

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into as of May 5, 2020 (the "Effective Date") by and among the Town of Yountville, a municipal corporation organized under laws of the State of California (“Town”) and RH Yountville, Inc., a Delaware corporation (“RH”). The Town and RH are collectively referred to as the “Parties,” and each will individually be referred to as a “Party.”

RECITALS

A. RH operates a wine tasting and education room at 6711 Washington Street (APN 036-440-001; "Ma(i)sonry"), and a full-service restaurant at 6725 Washington Street (APN 036-032-008; "RH Gallery"). Ma(i)sonry and RH Gallery will be collectively referred to herein as the "RH Campus."

B. The uses and operations on the RH Campus are subject to a Master Development Plan, including a Master Use Permit, pursuant to various Town approvals, including Resolution Nos. 15-3264, 17-3433, and 18-3511, which are fully incorporated herein and collectively referred to as the "Master Development Plan".

C. Town sent a Notice of Violation / Abatement Order to RH, dated January 13, 2020, alleging that RH was not in compliance with the conditions of approval to its Master Development Plan relating to the number of employees and employee parking. This notice of violation, together with the Town's letters entitled Extension of Time to File Appeal of Notice of Violation / Abatement Order dated January 17, 2020 and Additional Extension of time to File Appeal of Notice of Violation/Abatement Order dated February 25, 2020, is fully incorporated herein and collectively referred to as the “Notice of Violation.”

D. Promptly after receiving the Notice of Violation, RH began, through a series of meetings and telephone calls with Town management and staff, to discuss a resolution to the issues raised in the Notice of Violation. Those discussions have been productive and led to this Agreement.

E. In connection with this Agreement, Town and RH recognize that changes to the current Employee Parking Management Program and associated Employee Parking Management Plan Confirmation of the Master Development Plan are necessary, and so, in addition to the Parking Lease as defined and detailed below, Town and RH have developed and agreed upon the interim parking plans further described in Section 6 below.

F. In connection with this Agreement, Town has offered to lease to RH certain real property located near the RH Campus, adjacent to Washington Street between the intersections of Washington Street and Lincoln Avenue and Washington and Jackson Streets (the “Parking Property”) for purposes of RH providing at its sole expense sufficient parking spaces for RH's employees, as well as 24 public parking spaces for the public to use for the adjacent Yountville Community Park (the "Parking Lease").

G. The Parking Lease will require RH to construct, at its sole expense, 47 parking spaces, including the 24 public parking spaces, and bear all costs of maintaining those parking spaces on the Parking Property at its sole expense, in addition to making annual payments of \$66,986.00 to Town, subject to annual increases.

H. In light of the substantial costs and liabilities related to RH's improvements to the Parking Property and the public benefit conferred by the creation of the 24 public parking spaces for access to Yountville Community Park and maintenance of such parking under the Parking Lease, RH has requested of Town a modification to its Master Use Permit which previously was approved under the Master Development Plan (the "Application", attached as Exhibit B) pursuant to YMC Section 17.156.050. The Planning Director has reviewed that Application and has stated staff's intention to approve that Application, subject to the Council's approval of this Agreement.

I. Accordingly, the Parties desire to resolve the issues raised in the Notice of Violation and all related issues on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated into this Agreement.
2. Parking Lease. Concurrently with the Parties' execution of this Agreement, the Parties will execute and enter into the Parking Lease attached as Exhibit A ("Parking Lease"). The Parking Lease shall become effective upon the date of approval of the Application, as defined below, by the Planning Director; provided, however, that the date of approval shall be tolled if and for the duration of any appeal or court action related to the Application.
3. Application for Master Use Permit Modification. RH has requested that the Town modify its Master Use Permit, which is part of the Master Development Plan, pursuant to YMC Section 17.156.050 (the "Application"). Town acknowledges that the Planning Director has reviewed the Application and is prepared, upon Town Council's approval of this Agreement and in accordance with all applicable provisions of the YMC and state law, to issue a modification to the Master Use Permit as described in that Application. Within 30 days after the Effective Date, the Planning Director will issue the modification to the Master Use Permit described in the Application and in accordance with all applicable provisions of the YMC and state law.
4. Discretionary Actions. This Agreement is not intended to, and will not be construed to impair or constrain, Town's discretion or ability to comply with all applicable provisions of the YMC and state law in reviewing, considering, or acting on, the Application or any future application submitted by RH for a new use permit or an amendment to an existing use permit. Subject to the foregoing understanding, Town acknowledges that nothing in this Agreement precludes RH from challenging any action taken by Town or the Town Council on the Application.

5. Town Processing. This Agreement is contingent upon the Town conducting its governing procedures for the Application, including, but not limited to, proper compliance under the California Environmental Quality Act (CEQA) and regulations promulgated thereunder.

6. Interim Parking. During all periods prior to and during the construction of the improvements required under the Parking Lease, RH employee parking will be conducted in accordance with the Employee Parking Management Plan Confirmation dated April 30, 2020, which is fully incorporated herein and referred to as the "Employee Parking Management Plan Confirmation."

7. Settlement Payment. RH will pay to Town \$75,000.00 in four equal payments of \$18,750.00 as follows: the first payment is due on or before June 1, 2020; the second payment is due on or before September 1, 2020; the third payment is due on or before December 1, 2020; and the fourth payment is due on or before March 1, 2021. The Parties agree these amounts are the Town's reasonable estimate of all costs the Town has incurred in connection with the investigation, prosecution, and settlement of the Notice of Violation, including all work Town has performed in relation to this Agreement, and the negotiation, preparation and completion of the Notice of Violation and this Agreement.

8. Cooperation. The Parties will mutually cooperate with the other Party in connection with each of the obligations set forth in Sections 1 through 7 of this Agreement. Each Party will execute and deliver to the other Party all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement.

9. General Mutual Release. Each Party (including its present and former agents, members, employees, officers, directors, administrators, representatives, successors, transferees, licensees, assigns, and attorneys, and all those claiming by, through, under or in concert with any of them, either in their representative or individual capacities) fully and forever releases the other Party from all claims, obligations, debts, demands, or causes of action, arising from or relating to the Notice of Violation.

10. Waiver Of California Civil Code Section 1542. This Agreement is intended to be a full and unconditional settlement and compromise of all claims covered in Section 9. No claims are reserved. The Parties warrant and represent that they are fully aware that certain jurisdictions limit the general release of unknown claims, such as California, but that the Parties intend to waive such limitations to the fullest extent permitted by applicable law with respect to the releases herein. Accordingly, the Parties waive and relinquish every right or benefit that they have or might have under California Civil Code Section 1542 or any other similar or equivalent federal provision, other provision of California state law, provision of common law, or otherwise, to the fullest extent under any such law that the Parties may lawfully waive with regard to the scope of the releases herein. California Code Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by

him or her, would have materially affected his or her settlement with the debtor or released party.

Having been so apprised, each of the Parties acknowledge that they are aware that they might later discover facts in addition to or different from those which they now know or believe to be true with respect to the claims covered in Section 9, but that it is their intention to release the matters within the scope of the releases herein, known or unknown, suspected or unsuspected, which now exist, might exist, or previously existed between the Parties with respect thereto. The Parties assume the risk of the facts turning out to be different, and understand and acknowledge that this Agreement will be in all respects effective and not subject to termination, rescission or modification by reason of any such change in facts.

11. Attorneys' Fees. In the event of any action or proceeding to interpret or compel compliance with, or for a breach of, any of the terms of this Agreement, the prevailing party will be entitled to recover from the non-prevailing party its reasonable expenses incurred in connection with such action or proceeding including, without limitation, reasonable attorneys' fees.

12. Indemnification. To the fullest extent permitted by law, RH shall indemnify, hold harmless and defend Town, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses arising out of or in connection with Town's approval of this Agreement.

13. Integration. This Agreement represents the entire agreement and understanding between the Parties regarding the settlement of all disputes and claims alleged to occur before the execution of this Agreement, including those under the Notice of Violation, and supersedes all prior and contemporaneous discussions, representations, or negotiations, whether oral or written, regarding settlement of the aforesaid claims.

14. Governing Law and Venue. This Agreement was drafted, negotiated, and entered into exclusively within the State of California. This Agreement will be governed by the substantive laws of the State of California, without reference to choice of law principles. In any action, proceeding, claim, suit, or other challenge or dispute arising out of or related to this Agreement, venue shall be in the Superior Court of California for the County of Napa.

15. Dispute Resolution. In the event of any dispute between the Parties regarding or arising out of this Agreement, prior to the Parties submitting such dispute to mediation with Judicial Arbitration and Mediation Services ("JAMS"), and before commencing a civil action, the Parties will meet and confer, in good faith, with each other at least twice in order to seek an amicable, reasonable resolution to such dispute. If such resolution cannot be reached, the Parties agree to submit such dispute to mediation in Napa County and to split the cost thereof equally between them.

16. Successors and Assigns. This Agreement shall be binding on, and inure to the benefit of, the successors and assigns of any the Parties. RH and the Town may not assign any right, interest, or obligation under this Agreement, in whole or in part, to any other party without the written consent of the other Party.

17. Consultation with Counsel. The Parties acknowledge that they have had sufficient opportunity to consult counsel of their choosing in the negotiation and preparation of this Agreement, have carefully read this Agreement including all attachments and exhibits hereto and all documents incorporated herein by reference, and have voluntarily entered into this Agreement. The Parties further agree and acknowledge that they have both participated in the drafting of this Agreement and this Agreement shall be construed as a whole and strictly for or against either of the Parties.

18. Matters Not Covered. The Parties agree and acknowledge that nothing in this Agreement precludes the Town from prosecuting or enforcing, in any lawful manner, any violation of any provision of the Yountville Municipal Code or other law not within the scope of Sections 9 and 10 above, whether or not such violation occurred or allegedly occurred before or after the Effective Date, against RH or any other responsible party.

19. Waiver. No waiver by either of the Parties of any breach of any term or provision of this Agreement by the other Party will be deemed, nor will be, a waiver of any preceding, concurrent, or succeeding breach of the same or any other term or provision hereof.

20. Authority. Each Party warrants and represents that the signatories to this Agreement have the full power and authority to execute this Agreement on behalf of such Party and, upon execution and delivery of this Agreement by each Party as set forth below, such Party is fully bound by the provisions of this Agreement.

21. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall nevertheless remain in full force and effect without being impaired or invalidated in any way thereby. In such event, the Parties agree to meet and confer in good faith regarding appropriate means to replace as soon as practicable and to the fullest extent feasible those terms and provisions severed from this Agreement in order to achieve the original purposes of such terms and provisions in a manner that both concur are lawful.

22. Precedent Value. The Parties agree and acknowledge that neither this Agreement nor any term hereof shall be admissible or citable in any other or future suit, legal proceeding, or code enforcement proceeding, except in a proceeding to enforce or dispute this Agreement. This Agreement and its terms are non-precedential and shall not serve as a precedent or model for resolving any dispute, issue, principle, or proceeding, whether involving the Parties or other parties or entities.

23. Modification. No amendment or modification of the provisions of this Agreement will be valid and enforceable unless such amendment or modification is in writing and signed by all the Parties.

24. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and all of which, taken together, will constitute a binding settlement agreement on the part of each of the undersigned. Photocopies, PDFs, or faxed copies of original signature pages will have the same force and effect as original signature pages.

25. Any written notices to the Parties pursuant to this Agreement will be sent to the following persons and addresses:

TOWN:

The Town of Yountville
Attn: Steven R. Rogers, Town Manager
6516 Washington Street
Yountville, California 94599

With copy to:

Gary B. Bell
Yountville Town Attorney
Colantuono, Highsmith & Whatley, PC
420 Sierra College Dr., Ste. 140

RH:
Restoration Hardware, Inc.
15 Koch Road
Corte Madera CA 94925

Attn: CFO

With copy to:

Restoration Hardware, Inc.
15 Koch Road
Corte Madera CA 94925

Attn: Legal Department

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date:

RH YOUNTVILLE, INC., a Delaware corporation

By: _____
Name: _____
Its: _____

TOWN OF YOUNTVILLE, a municipal corporation
organized under the laws of the State of California

By: _____
Name: _____
Its: _____

EXHIBIT A
Parking Lease

EXHIBIT B
Application for Master Use Permit Amendment

RH has requested that its Master Use Permit be modified pursuant to YMC Section 17.156.050, as summarized below:

1. To allow an additional 16 seats, indoors or outdoors, with 8 seats available for use immediately and 8 seats available for use: (i) upon completion of the construction and improvements required by the Parking Lease, and (ii) provided RH has not been issued a notice of violation, abatement order, and/or an administrative citation in good faith by the Town for a period of 6 months after the Effective Date.
2. To specify that RH may seek future amendments to the Master Use Permit regarding the number of seats up to the maximum allowed by available parking under the YMC.