

FIFTH AMENDMENT TO CONTRACT FOR SALE AND PURCHASE

THIS FIFTH AMENDMENT TO CONTRACT FOR SALE AND PURCHASE (“Fifth Amendment”), made and entered into as of the last signature date affixed hereto (“Effective Date”) by and between **CITY OF GAINESVILLE, FLORIDA, a municipal corporation** (“Seller”) and **AMJ GROUP, INC., a Florida for profit corporation** (“Buyer”), with Seller and Buyer collectively referred to as the “Parties.”

RECITALS

- A. Buyer and Seller are the Parties to that certain Contract for Sale and Purchase dated on or about November 3, 2021, as amended (“Contract”), regarding the purchase and sale of certain real property as described in the Contract; and
- B. The Parties entered into a First Amendment to the Contract on or about December 17, 2021; and
- C. The Parties entered into a Second Amendment to the Contract on or about December 22, 2021; and
- D. The Parties entered into a Third Amendment to the Contract on or about January 21, 2022; and
- E. A Special Warranty Deed transferring ownership of the certain real property as described in the Contract was executed on January 25, 2022, and the Special Warranty Deed was recorded in the Official Records of Alachua County on January 27, 2022, at ORB 4972, Page 983 (“Special Warranty Deed”); and
- F. The Special Warranty Deed included and imposed certain development covenants, and certain requirements for Payment and Performance Bonds, with associated required deadlines subject to the Seller’s Right of Reverter; and
- G. The Parties entered into a Fourth Amendment to the Contract on or about January 17, 2023; and
- H. The Parties desire to amend the Contract in the manner and pursuant to the terms, conditions, and other provisions of this Fifth Amendment.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars and other good and valuable consideration in hand paid by each party to the other, the receipt and sufficiency whereof is hereby acknowledged, the Parties hereto, intending to be legally bound hereby, do hereby covenant and agree as follows:

- 1. *Recitals.* The foregoing recitals are true and correct.
- 2. *Amendment.* The Contract is amended as follows, in strike-through and underline format, to extend the deadlines for the development requirements and associated right of reverter provided in Section 6 SPECIAL CONDITIONS of the Contract, and by implication hereto also extending the same corresponding deadlines provided in the Special Warranty Deed.

6. SPECIAL CONDITIONS:

- (a) DEVELOPMENT AGREEMENT: As material consideration to the parties for entering into this Contract, the parties shall continue to negotiate the terms of and enter into a Development Agreement that is in substantial conformance with the Development Agreement Term Sheet attached hereto and incorporated as **Exhibit A** (“Development Agreement Term Sheet”). The parties expressly recognize that Closing on the Property is not contingent on the parties, prior to Closing, fully executing the Development Agreement. The Parties shall enter into the Development Agreement on or before the earlier occurrence of the following

two events: 1) the issuance of any City of Gainesville building permits for the Property; or 2) June 30, 2024.

- (b) POST-CLOSING – DEVELOPMENT REQUIREMENTS; REVERTERS; SECURITY; ASSIGNMENT; MORTGAGES AND MORTGAGEE RIGHTS/OBLIGATIONS: It is expressly recognized that the Buyer’s commitment to timely completing a development on the Property after Closing was a material inducement to the Seller selecting the Buyer in the Seller’s competitive real estate disposition process and entering into this Contract. As such, the special warranty deed by which Seller will convey title to the Property shall include language in substantial conformance with the language contained in this Paragraph 6b and same shall survive the Closing.

(1) Development Requirements: Buyer shall construct on the Property a mixed-use development with a minimum of 7 stories to accommodate the following uses and quantities: a minimum of 104 residential condominium units and/or rental housing, and/or senior housing; a minimum of one floor of office space; a full-service grocery store (defined as a retail establishment open to the public that is engaged in the sale of fresh foods and produce); a footbridge connecting the Property with the City-owned parking garage adjacent to the Property; right of way improvements; and a minimum of 75 on-site parking spaces, (only if required by the prospective grocer). 100% of the residential units constructed will be no greater than 140% AMI Housing and at least 20% of the residential units constructed will be no greater than 120% AMI Housing, without the need for any subsidy or assistance (aside from City of Gainesville and/or State of Florida down payment assistance programs), depending on the household size and assuming prevailing costs and interest rates as of the Effective Date. All of the foregoing is collectively referred to as the “Development.”

As used herein, the following terms are defined as follows:

120% AMI Housing: means a housing unit that is sold at a price that is affordable to a Household with an Annual Household Income at or below 120% of AMI.

140% AMI Housing: means a housing unit that is sold at a price that is affordable to a Household with an Annual Household Income at or below 140% of AMI.

AMI: means the most current “area median income” (also known as “median family income” or “MFI”) for a Household in the Gainesville, Florida, area as periodically published by the United States Department of Housing and Urban Development (HUD), without regard to any adjustments made by HUD for the purposes of the programs it administers.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise required by the applicable funding source.

Household(s): means all persons who will occupy a unit and share living arrangements.

(2) Reverter: In the event Buyer fails to meet any of the following three obligations, the Seller shall have the absolute right, but not the obligation, to cause title to the Property to revert to Seller, unless Buyer’s failure to meet the obligation was caused by a riot, war on American soil, national emergency, strike, flood, hurricane, fire, act of God, or other Force Majeure event as provided in STANDARD W, such that Buyer is unable by reasonable diligence to avoid the delay and under such circumstances the deadline shall be extended by the Seller in writing by such reasonable time as necessary and equitable: 1) Buyer shall enter into a Development Agreement with Seller in accordance with Section 6(a) of this Contract prior to issuance of any City of Gainesville building permits for the Property; 2) Buyer shall obtain all necessary permits and commence construction (construction is defined as above ground, vertical improvements) of the Development on or before ~~24~~ 36 months after the Closing Date; and 3) Buyer (or applicable Surety or Mortgagee) shall complete construction of the Development (defined as receiving a Final Certificate of Occupancy from the City of Gainesville) on or before ~~48~~ 60 months after the Closing Date. The preceding three obligation deadlines shall be collectively called the “Reverter Deadlines.” Buyer and Seller agree that by mutual agreement the Reverter Deadlines provided herein may be extended.

To exercise its right of reverter upon Buyer’s failure to meet any of the Reverter Deadlines, Seller shall

record an Affidavit to that effect in the public records of Alachua County, Florida, on or before ~~48~~ 60 months after Closing Date plus any extensions as provided herein. Within a reasonable time after such recording, Buyer and Seller shall close on the transfer of the Property back to the Seller. At the Closing, Buyer shall execute a deed to Seller, Seller will return to Buyer the Purchase Price, less the Deposits which shall be retained by Seller as liquidated damages. The Buyer shall provide title insurance to the Seller and shall convey the Property back to the Seller free and clear of all encumbrances.

Upon the occurrence of the earlier of the following two occurrences: 1) Buyer has met all three reverter obligations concluding with the Development receiving a Final Certificate of Occupancy; or 2) Seller has not recorded a reverter Affidavit on or before ~~48~~ 60 months after Closing Date plus any extensions as provided herein, then the right of reversion shall expire and the Property shall be automatically released of such reversion. In addition, Seller agrees to execute at Buyer's request a recordable release evidencing the expiration of such right of reversion.

(3) Security: Buyer and its construction contractor shall provide Payment and Performance Bonds guaranteeing the Development will be completed and that payment will be made for all labor and materials (collectively, the "Surety Bond"). The Surety Bond must provide for enforcement by the City of Gainesville (such as by naming the City as an Additional Obligee), must be executed and recorded in the public records of Alachua County, must be issued by a surety insurer authorized to do business in the State of Florida, and the Surety Bond must state on its front page:

1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and the City.
2. The bond number assigned by the surety.
3. A description of the Development sufficient to identify it, such as a legal description or the street address of the property being improved, and a description of the Development improvements.

Before commencing construction on the Development, the Buyer shall provide to the Seller a certified copy of the recorded Surety Bond. The Surety Bond shall guarantee the performance of the construction work in the time and manner prescribed in the construction contract and the prompt payments to all persons defined in Section 713.01, Florida Statutes, who furnish labor, services, or materials for the work provided for in the construction contract. It is expressly recognized that the Seller being named as an Additional Obligee or otherwise being granted rights to enforce the Surety Bond, is done for the sole purpose of protecting the Seller's interest in the completion of the Development, and in no way creates any obligation, liability, or expense on behalf of the Seller.

(4) Assignment: Prior to receiving a Final Certificate of Occupancy for the Development, the Buyer may not sell, convey, assign, or otherwise transfer or dispose of any of its rights, title, and interest in the Property or the Development, or any duty or obligation of the Buyer pertaining to the Property or the Development, or any part thereof, without prior written consent of the Seller, which consent may be withheld by Seller in its sole and absolute discretion. However, Seller hereby acknowledges, consents, and agrees that, without further notice to or consent of Seller, Buyer shall be entitled to assign all of its rights, title, and interest in or to the Property or the Development to a subsidiary or affiliate, which is owned in whole or in part by Buyer or a subsidiary or affiliate of Buyer, under common ownership with Buyer, or controlled by Buyer, (the "Buyer's Successor"), pursuant to a written assignment document, which shall include Buyer's Successor's consent and agreement to be bound by all obligations of the Buyer as stated in this Contract, the Development Agreement, and the special warranty deed. Buyer or Buyer's Successor shall provide the Seller with a copy of the written assignment document, together with the name and address of a contact person for purposes of notice to the Buyer's Successor.

(5) Mortgage and Mortgagee's Rights and Obligations: The Buyer may, without prior written consent of Seller, mortgage its interest in the Property or Development, or any part thereof, to any party that lends money for the purchase of the Property or the costs of construction of the Development and requires a written, recorded mortgagee interest in the Property or the Development (a "Mortgagee"). Buyer shall promptly provide Seller with a copy of any recorded Mortgage and the name and address of a contact

person for purposes of notice to the Mortgagee.

The Seller shall provide each Mortgagee with a copy of any notice of default (including, but not limited to, the obligations to commence construction and to complete construction of the Development as set forth in this Paragraph 6), together with any opportunity to cure, as provided by this Contract, on its own behalf or on behalf of the Buyer; provided, however, that if the event of default cannot practically be cured by the Mortgagee without the Mortgagee taking possession of the Property, then the Seller shall grant the Mortgagee such additional time as is reasonably necessary in order for the Mortgagee to obtain possession of the Property and cure such event of default, provided that the Mortgagee provides the Seller with documentation evidencing that the Mortgagee is diligently undertaking and proceeding to obtain such possession and cure such default to the Seller's reasonable satisfaction. In any event, the Mortgagee shall not have more than 180 calendar days from the date of notice of default to cure such default or breach. To avail itself of the opportunity to cure, Mortgagee shall indemnify, defend, and hold harmless the Seller from any and all damages, claims, suits, and liability of any kind that Buyer may have or assert against the Seller as a result of the Seller providing Mortgagee an opportunity to cure.

- 3. *Counterparts.* This Fifth Amendment may be executed in one or more counterparts, which when taken together by facsimile or electronic transmission, shall be deemed an original.
- 4. *Controlling Document.* Except to the extent modified and amended by this Fifth Amendment, the Contract as amended shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have set their hands and seals below as of the date written.

SELLER:

CITY OF GAINESVILLE, FLORIDA, a municipal corporation,

By: _____
Cynthia W. Curry, Interim City Manager

Date: _____

WITNESSES:

Signature

Print Name

Signature

Print Name

APPROVED AS TO FORM AND LEGALITY:

City Attorney
City of Gainesville

BUYER:

AMJ Group, Inc.

By: _____
Michael E. Warren, President

Date: _____

WITNESSES:

Signature

Print Name

Signature

Print Name