

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 2020, by and

between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

MAG Real Estate and Development, Inc. a Florida corporation, with offices located at 933 South Congress Avenue, Delray Beach, Florida 33445, hereinafter referred to as "LICENSEE."

WITNESSETH:

WHEREAS, LICENSEE is the Property owner tasked with assessing and remediating the groundwater impacts associated with its real property located at 1621 South Dixie Highway, Pompano Beach, Florida 33060 ("Project"); and

WHEREAS, LICENSEE desires to obtain a license from CITY to use certain CITY right-of-way (Broward County Parcel ID No. 4942 11 00 0530) adjacent to LICENSEE's Property for the purpose of installing, operating and maintaining groundwater monitoring wells; and

WHEREAS, LICENSEE's proposed use of CITY's right-of-way will not interfere with the rights enjoyed by the public nor will such use result in a direct or indirect cost to the public.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, the parties agree as follows:

1. AUTHORIZATION AND DESCRIPTION OF PROPERTY.

CITY grants to LICENSEE, and LICENSEE accepts from CITY, a non-exclusive license to occupy a portion of the right-of-way along South Dixie Highway, Broward County Parcel ID

No. 4942 11 00 0530 ("Property"), legally described as set forth in Exhibit "A," attached and made a part of this Agreement, for the installation, maintenance and proper abandonment of a flush-mounted groundwater monitoring well and additional shallower or deeper monitoring wells with similar surface construction features and for periodic sampling from each well ("Project Improvements"), as may be required by the Broward County Environmental Protection and Growth Management Department, Environmental Engineering and Permitting Division. The location of each Improvement is depicted in detail on Exhibit "B," attached and made a part of this Agreement. In exchange, LICENSEE agrees to pay CITY as compensation for this License in the sum of One Dollar (\$1.00) per annum. Receipt of the first payment of One Dollar (\$1.00) is acknowledged.

2. TERM.

The term of this license shall run in perpetuity provided the LICENSEE continues to maintain the Improvements in good operating condition as determined by the CITY and the surrounding Property in substantially the same condition as it existed prior to the Improvements being installed by Licensee and also as reasonably determined by the CITY. Should the CITY reasonably determine that the LICENSEE has failed to maintain the Improvements, that a higher municipal use is required of subject Property, that the public's health, safety or welfare is at risk, or that it wishes to terminate this Agreement for any other reason, then LICENSEE shall be notified to immediately cease use of the Property as it relates to the installation and maintenance of the Improvements. Notice shall be sent in writing, in accordance with Paragraph 13 hereof.

3. USE OF PREMISES.

A. LICENSEE shall use and occupy the right-of-way for the installation, periodic sampling, maintenance and proper abandonment of a flush-mounted groundwater monitoring well and additional shallower or deeper monitoring wells with similar surface

construction features, as may be required by the Broward County Environmental Protection and Growth Management Department, Environmental Engineering and Permitting Division.

B. LICENSEE specifically agrees that the Property shall not be used for any other purpose whatsoever without the CITY's written consent. LICENSEE shall not permit the licensed Property to be used or occupied in any manner that is inconsistent with the use granted or that violates any laws or regulations of a governing authority. LICENSEE shall at all times, with the exception of when work is being done as approved by CITY, keep and maintain Property in as good of a condition or better than existing at the start of construction of any Improvements. LICENSEE shall provide documentation (such as pictures, video, topographic surveys) to the CITY Engineer to establish the conditions that existed on the Property prior to construction. Any and all damage caused as a result of such installation of the Project Improvements to any Property elements, including, but not limited to pavement, curbs, sidewalks, landscaping, trees, irrigation, utility poles, located within the CITY right-of-way shall be restored or repaired by LICENSEE to a condition equal to or better than that existed prior to commencement of construction or installation of the Project Improvements. Similarly, LICENSEE shall be responsible for all damage to any subsurface features including, but not limited to, water service lines, utility access lines, covers, water meter boxes, water isolation valve systems, and sanitary sewer cleanouts that may deteriorate as a result of removing asphalt, base materials, compaction, or paving operations. LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. LICENSEE shall notify all necessary utility companies, 48 hours in advance prior to digging for verification of all underground utilities, irrigation and any other obstructions and coordinate such utility review prior to initiating Improvements. LICENSEE agrees that this license is contingent upon LICENSEE submitting an Engineering Permit with the appropriate fee, along with a site plan or location plan, blueprints

and other documentation as required by the City Engineering Department for the issuance of a permit and granting of this License. Compliance with this Agreement does not in any way waive any other CITY building or construction ordinances, fees or requirements. LICENSEE shall not commence construction or occupy the right-of-way prior to obtaining all necessary permits and approvals.

4. ASSIGNMENT.

LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this License to any other person or business entity without the CITY's prior written consent. In the event of an attempt to assign, transfer, convey or otherwise dispose of this License to any person or business entity not specifically a party to this Agreement and License, then this License shall be null and void and terminated without notice to LICENSEE.

5. MAINTENANCE.

LICENSEE agrees to at all times maintain and repair, during the term of this Agreement, at its sole cost and expense the Project Improvements and ensure that such Improvements are in good working condition, as reasonably determined in the CITY's sole discretion. Construction activities shall not commence until LICENSEE submits to the CITY Engineering Department a maintenance of traffic plan for approval. LICENSEE assumes all risks in the operation and maintenance of the Project Improvements on the Property and shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, regardless whether occasioned by the LICENSEE, its officers, employees, contractors or agents. LICENSEE further agrees that it shall not make any alteration to the Project Improvements that would increase the Improvements' size or capacity or any other substantial alteration without the CITY's prior written consent.

6. INDEMNIFICATION.

A. LICENSEE shall indemnify, defend and hold harmless the CITY and its officials, agents and employees from and against any and all claims, losses, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising from this Revocable License Agreement. LICENSEE acknowledges and agrees that the CITY's authorization to occupy, and the benefit it receives from its use of the CITY's right-of-way under this Agreement shall serve as consideration for such indemnification.

B. LICENSEE shall be solely responsible and answerable for damages related to all accident or injuries to person or property arising out of or caused in the performance of the Project done pursuant to this Agreement by or on behalf of LICENSEE. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in § 768.28, Florida Statutes.

7. INSURANCE.

LICENSEE shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this agreement and any renewals. The insurance policy shall contain a sixty (60) day cancellation clause period and a Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "C."

8. TAXES.

As further consideration of this License Agreement, LICENSEE further agrees to pay any taxes of whatever nature which may validly be levied against the premises or pursuant to this Agreement during the continuance of this Agreement.

9. AMENDMENTS.

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

10. SURRENDER UPON TERMINATION.

A. LICENSEE shall peaceably surrender this License and restore the licensed Property to its original condition or better upon CITY's written notice, as provided for in Section 13, that LICENSEE has failed to maintain the Improvements to the CITY's satisfaction or other reasons as provided for in Section 2 of this Agreement.

B. LICENSEE shall remove from the licensed Property, at LICENSEE's own expense, any Improvements, fixtures, equipment or other personal property and, thereafter, the License shall be considered abandoned and terminated. Upon completion of LICENSEE's removal, the condition of the Property shall be such that it is safe and not a hazard and in its original condition or better as determined by the CITY.

11. NONWAIVER.

Failure of the CITY to insist upon strict performance of any covenant or condition of this Revocable License, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall

remain in full force and effect. None of the conditions, covenants or provisions of this Revocable License Agreement shall be waived or modified except by the Parties in writing.

12. TERMINATION.

This Revocable License Agreement may be terminated by either party with reasonable cause for the reasons described in Section 2 at any time during the term, upon sixty (60) days written notice to the other of its desire to terminate this Revocable License Agreement. It is expressly understood by the parties that LICENSEE is receiving from CITY a Revocable License that may be terminated by the CITY due to failure by the LICENSEE to maintain the Improvements, CITY's need to use the Property for a higher municipal purpose, LICENSEE's use of the Property poses a risk to the public's health, safety or welfare as determined by CITY, or CITY's convenience. LICENSEE shall be solely responsible for any expenses incurred to remove its personal property including equipment, with no right to compensation of any kind from CITY. Where LICENSEE's use poses a risk to the public's health, safety or welfare, the LICENSEE shall receive written notice to immediately cease and desist such use and shall promptly remove the Improvement as determined by CITY, in the CITY's sole discretion.

13. NOTICES.

Any notice or demand under the terms of this Revocable License Agreement or by any statute or ordinance that must be given or made by a party hereto shall be in writing and shall be given by certified mail to the other party at the address set forth below or to such other address as such party may from time to time designate by notice, except where otherwise provided.

Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061

COPY TO: City Attorney

City of Pompano Beach
Post Office Box 2083
Pompano Beach, Florida 33061

FOR LICENSEE: MAG Real Estate and Development, Inc.
933 South Congress Avenue
Delray Beach, Florida 33445

14. MISCELLANEOUS PROVISION.

It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a License, not a Lease; that the LICENSEE's right to occupy the right-of-way is subordinate to CITY's (or any franchisee of CITY) use of the licensed Property and, should any relocation of any CITY owned utility be necessitated at any time in the future, then LICENSEE shall relocate the Improvements, subject to approval of relocation plans by the CITY, if practicable, or LICENSEE shall terminate its use of the licensed Property at its own expense.

15. LAWS AND ORDINANCES.

LICENSEE shall observe all laws and ordinances of the city, county, state and federal governing authorities directly relating to the Property's use.

16. RECORDATION OF AGREEMENT.

This Revocable License Agreement shall be recorded in the Public Records of Broward County, Florida, at the LICENSEE's expense, with a copy given to CITY.

17. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL

A. The Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of state and federal courts located in Florida with respect to claims under this Revocable License Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this

Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise, but the LICENSEE and the CITY waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

C. By entering into this Agreement, the Parties expressly waive any rights either party may have to a trial by jury of any litigation related to this agreement. If a party fails to withdraw a request for a jury trial in a lawsuit arising out of this Agreement after written notice by the other party of violation of this section, the party making the request for jury trial shall be liable for the reasonable attorneys' fees and costs of the other party in contesting the request for jury trial, and such amounts shall be awarded by the court in adjudicating the motion.

19. NO THIRD PARTY BENEFICIARIES.

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this License Agreement. None of the parties intends to directly or substantially benefit a third party by this License Agreement. The parties agree that there are no third party beneficiaries to this License Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this License Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

20. NONDISCRIMINATION.

LICENSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this License Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

21. CONTINUITY.

This License Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

22. PUBLIC RECORDS.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the CITY in order to perform the service.
2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the LICENSEE does not transfer the records to the CITY.
4. Upon completion of the contract, transfer, at no cost to the CITY, all public records in possession of the LICENSEE, or keep and maintain public records required by the CITY to perform the service. If the LICENSEE transfers all public records to the CITY upon completion of the contract, the LICENSEE shall destroy any duplicate public records that

are exempt or confidential and exempt from public records disclosure requirements. If the LICENSEE keeps and maintains public records upon completion of the contract, the LICENSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

B. Failure of the LICENSEE to provide the above described public records to the CITY within a reasonable time may subject LICENSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

23. FORCE MAJEURE.

Neither party shall be obligated to perform any duty, requirement or obligation under this License Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force

Majeure”). In no event shall a lack of funds alone on the part of LICENSEE be deemed Force Majeure.

24. ENTIRE AGREEMENT AND INTERPRETATION.

A. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

B. Regardless of which party or party’s counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of one party, and therefore construed against either party.

C. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 2020, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

MAG Real Estate and Development Inc., a Florida corporation

Kristofer Davis

KRISTOFER DAVIS
Print Name

Edward Farhat

EDWARD FARHAT
Print Name

By: Maher Hanna

MAHER HANNA
Typed or Printed Name

Title: President

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 3rd day of May, 2021, by Maher Hanna. He/she is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

Dilene Simeon
NOTARY PUBLIC, STATE OF FLORIDA



(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

JES/jrm
9/16/19
L:agr/engr/revocable license template-JES