

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

INNOVATE CORP.

March 2022

**Prepared by and return to:
Francis X. J. Lynch, Esquire
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DECLARATION OF USE AGREEMENT

THIS 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 called the “Town”); and INNOVATE CORP., a Delaware corporation, 295 Madison Avenue, 12th Floor, New York, New York 10017, (hereinafter called “Innovate”) which terms “Town” and “Innovate” will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH :

WHEREAS, the Property described in Exhibit “A” attached hereto and made a part hereof (hereinafter referred to as the “Property”) is located within the municipal limits of the Town; and

WHEREAS, Innovate is a cultural arts center exceeding 3,000 square feet which is a permitted use in the C-PC Zoning District with Special Exception approval; and

WHEREAS, the Town Council conditionally approved Zoning Application No. ZON-22-018 (the “Application”) on March 9, 2022, which authorized Innovate to operate a cultural arts center at the above referenced location and approved the renovation of the theater building; and

WHEREAS, the Application was approved, subject to the conditions set forth herein and the approval of this Declaration of Use Agreement on the basis of Innovate’s application, the testimony on behalf of Innovate, and the specific finding of the Town Council that the proposed cultural arts center be beneficial and compatible with the neighborhood, and upon a finding by the Town Council that the applicable provisions of the Town Code governing use of the Property and Special Exception criteria have been met; and

WHEREAS, should Innovate fail to comply with the conditions set forth by the Town Council on March 9, 2022 as further set forth in Article IV below, the approval of the Special Exception may be revoked and Innovate’s operation may cease as identified in the application; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exception is 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 AUTHORITY

Innovate has the full right to enter into this Declaration of Use Agreement and to bind themselves to the terms of this Agreement. 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 and the Agreement dated March 6, 1979, as amended. 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 Property are subject.

ARTICLE III

CULTURAL ARTS CENTER USE

The use of Property shall be for the operation of a cultural arts center in compliance with all of the information and exhibits, not inconsistent with the terms and conditions set forth herein, as set forth in the Application and the conditions of approval as authorized by Town Council on March 9, 2022 as the same may be amended from time to time (hereinafter referred to as the "Approval").

ARTICLE IV

CONDITIONS

The approval for Innovate to operate the cultural arts center is conditioned upon the following:

- 1) Valet parking shall be operated in accordance with the traffic and valet circulation plan named "Traffic – Small/Medium Event Ingress Circulation" dated March 9, 2022.
- 2) The hours of operation will be from 8:00 am until 12:00 am, seven days a week for members of the public.
- 3) Innovate will not have full capacity cultural arts programming prior to 6pm when The Royal Poinciana Plaza is hosting an outdoor promotional event.

ARTICLE V
VOLUNTARY AGREEMENT

Innovate agrees 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 Town Council of a violation of any of the terms or conditions of this Agreement and upon notice in writing from the Town to Innovate and Innovate's representative of said violation(s) and the date upon which said violation(s) shall be corrected, Innovate 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 Town Council, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to Innovate.

In the event Innovate, its representatives, successors and assigns, disputes the determination of the Town Council that a violation of this Agreement has occurred, Innovate may appeal its decision to the Circuit Court in and for Palm Beach County, Florida.

2. In addition to the above, the Town and/or Innovate 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 INNOVATE/RECORDING

This Agreement shall run with Innovate and shall be binding upon Innovate, its representatives, successors and assigns, and shall terminate upon the termination of the Special Exception Permit or the business tax receipt for Innovate or rescission of approval by Town Council. This Agreement shall be recorded by Innovate in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.

ARTICLE VIII

ENTIRE AGREEMENT

This Agreement and Special Exception under Application ZON-22-018 represent 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

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 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 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.

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

Print Name: _____

By: _____
Danielle Moore, Mayor

Print Name: _____

Print Name: _____

By: _____
Margaret Zeidman, President Town Council

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

Print Name: _____

INNOVATE CORP.

Print Name: _____

By: _____
Its: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by Danielle Moore, 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.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

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 and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

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 and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2022, by _____, on behalf of INNOVATE CORP. He/She is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

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

By: _____
John C. Randolph, Esquire

EXHIBIT “A”

LEGAL DESCRIPTION