA PARK 3rd ADDITION, according to the Plat thereof as recorded in Plat Book 8, Page 72, Public Records of Palm Beach County, Florida