

**STREETSCAPE - AGREEMENT  
BETWEEN THE CITY OF GAINESVILLE  
AND GAINESVILLE COMMERCE CENTER LIMITED PARTNERSHIP BY ITS GENERAL  
PARTNER AMJ INC., OF GAINESVILLE**

This Agreement (Agreement), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2001, between Gainesville Commerce Center Limited Partnership (Developer), and the City of Gainesville, Florida (City), a municipal corporation.

**WITNESSETH:**

**WHEREAS**, on March 19, 1999 the City of Gainesville (City), AMJ, Inc. of Gainesville, and the Gainesville Community Redevelopment Agency (CRA) entered into an Agreement for Development and Disposition of Property (subsequently amended on May 4<sup>th</sup>, 2000), and

**WHEREAS**, on July 13, 2000 AMJ Inc., of Gainesville assigned its rights and obligations under the Agreement for the Development and Disposition of Property (Development Agreement) to the Gainesville Commerce Center Limited Partnership (Developer), of which AMJ, Inc. of Gainesville is general partner; and

**WHEREAS**, pursuant to the Development Agreement the Developer has agreed to construct, equip, and otherwise complete the Commerce Building Project and the Residential Project; and

**WHEREAS**, pursuant to the Development Agreement the City has agreed to construct or supervise the construction of public on-street parking, roadway, and streetscape improvements (Improvements) adjacent to and near the Commerce Building and Residential Projects along NE 2<sup>nd</sup> Avenue between NE 1<sup>st</sup> Street and NE 3<sup>rd</sup> Streets, and NE 3<sup>rd</sup> Street between University Avenue and NE 2<sup>nd</sup> Avenue; and

**WHEREAS**, careful coordination of the construction of the Commerce Building and Residential Project with the Improvements adjacent thereto, is imperative to the successful completion of obligations under the Development Agreement; and

**WHEREAS**, the City has determined that the best way to ensure careful coordination of the construction of the Commerce Building and Residential Project with the Improvements is to contract with the Developer to construct the Improvements.

**NOW THEREFORE**, for and in consideration of the mutual covenants contained herein to be performed by the respective parties hereto and other good and sufficient consideration, the parties mutually agree and covenant as follows:

**Section 1.** The Developer will construct Improvements within the public rights-of-way of NE 2nd Avenue between NE 1<sup>st</sup> Street and NE 3<sup>rd</sup> Street and NE 3<sup>rd</sup> Street between University Avenue and NE 2nd Avenue generally in accordance with the preliminary plans prepared by Brown & Cullen, Inc., dated January 29, 2001 and attached hereto as Exhibit "A". (The developer will also be providing improvements on portions of University Avenue, Northeast 1<sup>st</sup> Avenue, Northeast 4<sup>th</sup> Street, and Northeast 5<sup>th</sup> Street, as shown on Exhibit A, but not under the obligations pursuant to this agreement. These other improvements may be completed in phases mutually agreed to by the City and the Developer.) All on-street parking along NE 2<sup>nd</sup> Avenue between 1<sup>st</sup> and 3<sup>rd</sup> Streets and NE 3<sup>rd</sup> Street between University and 2<sup>nd</sup> Avenues shall be constructed by the time of completion of the Commerce Project and by the time the City makes its parking spaces at City Hall available pursuant to the License Agreement of April 7, 1999 between the City and the Developer.

**Section 2.** The Developer will provide the City with a detailed line item cost estimate for the Improvements, or any phase thereof, prior to commencement of construction. The City shall review the cost estimate. The City will notify the Developer in writing if the cost estimate is acceptable or if there are deficiencies within five working days of receipt. The Developer shall correct any deficiencies within five working days and resubmit to the City. Once approved by the City, the cost estimate will become the Contract Cost for the Improvements.

**Section 3.** The City, with funds provided by the CRA, will pay the Developer for construction of the Improvements. The CRA has approved \$200,000 inclusive of design costs to construct the Improvements. Both parties acknowledge that the final design may have to be modified to conform to the budgeted amount or the area of streetscaping may need to be reduced.

**Section 4.** The City will supervise construction of the Improvements by the Developer as provided in the Development Agreement.

**Section 5.** The Developer may request monthly payments on a percent complete basis. Upon receipt of an invoice, the City will inspect to verify that the work has been completed as specified in the invoice and pursuant to the Plans in Exhibit "A". If completed, the City will pay the invoice amount less a 10% retainage. Upon completion of each phase of the Improvements and submittal of a final invoice by the Developer for payment of the retainage amount by the City, the City will conduct a final inspection. Upon acceptance of the Improvements by the City the retainage amount will be paid to the Developer.

**Section 6.** The City shall not be obligated to pay more than the amounts specified in each line item or the total cost shown of the Contract Cost without prior written approval by the City.

**Section 7.** Any notice, any acceptance, request, etc., from either party to the other shall be made in writing and personally delivered or sent by certified mail, return receipt requested, and shall be deemed to have been received when either are deposited in a US Postal Service mailbox or personally delivered with signed proof of delivery. Developer's and the City's representatives are:

Developer:

Michael Warren, President  
AMJ, Inc., of Gainesville  
502 NW 16<sup>th</sup> Street  
Gainesville, Florida 32601

City:

Teresa Scott, Director  
City of Gainesville Public Works Department  
PO Box 490, Mail Station 58  
Gainesville, Florida 32602

**Section 8.** Failure of either party to comply with any of the provisions of this Agreement shall constitute breach. In the event a party is in breach of this Agreement, the non-breaching party may provide written notice specifying the cause and giving 15 days to cure the breach. If the breach is not cured, the Agreement may be terminated by the non-breaching party. If this Agreement is terminated the City shall be responsible to pay the Developer only an amount for the Improvements made up to the date notice of termination is sent, or the ratio of the amount completed to the Schedule of Costs or the ratio of the amount completed to the total cost, whichever is the least

**Section 9.** Any changes or modifications to this Agreement shall be in writing and executed by both parties.

**Section 10.** The Developer agrees to indemnify and hold harmless the City, its officers, employees and agents from all suits or actions of every name and description brought against the City based on personal injury, bodily injury (including death), or property damage (including destruction), received or claimed to be received or sustained by any person or persons arising from or in connection

with any negligent act or omission, or willful misconduct, of the Developer's or his agents, employees, contractors, subcontractors or assigns, in providing the services called for herein. Nothing in the Contract shall be construed as a waiver of the City's sovereign immunity granted pursuant to Section 768.28, Florida Statutes.

**Section 11.** In the performance of this Agreement, the Developer will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the City. The Developer shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by the Developer in the full performance of this agreement.

**Section 12.** This Agreement is effective on execution and delivery by the City and the Developer, and shall remain in full force and effect until the Improvements are completed by the Developer and paid for by the City or April 30, 2003, whichever is earlier, unless otherwise terminated as provided herein.

**Section 13.** This agreement constitutes the entire agreement and understanding between the parties.

**IN WITNESS THEREOF,** the parties have caused this Agreement to be executed on the day and year first above written.

Attest:

Gainesville Commerce Center Limited Partnership, by  
AMJ, Inc. of Gainesville, General Partner

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\_\_\_\_\_  
Michael Warren, President

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Attest:

City of Gainesville

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Wayne Bowers, City Manager

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Approved as to form and legality:

\_\_\_\_\_  
City Attorney

