

Prepared by:  
Suzanne S. Howard  
Assistant General Counsel  
Office of General Counsel  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

### USE AGREEMENT

**THIS USE AGREEMENT** ("Agreement"), is made this 14<sup>th</sup> day of March, 2003, between **JEA**, a body politic and corporate ("JEA"), and **CITY OF JACKSONVILLE**, a municipal corporation ("City").

### **WITNESSETH:**

**WHEREAS**, JEA is the owner of the property described in Exhibit A, attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, City desires to utilize the Property for park purposes in connection with the public park being developed on adjacent land owned by the City; and

**WHEREAS**, City is willing to indemnify, defend and hold JEA harmless from damages and expenses which may be incurred as a direct or indirect result of such use and certain other conditions.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants contained herein, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Use. JEA acknowledges and agrees that City may use the Property only for park purposes in connection with the adjacent public park.
2. Non-Interference. It is understood and agreed that City's use of the Property shall not interfere with JEA's use of the Property. In the event of any such interference, City, upon receipt of written notice from JEA, shall cause any such interference to cease and make such modifications in its use of the Property as may be reasonably required to prevent such interference.
3. Regulations. City shall obtain all permits, licenses, and approvals required by any federal, municipal, state or other governmental authority for its use of the Property and shall at all times comply with all laws, ordinances, rules and regulations of any federal, municipal, state, or other governmental authority with respect to its use of the Property.
4. Damage to Property. City shall, at its sole cost and expense, repair to the complete satisfaction of JEA, any and all damage to the Property and any improvements located thereon caused by or arising from City's exercise of the rights granted herein.
5. Improvements. City shall not construct or install any improvements or landscaping on the Property without the prior written consent of JEA. Upon termination of this Agreement, City shall, at its sole cost and expense, remove any and all improvements constructed or installed by City on the Property.
6. Maintenance. City shall, at its sole cost and expense, maintain the Property during the term

of this Agreement.

7. Mechanics' Liens. City shall have no power to do any act or make any contract which may create or be the foundation for any mechanics', materialmen's or other lien or encumbrance upon the Property.

8. Indemnification. In consideration of ten dollars (\$10.00) receipt and sufficiency of which is hereby acknowledged, City shall, to the extent permitted by Section 768.28, Florida Statutes, hold harmless, indemnify, and defend JEA against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, arising out of or incidental to the exercise by City of the rights granted herein. For purposes of this indemnification, the term "JEA" shall mean JEA, as a body politic and corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification shall survive the expiration or other termination of this Agreement.

9. Hazardous Substances.

(a) City covenants and agrees that it will not cause or permit any Hazardous Substances (the "Hazardous Substances" as hereinafter defined) to be installed, placed, stored, held, located, released or disposed of in, on, at, or under the Property. City further covenants and agrees to indemnify JEA for any loss, cost, damage, liability or expense (including without limitation, attorneys' fees and other costs of legal representation ) that JEA might ever incur because of City's failure to comply with the provisions of the immediately preceding sentence. For purposes of this indemnification, the term "JEA" shall mean JEA, as a body corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification is to survive the expiration or other termination of this Agreement.

(b) For the purposes of this Paragraph 9, Hazardous Substances shall mean and include all those substances, elements, materials or compounds that are included in any list of hazardous or restricted substances adopted by the United States Environmental Protection Agency (the "EPA") or any other substance, element, material or compound defined or restricted as a hazardous, toxic, radioactive or dangerous substance, material or waste by the EPA or by any other ordinance, statute, law, code, or regulation of any federal, state or local governmental entity or any agency, department or other subdivision thereof, whether now or later enacted, issued or promulgated.

10. Waiver. Any waiver at any time by JEA of its rights with respect to City or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any other prior or subsequent default or matter.

11. Assignment. This Agreement shall not be transferred or assigned by City, nor shall any other party succeed to the interests of City in this Agreement.

12. Notices. Any notice, demand, or request required or authorized by this Agreement shall be deemed properly given if mailed postage prepaid, to JEA, 21 West Church Street, Jacksonville, Florida 32202, Attention: Managing Director, in the case of JEA; and to City of Jacksonville, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202, Attention: Corporate Secretary, in the case of City, or to such other address as may be designated by either party.

13. Costs. Any cost, expense or liability connected with or in any manner incident to the granting, exercise, enjoyment, or relinquishment of this Agreement shall be assumed and discharged by City.

14. Right to Terminate. This Agreement may be terminated by JEA, at any time, with or without cause, by providing written notice of such termination to City.

15. Entire Agreement. This Agreement represents the full, complete and entire agreement between JEA and City with respect to the subject matter hereof. No modification, alteration or amendment to this Agreement shall be binding unless in writing and executed by the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year set forth above.

Attest:

**JEA**

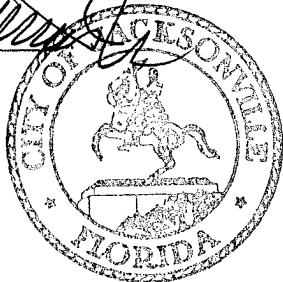
Cathy L. Barnwell  
Print Name: Cathy L. Barnwell  
Title: Process Supt. Assoc.

By: Donald L. Burch, Jr.  
Print Name: Donald L. Burch, Jr.  
Title: Director, Real Estate Services

Attest:

**CITY OF JACKSONVILLE**

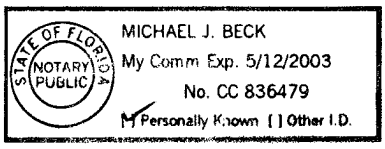
Neil W. McArthur, Jr.  
Neil W. McArthur, Jr.  
Corporation Secretary



By: John A. Delaney  
John A. Delaney, Mayor

**STATE OF FLORIDA  
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March, 2003, by Donald L. Burch, Jr. and Cathy L. Barnwell, the Director, Real Estate Services and Process Supt. Assoc., respectively, of JEA, a body politic and corporate, on behalf of JEA. Such persons are personally known to me.



Michael J. Beck  
Michael J. Beck  
(print name)  
Notary Public

**STATE OF FLORIDA  
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of March, 2003 by

John A. Delaney and Neill W. McArthur, Jr., the Mayor and Corporation Secretary, respectively, of the City of Jacksonville, a municipal corporation, on behalf of the corporation. Such persons are personally known to me.

*Sharon E. Chappelle* (x)

[print or type name]  
NOTARY PUBLIC



Sharon E. Chappelle  
MY COMMISSION # CC935460 EXPIRES  
July 25, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.

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FORM APPROVED

By: *[Signature]*

Office of General Counsel

EXHIBIT "A" LEGAL DESCRIPTION OF PROPERTY

SKETCH TO SHOW

LEGAL DESCRIPTION:  
ALL OF LOTS 8 & 13 AND THE WESTERLY 20.95 FEET OF LOTS 7 & 14, BLOCK 7, OF EAST GRAND PARK, RECORDED IN PLAT BOOK 3, PAGE 89, OF THE CURRENT PUBLIC RECORDS, OF DUVAL COUNTY, FLORIDA.

NOTE:  
THIS IS NOT A SURVEY, SKETCH BASED ON PLAT BOOK 3, PAGE 89, OF THE CURRENT PUBLIC RECORDS, DUVAL COUNTY, FLORIDA

