

**JOINT USE AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
EDWARD WATERS COLLEGE, INC.**

THIS JOINT USE AGREEMENT (hereinafter "Agreement") is entered into this 9th day of March, 2012, by and between the **CITY OF JACKSONVILLE**, a municipal corporation existing under the Constitution and the laws of the State of Florida, (hereinafter "Jacksonville"), and **EDWARD WATERS COLLEGE, INC.** (hereinafter "EWC"), whose address is 1658 Kings Road, Jacksonville, Florida 32209.

WITNESSETH:

WHEREAS, EWC was organized in 1967 as a non profit Florida corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended from time to time; and

WHEREAS, EWC owns certain open space property consisting of approximately .655 acres located on the northwest corner of Pearce Street and 3rd Street (hereinafter the "Park"), more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, EWC desires to maintain and provide use of the Park to the general public and seeks the assistance of Jacksonville to accomplish this goal; and

WHEREAS, Jacksonville desires to improve the Park and facilitate EWC's goal of providing use of the Park to the general public by providing a playscape and fencing for the Park; and

WHEREAS, Jacksonville believes that the activities of EWC are beneficial to the children and citizens of Jacksonville, Duval County, Florida and its surrounding areas, and, among other things, EWC promotes the welfare, health and interests of the general public and EWC provides economic benefits to Jacksonville, Duval County, Florida and its surrounding areas; and

WHEREAS, EWC and Jacksonville desire to have joint use of the Park so that EWC can maintain and offer to the general public use of the Park as a community recreational location for safe play, and Jacksonville can support such use by providing the playscape and fencing for the Park in order to promote use of the Park by all ages without discrimination as to age, religion, disability, marital status, national or ethnic origin, gender, creed, color or race; and

WHEREAS, EWC and Jacksonville desire to enter into this Agreement in order to enable EWC to accomplish its commitment to providing use of the Park to citizens in Jacksonville, Duval County, Florida and its surrounding areas; and

WHEREAS, the Jacksonville City Council finds that such use of the Park as a safe play area serves a public purpose;

NOW, THEREFORE, for and in the consideration of One and 00/100 dollars (\$1.00) in hand paid

each respective party to the other and other good and valuable consideration, including, but not limited to, the covenants, conditions and terms hereof, the sufficiency and receipt of said good and valuable consideration being herewith acknowledged by the respective parties, EWC and Jacksonville stipulate and agree as follows:

1. Recitals. The recitals set forth herein are accurate, correct and true and incorporated herein by this reference.

2. Definitions. As used in this Agreement, the words defined immediately below shall have the meaning stated next to same. Words imparting the singular number include the plural number and vice versa, and the male gender shall include the female gender and vice versa, unless the context clearly requires otherwise.

(a) "Governmental Requirement" means any permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, condition, certificate, license, authorization, policy, or other direction or requirement of Jacksonville or any governmental and/or regulatory national, state or local entity with jurisdiction over Jacksonville, EWC and/or the Park. Governmental Requirements shall include all applicable, relevant, or appropriate Florida Statutes and Jacksonville City Ordinances, including, without limitation, any regulation found in the Florida Administrative Code, and all Florida statutes, City ordinances and regulations or rules now existing or in the future enacted, promulgated, adopted, entered, or issued, both within and outside the present contemplation of the respective parties to this transaction.

(b) "Section" means the numerical sections of this License and the respective subsections thereof. Each respective Section begins with a numerical number and a capitalized heading of the Section, which is underlined to indicate the subject matter thereof.

(c) "Term" means the term of this Joint Use Agreement, which is a period of twenty (20) years commencing on MARCH 9, 2012 and terminating on MARCH 8, 2032. Upon mutual agreement of the parties, this Agreement may be extended for three (3) additional five (5) year periods under the same terms and conditions as set forth herein. Notice of EWC's request for an additional term must be given to Jacksonville in writing at least sixty (60) days prior to the end of the then current term.

3. Joint Use Agreement. In consideration of the representations, agreements and covenants contained herein, EWC and Jacksonville enter into this Joint Use Agreement for the term of twenty (20) years, which term shall commence on MARCH 9, 2012 and continue until MARCH 8, 2032, for the joint use of certain real property situated, lying and being on the northwest corner of Pearce Street and 3rd Street, in Jacksonville, Duval County, Florida, and containing approximately .655 acres, more or less (the "Park"), said real property more particularly described on **Exhibit A**, together with the existing improvements located thereon and all improvements constructed or installed thereon by EWC or Jacksonville, including a playscape and fencing to be provided by Jacksonville and maintained by EWC during the Term in accordance with all of the provisions, covenants, conditions and terms herein.

4. Responsibilities of EWC.

(a) EWC shall make the Park available to the general public for a minimum period of twenty (20) years, the initial Term of this Agreement, and shall provide prominent signage, approved by Jacksonville, indicating that the Park is open to the general public.

(b) EWC shall maintain and repair current structures and facilities at the Park, including the playscape and fencing.

5. Responsibilities of Jacksonville. Jacksonville shall provide funding in an amount not to exceed ONE HUNDRED SEVENTY FIVE THOUSAND AND NO/00 DOLLARS (\$175,000.00) for the installation of the playscape and perimeter fencing at the Park.

6. Non-discrimination. EWC shall not discriminate against any person on the basis of race, creed, color, sex, religion, ethnic or national origin, age, marital status or disability in offering use of the Park to the general public.

7. Improvements to Park/Equipment.

(a) Jacksonville desires to make improvements to the Park and its facilities by providing the playscape and perimeter fencing. Maintenance and repair of Park structures, facilities and completed improvements, including the playscape and perimeter fencing, shall be the responsibility of EWC.

(b) It is understood and agreed between the parties that the playscape and the perimeter fencing shall become the property of EWC, free and clear of all construction or other liens. Jacksonville shall deliver to EWC contractor(s)' affidavits and waivers of lien from all those who supplied labor, material or services in connection with the construction of the perimeter fencing together with satisfactory proof of full payment of such.

(c) In the event that EWC fails to keep the Park open to the general public for a minimum period of twenty (20) years, EWC shall repay Jacksonville the sum of \$175,000 for the playscape, fencing and improvements on a pro rata basis. The repayment obligation of this subsection 7(c) shall survive the termination of this Agreement.

8. Insurance.

(a) EWC shall procure and maintain, at its sole cost and expense, during the Term of this Agreement, insurance of the types and in the minimum amounts stated below:

<u>Schedule</u>	<u>Limits</u>
<u>Commercial General Liability</u>	\$1,000,000 Per Occurrence
Premises-Operations	\$2,000,000 Aggregate
Products-Completed Operation	\$1,000,000 Products-Comp Op
Blanket Contractual Liability	\$1,000,000 Personal/Advertising Injury
Independent Contractors	

(b) Jacksonville shall be named as Additional Insured under the Commercial General Liability Insurance coverage. EWC shall provide a waiver of subrogation on all required insurance in favor of Jacksonville.

(c) Said insurance shall be written by an insurer holding a current certificate of authority issued by the Department of Financial Services of the State of Florida pursuant to Chapter 624, Florida Statutes. Such

insurance shall be written by an insurer with an A.M. Best rating of A- VII or better. Prior to the execution of this Agreement, EWC shall furnish to Jacksonville Certificates of Insurance approved by Jacksonville's Risk Manager evidencing the maintenance of said insurance. The insurance policy shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until thirty (30) days after receipt of written notice by Jacksonville. Any indemnification provisions in this Agreement are separate and apart and in no way limited by the insurance amounts stated above.

(d) Jacksonville is self-insured, and its obligations with respect thereto are controlled by the provisions and limitations of § 768.28, Florida Statutes, the provisions of which are not altered, expanded or waived.

(g) Neither approval of, nor failure to disapprove, the insurance furnished by EWC shall relieve EWC or its agents from the responsibility to provide the insurance as required by this Agreement.

(h) Failure to maintain proper insurance as required by this Section 8 after having received written notice from Jacksonville may result in immediate termination of this Agreement.

9. Indemnification. EWC shall indemnify, defend and save harmless Jacksonville against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable attorney's fees and costs, by or on behalf of any person or party whatsoever, arising out of:

(a) any accident, injury or damage which shall happen in or about the Park and any matter or thing growing out of the condition, occupation, maintenance, alteration, repair, use or operation of the Park during the Term; or

(b) any negligent or intentional act or omission of EWC or any of EWC's representatives, employees, licensees, invitees, or agents.

10. Title to Park. Title to the Park shall remain vested with EWC, subject to the covenants, conditions and terms of this Agreement, and Jacksonville shall have no interest in the title to the Park. The perimeter fencing provided by Jacksonville shall be vested with EWC, which shall have the title thereto, subject to the covenants, conditions and terms of this Agreement. Jacksonville shall have use of the Park, subject to the covenants, conditions and terms of this Agreement, but EWC shall always remain vested with title to the Park and in control thereof.

11. Default. Each of the following events shall be a default hereunder by EWC or Jacksonville, as the case may be, and shall constitute a breach of this License:

(a) If EWC shall fail to perform any of the covenants, conditions and terms of this Agreement on EWC's part to be performed and such non-performance shall continue for a period of thirty (30) days after written notice thereof by Jacksonville to EWC; or, if EWC shall fail to act in good faith to commence and undertake performance within such thirty (30) day period to cure a non-performance which cannot be cured within the initial thirty (30) day period and to designate in writing the reasonable time period to cure such non-performance and its intent to do so; or, EWC, having commenced to undertake such performance within the initial thirty (30) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance; or

(b) If EWC ceases to be an active Florida corporation in good standing or loses its exemption from taxation under Section 501(c)(3) of the Internal Revenue Code; or

(c) If Jacksonville shall fail to perform any of the covenants, conditions and terms of this Agreement on Jacksonville's part to be performed and such non-performance shall continue for a period of thirty (30) days after written notice thereof by EWC to Jacksonville; or, if Jacksonville shall fail to act in good faith to commence and undertake performance within such thirty (30) day period to cure a non-performance which cannot be cured within the initial thirty (30) day period and to designate in writing the reasonable time period to cure such non-performance and its intent to do so; or, Jacksonville, having commenced to undertake such performance within the initial thirty (30) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance.

If an event of default shall occur and be uncured, then the party not in default shall have the right to terminate and cancel this Agreement immediately by giving the defaulting party written notice of such termination and cancellation. Upon such notice, this Agreement shall terminate and the parties shall be released from all obligations under this Agreement that do not specifically survive its termination.

12. Termination by EWC. EWC shall retain an absolute right to terminate and cancel this Agreement at any time during the Term in the event EWC determines that its financial condition and/or operating funds are not sufficient for it to maintain and operate the Park as described herein upon giving Jacksonville at least sixty (60) days' written notice of EWC's need to terminate and cancel its obligations hereunder and designating the termination date. In such event, the Agreement shall terminate and cease as of the effective date of EWC's termination hereunder and the parties shall be released from all obligations hereunder which do not specifically survive termination.

13. Termination by Jacksonville. Notwithstanding any contrary provision of this Agreement, Jacksonville shall have the absolute right to terminate this Agreement at any time by providing at least sixty (60) days' written notice of such termination to EWC.

14. Jacksonville's Access to Park. Jacksonville shall have free access to the Park in order to perform its responsibilities under this Agreement. EWC shall provide to Jacksonville keys to all gates and improvements on the Park.

15. Force Majeure. If EWC or Jacksonville shall be delayed in, hindered in or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, war, riots, insurrection, the act, failure to act or default of the other party, or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay.

16. Miscellaneous:

(a) Notices. Any notice, demand, or other communication required, or which may be given, unless otherwise specifically provided for in this Agreement, shall be in writing, shall be addressed

to the respective Parties at the addresses shown below, and shall be effective: five (5) days after being mailed, if sent by certified, postage prepaid U.S. mail; upon receipt of confirmation, if delivered by confirmed facsimile; upon delivery, if delivered in person; or, the day after dispatch if sent by an overnight courier service that provides the sender with written record of delivery. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein.

If to CITY: Office of the Director
 City of Jacksonville
 Department of Recreation and Community Services
 214 North Hogan Street, Suite 3102
 Jacksonville, Florida 32202

If to EWC: George Dandelake
 Edward Waters College, Inc.
 1658 Kings Road
 Jacksonville, FL 32209

With a copy to: Edward Waters College
 1658 Kings Road
 Jacksonville, Florida 32209
 Attention: In-House Counsel Office of the President

(b) Further Instruments. Each respective party hereto shall, from time to time, execute and deliver such further instruments as any other party or parties or its counsel may reasonably request to effectuate the intent of this Agreement.

(d) Severability of Invalid Provision. If any one or more of the agreements, provisions, covenants, conditions and terms of the Agreement shall be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants, conditions or terms shall be null and void with no further force or effect and shall be deemed separable from the remaining agreements, provisions, covenants, conditions and terms of the Agreement and shall in no way affect the validity of any of the other provisions hereof.

(e) No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of EWC or Jacksonville in his or her individual capacity, and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(f) Third Party Beneficiaries. Nothing herein express or implied is intended or shall be construed to confer upon any entity other than EWC and Jacksonville any right, remedy or claim, equitable or legal, under and by reason of this Agreement or any provision hereof, all provisions, conditions and terms

hereof being intended to be and being for the exclusive and sole benefit of EWC and Jacksonville.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the Ordinances of the City of Jacksonville. Wherever possible, each provision, condition and term of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision, condition or term of this Agreement, or any documentation executed and delivered hereto, shall be prohibited by or invalid under such applicable law, then such provision, condition or term shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision, condition or term or the remaining provisions, conditions and terms of this Agreement or any documentation executed and delivered pursuant hereto.

(j) Section Headings. The section headings inserted in this Agreement are for convenience only and are not intended, and shall not be construed, to limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision, condition or term hereof.

(k) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(l) Entire Agreement. This Agreement contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understandings between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto or their agents or employees made outside of this Agreement and not contained herein shall form any part hereof or bind any respective party hereto. This Agreement shall not be supplemented, amended or modified except by written instrument signed by the respective parties hereto.

(m) Attorneys' Fees and Costs. In any litigation arising out of or pertaining to this Agreement, the prevailing party shall be entitled to an award of its attorney's fees and costs, whether incurred before, during or after trial, or upon any appellate level.

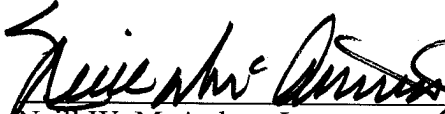
(n) Waiver of Defaults. The waiver by either party of any breach of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Agreement.

[Remainder of page left blank intentionally. Signature page follows immediately]

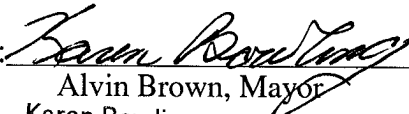
IN WITNESS WHEREOF, the respective parties hereto have executed this Agreement for the purposes expressed herein effective the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE



Neill W. McArthur, Jr.
Corporation Secretary

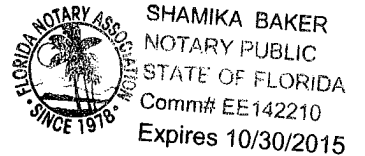


By: 
Alvin Brown, Mayor
Karen Bowling
Deputy Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of
Executive Order No. 2011-06

STATE OF FLORIDA
COUNTY OF DUVAL

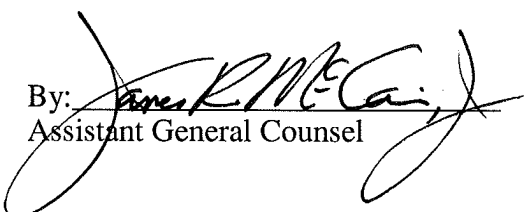
The foregoing instrument was acknowledged before me this 9th day of March, 2012, by Alvin Brown and Neill W. McArthur, Jr., the Mayor and Corporation Secretary, respectively, of the City of Jacksonville, a municipal corporation, on behalf of the corporation. Such persons are personally known to me.


Shamika Baker
[print or type name]
Notary Public, State of Florida at Large



Form Approved:

OFFICE OF GENERAL COUNSEL

By: 
Assistant General Counsel

WITNESSES:

EDWARD WATER COLLEGE, INC.

Linda E Foster
Print Name: LINDA E. FOSTER

George W Dumbelate
Print Name: George W Dumbelate

By: [Signature]
Print Name: NATHANIEL GLOVER
Title: PRESIDENT

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 5th day of MARCH, 2012, by Nathaniel Glover, the President of Edward Waters College, Inc., a Florida non profit corporation, on behalf of the corporation. Such person: (notary must check applicable box)

is personally known to me; or
produced a current _____ driver's license as identification; or
produced _____ as identification

Hazel Clayton
HAZEL CLAYTON

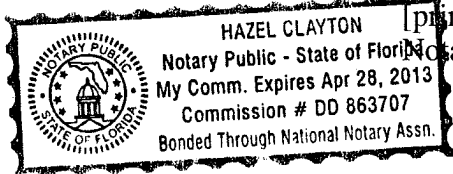


EXHIBIT A

Legal Description of Park

**935-45 10-2S-26E
AFRO-AMERICAN LIFE INS COS PLAT
LOTS 5, 6, 7**

**935-44 10-2S-26E .15
AFRO-AMERICAN LIFE INS COS PLAT
LOTS 8,9**

**10-2S-26E .10
PT GOVT LOT 2 RECD O/R 12312-2077**