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**City Council Agenda Item**  
**Meeting of February 2, 2016**

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**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James R. O'Connor, City Manager  
**DATE:** January 28, 2016

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**SUBJECT:** License Agreement for Use of City Real Property – Postal Annex  
Property License (Temporary Vehicle Parking) - #2015-LA-263

**REQUESTED BY:** City Manager/Public Works Department

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The following is requested as it relates to the above-referenced agenda item:

- Request Council review and approval based on the attached supporting documentation.
  - No action required. (Information only)
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## DEPARTMENTAL CORRESPONDENCE

TO: James R. O'Connor, City Manager  
DEPT: City Manager

FROM: Monte K. Falls, PE, Director  
DEPT: Public Works *MKFALLS 1/27*

DATE: January 26, 2016

RE: **License Agreement #2016-LA-0263  
McKee Botanical Garden, Inc. at Old Postal Annex Property**

### Background:

On February 13, 2016, McKee Botanical Garden is hosting their 7<sup>th</sup> annual car show. As such, Christine Hobart, Executive Director, inquired about the possibility of using the former Postal Annex site for overflow parking. To facilitate this request staff has prepared a license agreement for your action.

### Recommendation:

- Place this item on the City Council's agenda for February 2, 2016;
- Approve this license agreement with McKee Botanical Gardens, Inc. for overflow parking.

### Analysis:

Strengths: The license will allow McKee Botanical Gardens the use of the site for overflow parking to facilitate their community event.

Weaknesses: The site would not be available to the City during the term of the agreement.

Opportunities: The license will provide the opportunity to partner with McKee Botanical Gardens.

Threats: None.

### Attachments

Cc: Wayne Coment, City Attorney  
Christine Hobart, Executive Director, McKee Botanical Gardens, Inc.

MKF/ntn

**CITY OF VERO BEACH, FLORIDA**  
**LICENSE AGREEMENT**  
**FOR USE OF CITY REAL PROPERTY**  

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**POSTAL ANNEX PROPERTY LICENSE**  
**(TEMPORARY VEHICLE PARKING)**  
**#2015-LA-263**

THIS LICENSE AGREEMENT (hereinafter "License") is made and entered into as of the date last written below (hereinafter "Effective Date") by and between the **City of Vero Beach, Florida**, a Florida municipal corporation, whose mailing address is **P.O. Box 1389, Vero Beach, Florida 32961-1389** (hereinafter "City"), and **McKee Botanical Garden, Inc.**, whose mailing address is **350 U.S. Highway 1, Vero Beach, Florida 32962** (hereinafter collectively "Licensee"). City and Licensee may also be referred to herein individually as a "party" or collectively as the "parties."

WITNESSETH: That for and in consideration of the full, faithful, and timely performance of and compliance with all terms and conditions stated herein, the City does hereby license to Licensee the City real property described as follows:

That certain parcel of City real property located at 1655 Indian River Boulevard in Vero Beach, Indian River County, Florida, the location and description of said lands being as more fully described and depicted in Exhibit "A" attached hereto and incorporated herein (hereinafter "Premises").

TO HAVE THE USE OF the hereinabove described Premises from the Effective Date to the termination date of this License. The terms and conditions on and for which this License is granted are as follows:

1. **USE OF PREMISES:** Licensee is hereby authorized to occupy, utilize, and maintain the Premises for temporary remote parking of motor vehicles for Licensee's special event on Saturday, February 13, 2016, so long as such use meets the conditions of this License and all regulatory requirements of the City of Vero Beach, Indian River County, and the State of Florida and its agencies having jurisdiction. All of the foregoing shall be subject to all terms and conditions of this License. The City retains the sole and absolute right to determine whether any proposed or actual use of the Premises is within the uses contemplated and allowed by this License.
2. **TERM:** The term of this License shall commence 12:01 A.M. Thursday, February 11, 2016 and terminate 12:00 midnight, Sunday, February 14, 2016 (hereinafter the "Term").
3. **LICENSE AND USE FEES:** City fees for granting of this License and use of the Premises are waived by the City. Licensee shall be solely responsible for any and all other expense associated with or arising from Licensee's compliance with this License and Licensee's preparation, use, and restoration of the Premises.
4. **EXTENT OF USE:** The License is granted to the Licensee to occupy and use the Premises only for those activities specified herein and as conditioned by all regulatory entities and agencies, permits, and land use approvals. The Licensee shall not: (i) change or add to the approved use of the Premises as defined herein and; (ii) change activities in any manner that may have a land use or an environmental impact that was not considered in the original authorization or regulatory permits and approvals.

5. SPECIAL LICENSE CONDITIONS: In addition to all other terms and conditions herein, this License and Licensee's use of the Premises are further conditioned as follows:

(a) Licensee shall at all times occupy and use the Premises and operate its motor vehicle parking activity in a safe and efficient manner and in such a manner as not to cause or create any conflict with use of the adjacent public roadways.

(b) Licensee shall be responsible for providing security measures, including all necessary personnel and devices/equipment, to maintain safety and control of traffic and persons. Licensee shall coordinate such traffic and crowd control measures with the Vero Beach Police Department and comply with any requirements deemed appropriate by the Chief of Police for protecting public safety.

(c) Licensee shall be responsible for providing qualified and trained personnel to supervise, direct, and control the safe movement of persons and vehicles using the Premises.

(d) Neither Licensee nor any other person or entity shall charge for use of the Premises without written permission of the City.

(e) Licensee's permission hereunder includes occupancy and use of the Premises: from Thursday, February 11, 2016 for Licensee's preparation and setup of the Premises for Licensee's authorized use; the day of Licensee's event, Saturday, February 13, 2016 for temporary parking of motor vehicles; and subsequent to Licensee's event until 12:00 midnight, Sunday, February 14, 2016 to allow time for cleanup and restoration of the Premises.

6. SUPERVISION AND CONTROL OF PREMISES: Licensee shall solely be responsible for the operation, management, and maintenance of the Premises pursuant to the terms and conditions of this License. Licensee shall instruct, monitor, supervise, and manage all persons and entities in the use of the Premises consistent with the terms and conditions of this License and all limitations, restrictions, laws, and regulations. Licensee and not the City shall have the right and duty to control access to the Premises by such persons and other third parties. Notwithstanding any other term or condition hereof, Licensee shall be deemed for all purposes to be solely in possession and control of the Premises.

7. NUISANCES OR ILLEGAL OPERATIONS: Licensee shall not permit the Premises or any part thereof to be used, occupied, or maintained for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the City and this License is modified accordingly, nor shall Licensee knowingly permit or suffer any nuisances or illegal operations of any kind on or from the Premises. Licensee shall not allow on the Premises any loud music or other objectionable noise or amplification of sound.

8. NON-DISCRIMINATION: Licensee expressly agrees that no person, on the grounds of race, color, religion, national origin, age, marital status, gender identity, sexual orientation, disability, or any other characteristic protected by Federal or Florida law, will be excluded from participation in, denied benefits of, denied access to, or be otherwise subjected to discrimination with respect to any activity occurring within the Premises or upon lands adjacent to and used as an adjunct of the Premises; and that in the furnishing of services on the Premises, no person, on any of the foregoing grounds, shall be excluded from participation therein, denied the benefits thereof, or be otherwise subjected to discrimination.

9. IMPROVEMENTS AND INSTALLATIONS: No permanent improvements, installations, or equipment of any kind or nature, shall be constructed or installed on or in the Premises without prior review and written approval by the City, as well as compliance with all other reviews, permits, and approvals required by applicable code, ordinance, law, rule, or regulation. Licensee shall be limited to those improvements, installations, and equipment specifically approved by the City in writing. Upon written notice from the City, Licensee shall, at its own cost and expense, immediately remove any improvement, installation, or equipment made or installed without first obtaining



**CITY OF VERO BEACH, FLORIDA**  
**LICENSE AGREEMENT**  
**FOR USE OF CITY REAL PROPERTY**  

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**POSTAL ANNEX PROPERTY LICENSE**  
**(TEMPORARY VEHICLE PARKING)**  
**#2015-LA-263**

THIS LICENSE AGREEMENT (hereinafter "License") is made and entered into as of the date last written below (hereinafter "Effective Date") by and between the **City of Vero Beach, Florida**, a Florida municipal corporation, whose mailing address is **P.O. Box 1389, Vero Beach, Florida 32961-1389** (hereinafter "City"), and **McKee Botanical Garden, Inc.**, whose mailing address is **350 U.S. Highway 1, Vero Beach, Florida 32962** (hereinafter collectively "Licensee"). City and Licensee may also be referred to herein individually as a "party" or collectively as the "parties."

WITNESSETH: That for and in consideration of the full, faithful, and timely performance of and compliance with all terms and conditions stated herein, the City does hereby license to Licensee the City real property described as follows:

That certain parcel of City real property located at 1655 Indian River Boulevard in Vero Beach, Indian River County, Florida, the location and description of said lands being as more fully described and depicted in Exhibit "A" attached hereto and incorporated herein (hereinafter "Premises").

TO HAVE THE USE OF the hereinabove described Premises from the Effective Date to the termination date of this License. The terms and conditions on and for which this License is granted are as follows:

1. **USE OF PREMISES:** Licensee is hereby authorized to occupy, utilize, and maintain the Premises for temporary remote parking of motor vehicles for Licensee's special event on Saturday, February 13, 2016, so long as such use meets the conditions of this License and all regulatory requirements of the City of Vero Beach, Indian River County, and the State of Florida and its agencies having jurisdiction. All of the foregoing shall be subject to all terms and conditions of this License. The City retains the sole and absolute right to determine whether any proposed or actual use of the Premises is within the uses contemplated and allowed by this License.
2. **TERM:** The term of this License shall commence 12:01 A.M. Saturday, February 6, 2016 and terminate 12:00 midnight, Saturday, February 20, 2016 (hereinafter the "Term").
3. **LICENSE AND USE FEES:** City fees for granting of this License and use of the Premises are waived by the City. Licensee shall be solely responsible for any and all other expense associated with or arising from Licensee's compliance with this License and Licensee's preparation, use, and restoration of the Premises.
4. **EXTENT OF USE:** The License is granted to the Licensee to occupy and use the Premises only for those activities specified herein and as conditioned by all regulatory entities and agencies, permits, and land use approvals. The Licensee shall not: (i) change or add to the approved use of the Premises as defined herein and; (ii) change activities in any manner that may have a land use or an environmental impact that was not considered in the original authorization or regulatory permits and approvals.

5. SPECIAL LICENSE CONDITIONS: In addition to all other terms and conditions herein, this License and Licensee's use of the Premises are further conditioned as follows:

(a) Licensee shall at all times occupy and use the Premises and operate its motor vehicle parking activity in a safe and efficient manner and in such a manner as not to cause or create any conflict with use of the adjacent public roadways.

(b) Licensee shall be responsible for providing security measures, including all necessary personnel and devices/equipment, to maintain safety and control of traffic and persons. Licensee shall coordinate such traffic and crowd control measures with the Vero Beach Police Department and comply with any requirements deemed appropriate by the Chief of Police for protecting public safety.

(c) Licensee shall be responsible for providing qualified and trained personnel to supervise, direct, and control the safe movement of persons and vehicles using the Premises.

(d) Neither Licensee nor any other person or entity shall charge for use of the Premises without written permission of the City.

(e) Licensee's permission hereunder includes occupancy and use of the Premises: from Saturday, February 6, 2016 for Licensee's preparation and setup of the Premises for Licensee's authorized use; the day of Licensee's event, Saturday, February 13, 2016 for temporary parking of motor vehicles; and subsequent to Licensee's event until Saturday, February 20, 2016 to allow time for cleanup and restoration of the Premises.

6. SUPERVISION AND CONTROL OF PREMISES: Licensee shall solely be responsible for the operation, management, and maintenance of the Premises pursuant to the terms and conditions of this License. Licensee shall instruct, monitor, supervise, and manage all persons and entities in the use of the Premises consistent with the terms and conditions of this License and all limitations, restrictions, laws, and regulations. Licensee and not the City shall have the right and duty to control access to the Premises by such persons and other third parties. Notwithstanding any other term or condition hereof, Licensee shall be deemed for all purposes to be solely in possession and control of the Premises.

7. NUISANCES OR ILLEGAL OPERATIONS: Licensee shall not permit the Premises or any part thereof to be used, occupied, or maintained for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the City and this License is modified accordingly, nor shall Licensee knowingly permit or suffer any nuisances or illegal operations of any kind on or from the Premises. Licensee shall not allow on the Premises any loud music or other objectionable noise or amplification of sound.

8. NON-DISCRIMINATION: Licensee expressly agrees that no person, on the grounds of race, color, religion, national origin, age, marital status, gender identity, sexual orientation, disability, or any other characteristic protected by Federal or Florida law, will be excluded from participation in, denied benefits of, denied access to, or be otherwise subjected to discrimination with respect to any activity occurring within the Premises or upon lands adjacent to and used as an adjunct of the Premises; and that in the furnishing of services on the Premises, no person, on any of the foregoing grounds, shall be excluded from participation therein, denied the benefits thereof, or be otherwise subjected to discrimination.

9. IMPROVEMENTS AND INSTALLATIONS: No permanent improvements, installations, or equipment of any kind or nature, shall be constructed or installed on or in the Premises without prior review and written approval by the City, as well as compliance with all other reviews, permits, and approvals required by applicable code, ordinance, law, rule, or regulation. Licensee shall be limited to those improvements, installations, and equipment specifically approved by the City in writing. Upon written notice from the City, Licensee shall, at its own cost and expense, immediately remove any improvement, installation, or equipment made or installed without first obtaining

all required approvals and permits and repair, clean, and restore the Premises to a reasonably good condition acceptable to the City.

10. PERMITS AND LICENSES: Licensee shall be responsible for obtaining all required governmental, regulatory, and other approvals, permits, and licenses necessary for Licensee's occupation, use, and operation of the Premises and access thereto.

11. COMPLIANCE WITH LAWS: On or in conjunction with the use of the Premises, Licensee shall at all times comply with all Federal and Florida Statutes and all administrative rules promulgated thereunder, as well as all applicable local laws and regulations.

12. MAINTENANCE OF PREMISES; RIGHT TO INSPECT: Licensee shall maintain the Premises in good condition at its own expense, keeping the structures, equipment, and other improvements located thereon and therein in a good state of repair. The Premises shall be subject to inspection by the City or its designated agent(s) at any reasonable time and is otherwise subject to a right of entry by City employees and agents in performance of their duties.

13. UTILITIES AND OTHER SERVICES: Licensee shall be responsible for establishing and maintaining all utilities and other services needed to serve Licensee's use of the Premises and for Licensee's operations and activities. Licensee shall promptly pay on or before the due date all charges for such utilities and other services, including but not limited to electric, water, sewer, communications, security, sanitation, and solid waste removal. Licensee shall hold City harmless from payment of charges for any and all such utilities and services and for any interruption in such utilities or services. Except as may be contracted for separately between Licensee and City, the City shall have no responsibility or obligation to provide any utilities or services of any kind for Licensee's use of the Premises or for Licensee's operations and activities.

14. REFUSE REMOVAL: Licensee shall be responsible for providing the prompt removal from the Premises and proper disposal of all refuse, garbage, debris, trash, and other discarded materials and shall not allow an accumulation thereof on, in, or adjacent to the Premises. Upon expiration or termination of this License, Licensee shall be responsible for and ensure that the Premises, together with surrounding adjacent properties, public roadways/rights-of-way, and drainage facilities, shall all be cleaned and left in a condition substantially similar to their condition prior to Licensee's use of the Premises and to the satisfaction of the City.

15. TAXES AND ASSESSMENTS: Licensee shall be responsible for payment of any liabilities that accrue against Licensee's interests hereunder, including any and all taxes and assessments of every kind and description which are now or may be hereafter lawfully assessed or levied against Licensee's interests during the Term. Licensee shall indemnify and hold harmless the City for any such claims.

16. PROPERTY RIGHTS: This License provides Licensee with no leasehold or other property interest in the Premises. The License granted hereunder is for the occupancy and use of government property and merely provides permission, personal to Licensee, to occupy, use, and maintain the Premises pursuant to the terms and conditions herein and at Licensee's sole risk and at the City's sufferance and convenience.

17. ASSIGNMENT: This License shall not be assigned, transferred, hypothecated, sold, mortgaged, or otherwise encumbered without prior written consent of the City's City Council in its sole discretion. Any assignment or other transfer shall be subject to the terms and conditions hereof and all applicable laws, rules, and regulations in effect at the time. Any assignment or other transfer made without prior written consent of the City shall be null and void and without legal effect.

18. ASSUMPTION OF RISK; RELEASE AND INDEMNIFICATION: For and in additional consideration of the separate sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by City to Licensee, the

receipt and sufficiency of which is hereby acknowledged by Licensee, Licensee agrees as follows:

(a) Premises "As Is." Licensee accepts the condition of the Premises as is and recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of or access to the Premises. The City has not made and makes no warranty of any kind whatsoever as to the condition of the Premises or its fitness for any particular purpose. This express assumption of risk by Licensee is made for and on behalf of Licensee and Licensee's employees, agents, guests, contractors, subcontractors, and all other invitees of Licensee.

(b) Release and Indemnification (Premises). Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, and agents (collectively "Released Parties"), and agrees to indemnify and hold harmless the Released Parties from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including but not limited to, costs of investigation and attorneys' and experts' fees and costs through trial and appeal, arising out of, incidental to, or in any way connected with the condition or use of, or access to, the Premises, any improvement, installation, or equipment thereon or therein, or otherwise arising under this License. LICENSEE UNDERSTANDS AND AGREES THAT THIS RELEASE AND INDEMNIFICATION INCLUDES ANY AND ALL CLAIMS BASED ON THE NEGLIGENCE, ACTIONS, OR INACTION OF THE CITY OR ANY OTHER RELEASED PARTY AND INCLUDES ANY OTHER CAUSE OR CONDITION WHATSOEVER, AND COVERS, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE.

(c) Indemnification (Use). Licensee shall indemnify and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including but not limited to, costs of investigation and attorneys' and experts' fees and costs through trial and appeal, arising out of, incidental to, or in any way connected with: the use, occupancy, maintenance, or improvement of the Premises or any improvement, installation, or equipment thereon or therein by Licensee or any employee, representative, agent, guest, contractor, sub-contractor, material supplier, service supplier, or other invitee of Licensee, or of any of the foregoing, and; any act or omission of Licensee or any employee, representative, agent, guest, contractor, sub-contractor, material supplier, service supplier, or other invitee of Licensee, or of any of the foregoing, or otherwise arising under this License. Said indemnification includes any damage of any kind to the Premises or City improvements, structures, installations, or equipment thereon or therein or adjacent thereto.

(d) Release and Indemnity (Public Improvements and Utilities). Licensee's release and agreement to indemnify and hold the Released Parties harmless provided for herein shall also include any claim for damage suffered by City or any other utility, whether publicly or privately owned or operated. In addition, Licensee waives all claims of any kind or nature whatsoever against the Released Parties for damages that Licensee may suffer by reason of the installation, construction, reconstruction, operation and/or maintenance of any public improvement or utility, whether presently in place or that may in the future be constructed or installed, including but not limited to: any water and/or sewer mains, lines, pipes, or other facilities or structures; storm water structures, pipes, or other facilities; and electric lines, conduit, or other facilities or structures. Said release includes any damage due to failure of any such utility or installation, natural causes, or from any other cause of whatsoever kind or nature.

(e) Intent and Effect. It is the intent and effect of the provisions contained in this section, and a condition in consideration for granting of this License for the use of public property, that Licensee's release and indemnification shall be and include a full and total release and indemnification of the Released Parties against any kind or nature of claim whatsoever that is or may be asserted by reason of or as a consequence of the City having granted permission to Licensee to occupy, use, and maintain the Premises. The provisions of this section are provided as additional consideration and inducement for grant of the License hereunder and the License would not have been granted by the City absent the giving of such additional consideration by Licensee. Licensee's release and indemnification obligations shall survive the termination of the License for any matter arising or claim accruing prior to the effective date of the termination or the date Licensee no longer occupies, uses, or maintains the Premises, whichever is later.

Nothing in this License shall be construed as a waiver of sovereign immunity by the City whatsoever, whether by contract or under any law or regulation.

19. INSURANCE: Licensee shall, at all times during the term of this License and until such time that Licensee no longer occupies or uses the Premises and the City has approved and accepted possession of the restored Premises, procure and maintain insurance coverage, at Licensee's sole cost and expense, in such amounts and types of insurance which shall conform to the following *minimum* requirements:

(a) Workers' Compensation (for Licensee and its employees, to extent required by state law).

\$500,000 each accident  
\$500,000 bodily injury by disease each employee  
\$500,000 bodily injury by disease policy limit

Workers' Compensation insurance must meet mandatory statutory limits for employers with three or more employees.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

(b) Commercial General Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Insurance Services Office ("ISO") and must include policy limits of at least \$1,000,000 per occurrence/\$2,000,000 aggregate. Licensee shall be and remain liable for and pay all deductibles and other amounts not covered, paid, or reimbursed under the insurance policies.

(c) City Additional Insured; Policy Endorsements; Certificates of Insurance. The policies of insurance required herein for commercial general liability insurance, including all renewals, shall be written to specifically name and include the City as additional insured or be endorsed to name and include the City as additional insured, provide for at least thirty (30) days advance notice to the City by the insurer prior to any policy change, amendment, termination, or expiration of coverage, and for a waiver of subrogation. Licensee shall cause its insurance agent(s) or carrier(s) to provide the City with a copy of such policies, additional insured endorsements containing language no less restrictive than ISO Form CG 20 10 07 04 13 or ISO Form CG 20 33 07 04 13, and certificates of insurance stating that the coverage as required herein is in force and effective no later than the Effective Date of this License as a condition of granting of this License and before any operations or use of the Premises are commenced. Licensee shall cause insurance policies, policy endorsements, and certificates of insurance in conformance with the requirements hereof to be promptly provided to the City for each subsequent policy renewal during the Term. For any new or replacement insurer, Licensee shall cause a copy of the new or replacement insurance policy and corresponding additional insured endorsement and certificate of insurance to be promptly provided to Landlord.

(d) Licensee's Insurance Primary; Subrogation Waiver. Licensee's insurance in all instances shall be primary and shall include a waiver of subrogation. Any insurance that may be maintained by the City shall be in excess of and shall not contribute with Licensee's insurance.

(e) Insurance Approval; Continuing Obligation. All insurance policies shall be issued by a company licensed to do business in the state of Florida and be otherwise satisfactory to the City and subject to the City's approval. All insurance documents submitted to the City are subject to City approval for adequacy and protection. All coverage shall be provided by insurance companies authorized to do business in the state of Florida and otherwise satisfactory to the City. Licensee's obligation to provide and maintain the minimum required insurance and endorsement(s), and provide evidence of such to the City, is a continuing responsibility of Licensee and failure to do so will be deemed detrimental to the public interest and can result in immediate termination of this License by the City in its sole discretion.

(f) **Modification of Insurance Requirements.** If this License is continuing in nature, the City shall have the right to periodically review the adequacy of the required insurance, its form and type, and the amount of coverage and, notwithstanding any other term or condition of this License, unilaterally modify the insurance requirements of this section by written notice of such amendment to Licensee. Such modifications shall be as found reasonably necessary in the sole discretion of the City. Factors which may be considered by the City include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes in use of the Premises, changes in risk exposure, measurable changes in local and national economic indicators, and changes in City policies and procedures.

20. **COMPLIANCE WITH TERMS AND CONDITIONS:** Licensee binds itself, its successors, and assigns to abide by the terms and conditions herein set forth, and said terms and conditions shall be deemed covenants of Licensee and Licensee's successors and assigns. In the event Licensee fails or refuses to comply with the terms and conditions herein set forth, or in the event Licensee violates any of the terms and conditions, this License may be immediately terminated by the City in its sole discretion.

21. **ENFORCEMENT OF PROVISIONS; WAIVER:** Any term or condition of this License, compliance therewith, or breach thereof may be waived by the party that is entitled to the benefit thereof, but no waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of such waiving party. Any such waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this License, in any one or more instances, shall not invalidate this License, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this License. Except as otherwise provided herein, the failure of a party to assert any of its rights under this License or otherwise shall not constitute a waiver of such rights. A waiver by a party shall not invalidate this License, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

22. **TERMINATION OR SUSPENSION OF LICENSE:** Either party may terminate this License with or without cause with seven (7) days notice to the other party. However, the City may dispense with or reduce the aforesaid notice period should the City determine that Licensee is in breach of or otherwise has failed to comply with any term or condition of this License or the public interest or safety requires more immediate termination. In addition, the City's city manager is authorized to temporarily suspend the License and Licensee's permission to use the Premises whenever he has determined that Licensee has violated or is otherwise not in full compliance with any term or condition of this License, any law or regulation, or that public or City interest requires such action. Such suspension shall not be a prerequisite to termination.

23. **PERMISSION GRANTED:** Upon termination of this License all permission granted hereunder shall cease and terminate and possession of all of the Premises shall revert to the City.

24. **RESTORATION OF PREMISES:** Except as otherwise agreed in writing by the parties, before the expiration or termination of the License Licensee shall, at Licensee's expense, vacate the Premises and remove all Licensee improvements, structures, and equipment occupying or erected thereon or therein. Licensee shall clean and restore the Premises to substantially the same or better condition as existed prior to Licensee's use of the Premises, subject to approval and acceptance by the City. If Licensee does not timely remove the structures and equipment occupying and erected upon the Premises by or for Licensee, or does not adequately clean and restore the Premises, the shall be automatically deemed authorized to remove any such improvements and equipment and clean and restore the Premises at Licensee's expense. Such remedy shall be in addition to all other remedies available to the City under applicable laws, rules, and regulations, including the right to compel removal of all structures, improvements, and equipment and the right to impose against Licensee all actual and administrative costs for such removal and restoration. The obligations of Licensee under this section shall survive termination of this License.

25. CITY AGENT: Except as otherwise provided herein, the City's city manager shall be the City's agent and shall have the authority to administer this License on behalf of the City, including but not limited to the authority to: provide notices to Licensee; enforce, suspend, or terminate this License; and exercise any right of the City hereunder on its behalf.

26. NOTICES: Any notice required to be given pursuant to this License shall be in writing and shall be sufficient if: delivered personally; by courier such as FedEx, UPS, or Priority Mail; by United States First Class registered or certified mail, return receipt requested; or sent by United States First Class Mail evidenced by a certificate of mailing. Such notices shall be provided to the respective party at their address set forth above. Any notice the delivery of which is refused by the recipient shall be deemed given as of the date it is mailed or sent. Licensee shall notify the City of any change to Licensee's address at least ten (10) days before the change is effective.

27. LICENSEE ORGANIZATION: If Licensee is an entity other than a natural person, Licensee's status as a legal entity shall continuously be in good standing, active, and current with the state of its incorporation and registration and with the State of Florida, and Licensee shall keep its status active and current throughout the Term. Licensee shall keep the City apprised of its designated officers, directors, partners, managers, and other officials.

28. NO JOINT VENTURE OR AGENCY: Nothing in this License or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the parties. Neither party is nor shall be deemed the agent or representative of the other party in any instance whatsoever.

29. THIRD-PARTY BENEFICIARIES: The terms and provisions of this License are intended solely for the benefit of the parties and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

30. ENTIRE AGREEMENT; CAPTIONS: This License and its exhibits and attachments set forth all the promises, agreements, conditions, and understandings, either oral or written, between the parties. The captions, paragraphs, sections, or letters appearing in this License are inserted only as a matter of convenience and in no way affect, define, limit, expand, construe, or describe the scope or intent of the sections and paragraphs hereof.

31. AMENDMENTS: Except to the extent otherwise provided herein, no subsequent alteration, amendment, change, or addition to this License or any exhibit or attachment hereto shall be binding on the City or Licensee unless in writing and signed by them and made a part of this License. Any and all amendments to this License and any exhibit or attachment hereto shall require approval of City's city council and must comply with all ordinances, rules, regulations, and statutes in existence at the time of the execution of the modification or amendment.

32. SEVERABILITY: If any provision of this License is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any party under this License will not be materially and adversely affected thereby, such provision shall be fully severable; this License will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this License will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the parties shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this License a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.

33. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL: This License shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies. Venue for resolution of any dispute arising from or under this License or its performance shall be in Indian River County,

Florida and all actions and proceedings arising from or under this License or Licensee's occupation, use, maintenance, or restoration of the Premises or otherwise related to the subject matter of this License shall be in the court of the State of Florida in Indian River County, Florida, which court shall have exclusive jurisdiction for such purpose. Each of the parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this License or Licensee's occupancy, use, maintenance, or restoration of the Premises or otherwise related to the subject matter of this License. This provision is a material inducement for the parties hereto to enter into this License, and shall survive the termination of this License.

34. ATTORNEYS' FEES: In the event there arises between the parties any dispute or litigation, each party shall be responsible for its own attorneys' fees and costs. However, should any claim or litigation against the City arise as to liability for any injury, death, or property damage due to the condition of the Premises or Licensee's occupancy, use, operation, maintenance, or restoration of the Premises or Licensee's activities, Licensee shall be responsible for and reimburse the City for the cost of City's defense, including but not limited to attorneys' and experts' fees and costs.

35. RECORDING. This License, being of limited duration, will not be recorded in the public records.

IN WITNESS WHEREOF, the parties have executed this License as of the dates entered below and the respective signatories of the parties whose signatures appear below hereby warrant and represent that they have been and are on the date of execution of this License duly authorized to execute this License and bind their respective party.

**SIGNATURE PAGES FOLLOW**

**LICENSEE:**

**McKEE BOTANICAL GARDEN, INC.**

**ATTEST:**

\_\_\_\_\_  
Stephanie Hurtt  
Secretary

By: \_\_\_\_\_  
Matthew McManus  
President

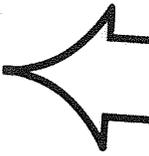
STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing License Agreement for Use of City Real Property was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016 by **Matthew McManus, as President, and Stephanie Hurtt, as Secretary,** of McKee Botanical Garden, Inc., Licensee. They \_\_\_ are personally known to me; OR \_\_\_ produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name:  
Commission No.:  
My Commission Expires:

ATTEST:

CITY OF VERO BEACH



\_\_\_\_\_  
Tammy K. Vock  
City Clerk

By: \_\_\_\_\_  
Jay Kramer  
Mayor

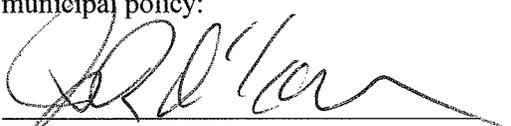
[Seal]

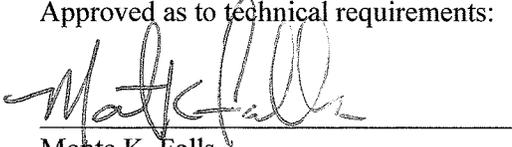
STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

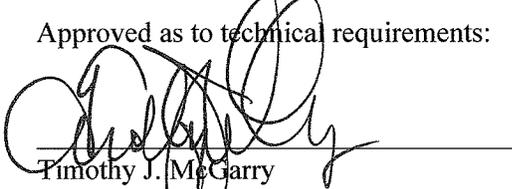
The foregoing License Agreement for Use of City Real Property was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016 by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

\_\_\_\_\_  
NOTARY PUBLIC  
Print name:  
Commission No.  
My Commission Expires:

Approved as to form and legal sufficiency:  
  
Wayne R. Coment  
City Attorney

Approved as conforming to municipal policy:  
  
James R. O'Connor  
City Manager

Approved as to technical requirements:  
  
Monte K. Falls  
Public Works Director

Approved as to technical requirements:  
  
Timothy J. McGarry  
Planning & Development Director

Approved as to technical requirements:  
  
David E. Currey  
Chief of Police

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**  
**TEMPORARY LICENSE TO USE CITY PROPERTY #2015-LA-263**  
**Portion of Government Lot 4, Section 6-33-40**  
**Parcel #33-40-06-00008-0000-00027.0**

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Government Lot 4, Section 6, Township 33 South, Range 40 East, according to the Last General Plat of Lands of the Indian River Farms Company as recorded in Plat Book 2, Page 25, of the Public Records of St Lucie County, Florida, said lands now lying and being in Indian River County, Florida, and being more particularly bounded and described as follows:

That part of Government Lot 4, Section 6, Township 33 South, Range 40 East, lying south of 17<sup>th</sup> Street and west of Indian river Boulevard;

Less; The west 5 acres;

Said license area containing 4.61 acres more or less.

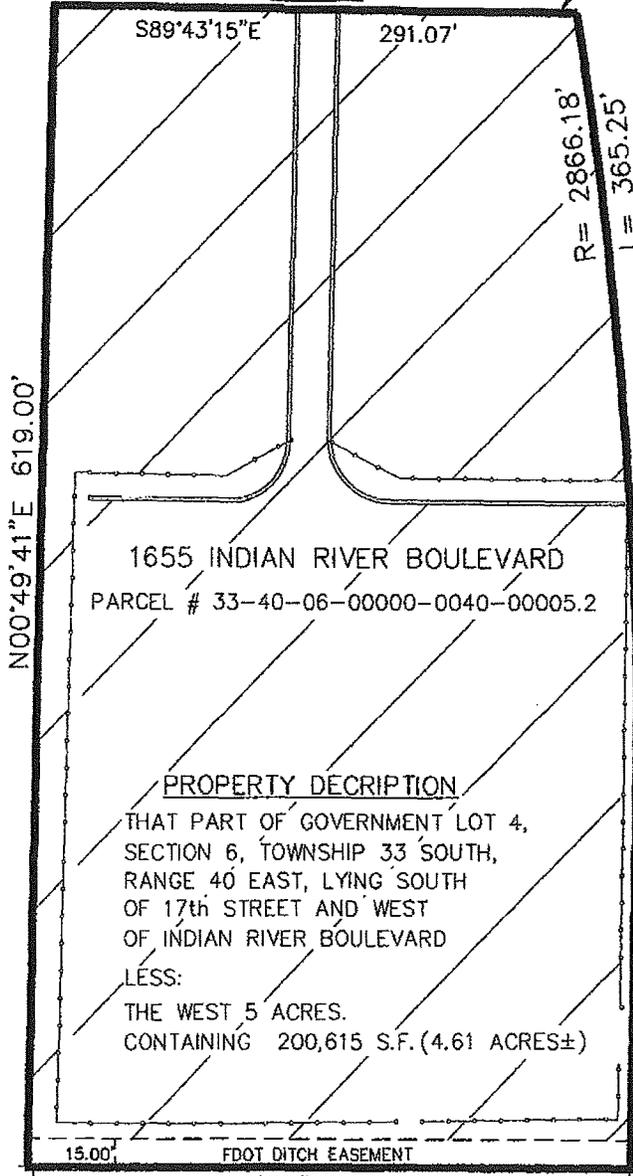
  
\_\_\_\_\_  
David R. Gay, PSM #5973



17TH STREET  
(100' R/W)

SUBJECT LICENSE AREA  
(TEMPORARY STORAGE)

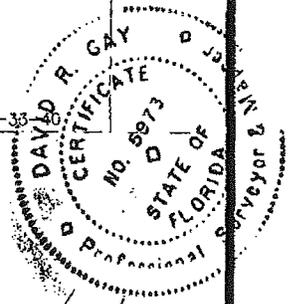
SCALE 1" = 100'



1655 INDIAN RIVER BOULEVARD  
PARCEL # 33-40-06-00000-0040-00005.2

PROPERTY DECEIPTION  
THAT PART OF GOVERNMENT LOT 4,  
SECTION 6, TOWNSHIP 33 SOUTH,  
RANGE 40 EAST, LYING SOUTH  
OF 17th STREET AND WEST  
OF INDIAN RIVER BOULEVARD  
LESS:  
THE WEST 5 ACRES.  
CONTAINING 200,615 S.F. (4.61 ACRES±)

INDIAN RIVER BOULEVARD  
(200' R/W)



*David R. Gay*  
DAVID GAY, PSM #5973 DATE 1/7/16

THIS SKETCH IS NOT A SURVEY

SHEET 2 OF 2

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS ENGINEERING & SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION TEMPORARY LICENSE TO USE CITY PROPERTY OLD POSTAL ANNEX PROPERTY SECTION 6-33-40	EXHIBIT "A"		REV. NO.	AUTHRD.BY
		CITY PROJECT NO. 2016-LA-263	DRWN.BY DG	DATE 01/2016	DATE
		DATE 01/2016	DRWN BY DG	CHKD BY MKF	DESCRIPTION

## Detail by Entity Name

### Florida Not For Profit Corporation

MCKEE BOTANICAL GARDEN, INC.

### Filing Information

Document Number	N03000003781
FEI/EIN Number	65-1189895
Date Filed	04/29/2003
State	FL
Status	ACTIVE

### Principal Address

350 U.S. HWY. 1  
VERO BEACH, FL 32962

### Mailing Address

350 U.S. HWY. 1  
VERO BEACH, FL 32962

### Registered Agent Name & Address

ROSSWAY, BRADLEY W  
5070 NORTH HWY. A1A, STE. 200  
VERO BEACH, FL 32963-1292

### Officer/Director Detail

#### **Name & Address**

Title President

McManus, Matthew  
3340 Cardinal Drive  
VERO BEACH, FL 32963

Title 1VP

Rennick, Sandra  
P.O. Box 643282  
VERO BEACH, FL 32964

Title T

Schlitt, Jr., Frank J  
3003 Cardinal Drive, Suite C

Title Secretary

Hurt, Stephanie  
917 Ladybug Lane  
Vero Beach, FL 32963

**Annual Reports**

<b>Report Year</b>	<b>Filed Date</b>
2013	03/05/2013
2014	02/26/2014
2015	02/23/2015

**Document Images**

<a href="#"><u>02/23/2015 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>02/26/2014 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>03/05/2013 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>03/01/2012 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>03/01/2011 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>01/07/2010 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>03/24/2009 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/15/2008 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>03/13/2007 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/26/2006 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/19/2005 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>05/27/2004 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/29/2003 -- Domestic Non-Profit</u></a>	<a href="#">View image in PDF format</a>

12-0176-00  
WADDELL & WILLIAMS INSURANCE GROUP  
3599 INDIAN RIVER DR E  
VERO BEACH FL 32963-1507

01-15-2016

MCKEE BOTANICAL GARDEN INC  
350 US HIGHWAY 1  
VERO BEACH FL 32962-2906



P.O. BOX 30660, LANSING, MICHIGAN 48909-8160 • 517-323-1200

AUTO-OWNERS INSURANCE COMPANY  
AUTO-OWNERS LIFE INSURANCE COMPANY  
HOME-OWNERS INSURANCE COMPANY  
OWNERS INSURANCE COMPANY  
PROPERTY-OWNERS INSURANCE COMPANY  
SOUTHERN-OWNERS INSURANCE COMPANY

**You may view your policy online at  
[www.auto-owners.com](http://www.auto-owners.com).**

To enroll, use the policy number **72697922**  
and Personal ID code (PID) **R5T 8K7 7C7**.  
Once enrolled, you may choose to stop  
receiving the paper policy in the mail.

Your agency's phone number is 772-231-1313

RE: Policy 984782-72697922-15

Thank you for selecting Auto-Owners Insurance Group to serve your insurance needs! Feel free to contact your independent Auto-Owners agent with questions you may have.

Auto-Owners and its affiliate companies offer a variety of programs, each of which has its own eligibility requirements, coverages and rates. In addition, Auto-Owners also offers many billing options. Please take this opportunity to review your insurance needs with your Auto-Owners agent, and discuss which company, program, and billing option may be most appropriate for you.

Auto-Owners Insurance Company was formed in 1916. The Auto-Owners Insurance Group is comprised of five property and casualty companies and a life insurance company. Our A++ (Superior) rating by A.M. Best Company signifies that we have the financial strength to provide the insurance protection you need.

~ *Serving Our Policyholders and Agents Since 1916* ~

INSURANCE COMPANY  
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

AGENCY WADDELL & WILLIAMS INSURANCE GROUP  
12-0176-00 MKT TERR 114 772-231-1313

INSURED MCKEE BOTANICAL GARDEN INC

ADDRESS 350 US HIGHWAY 1  
VERO BEACH FL 32962-2906

## TAILORED PROTECTION POLICY DECLARATIONS

Change Endorsement Effective 01-08-2016

**POLICY NUMBER 984782-72697922-15**

Company  
Bill

Policy Term	
12:01 a.m.	12:01 a.m.
08-24-2015	to 08-24-2016

---

### Description of Change

ADD TO 55181 ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION

NAME OF PERSON OR ORGANIZATION:  
CITY OF VERO BEACH ELECTED OFFICIALS EMPLOYEES OFFICERS  
& AGENTS

Transaction Number: 003

Endorsement Premium:

\$30.00  
ADDITIONAL

(THIS IS NOT A BILL)



*Request sent to Auto-Owners*

**Gail Cain**

---

**From:** Gail Cain [gail@waddellins.com]  
**Sent:** Friday, January 08, 2016 11:25 AM  
**To:** 'branchmail@aoins.com'  
**Subject:** 12017600; Endorsement request

*Good Morning,*

*Please endorse policy #72697922, McKee Botanical Garden, Inc. to add form #55181, Additional Insured-Designated Person or Organization showing City of Vero Beach, elected officials, employees, officers & agents are listed as additional insureds for General Liability as respects the operations of the named insured with regard to premises leased to the insured for a Special Event on February 13, 2016. Our insured will be using the additional insureds property as remote parking for the event. All else remains the same.*

*Thanks & Have a Blessed Day, Gail*

*Gail L. Cain*

*[gail@waddellins.com](mailto:gail@waddellins.com)*

*Waddell & Williams Insurance Group*

*3599 Indian River Drive East*

*Vero Beach, FL 32963*

*772-231-1313 Fax: 772-231-1314*



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COMMERCIAL GENERAL LIABILITY  
55181 (12-04)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- 1. In the performance of your ongoing operations;  
or

- 2. In connection with your premises owned by or rented to you.

B. The following is added to SECTION III - LIMITS OF INSURANCE:

The limits of liability for the additional insured are those specified in the written contract or agreement between the insured and the designated person or organization, not to exceed the limits provided in this policy. These limits are inclusive of and not in addition to the limits of insurance shown in the Declarations.