

LEGISLATIVE

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PREPARED BY/RETURN TO:
William J. Haley, Esquire
BRANNON, BROWN, HALEY,
ROBINSON & BULLOCK, P.A.
P. O. Box 1029
Lake City, FL 32056-1029

LEASE

THIS LEASE, made and entered into, in duplicate, this 8th day of August, 2006, by and between **SUWANNEE RIVER WATER MANAGEMENT DISTRICT**, a special taxing district organized under Florida Statutes Chapter 373, having a mailing address of 9225 CR 49, Live Oak, FL 32060, hereinafter called the "**Lessor**", and **CITY OF GAINESVILLE**, a municipality of the State of Florida, having a mailing address of Parks, Recreation and Cultural Affairs Department, Station 24, P.O. Box 490, Gainesville, FL 32602-0490 hereinafter called the "**Lessee**";

WITNESSETH:

That the Lessor, for and in consideration of the covenants hereinafter contained and made on the part of the Lessee, hereby demises and leases to Lessee, and Lessee leases from Lessor the property (Premises) in Alachua County, Florida, described in Schedule A attached:

TO HAVE AND TO HOLD the same for a primary term of fifty (50) years commencing with the date hereof and for the rent payable to the Lessor of One and No/100 Dollars (\$1.00) and other good and valuable consideration and in consideration of said Premises and of the covenants and agreements hereinafter expressed, the parties hereto agree as follows:

1. PERSONAL PROPERTY

All personal property placed or moved onto the Premises described herein shall be at the risk of the Lessee or owners thereof, and Lessor shall not be liable for any damage to said personal property, except the Lessor shall be liable for any conduct, act or negligence on its part, or the part of its agents, which cause damage to the property of the Lessee.

2. LAWS AND REGULATIONS

That the Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal and State Governments and of any and all their Departments and Bureaus applicable to said Premises, for the correction, prevention and abatement of nuisances or other grievances, in, upon, or connected with said Premises during said term.

3. LESSOR'S ACCESS

A. After occupancy, the Lessee shall not unreasonably withhold consent from the Lessor to enter the Premises from time to time in order to inspect the Premises or to make necessary or needed work that in Lessor's sole discretion, Lessor determines is required.

4. COVENANTS OF LESSEES

Lessee does hereby, for itself, its successors and assigns, covenant with the Lessor, its successors and assigns, that it will also keep all and singular the premises in such repair, order and condition as the same are in at the time of occupancy and will not make or suffer any strip or waste of the premises; and that no unlawful, improper, or offensive trade or business shall be carried on, in, or upon the

Premises and that the Lessor, its successors and assigns, and its agents, at reasonable times may enter to view the Premises, and to make any repair which it may find necessary to make, to protect its interest in the Lease; it being understood and agreed, however, that Lessor shall not be bound to make any repairs or improvements at its expense.

5. USE OF PREMISES

A. Acceptable Uses: Premises may be used for certain active and passive recreational activities to include but not limited to soccer, softball and baseball fields, tennis and basketball courts, team sports, hiking, biking, and bird watching. Acceptable facilities include covered and anchored picnic tables, educational and instructional kiosks, bicycle parking racks, concession facilities and restroom facilities. The cumulative impervious surface area of all facilities is limited to five percent of total property area, and only permitted with prior approval from the Lessor.

B. Prohibited Uses: The Premises shall not be used by motorized vehicles except for certain pervious parking facilities and for the purpose of maintaining the Premises. There shall be no harvesting of trees, placement of impervious surfaces nor buildings, except as noted in subparagraph 5.A. above.

C. Acceptable Maintenance Activities: Acceptable Maintenance activities shall include the right of Lessee to remove dead or dying vegetation, light bushhogging, mowing, cutting of underbrush and similar activities needed to maintain the recreational facilities. Lessee shall not engage in any activity or use any practice that would have a negative impact on the Floridian Aquifer or other water resources.

6. ABANDONMENT

If the Lessee shall abandon or vacate said Premises or fail to comply with the obligations of the Lessee under this Lease before the end of the term of said Lease, the Lessor may, at its option, after 30 days notice, cancel this Lease or it may enter said Premises as the agent of the Lessee, to complete the work and obligations of Lessee without being liable in any way therefore.

7. LESSEE'S RIGHTS

Lessee shall have the right at any time it is not in default, to remove any and all fixtures and other personal property belonging to it whether or not such personal property is so attached to the realty as to be regarded in law as part of the realty. If, in removing any such personal property, any of the leased property is damaged, it shall be an obligation of the Lessee to promptly repair such damage.

8. NOTICE

If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing signed by the party serving the same, deposited in registered or certified United States Mail, Return Receipt Requested, postage prepaid, or sent by facsimile copy (fax), addressed to the Lessor or Lessee at the addresses heretofore set forth. Any notice so mailed or faxed shall be deemed to have been given as of the time the same is deposited in the United States Mail or faxed.

9. UTILITIES

The Lessee agrees that it will pay all charges for utilities, including but not limited to gas, electricity, water and sewer used on said premises.

10. LIABILITY INSURANCE

Lessee further covenants and agrees that it will at all times during the term of this demise, at its own expense, in addition to any insurance that it may have to cover the Lessee's interest, maintain and keep in force liability insurance in the amount of \$100,000/\$300,000 to indemnify Lessor and Lessee jointly as their respective interests may appear, against loss, liability, or damage which may result to Lessor and Lessee, or either, from any accident or casualty whereby any person or persons whomsoever may be injured or killed in or about the demised premises. Lessee shall deliver to Lessor a certificate of such insurance.

11. TAXES AND INSURANCE

During the term hereof, the Lessee shall pay all ad valorem taxes and any other taxes or charges made or assessed against the Premises. The Lessee shall, at its expense, maintain whatever insurance it so desires on the personal property located upon or within said premises and owned or under the control or in the custody of the Lessee.

12. INDEMNIFICATION

Each party, as otherwise permitted by law, indemnifies, defends, and holds the other party harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorney's fees which may be imposed upon or incurred by, or asserted against the

other party by reason of the indemnifying party failing to perform the covenants and conditions as set forth herein.

13. ATTORNEY'S FEES

If one party defaults in the performance of any of the covenants of this instrument and by reason thereof the other party employs the services of any attorney to enforce performance of the covenants by the defaulting party, then the party prevailing in such action shall be entitled to collect from the other party all of its costs, including a reasonable attorney's fee for its attorney.

14. RIGHT OF FIRST REFUSAL

So long as Lessee is not otherwise in default, Lessee shall have the right of first refusal in the event Lessor desires to sell all or a portion of the Premises. In the event of a proposed sale by Lessor, Lessor shall give Lessee not less than ninety (90) day notice of the desire to sell the Premises, setting forth in writing the terms and conditions of the sale. The purchase price to Lessee shall be determined in accordance with the provisions of Paragraph 17. Within said ninety (90) days, Lessee shall either accept or reject the offer and upon accepting the offer, the closing shall take place in accordance with the offer. Even though Lessee does not exercise the right of first refusal to purchase the property, the Lessee shall continue in accordance with the terms set forth in this Lease and the obligations of Lessee hereunder will be owed to the new owner.

15. DEFAULT

A. Events of Default. If any one or more of the following events occur, Lessor may treat such event as a default under the Lease:

- (1) Lessee materially fails to comply with any material provision of

the Lease;

(2) Lessee holds over and continues in possession of the Premises or any part thereof after the expiration of this Lease without permission of Lessor.

B. Lessor's Notice Requirements.

If the Lessee materially fails to comply with any material provision of this Lease within thirty (30) days after delivery of written notice by the Lessor specifying the non-compliance and indicating the intention of Lessor to terminate this Lease, the Lessor may terminate this Lease without the necessity for a separate notice of termination and immediately apply to the court for a Writ of Possession to put the Lessor back in possession of the Premises.

C. Lessor's Remedies.

(1) If an event of default occurs and Lessor complies with the applicable notice requirements listed and either:

- a. Lessor obtains a Writ of Possession, or
- b. Lessee surrenders the Premises, or
- c. Lessee abandons the Premises, then Lessor, at its option, may either:

(i) possess the Premises, in which case this Lease is terminated; or

(ii) pursue any other remedy as may be authorized either by law or in equity.

(2) All of Lessee's personal property remaining on the Premises

after Lessor has been put back into possession shall be presumed to have been abandoned by Lessee, and title to all such property shall vest in the Lessor who shall be free to dispose of the property without further notice to Lessee. Lessee shall indemnify and hold Lessor harmless from any and all claims arising from Lessor's disposal of Lessee's abandoned property.

16. HAZARDOUS WASTE

A. Lessee covenants and agrees that no hazardous or toxic substance, within the definition of any applicable statute or regulation, shall be placed on the Premises during the term of this Lease, except in approved manner in accordance with all industrial standards and all laws, regulations, and requirements for such storage, promulgated by any federal, state or local government, agency or authority. Lessee hereby agrees to indemnify, defend, save and hold Lessor harmless from all loss, costs (including reasonable attorneys' fees, whether suit be brought or not and including appeals, if any), liability and damages whatsoever incurred by Lessor arising out of or by reason of any violation of any applicable, federal, state or local statute or regulation for the protection of the environment which occurs upon the Premises during the term of this Lease or by reason of the imposition of any governmental lien, for the recovery of environmental clean up costs expended by reason of such violation; provided that, to the extent that Lessor is strictly liable under such statute or regulation. Lessee's obligation to Lessor under this indemnity shall likewise be without regard to fault on the part of Lessee with respect to the violation of law which results in liability to Lessor, or caused by conditions which existed prior to the term of this Lease. The provisions of this paragraph shall continue in effect

after the termination of this Lease.

B. During the term of this Lease, whether or not the same is in default, Lessor shall be entitled to examine the Premises for investigation or assessments for the purposes of determining whether there exists on the Premises any environmental condition which could result in any liability, cost or expense to Lessor relating to hazardous substance. The costs of the inspections shall be paid by Lessee should the tests disclose hazardous substance on the Premises. Such assessment may include both above or below the ground testing for environmental damage whether presence of hazardous substances on the Premises and such other tests on the Premises as may be necessary to conduct the assessment in the opinion of Lessor. All cost of such assessments shall be paid by the Lessee within five (5) days after demand by Lessor.

17. OPTION TO PURCHASE

A. So long as Lessee is not in default under the terms of this Lease, Lessee shall have the option to purchase the Premises at the fair market value, minus the value of any improvements made by Lessee, plus closing costs. In setting the fair market value, the same shall be determined by a State of Florida Certified General Appraiser acceptable to both Lessor and Lessee.

B. The conveyance to the Lessee shall contain a restriction that the premises may be used solely for recreational purposes and otherwise in a manner that does not adversely impact the Gainesville Regional Utilities wellfield or other water resources.

18. MISCELLANEOUS

A. It is understood and agreed between the parties hereto that time is of the essence of this instrument and applies to all terms and conditions contained herein.

B. All covenants and agreement of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the Lessor and Lessee subject to the restrictions specifically set forth herein. Whenever used as singular, numbers shall include the plural or singular and the use of any gender shall include all genders.

C. The agreements contained in this Lease set forth the entire understanding of the parties and may not be changed or terminated orally.

D. Failure of the Lessor or Lessee to take any action against the other for violation of any of the terms of this Lease shall not prevent a subsequent act of a similar nature from being a violation of the Lease. No act or agreement to accept surrender of the Premises from the Lessee shall be valid unless in writing and signed by the Lessor.

E. All questions concerning the meaning, execution, construction, effect, validity and enforcement of this Lease shall be in accordance with the laws of the State of Florida.

F. Venue for any suits or other proceedings with respect to this Lease shall be Suwannee County, Florida.

G. A facsimile ("FAX Copy") of this Lease and the signatures thereon shall be considered as originals.

H. The rights of the Lessor shall be cumulative and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

I. The Lessor covenants that the Lessee shall peaceably and quietly have, hold and enjoy the Premises for the uses set forth in this Lease, and further covenants that they have the full right, title and power and authority to make, execute and deliver this Lease.

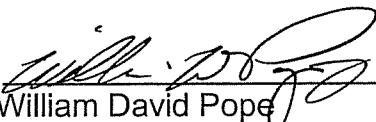
J. In the event that all or any portion of the demised property shall be condemned for any public use or purpose by any legally constituted authority the condemnation proceeds shall be paid to the Lessor.

K. Lessee may not assign its rights under this Lease without the prior written consent of the Lessor.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed as of the day and year first written above.

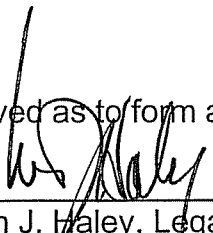
"LESSOR"

**SUWANNEE RIVER WATER
MANAGEMENT DISTRICT**

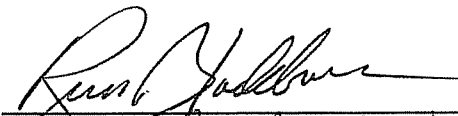
By: 
William David Pope
Chairman

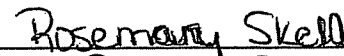
Attest: 
Dr. C. Linden Davidson
Secretary/Treasurer

Approved as to form and legality:

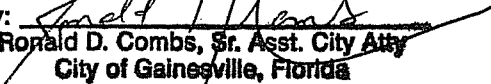

William J. Haley, Legal Counsel

"LESSEE"

By: 
Print Name: Russ Blackburn
Title: CITY MANAGER

Attest: 
Print Name: Rosemary Skell
Title: Administrative Assistant

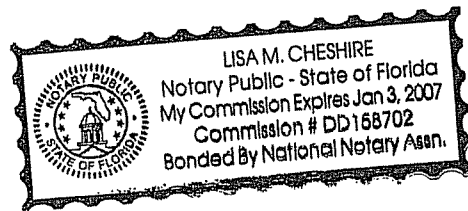
APPROVED AS TO FORM AND LEGALITY

By: 
Ronald D. Combs, Sr. Asst. City Atty
City of Gainesville, Florida

STATE OF FLORIDA
COUNTY OF Suwannee

The foregoing instrument was acknowledged before me this 8 day of August, 2006, by William David Pope and Dr. C. Linden Davidson, as Chairman and Secretary/Treasurer, respectively, of Suwannee River Water Management District, a Florida Statutes Chapter 373 Water Management District, on behalf of said Water Management District, and who are personally known to me or who produced _____ and _____, respectively, as identification.

Lisa M. Cheshire
Print Name: Lisa M. Cheshire
Notary Public, State of Florida



STATE OF FLORIDA
COUNTY OF Alachua

The foregoing instrument was acknowledged before me this 21st day of July, 2006, by Russ Blackburn and City Manager and _____, respectively, of the City of Gainesville, a municipality of the State of Florida, on behalf of said municipality, and who are personally known to me or whom produced and _____, respectively, as identification.

Constance N. Williams
Print Name: Constance N. Williams
Notary Public, State of Florida



CONSTANCE N. WILLIAMS
MY COMMISSION # DD 526843
EXPIRES: April 26, 2010
Bonded Thru Budget Notary Services