

AMENDED AND RESTATED
DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
PALM BEACH DAY ACADEMY, INC.

Dated _____ 2022

TABLE OF CONTENTS

Page No.

ARTICLE I

RECITALS.....4

ARTICLE II

REPRESENTATION OF OWNERSHIP.....4

ARTICLE III

ACADEMY USE.....5

ARTICLE IV

CONDITIONS OF APPROVAL.....5

ARTICLE V

PARKING LOT CONDITIONS.....6

ARTICLE VI

UNITY OF TITLE.....7

ARTICLE VII

PARKING EASEMENT OR FEE INTEREST.....7

ARTICLE VIII

VOLUNTARY AGREEMENT.....7

ARTICLE IX

REMEDIES FOR VIOLATION.....8

ARTICLE X

PROVISIONS TO RUN WITH LAND/RECORDING.....8

ARTICLE XI	
ENTIRE AGREEMENT.....	8
ARTICLE XII	
EFFECTIVE DATE.....	8
ARTICLE XIII	
MISCELLANEOUS.....	9
EXHIBIT “A”	
THE LAND.....	14

AMENDED AND RESTATED DECLARATION OF USE AGREEMENT

THIS AMENDED AND RESTATED DECLARATION OF USE AGREEMENT 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 the PALM BEACH DAY ACADEMY, INC. (F/K/A PALM BEACH DAY ACADEMY, INC.), 241 Seaview Avenue, Palm Beach, Florida (hereinafter the "Academy"), which terms "Town" and "Academy" will include and bind the successors and assigned of the parties, wherever the contest 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 the Academy; and

WHEREAS, the Academy has been in operation for over 100 years;

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

WHEREAS, Academy 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 Academy 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, 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 Academy; and

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 August 10, 2022 granted approval of COA-22-026 and ZON-22-070 to allow the installation of a surface parking lot for 31 cars, new parking gate and ground lighting, to replace a portion of the west field and whereas, the Town Council imposed additional conditions as part of the approval as set forth in this Amendment.

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

Academy 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 the Academy or the Land are subject.

ARTICLE III

ACADEMY USE

The use of the Land shall be for Academy 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 measure from 5.5 feet NGVD.
2. There shall be no lighting erected in the West play field that is above 40 inches tall. All lights in the West play field shall be on mechanical timer that turns on 7 am – 7 pm, with the exception of any events as allowed in Paragraph 5 below.
3. The Academy 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 Academy property. That wall shall be set back from the West property line the distance necessary to ensure that the footers remain on the Academy property or 2 feet East of said property line, whichever is greater. The Academy shall landscape both sides of the wall. The Academy'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 Academy 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 Academy 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 Academy shall be responsible for replacing said material.
4. There shall be no vehicle entrance at the West end of the playing field.
5. Weekend or evening parking on the West play field, including the new parking lot shall be limited to a maximum of 12 Academy events per year.

6. The Academy shall provide traffic control at the East and West ends of Seaview Avenue during major events at the Academy.
7. The Academy shall participate in a meeting, or meetings, between the Town Recreation Department and the Palm Beach Public Academy to address parking and traffic management on Seaview Avenue.
8. No Academy buses shall be parked on the North Academy parcel.
9. The Academy has developed and submitted to the Town for review, a program to promote carpooling and the use of bus transportation by students at the Academy, and has evaluated with Palm Tran the possible transportation of students by public transit and shall evaluate the staggering of arrival and dismissal times.
10. 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).
11. A unity of title, acceptable to the Town, between the Northern and Southern parcels of land occupied by the Academy shall be recorded in the official records of Palm Beach County.
12. 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.
13. 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.

ARTICLE V

PARKING LOT CONDITIONS

The Academy agrees to the following conditions related to the Parking Lot approval:

1. The Academy agrees to install 20 shade trees along Seaview Avenue.
2. The Academy agrees to construct a 7 foot tall CBS wall along the north property line of the West play field and two layers of landscaping, as approved by ZON-22-070 (COA-22-026), to the South of the new wall. The grade will be pitched to the center of the parking lot.
3. The Academy agrees that the parking lot will be constructed with sand set pavers.

4. The Academy agrees that the parking lot is to be used by the school community and not to be leased or used by third parties.
5. The Academy agrees that the hours of use for the parking lot is Monday –Friday, 7 a.m. to 7 p.m. and at all other times the gates will be closed and locked. An exception to the above hours would be if there were a special event (as allowed in Paragraph 5 of Article II above) that last past 7 p.m.

ARTICLE VI

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 an Academy is operated on the Land, unless said unity of title is released by the Town or otherwise modified by agreement between the Academy 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 VII

PARKING EASEMENT OR FEE INTEREST

The Academy 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 Academy 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 Academy campus. Said easement or fee interest shall be recorded in Academy at Academy's expense in the Official Records of Palm Beach County, Florida. If the Academy 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 the Academy.

ARTICLE VIII

VOLUNTARY AGREEMENT

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

ARTICLE IX

REMEDIES FOR VIOLATION

The Town and Academy 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 even 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 X

PROVISIONS TO RUN WITH LAND/RECORDING

This Agreement shall run with the Land and shall be binding upon the Academy and Town and their respective heirs, legal representatives and successors. This Agreement shall be recorded by Academy 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 XI

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 XII

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 XIII

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:

TOWN OF PALM BEACH

By: _____
Danielle Moore, Mayor

By: _____
Margaret Zeidman, President
Town Council

By: _____
Kirk Blouin
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 _____, 2022, by Danielle Moore, Mayor 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 _____, 2022, 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 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 _____, 2022, 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 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 _____, 2022, 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: _____