

**DECLARATION OF USE
AGREEMENT**

by

THE TOWN OF PALM BEACH

and

Tutto Mare, LLC

And

RPP Palm Beach Property LP

_____, 2024

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2024 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called "Town") and Tutto Mare, LLC (hereinafter called "Tutto Mare"), 340 Royal Poinciana Way, Palm Beach, Florida, 33480, and RPP Palm Beach Property, LP (hereinafter called "RPP"), 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467, collectively referred to herein as "The Parties"), which terms "Town" and "Tutto Mare" and "RPP" 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 "_____" attached hereto and made a part hereof (hereinafter referred to as the "Land" or "Property") is located within the municipal limits of the Town; and

WHEREAS, the Tutto Mare location falls within the Town's C-PC Zoning District at the Royal Poinciana Plaza, which is controlled by RPP; and

WHEREAS, Tutto Mare desires a Special Exception Use / Site Plan Review / Variances at the Property to operate a restaurant called Tutto Mare; and

WHEREAS, the Town Council conditionally approved Application Number _____ on _____, 2024 which granted the _____;

_____;

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exceptions / Site Plans / Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and

WHEREAS, on March 9, 2022, the Town Council did, after public notice and public hearing, approving Zoning Application ZON-21-018, which authorized the redevelopment of the Property, including a restaurant of 220 seats; based upon a valet plan and traffic study that were reviewed and approved by the Town;

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 AUTHORITY

Tutto Mare, RPP and the Town have full right to enter into this Agreement and to bind the parties 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. The execution of this Agreement or the consummation of the transactions contemplated herein will not violate any restriction, court order or agreement to which the Space, Building, or Land are subject.

ARTICLE III [TYPE OF] USE

The restaurant use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as ZON-24-003/COA-23-047 and approved by the Town Council on _____, 2024 as the same may be amended from time to time (hereinafter referred to as the "Approval").

ARTICLE IV CONDITIONS

The approval shall be based upon the following conditions [Check those Conditions that are applicable and propose language and metrics to complete each Condition checked]:

[CONTINUED NONCONFORMING USE / ACCESSORY USES:]

- ☒ The project was approved for the continued operation of a Tutto Mare Restaurant with accessory outdoor seating use. The following licenses shall be required to be applied for, reviewed, and approved annually: business tax receipt and outdoor café permit.

[OCCUPANCY / MEMBERSHIP:]

- ☒ The maximum occupancy, which includes employees, shall not exceed 225 people, based upon 64 outdoor seats, 66 bar seats, 70 dining room seats, and 25 staff.

[HOURS:]

- ✓ The Tutto Mare Restaurant shall be located at Royal Poinciana Playhouse. The hours of operation will be 8:00 a.m. to 10:00 p.m. Sunday through Thursday, and 8:00 a.m. to 11:00 p.m. Friday and Saturday. All guests will be required to exit the Tutto Mare Restaurant within 30 minutes of closing time. Closing time as used herein refers to the time after which the kitchen will no longer serve food.
- ✓ The outdoor terrace hours will be 8:00 a.m. to 10:00 p.m. Sunday through Thursday, and 8:00 a.m. to 11:00 p.m. Friday and Saturday.
- ✓ The Tutto Mare Restaurant shall be allowed to remain open until 2:00 a.m. on New Year's Eve. Valet parking shall be managed as set forth in the valet parking plan that was previously reviewed and approved by the Town Council during its review of Zoning Application ZON-21-018 , attached hereto as Exhibit “_____”

[FOOD & BEVERAGE SERVICE / NUMBER OF SEATS:]

- ✓ There will be no dinner reservations made earlier than 5:00 p.m.
- ✓ Breakfast, lunch, and dinner seating shall be limited to 200 seats, including bar and outdoor seating.

[BUILDING:]

- ✓ The main entrance to the Tutto Mare Restaurant shall be through double doors generally located in the middle of the south-side of the restaurant space.
- ✓ No Tutto Mare Restaurant guests, or other social or leisure activity or entertainment of any kind will be permitted on the roof of the Tutto Mare Restaurant or other part of the Royal Poinciana Playhouse building.
- ✓ The Tutto Mare Restaurant shall provide state of the art exhaust vents and scrubbers and shall have them cleaned on a weekly basis.

[NOISE:]

- ✓ Any violation of the noise ordinance as verified by a Town official shall be deemed a violation of this Agreement.

[MUSIC / SOUND / D.J.'S:]

- ✓ There shall be no dance floor or amplified live music, with the number of musicians limited to 0.
- ✓ The only amplified music allowed in the inside of the restaurant area shall be background music played via the Tutto Mare Restaurant custom-designed sound system that governs volume.
- ✓ No D.J.s with external sound equipment shall be allowed to perform.
- ✓ Only soft, ambient, background music shall be permitted from 8:00 am to closing inside the restaurant, and from 10:00 a.m. to closing outside within the outdoor seating area. Background music will not be audible from outside of the Property.
- ✓ All music will comply with the Town's noise ordinance found in Section 42-228, as may be amended from time to time, including compliance with times and decibel readings.

[PARKING:]

- ✓ It is the intent of this Agreement to preserve the nearby residential character of the neighborhood and to not allow members and guests of the Tutto Mare Restaurant to park on residential streets. Parking shall be provided in accordance with the parking plan shown in the approved plans for Zoning Application ZON-21-018, attached hereto as Exhibit "_____" and the Amended and Restated 1979 Agreement, attached hereto as Exhibit "_____".

[VALET SERVICES:]

- ✓ Valet parking is required from 10:00 a.m. until closing. The valet stand and car service and taxi drop off and pick up shall be located in the valet motor court at The Royal Poinciana Playhouse parking lot as depicted on Exhibit "_____"

[DELIVERIES:]

- ✓ The Tutto Mare Restaurant shall instruct its delivery services to function without using the south-side front entry doors. The Tutto Mare Restaurant shall instruct its delivery services to use the back of house door on the south elevation of the restaurant. There shall be no Tutto Mare Restaurant deliveries or vendor services before 8:00 a.m.

[GARBAGE:]

- ✓ All trash shall be stored inside the Tutto Mare Restaurant and will not be taken to the dumpster until after 8:00 a.m. the following day.
- ✓ All trash shall be stored in the indoor trash room inside the Tutto Mare Restaurant daily and not taken to the outdoor rubbish receptacle until after 8:00 a.m. the following day.

[LIGHTING:]

- ✓ The Tutto Mare Restaurant shall not add lighting to The Royal Poinciana Plaza's parking lots.
- ✓ All lights in the Parking lot shall be low level so that they shine downward and do not produce any light or glare which would adversely affect surrounding properties.
- ✓ Any future lighting, including terrace lighting, will first receive all required Town approvals prior to the installation of the lighting, and shall comply with the "Town of Palm Beach Exterior Lighting Requirements" in perpetuity.

[MAINTENANCE:]

- ✓ Maintenance Provisions:
 - ✓ The Tutto Mare Restaurant shall at all times be continually maintained with the upmost standards of a first-class restaurant and will comply with all ordinances, rules and regulations of the Town of Palm Beach, Palm Beach County, and State of Florida, (and each of the foregoing governmental entity's respective districts, departments, and agencies) as to maintenance, health, and safety standards.
 - ✓ All buildings and improvements shall be maintained in a first-class condition, especially as to the exterior appearance. Painting and other exterior maintenance shall be periodically performed as reasonably required. No excessive and/or unsightly mildew, rust deposits, dirt, graffiti, or deterioration shall be permitted to accumulate on any building or other improvement. The glass in windows and in glass sliding doors shall not be cracked or broken. Building openings shall not be boarded up. Foundations, exterior walls, and roofs shall be weather-tight and shall be maintained in good repair. All appurtenances to any structure, such as awnings, shutters, doors, rails, and light fixtures shall be securely attached

and in working condition, and shall not be broken, hanging loose, or falling away from the structure. All walls and fences shall be maintained in good repair and in an upright condition and shall be free from graffiti, or broken, cracked, or leaning sections, or loose component pieces.

✓ All landscaping within the Land shall be regularly maintained with proper horticultural and arboricultural practices, including without limitation such replanting and, as is from time to time necessary, mowing, trimming, fertilization, and weed, insect, and disease control. All dead or diseased sod, trees, plants, shrubs, or flowers shall be promptly replaced.

✓ Maintenance or other actions reasonably required by the Town to meet the forgoing Maintenance Provisions in Paragraph 21 shall be commenced and completed within a commercially reasonable time period as determined by the Town Director of Planning, Zoning, and Building Department within the exclusive reasonable exercise of his or her discretion, and a failure to maintain or take other curative action as so reasonably required shall be subject to being treated by the Town as a violation of the terms and conditions of this Agreement. The Maintenance Provisions of this Declaration of Use Agreement provide the Town with supplemental means to assure that the buildings and improvements on the Land are maintained and shall not create any obligation on the Town (or its officials, officers, or employees) to conduct such maintenance or enforce the Maintenance Provisions of this Declaration of Use Agreement. Further, the Maintenance Provisions of this Declaration of Use Agreement shall not prevent the Town from enforcing any building or structure maintenance or appearance law or regulation the Town may currently enforce, or that may from time to time become applicable in the future.

[COMPLIANCE:]

- ✓ The Town shall have the right to conduct inspections on the Buildings and Land on a periodic basis to ascertain compliance with this Agreement. Failure to allow an inspection by the Town will constitute a violation of this Agreement.
- ✓ The Owner or operator of the Tutto Mare Restaurant shall provide an affidavit of compliance each year at the time of renewal of the business tax receipt.

**ARTICLE V
VOLUNTARY AGREEMENT**

The Parties agree to be bound by the terms and conditions in this Agreement and waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

**ARTICLE VI
REMEDIES FOR VIOLATION**

1. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this Agreement or any other provision in the Town Code of Ordinances, and upon notice in writing from the Town to Tutto Mare, RPP, and their representative of said violation(s) and the date upon which said violations(s) shall be corrected, Tutto Mare, RPP and/ or their successor(s) or assigns shall pay to the TOWN a liquidated amount of \$2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to the owner. The Town Council may, upon a finding of violation, alter this Agreement or rescind the approval of the use.

In the event Tutto and/or RPP disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this Agreement, or in the event Tutto and/or RPP dispute any code violation, Tutto and/or RPP may appeal the determination of the Director of the Planning, Zoning and Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days following the written notice of violation.

2. The Town 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; (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific 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 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 Town shall be entitled to recover its costs, expenses, and reasonable attorney's fees insofar as the Town prevails, either before or as a result of litigation, including appeals.

**ARTICLE VII
PROVISIONS TO RUN WITH
THE [LAND, OWNER, TENANT]**

This Agreement shall run with the Land and shall be binding upon the Parties. This Agreement shall be recorded by Tutto Mare in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.

**ARTICLE VIII
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 IX EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which this Agreement is executed by the last party to sign the Agreement.

ARTICLE X MISCELLANEOUS PROVISIONS

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.

All references in this Agreement to times of a day are stated in terms of Eastern Standard Time, i.e., whichever of Eastern Standard Time or Eastern Daylight Time may be in effect at the time. The word "day" in this Agreement means any period beginning when the time of day is midnight and ending on the next later occasion when the time of day is midnight.

This Agreement 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.

In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken from 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.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

[Signatures, Notary, and Exhibits to follow]