

Prepared by and return to:

Richard W. Hawthorne, Esq.
Driver, McAfee, Hawthorne & Diebenow, PLLC
One Independent Square, Suite 1200
Jacksonville, Florida 32202

AIR RIGHTS EASEMENT AGREEMENT

This **AIR RIGHTS EASEMENT AGREEMENT** (the “Agreement”) is made and entered into as of _____, 2024 (the “Effective Date”) by and between the **CITY OF JACKSONVILLE**, a municipal corporation and political subdivision of the State of Florida (the “Grantor”), whose address is 117 West Duval Street, Suite 480, Jacksonville, Florida 32202, and **JAX DOWNTOWN PRO REAL ESTATE, LLC**, a Florida limited liability company (the “Grantee”), whose address is 1400 South International Parkway, Lake Mary, Florida 32746. Whenever used herein, the terms “Grantor” and “Grantee” shall include all of the parties to this instrument and their heirs, personal representatives, successors, and assigns.

Recitals:

A. Grantor is the owner of certain real property located in Duval County, Florida that is legally described and generally depicted in Exhibit A attached hereto (the “Easement Air Space”).

B. Grantee is the owner of certain real property located in Duval County, Florida that is legally described in Exhibit B attached hereto (the “Benefitted Property”), upon which Grantee intends to construct and install, from time to time, among other things, a stadium grandstand and other stadium related structures, improvements and facilities (collectively, the “Building”).

C. Grantee has requested that Grantor provide an air rights easement to Grantee, and Grantor has agreed to grant such easement pursuant to the terms and provisions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Grant of Easement.** Grantor does hereby grant to Grantee, and Grantee’s successors and assigns, an unobstructed, exclusive, perpetual, appurtenant easement over, across, and through the Easement Air Space with the right, privilege, and authority to construct, install, operate, maintain, improve, remove, repair, and/or replace the Building within the Easement Air Space. Grantee shall maintain the Building in a continuous state of good and safe condition and repair. The term of this easement shall be for so long as Grantee uses the Easement Air Space for

the purposes granted. This Agreement shall automatically terminate upon the complete demolition of the Building, unless the Building is demolished as a result of a Force Majeure event in which case this Agreement shall survive so long as reconstruction of the Building is diligently pursued. Upon termination as provided herein and on demand of Grantor, Grantee shall deliver to Grantor its quitclaim of the Easement Air Space.

3. Incidental Rights. Each of the rights and benefits granted herein shall include all those additional rights and benefits which are necessary for the full enjoyment thereof and are customarily incidental thereto.

4. Indemnification of Grantee. See Exhibit C attached hereto and incorporated herein by this reference for the indemnification obligations of Grantee.

5. Insurance. See Exhibit D attached hereto and incorporated herein by this reference for the insurance obligations of Grantee and its contractors and subcontractors to the extent Grantee contracts with contractors or subcontractors in any way related to the Easement Air Space.

6. Representations and Warranties. This Easement is granted by Grantor without any representation or warranty by Grantor with respect to the ownership and status of title with respect to Grantor's Property and the Easement Air Space. Grantee acknowledges and agrees that it is Grantee's responsibility to confirm such matters and the efficacy of the grant of the Easement Air Space pursuant to this Agreement.

7. Running Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, shall run with the title to the Easement Air Space and the Benefitted Property, and are binding upon and inure to the benefit of heirs, successors, and assigns of Grantor and Grantee.

8. Notices. Any notice, demand, consent, authorization, request, approval or other communication (collectively, "Notice") that any party is required, or may desire, to give to or make upon the other party pursuant to this Agreement shall be effective and valid only if in writing, signed by the parties giving such Notice, and delivered personally to the other parties or sent by express 24-hour guaranteed courier or delivery service, with confirmed receipt, or by registered or certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other parties and sent simultaneously as follows (or to such other place as any party may by Notice to the other specify):

To Grantor: City of Jacksonville
Public Works Department
214 North Hogan Street, 10th Floor
Jacksonville, Florida 32202
Attn: Director of Public Works

With copies to: City of Jacksonville
Public Works Real Estate Division
214 North Hogan Street, 10th Floor

Jacksonville, FL 32202
Attn: Chief of Real Estate

Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Attn: Corporation Secretary

To Grantee: Jax Downtown Pro Real Estate, LLC
1400 South International Parkway
Lake Mary, Florida 32746
Attn: _____

With a copy to: _____

Notices shall be deemed given when received, except that if delivery is not accepted, Notice shall be deemed given on the date of such non-acceptance.

9. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any proceeding brought pursuant to this Agreement shall be in Duval County, Florida.

10. Severability. The invalidity of any provision contained in this Agreement shall not affect the remaining portions of this Agreement, provided that such remaining portions remain consistent with the intent of the Agreement and do not violate Florida law.

11. Enforcement. Either party may enforce this Agreement by appropriate action and should the party prevail in litigation, it shall be entitled to recover as part of its costs its reasonable attorneys' fees.

12. Force Majeure. As used herein, "*Force Majeure*" shall mean acts of God, earthquakes, blizzards, tornados, hurricanes and tropical storms, inclement weather, fire, flood, malicious mischief, insurrection, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, terrorist attacks, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction or inability to obtain materials or supplies after the exercise of reasonable efforts, delay in granting any required consent or approval by the party entitled to so grant within the time frame required herein or any other matter beyond the reasonable control of the party obligated to perform.

13. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto relating to the subject matter hereof and may not be amended except by an instrument in writing executed by Grantor and Grantee, or their respective successors and assigns, which written document shall be recorded in the public records of Duval

County, Florida. Notwithstanding the previous sentence, Grantee, or its successors and assigns, may terminate this Agreement by recording a termination of easement in the public records of Duval County, Florida. Notwithstanding the forgoing, this Agreement shall not be amended, modified, or terminated without prior written notice to the holder of any mortgage encumbering the Benefitted Property. No prior oral or written agreement shall have any force or affect whatsoever unless contained within this Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Air Rights Easement Agreement as of the Effective Date.

WITNESSES:

Print Name: _____
Address: _____

Print Name: _____
Address: _____

GRANTOR:

CITY OF JACKSONVILLE, a municipal corporation and political subdivision of the State of Florida

By: _____
Name: _____
Title: _____

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2024, by _____, as _____ of the **City of Jacksonville**, a municipal corporation and political subdivision of the State of Florida, on behalf of the City. Such person [] is personally known to me or [] has produced _____ as identification.

Signature of Notary Public
Print Name: _____
Notary Public, State and County aforesaid
Commission No.: _____
My Commission Expires: _____

[affix notary seal]

Form Approved:

Assistant General Counsel

[signatures continue on the following page]

WITNESSES:

Print Name: _____

Address: _____

Print Name: _____

Address: _____

GRANTEE:

JAX DOWNTOWN PRO REAL ESTATE, LLC, a Florida limited liability company

By: _____

Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2024 by _____, the _____ of **Jax Downtown Pro Real Estate, LLC**, a Florida limited liability company, on behalf of the company. He/She is (check one) [] personally known to me or [] has produced _____ as identification.

Signature of Notary Public

Print Name: _____

Notary Public, State and County aforesaid

Commission No.: _____

My Commission Expires: _____

[affix notary seal]

[end of signature pages]

EXHIBIT A

**Easement Air Space
(Sketch and Description)**

**MAP SHOWING SKETCH & DESCRIPTION OF:
(PROPOSED 3.0' AERIAL EASEMENT)**

A portion of ALBERT STREET, a variable width right-of-way, lying in Section 45, Township 2 South, Range 27 East, Duval County, Florida, and being more particularly described as follows:

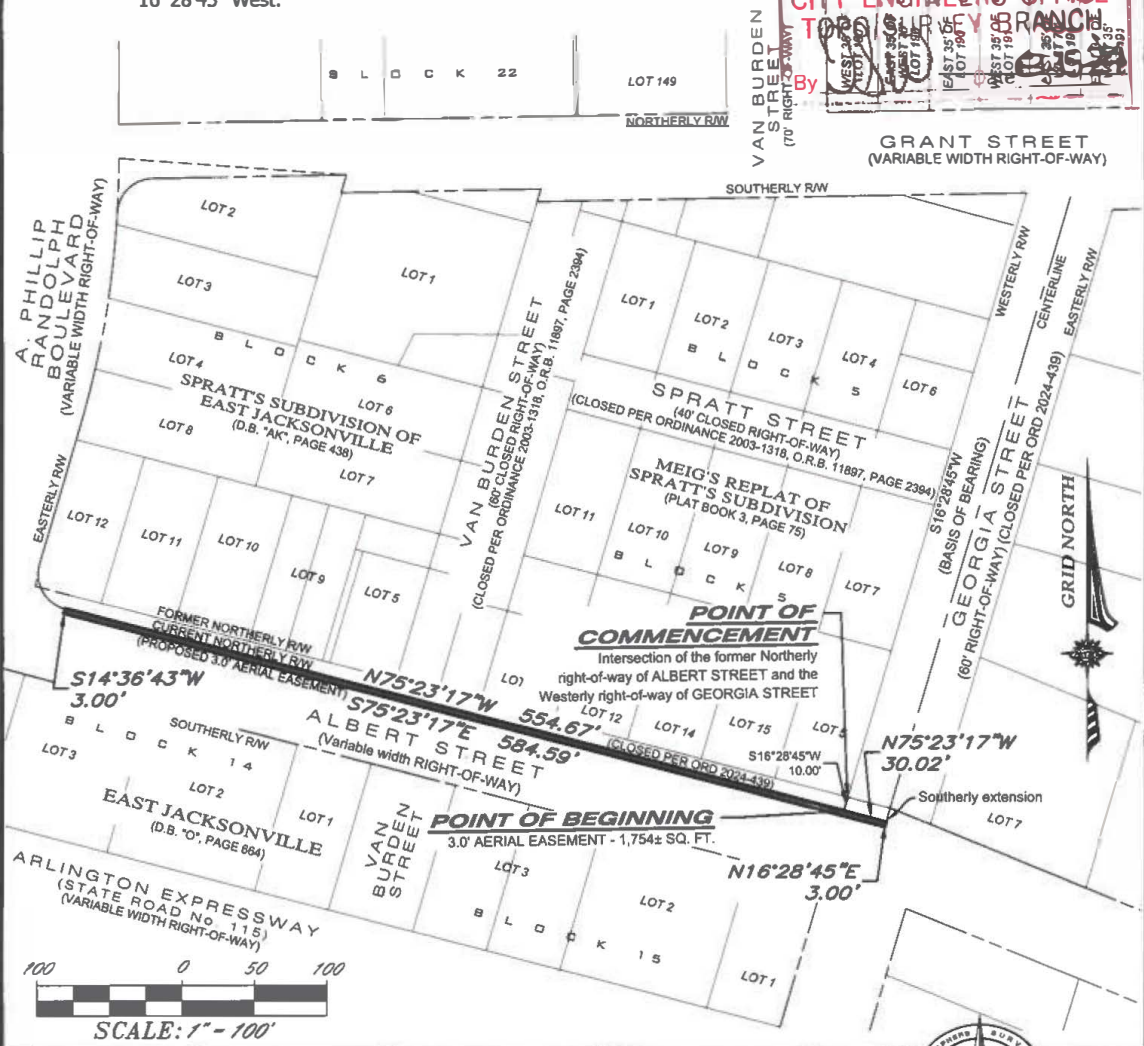
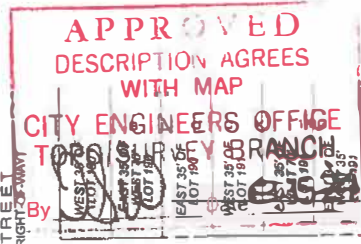
COMMENCE at the Intersection of the Former Northerly right-of-way of ALBERT STREET, a variable width right-of-way, (Closed by ORD 2024-439), with the Westerly right-of-way of GEORGIA STREET, a 60 foot right-of-way, (Closed by ORD 2024-439); thence South 16°28'45" West, along the Southerly extension of said Westerly right-of-way line of GEORGIA STREET, 10.00 feet to the Current Northerly right-of-way of ALBERT STREET, and the **POINT OF BEGINNING**; thence North 75°23'17" West, along said Current Northerly right-of-way, 554.67 feet; thence South 14°36'43" West, 3.00 feet; thence South 75°23'17" East, 584.59 feet, to an intersection with the Southerly extension of the centerline of said GEORGIA STREET; thence North 16°28'45" East, along said centerline, 3.00 feet to an intersection with an extension of said Existing Northerly right-of-way of ALBERT STREET; thence North 75°23'17" West, along said extension, 30.02 feet to the **POINT OF BEGINNING**.

Containing 1,754 square feet, more or less.

The lower limit of said aerial easement being at an elevation of 25.0 feet North American Vertical Datum of 1988 (NAVD88), the upper limit of said aerial easement being at an elevation of 76.0 feet NAVD88.

SURVEYORS NOTES

1. This map does not represent a boundary survey.
2. All dimensions, unless otherwise noted, are US survey feet.
3. Bearings are based of the Westerly right-of-way line of GEORGIA STREET, a 60 foot right-of-way, having a bearing of South 16°28'45" West.



PREPARED FOR: WAITZ & MOYE	JOB#: 23-009-02	
DRAWN: MAS	DATE: 7/26/24	CHECKED BY: JKM
PROJECT ALBERT STREET - 3.0FT AERIAL EASEMENT LOCATED IN: DUVAL COUNTY, FLORIDA		
REVISIONS		
DATE	DESCRIPTION	DRAWN BY

John K. Maffett
FLORIDA PROFESSIONAL
SURVEYOR & MAPPER NO. **LS6951**

ARC SURVEYING & MAPPING, INC.

5202 SAN JUAN AVENUE, JACKSONVILLE, FLORIDA 32210
PHONE: 904/384-8377 • LICENSED BUSINESS NO. 6487
www.arcsurveyors.com

FILE PATH: F:\2023\23-009 GRANT STREET TOPO - REF # 19101023-009-02 ROAD CLOSURE SKETCHES\DATA\DWG\23-009-02_GRANT-STREET-(3FT-AERIAL-ESMT)-DS.DWG LAST SAVED BY: JMAFFETT

EXHIBIT B

Legal Description of the Benefitted Property

EXHIBIT C

Indemnification Requirements

Grantee (the “Indemnifying Party”) shall hold harmless, indemnify, and defend the City of Jacksonville and City’s members, officers, officials, employees and agents (collectively, the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the Air Rights Easement Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

If an Indemnified Party exercises its rights under this **Exhibit “C,”** the Indemnified Party will (1) provide reasonable notice to the Indemnifying Parties of the applicable claim or liability, and (2) allow Indemnifying Party at its own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

**EXHIBIT D
INSURANCE REQUIREMENTS**

Without limiting its liability under this Easement, Grantee shall at all times during the term of this Easement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Grantee shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

This insurance shall cover the Grantee (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000 General Aggregate \$2,000,000 Products & Comp. Ops. Agg. \$1,000,000 Personal/Advertising Injury \$1,000,000 Each Occurrence \$ 50,000 Fire Damage \$ 5,000 Medical Expenses
-------------------------------------	---

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability (Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)	\$1,000,000 Combined Single Limit
---	--------------------------------------

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability \$1,000,000 per Claim and Aggregate
(Including Medical Malpractice when applicable)

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a three-year reporting option beyond the annual expiration date of the policy.

Builders Risk/ Installation Floater %100 Completed Value of the Project

Such insurance shall be on a form acceptable to the Grantor's Office of Insurance and Risk Management. The Builder's Risk/Installation Floater policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: the contractor, the City of Jacksonville, the Grantee, and their respective members, officials, employees and agents, the engineer, and the program management firm(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability \$1,000,000 per Loss
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this contract for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability \$1,000,000 per Loss
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

Additional Insurance Provisions

- A. **Additional Insured.** All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured.

- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.

- C. **Contractor's/Subcontractor's Insurance Primary.** The insurance provided by the Grantee's contractor or subcontractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.

- D. **Carrier Qualifications.** The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.

- E. **Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Grantee. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.

- F. **Contractor's/Subcontractor's Insurance Additional Remedy.** Compliance with the insurance requirements of this Agreement shall not limit the liability of the contractor or subcontractor, its employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

- G. **Survival.** Anything to the contrary notwithstanding, the liabilities of the Grantee's contractors or subcontractors under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.