

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

And

RPP PALM BEACH PROPERTY LP

And

INNOVATE CORP.

April 2022

**Prepared by and return to:
James M. Crowley, Esquire
Gunster
777 S. Flagler Drive, Suite 500 East
West Palm Beach, FL 33401**

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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"); INNOVATE CORP., a Delaware corporation, 295 Madison Avenue, 12th Floor, New York, New York 10017, (hereinafter called "Innovate"); and RPP PALM BEACH PROPERTY LP, a Delaware Limited Partnership, 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467 ("RPP")(collectively, the "Parties"), which terms "Town" and "Innovate" and "RPP" 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~~ has been approved to operate 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, among other things, RPP's proposed renovation of the theater building and parking area; 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 the Application, the testimony on behalf of Innovate and RPP, and the specific finding of the Town Council that the proposed cultural arts center is 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, Site Plan, and Variance criteria have been met; and

WHEREAS, should RPP and 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 and RPP have 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 by the Town Council at its public meeting on April 13, 2022. 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 valet circulation plan dated April 1, 2022, prepared by Simmons and White and attached hereto as Exhibit "B"; provided that the number of valet attendants shall be adjusted to maintain a regular maximum queueing of fifteen total cars;
- 2) The hours of operation for the cultural arts center shall run from 8:00 am until 12:00 am, seven days a week, for members of the public; provided that, on January 31 of each year, the cultural arts center may remain open until 2:00 AM for New Year's Eve;

- 3) Innovate shall not have a cultural arts programming event that exceeds half capacity prior to 6pm on dates when RPP is also hosting an outdoor promotional event at the Property prior to 6pm.
- 4) During the period from November 1 to April 30th, Innovate shall utilize ~~an~~two off-duty police officers to assist with traffic control for cultural arts center events that occur on weekdays between the hours of ~~2:30:00~~ p.m. and 5:~~300~~ p.m if said events will exceed a capacity of ~~75~~100 people.

ARTICLE V VOLUNTARY AGREEMENT

Innovate and RPP 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 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, RPP, and their representatives 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 and RPP.

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

2. In addition to the above, the Town and/or Innovate and/or RPP 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, RPP, and their 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 the Application 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 or assigned 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: _____

Print Name: _____

RPP PALM BEACH PROPERTY LP

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: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of
____ 2022, by _____, on behalf of RPP PALM
BEACH PROPERTY LP. 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

EXHIBIT "A"

PARCEL A:

A parcel of land in Section 22, Township 43 South, Range 43 East, Palm Beach County, Florida, bounded as follows:

On the north by the southerly right-of-way line of Royal Poinciana Way; on the east by the westerly right-of-way line of Cocoanut Row; on the west by the Waters of Lake Worth; on the south by the following described line:

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Cocoanut Row, as said streets are described in deed recorded in Deed Book 814, Page 477, and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Cocoanut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of 23°53'30"; hence northerly along the arc of said curve, a distance of 137.44 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 59.62 feet to the point of beginning of the herein described south line; thence westerly making an angle from southwest to west of 66°14'30", a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of a curve to the northeast, having a radius of 65.03 feet and a central angle of 85°42'43", a distance of 97.28 feet; thence northwesterly a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, Page 226, public records of Palm Beach County, Florida, said southeast corner is located on the arc of a curve concentric with the last herein described curve, and having a radius of 90.03 feet and a central angle of 102.55'30" and is 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature of a curve concave to the west, having a radius of 513.29 feet and a central angle of 15°35'22"; thence northerly along the arc of said reverse curvature a distance of 97.62 feet to a point in a line parallel with and 461.20 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, Page 226, public records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the Waters of Lake Worth and the end of herein described southerly line.

Excepting, however, so much of a nearly rectangular area of land, together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing described parcel of land, and which nearly rectangular area of land has a southerly boundary of 208.44 feet, an easterly boundary of 71.20 feet, a northerly boundary of 190.74 feet plus 12.08 feet, on two different courses coinciding with the south line of the east approach of Flagler Memorial Bridge, and having a westerly boundary of 71.38 feet coinciding with the west face of an existing concrete bulkhead within the Waters of Lake Worth, and all as such nearly rectangular area of land in riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company to Town of Palm Beach, dated September 11, 1939, and recorded in Deed Book 592, Page 478, of the public records of Palm Beach County, Florida.

ALSO EXCEPTING, HOWEVER, ROYAL POINCIANA WAY ADDITIONAL RIGHT-OF-WAY DESCRIBED IN ORDER OF TAKING, AS RECORDED IN OFFICIAL RECORDS BOOK 23661, PAGE 787, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

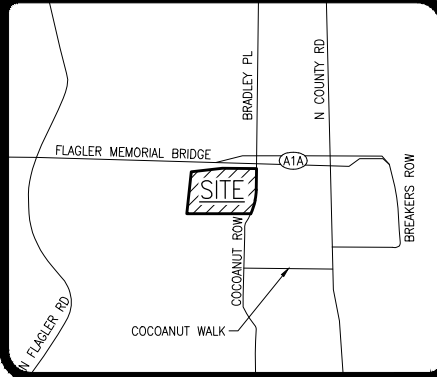
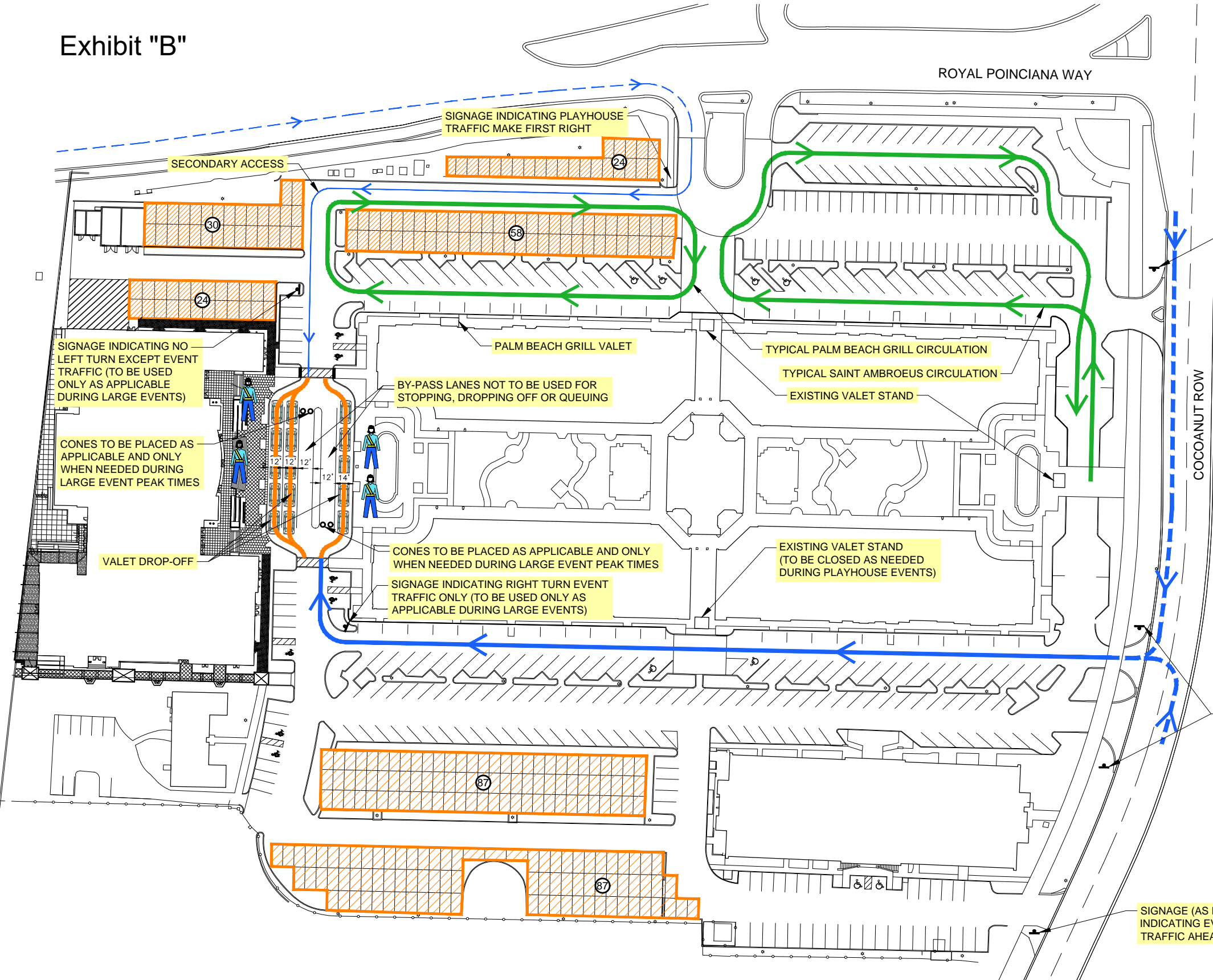
PARCEL B:

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

Beginning at a point on the Westerly right of way line of Cocoanut Row as laid out and in use, at a distance of 173.9 feet South of the intersection of said West line of the right of way of Cocoanut Row and the Southerly right of way line of Royal Poinciana Way, thence Westerly parallel to the Southerly right of way line of said Royal Poinciana Way a distance of 868.33 feet; thence Southerly at right angles to the preceding course a distance of 245.3 feet to the beginning of a curve concave to the West having a radius of 513.29 feet and a central angle of $15^{\circ}35'22''$; thence Southerly along the arc of said curve a distance of 42.04 feet to the Point of Beginning and the Northeast corner of the parcel of land herein described; thence continue Southerly along the arc of said curve a distance of 97.62 feet to a point of reverse curvature; thence Southerly along the arc of a curve to the East and having a radius of 599.29 feet, a distance of 4.06 feet to a point in the South line of the herein described parcel; thence Westerly, parallel to and 561.2 feet Southerly (measured at right angles) from the Southerly right of way line of said Royal Poinciana Way, a distance of 180 feet, more or less, to the waters of Lake Worth; thence Northerly along the waters of Lake Worth to a point in a line parallel to and 100 feet Northerly (measured at right angles) from the Southerly line of the herein described parcel; thence Easterly along said Parallel line a distance of 185 feet more or less to the Point of Beginning.

TOGETHER WITH the non-exclusive easement for ingress and egress as set forth in Deed dated March 31, 1955, recorded April 19, 1955, in Deed Book 1090, page 264, of the Public Records of Palm Beach County, Florida.

Exhibit "B"



LOCATION MAP
NOT TO SCALE



OPERATIONAL MANAGEMENT
STAFF DUTIES:



VALET ATTENDANTS:
EXACT NUMBER OF ATTENDANTS WILL
VARY AND DEPEND ON EVENT TYPE

LEGEND

- INGRESS QUEUE
- VALET DROP-OFF
- EXISTING RESTAURANT TYPICAL
VALET CIRCULATION

TOTAL VALET SPACES = 310

MINIMUM VALET
REQUIREMENTS *

EVENT SIZE	VALET ATTENDEES
100	3
200	4
300	5
400	7

* MINIMUM VALET ATTENDEES
REQUIRED TO MAINTAIN EVENT
QUEUE AT 15 VEHICLES OR LESS

VALET CIRCULATION AND PARKING PLAN

4/1/2022

REVISIONS

SIMMONS & WHITE
ENGINEERING | PLANNING | CONSULTING | DESIGN
2581 Metrocentre Blvd West • Suite 3 • West Palm Beach, Florida 33407 • (561) 478-7848

ROYAL POINCIANA PLAYHOUSE
SECTION 22, TOWNSHIP 43S., RANGE 43E.
TOWN OF PALM BEACH, FLORIDA
TRAFFIC CIRCULATION EXHIBIT

DESIGN B.K.	DRAWN C.O.	CHECKED	APPROVED	DATE
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JOB NO. 21-119	DRAWING NO. 21119215	SHEET 1	OF 1
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EXHIBIT B