

**RESOLUTION 20-12**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, ACCEPTING A LICENSE AGREEMENT FROM THE ST. JOE COMPANY RELATED TO THE USE OF LAND FOR AN EXTENSION OF GAYLES TRAILS EAST OF THE BREAKFAST POINT SUBDIVISION.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain LICENSE AND INDEMNIFICATION AGREEMENT AND WAIVER OF CLAIMS between the City and The St. Joe Company related to the construction and use of an extension of Gayle's Trails east of the Breakfast Point subdivision, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 24<sup>th</sup> day of October, 2019.

**CITY OF PANAMA CITY BEACH**

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



Mike Thomas, Mayor

**ATTEST:**



Mary Jan Bossert, City Clerk

**LICENSE AND INDEMNIFICATION AGREEMENT  
AND WAIVER OF CLAIMS**

**THIS LICENSE AND INDEMNIFICATION AGREEMENT AND WAIVER OF CLAIMS** (“Agreement”) is made and entered into by and between **THE ST. JOE COMPANY**, a Florida corporation (“Licensor”), and **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (“Licensee”).

**RECITALS:**

A. Licensor is the owner of the land generally depicted in the map referenced as **EXHIBIT “A”** (“Property”).

B. Licensee desires to enter the Property for the purpose of constructing an extension of the public pedestrian trail system commonly known as “Gayle’s Trails” using milled asphalt materials on portions of Licensor’s timber trail (“Trail Improvements”), together with the obligation to maintain, repair, and replace the Trail Improvements and the right to use the Property as a public pedestrian trail system (hereinafter the “Permitted Activities”).

C. Licensor is willing to grant Licensee a temporary, non-exclusive, revocable right of usage and access to and from the Property (“License”) to conduct the Permitted Activities, but only based on the terms and conditions hereof.

D. Licensee acknowledges and appreciates the risks of coming on the Property.

E. Licensee acknowledges and agrees that Licensee and all persons under Licensee’s direction and control, as well as any other person on the Property because of Licensee (collectively, the “Invitees”) and Contractors (defined herein) shall at all times exercise due care for their own personal safety and the safety of the Property and shall fully indemnify Licensor for any damages which may occur on the Property and/or are or will be associated with Licensee’s entry on the Property.

**NOW, THEREFORE**, in consideration of the mutual undertakings of the parties set forth in this Agreement and of other valuable considerations, the receipt and sufficiency of which the parties hereby acknowledge the parties hereby agree as follows:

1. **Incorporation of Recitals.** The recitals above are incorporated herein as if restated.
2. **Grant of License.** Licensor hereby grants a temporary, non-exclusive, revocable License to Licensee, its employees, agents, subcontractors, and persons under Licensee’s control, and to any contractor hired by Licensee, its employees, agents, subcontractors, and all persons under their direction and control (collectively, “Contractors”), as well as the “Invitees”, to enter the Property for the sole purpose of conducting the Permitted Activities and so long as Licensor owns the Property. Licensee may not conduct any activity within the Property other than the Permitted Activities without the prior written consent of Licensor.
3. **Term.** The term (“Term”) of the License granted hereunder shall commence on \_\_\_\_\_, 2019 and shall continue until terminated by Licensor (“Term”).
4. **Termination.** Licensor may terminate this Agreement upon the failure of Licensee to comply with the terms of this Agreement or the failure of Licensee to comply with the terms of the Permits, as hereinafter defined.

5. **Use Restrictions.** The Property may be used solely to conduct the Permitted Activities and only during the Term. Licensee shall faithfully comply with all rules posted on the Property or otherwise dictated by Licensor and this Agreement. Licensee acknowledges that Licensor may be performing development activities in the vicinity of the Property including, but not limited to, heavy truck traffic. Licensor may restrict the Permitted Activities at any time and for any reason upon twenty-four (24) hours' notice to Licensee. Licensor shall not be required to provide any alternate routes or access during any such restricted periods. Notwithstanding the foregoing, Licensee acknowledges and agrees that there shall be no Permitted Activities from November 25, 2019 through February 15, 2020.

There shall be no use or act by Licensee, its Contractors or Invitees which is in violation of any such rule, or any law or ordinance established by any federal, state, municipal or local governmental or regulatory agency pursuant to this Agreement. Licensee, its Contractors or Invitees agree to comply with all applicable laws, rules and regulations, including but not limited to, the provisions of the EMA and RGP as further defined herein. Licensee shall be solely responsible for any permit non-compliance and construction defaults pursuant to this Agreement caused by Licensee, its Contractors or Invitees. Licensee shall not permit any use of the Property which would cause a disruption or which would be offensive or harmful in Licensor's reasonable discretion.

6. **Construction of Trail Improvements.** Prior to performing any Permitted Activities under this Agreement, Licensee shall have any Contractors performing any work on or around the Property execute and deliver to Licensor a Joinder Agreement in the form attached hereto as **EXHIBIT "B"**. Contractors shall comply with this Agreement, all Permits, as well as all applicable laws and regulations, with respect to performing the Permitted Activities. Licensee shall be responsible for all costs required for the Permitted Activities and, unless Licensee obtains Owner's prior written consent, Licensee's activities on the Property shall be limited to the Permitted Activities. Licensee shall be responsible to ensure that the Permitted Activities do not impact any wetlands on the Property or any of Licensor's adjacent property. Licensee shall obtain a survey for the location of the Trail Improvements at its sole cost and expense.

6.1. **As-Is Condition.** Licensee agrees the acceptance of the Property shall be "AS IS," without any agreements, representations, understandings or obligations on the part of Licensor to perform any further alterations, repairs or improvements and shall further constitute a waiver and release by Licensee of any claim or cause of action for damages from Licensor resulting from any error or omission.

6.2. **Licensee's Plans and Specifications.** Licensee shall submit to Licensor for its review and approval and, if necessary, resubmit the same from time to time within fifteen (15) days after receipt of written notice of disapproval thereof from Licensor, until the same are approved by Licensor, detailed drawings, plans and specifications ("Plans and Specifications") of the Trail Improvements. Licensee shall not apply for any permitting or commence the construction and installation of any of the Trail Improvements unless and until Licensor shall give its written consent and approval to the Plans and Specifications (hereinafter "Approved Plans and Specifications"), which consent cannot be unreasonably withheld. Upon receipt of Licensor's approval of the Plans and Specifications, Licensee shall promptly thereafter, and at its sole cost and expense, seek and obtain all necessary building permits and governmental approvals required to enable Licensee to construct Licensee's Trail Improvements.

6.3. **Completion Date.** Promptly following Licensee's receipt of Approved Plans and Specifications and all necessary building permits and governmental approvals, Licensee shall, at its expense, commence the construction and installation of Licensee's Trail Improvements as so approved. Licensee shall cause all of Licensee's Trail Improvements to be completed on or before \_\_\_\_\_ ("Improvements Completion Date"). Licensee warrants and represents to Licensor that all such Licensee's Trail Improvements will be performed in a good workmanlike manner and in

conformance with all applicable laws, ordinances, requirements, orders, directions, rules and regulations of all governmental authorities, and in accordance with the Approved Plans and Specifications. The contractor selected by Licensee to perform Licensee's Trail Improvements shall be licensed, bonded, and approved by Licensor in writing prior to commencement of construction. All contractors performing work on the Property shall carry workers' compensation insurance, commercial general liability insurance and excess liability insurance in amounts reasonably acceptable to Licensor and shall deliver a certificate of insurance evidencing such coverages to Licensor prior to commencing work on the Property.

6.4 Coordination of Work. Licensee recognizes that, from time to time, there may be other ongoing activities on the Property and, if so, Licensee agrees to coordinate Licensee's Trail Improvements with such other activities so as not to interfere with such other on-going activities. Licensee further acknowledges and agrees that such other activities may, from time to time, interfere with Licensee's (and Licensee's contractors', subcontractors' and suppliers') access to the Property or other aspects of Licensee's Trail Improvements, including use restrictions as defined herein.

7. Maintenance, Repairs and Removal. Licensee shall be responsible, at its sole cost and expense, for any and all maintenance and repairs to the Property during the Term, including removal of all trash and debris.

In the event Licensor develops the Property upon which Licensee's Trail Improvements are located, Licensor shall provide Licensee with thirty (30) days written notice. Licensee shall be responsible, at its sole cost and expense, to remove any and all of Licensee's Trail Improvements from that portion of the Property as required by Licensor within sixty (60) days of such written notice.

8. Release and Indemnity. As further consideration for the License granted hereunder, Licensee hereby agrees:

8.1 to use due care for their own personal safety and the safety of other Invitees on the Property;

8.2 to assume all risks involved and to be fully responsible for the safety of Licensee, its Contractors and Invitees and, and hereby releases, saves and discharges Licensor, its successors and assigns, from any and all claims and demands of whatever nature, whether for personal injury or death of Licensee, its Contractors or Invitees, or loss of, or damage to personal property, and hereby assume further full responsibility for any accident, death, dismemberment, temporary or permanent disability resulting to Licensee and any Contractors and Invitees as a result of the License granted herein;

8.3 to indemnify and hold harmless Licensor, its successors or assigns (without waiving the sovereign immunity limitations on liability for Licensee under §768.28, Florida Statutes) from any liability, costs and expenses, including attorney's fees, on account of injury to or death of any person or persons whomsoever, including Licensee, Contractors, Invitees, employees, agents or representatives of the parties hereto or third persons, or for any loss or damage to property arising from or in connection with the Permitted Activities, the use or occupancy of the Property, or from ingress or egress from the Property;

8.4 that Licensor will look solely to Licensee's indemnification set forth herein this Article in connection with Licensee and its Contractors and Invitees entry upon the Property in connection with the Permitted Activities; and

8.5 that neither Licensee nor its Contractors or Invitees shall record a Notice of Commencement on the Property and that Licensee shall pay for all services in connection with the Permitted Activities and pay or bond off any liens recorded against the Property by Contractors and/or Invitees within

fifteen (15) days of recording of said liens.

9. **No Waste.** Licensee agrees that no act shall be permitted and nothing shall be kept in or about said Property that will increase the risk of any hazard, fire or catastrophe, and no waste shall be permitted or committed upon or any damage done to said Property. Licensee shall not permit the Property to be used or occupied in any manner which violates any laws or regulations of any governmental agency.

10. **Insurance.** Unless otherwise specified in this Agreement, Licensee and Licensee's Contractors shall, at their sole expense, maintain in effect at all times during the Term insurance coverages with limits not less than those set forth below with insurers and under forms of policies satisfactory to Licensor. Prior to commencing the Permitted Activities, Licensee and Licensee's Contractors shall deliver to Licensor Certificates of Insurance as evidence that policies providing such coverage and limits of insurance set forth below are in full force and effect, which Certificates shall provide that no less than thirty (30) calendar days advance notice will be given in writing to Licensor prior to cancellation, termination or material alteration of said policies or insurance. All insurance shall be carried in companies satisfactory to Licensor, shall name Licensor, its partners, its parent corporations, its affiliates and their respective officers, directors, authorized representatives and employees and Licensor's mortgagees as additional insured and the Policy shall include the condition that it is primary and that any liability insurance maintained by Licensor or any other additional insured is excess and non-contributory. The insurance required under this section shall include the following coverage and limits in the following categories, amounts and detail:

10.1. Worker's Compensation as required by applicable law and Employers' Liability Insurance with minimum limits of One Million and No/100 U.S. Dollars (\$1,000,000.00) per occurrence.

10.2. Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance on an "occurrence" basis, including Bodily Injury and Property Liability in limits of not less than One Million and No/100 U.S. Dollars (\$1,000,000.00) each occurrence or combined single limit which shall include broad form contractual liability insurance and coverage for independent contractors and completed operations.

10.3 All policies will be endorsed to include the Licensor as an additional insured, and will state that the insurance is primary insurance as regards any other insurance carried by the Licensor. All insurance coverages required by this Section shall be issued by companies with an A-VIII rating or better in the Best Guide, on forms acceptable to Licensor and shall provide that coverage thereunder may not be reduced or canceled unless thirty (30) calendar days prior written notice thereof is furnished to Licensor. Certificates of insurance shall be provided to Licensor prior to commencing the Permitted Activities. Licensee and Licensee's Contractors, for all those furnishing labor or materials to or through Licensee hereby agree to waive their right of subrogation and that such waiver shall be permitted by the insurance policy or policies procured by Contractors.

11. **Waiver.** No failure of Licensor to enforce any term hereof shall be deemed a waiver of said term. The rights and remedies of Licensor as contained in this License and as permitted by law or equity shall be cumulative.

12. **Assignment.** Licensee may not assign this License in whole or in part, without the prior written approval of Licensor, which said approval may be withheld at Licensor's absolute discretion.

13. **Recording.** This License shall not be recorded in the public records.

IN WITNESS WHEREOF, Licensor and Licensee executed this Agreement as of the Effective Date.

**LICENSOR:**

**THE ST. JOE COMPANY,**  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LICENSEE:**

**CITY OF PANAMA CITY BEACH,**  
**FLORIDA,** a municipal corporation

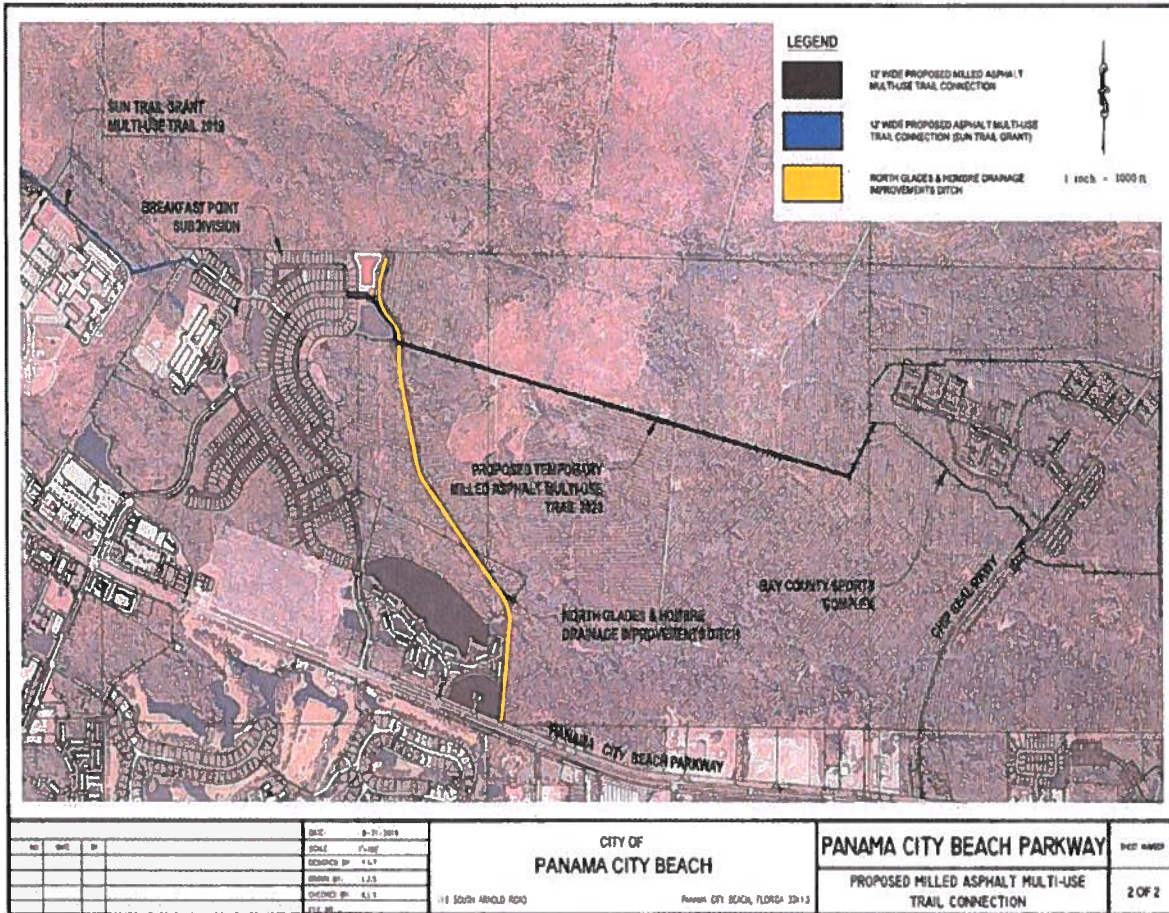
By: \_\_\_\_\_  
Mario Gisbert, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT "A"

## PROPERTY



|     |      |    |                     |
|-----|------|----|---------------------|
| NO. | DATE | BY | DESC.               |
|     |      |    | DATE: 8-27-2019     |
|     |      |    | SCALE: 1"=100'      |
|     |      |    | DESIGNED BY: S.L.T. |
|     |      |    | DRAWN BY: J.S.S.    |
|     |      |    | CHECKED BY: S.L.T.  |
|     |      |    | FILE NO.            |

CITY OF  
**PANAMA CITY BEACH**

18 SOUTH BIRCH ROAD      PANAMA CITY BEACH, FLORIDA 32313

**PANAMA CITY BEACH PARKWAY**

PROPOSED MILLED ASPHALT MULTI-USE  
TRAIL CONNECTION

HEET NAME  
**2 OF 2**

**EXHIBIT "B"**

**JOINDER AGREEMENT**

The undersigned, \_\_\_\_\_, a \_\_\_\_\_, hereby acknowledges receipt of a copy of the License Agreement dated \_\_\_\_\_, \_\_\_\_\_ by and between **THE ST. JOE COMPANY**, a Florida corporation ("Licensor") and **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation ("Licensee") (the "Agreement").

By completion of this Joinder Agreement, the undersigned agrees to comply with and to be bound by the terms, conditions, covenants and restrictions of the Agreement in all respects, including, without limitation, the obligation to conduct its work for the Licensee in accordance with the provisions of the Agreement, to assume the risks provided in the Agreement and to carry insurance and provide evidence of such consistent with the Agreement. The undersigned understands that all provisions of the Agreement are hereby made a part of this Joinder Agreement.

The undersigned Contractor/Subcontractor additionally agrees to indemnify and hold harmless Licensor, its successors and assigns, from any liability, costs and expenses, including attorney's fees, on account of injury or death of any person or persons, whomsoever, including Licensee, Contractor, Subcontractor, employees, agents or representatives of the parties hereto, or third person, or for any loss or damage to property arising from or in connection with the use or occupancy of the Licensor's Property, including, without limitation, the Permitted Activities.

The undersigned Contractor/Subcontractor specifically represents and warrants to Licensor that it (i) has the professional experience and skill to exercise its rights and perform its obligations hereunder, (ii) shall comply with applicable federal, state and local laws, including all professional registration and licensing (both corporate and individual) for all Permitted Activities, (iii) shall exercise its rights and perform their obligations in accordance with generally accepted professional standards, (iv) have sufficient capital assets and are adequately financed to meet all financial obligations it may be required to incur hereunder and (v) has obtained all permits necessary to perform the Permitted Activities.

All references in the Agreement to a "Contractor" or "Subcontractor" of the Company shall henceforth be deemed to include the undersigned.

Any notice to be addressed to the undersigned pursuant to the provisions of the Agreement shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned may change the address for notice if necessary in the future by notifying Licensor and Licensee in writing of such change.

Dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_