

## **RIGHT OF ENTRY LICENSE AGREEMENT**

This Right of Entry License Agreement (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Port St. Lucie, a Florida municipal corporation, whose address is 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida 34984 ("Licensor" or "City"), and Mattamy Palm Beach, LLC, a Delaware limited liability company, whose mailing address is 4901 Vineland Road, Orlando, Florida 32811 ("Licensee").

Licensor is the owner of certain vacant land located in the City of Port St. Lucie, St. Lucie County, Florida, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Land").

Licensee wishes to enter upon the Land for the purpose of making certain inspections, investigations, and preliminary site work, as more particularly set forth herein, while a more comprehensive agreement relating to construction of park infrastructure improvements is being negotiated between Licensor and Licensee.

Licensor is willing to allow Licensee to enter upon the Land as set forth in this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, the parties hereby agree as follows:

**1. Terms of Right of Entry.** Licensee will be permitted to enter upon the Land pursuant to this Agreement from the Effective Date (as defined below) of this Agreement until the earlier of: (a) the date the execution of a comprehensive agreement between Licensor and Licensee relating to Licensee constructing the park is executed, or (b) one hundred and twenty (120) days after the Effective Date. The "Effective Date" of this Agreement will be the later of: (a) the date both parties have fully signed this Agreement, or (ii) the date upon which Licensee submits to Licensor evidence satisfactory to Licensor of the insurance coverage required below.

**2. Scope of License Agreement.** The Licensor hereby grants Licensee a revocable non-exclusive license to do the following on the Land during the term of the License:

Scope of work shall consist of and be limited to inspections, investigations, and preliminary site work, including clearing operations and construction of a stormwater detention pond and associated drainage infrastructure necessary to construct the Tradition Parkway extension project. Licensee is responsible for providing all permits necessary for the construction of this drainage work.

**3. Insurance Required Prior to Entry Upon the Land.** Prior to any entry upon the Land, Licensee must provide Licensor a certificate of insurance, Licensee shall provide

certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. Licensee is responsible for ensuring that all contractors or subcontractors performing work relating to this Agreement have policies of insurance reflecting the coverage set forth below, without the language when required by written contract:

- i. Workers' Compensation Insurance & Employer's Liability: The Licensee shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Chapter 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis.
- ii. Commercial General Liability Insurance: The Licensee shall agree to maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Medical expense	\$10,000 any 1 person
- iii. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance and must include coverage for on-going and Completed Operations (should be ISO CG2037 & CG2010) under the General Liability policy. Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of completion of the work performed pursuant to this Agreement. Coverage is to be written on an occurrence form basis. Coverage shall apply on a primary and non-contributory basis. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests' provision as provided under the standard ISO form separation of insurers clause.
- iv. Certificate of Insurance. Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by this Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability policy. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers,**

**employees and agents and shall include License Agreement for Western Grove Park 1 be listed as additionally insured."** The Policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Agreement to exceed the above limits, the Licensee shall be required, upon receipt of thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. In the event that Licensee is unable to obtain such coverage, Licensee shall have the right to terminate this Agreement. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance.

- v. Automobile Liability Insurance: The Licensee shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Licensee does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Licensee to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary non-contributory basis.
- vi. Waiver of Subrogation: The Licensee shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Licensee enter into such a Contract on a pre-loss basis.
- vii. Deductibles: All deductible amounts shall be paid for and be the responsibility of the Licensee for any and all claims under this License Agreement.

It shall be the responsibility of the Licensee to ensure that all independent contractors and/subcontractors comply with the same insurance requirements as listed herein, including Products & Completed Operations coverage for a minimum of five (5) years from the date of completion of the improvements built pursuant to this Agreement. It will be the responsibility of the Licensee to obtain Certificates of Insurance from all contractors and subcontractors listing the City as an Additional Insured, without the language when required by written contract. If contractor, independent contractor or subcontractor maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by contractor/independent contractor/subcontractor.

All insurance carriers must have an AM Best rating of at least A:VII or better.

**Nothing in this Agreement shall be construed as a waiver of sovereign immunity by City whether by contract or under any law or regulation.** Failure of Licensee to promptly

provide the defense or indemnification required herein is a material breach of this License Agreement which can result in immediate termination notwithstanding any other provision herein. **City's liability in all instances shall be limited to the monetary limits set forth in s. 768.28, Florida Statutes.**

**4. Inspections Permitted.** From and after the Effective Date, and subject to satisfaction of the foregoing insurance and notice requirements, Licensee, and Licensee's employees, consultants, contractors, agents and similar professionals (each a "Licensee Party" and collectively the "Licensee Parties") will have the right to enter upon the Land for the purpose of making such tests, analyses, and investigations as Licensee may deem necessary or desirable, including but not limited to soil tests, groundwater tests, environmental assessments, and surveys. Licensee's testing shall not include any test pits or Phase II environmental testing ("**Phase II**") other than as permitted below without Licensor's prior written consent, which may be withheld or conditioned in Licensor's reasonable discretion. Without limiting the foregoing, License and Licensee Parties may conduct environmental composite soil testing, Standard Penetration Tests, Cone Penetration Test borings, and auger borings on the Land without Licensor's prior approval, and Licensee Parties may only conduct any Phase II if (a) Licensee's Phase I environmental study ("**Phase I**") recommends the performance of a Phase II, (b) a copy of such Phase I is delivered to Licensor, (c) Licensee obtains Licensor's approval of Licensee's proposed Phase II protocol, (d) Licensee coordinates the on-site assessment with Licensor to enable a representative of Licensor to be present, and (e) if requested by Licensor, Licensee delivers a report of such Phase II.

**5. Indemnification.** Licensee shall indemnify and hold harmless Licensor (and their respective officers, officials, employees, contractors and other representatives) from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees and court costs) relating to injury to persons or damage to property, or both, caused by any Licensee Party in connection with any entry on the Land, construction on the property, evaluation or inspection of the Land, or any other act or omission of a Licensee Party pertaining to Licensee's inspection of the Land or construction on the Land, except to the extent resulting from the gross negligence or willful misconduct of the Licensor and its respective officers, officials, employees, contractors and other representatives. The Parties do not alter, extend or waive any defense of sovereign immunity to which they may be entitled under the Florida Constitution, section 768.28, Florida Statutes, or as otherwise provided by law.

**6. No Warranty.** The Licensor makes no warranty regarding the condition of the Land. The Licensee and Licensee Parties shall access the Land at their sole risk.

**7. Compliance with Applicable Laws.** Licensee's investigations of the Land must at all times comply with all applicable federal, state and local laws, rules, and regulations and with any agreements in effect with respect to the Land that have been disclosed to Licensee. Additionally, all contractors performing work on the Land on behalf of Licensee must be

licensed and insured.

**8. Liens.** Licensee shall permit no liens or claims of lien to be filed against the Land and shall promptly discharge or transfer to bond any lien that may be filed against the Land by reason of the activities of the Licensee thereon, so long as Licensors provides Licensee with notice of such lien. It is understood and agreed by Licensee that it is not given any lien rights against the Land, and any such rights are hereby waived and released.

**9. Restoration of Land.** After completing any tests, inspections or other activities, including construction or site work activities, on the Land, Licensee shall restore the Land to the condition existing prior to the Licensee inspections, including but not limited to filling in holes, and removing any tools or equipment used during any test, inspection or other activity. Licensee shall notify Licensors in writing if Licensee discovers any defect or dangerous condition on the Land requiring Licensors's immediate attention. Licensee's obligation to restore the Land shall survive any termination of this Agreement. Notwithstanding the foregoing, if the comprehensive agreement relating to the Licensee constructing park infrastructure improvements between Licensors and Licensee is completed prior to Termination of this Agreement, Licensee has no obligation to restore improvements to the Land consistent with the comprehensive agreement and the improvements have been completed as evidenced by an Engineer's signed and sealed completion certification.

**10. Notices.** Any notices to be delivered pursuant to this Agreement shall be delivered in writing to the parties at the addresses set forth in the preamble hereof. Either party may change its address for notice purposes by delivering written notice thereof to the other party. Notices required by this Agreement shall be effective if delivered by hand, overnight courier service, or U.S. Mail, postage prepaid. Notices shall be deemed received within three (3) days of deposit in the mail if sent by U.S. Mail, upon delivery if hand delivered, and one (1) business day after deposit with any overnight courier service if sent in such manner.

**11. Amendment; Waiver.** This Agreement may only be amended, modified or terminated by an instrument executed by both parties hereto, or their respective successors or assigns. No waiver of any provision hereof shall be effective unless set forth in writing signed by the party entitled to enforce such matter, nor shall any single waiver constitute a waiver of any subsequent obligation.

**12. Governing Law; Venue.** This Agreement shall be governed in accordance with Florida law. Venue for any dispute arising under this Agreement shall lie exclusively in the courts in and for St. Lucie County, Florida.

**13. Counterparts.** This Agreement may be executed in two or more separate counterparts, each of which shall be deemed an original, and all of which when taken together, shall constitute one and the same instrument.

**14. No Third Party Beneficiaries.** No person or entity shall be deemed a beneficiary

of the terms of this Agreement, unless specifically provided for herein. The rights granted hereby, and other terms and conditions of this Agreement shall not constitute dedications to the public, and no member of the public shall have any rights hereunder.

**15. Sovereign Immunity.** Nothing in this Agreement shall be deemed or otherwise interpreted as waiving City's sovereign Immunity protections existing under Florida Statutes, case law, or any other source of applicable governing law, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes, as amended.

**16. Time Periods.** Any time periods provided for herein which ends on a Saturday, Sunday or a legal holiday will extend to 5:00 p.m. of the next business day.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to bind the respective parties and have executed this Agreement as of the date first written above.

**LICENSOR:**

**CITY OF PORT ST. LUCIE**, a Florida municipal corporation

By: \_\_\_\_\_  
Russ Blackburn, City Manager

Date: \_\_\_\_\_

**LICENSEE:**

**Mattamy Palm Beach, LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit A**  
**Depiction of the Land**