

AGREEMENT FOR DEVELOPMENT AND DISPOSITION OF PROPERTY

This Agreement for Development and Disposition of Property is made and entered by and between the City of Gainesville, Florida ("CITY") a municipal corporation, the Gainesville Community Redevelopment Agency, a public body corporate and politic of the State of Florida and the designated Community Redevelopment Agency of the City ("AGENCY") and AMJ Inc., of Gainesville, a Florida corporation, ("DEVELOPER").

WITNESSETH:

WHEREAS, on May 11, 1981 and September 21, 1981, the City Commission of the City of Gainesville (City Commission) adopted Resolutions R-81-32 and R-81-74 whereby the Commission found there exists one or more blighted areas within the boundaries of the City and found there is a need for rehabilitation and redevelopment of such area; and

WHEREAS, on September 21, 1981, the City Commission adopted Resolution R-81-74 establishing the boundaries of the district; and

WHEREAS, on September 28, 1981, the City Commission, by its adoption of Ordinance 2642, created the Downtown Redevelopment Agency and designated it as the City's Community Redevelopment Agency pursuant to Section 163.356, Florida Statutes and on May 8, 1995, by subsequent Ordinance No. 4074 designated the City Commission as the redevelopment agency for the City; and

WHEREAS, on April 14, 1997, by Resolution No. 960840, the CITY did adopt the Downtown Redevelopment Plan, and on March 9, 1998, by Resolution No. 970894, did amend said Plan; and

WHEREAS, on October 13, 1997 the CITY considered a proposal for developing City-owned parcels (14672, 14707, 14714, and 14714-1) and redeveloping adjacent Chamber of Commerce-owned property, approved the use of Stormwater Utility Funds to provide off-site stormwater mitigation, declared City-owned parcels (14672, 14707, 14714, and 14714-1) surplus, authorized the drafting and signing of an agreement to grant an option to the AGENCY for those parcels, and requested that the AGENCY accept the option to develop the parcels and issue a Request For Proposals (RFP); and

WHEREAS, on October 20, 1997 the AGENCY authorized acceptance of an option for City-owned parcels (14672, 14707, 14714, and 14714-1), the issuance of an RFP for the sale and development of said parcels for proposed residential development, and did subsequently issue an RFP; and

WHEREAS, on December 18, 1997 the DEVELOPER did submit a proposal to the AGENCY in response to said RFP; and,

WHEREAS, on January 16, 1998 the AGENCY did rank the DEVELOPER's proposal as the highest ranked proposal; and

WHEREAS, on February 16, 1998 the AGENCY did accept the DEVELOPER's proposal subject to negotiations, and directed staff to commence negotiations with the DEVELOPER; and

WHEREAS, The CITY, AGENCY and DEVELOPER are desirous of entering into this Agreement to effectuate the successful disposition of the Property and development of the Project and to set forth the respective duties and responsibilities of the parties pertaining to developing the Project;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, the parties agree as follows:

ARTICLE 1. DEFINITIONS.

The terms used in this Agreement shall have the following meanings:

1.01. "Act" means the Community Redevelopment Act of 1969, as amended, codified as Part III, Chapter 163, Florida Statutes.

1.02. "Agreement" means this Agreement for Development and Disposition of Property, including any attached Exhibits, and any revisions.

1.03. "Commencement Date" means the date on which the initial building permit is issued for the Commerce Building Project or either phase of the Residential Project.

1.04. "Commerce Building Project" means the proposed demolition of the existing offices for the Gainesville Area Chamber of Commerce and construction of approximately 60,000 square foot office building on the same site.

1.05. "Completion Date" means the date on which construction of the Commerce Building Project or either phase of the Residential Project is substantially completed meaning the buildings are 99% complete and the City of Gainesville Building Department has issued certificates of occupancy for completed units or certificates of completion for units which are ready for tenant/owner finishes before occupancy.

1.06. "Force Majeure" means conditions beyond the reasonable control of DEVELOPER that will excuse DEVELOPER's performance as defined in and subject to the conditions described in this Agreement and commonly referred to as "acts of God" and/or governmental intervention.

1.07. "Mortgagee" means any person(s), including the AGENCY and CITY, to which the DEVELOPER grants a security interest, mortgage, pledge, assignment of lease, or otherwise encumbers the rights and interests of the DEVELOPER in the Commerce Building Project site, Residential Project Site or the Residential Project, or both.

1.08. "Plan" means the redevelopment plan for the downtown area of the City, including the Project Site, as approved by the AGENCY and adopted by the CITY on April 14, 1997, by Resolution No. 960840, and amended on March 9, 1998, by Resolution No. 970894; .

1.09. "Project plans" means the plans and specifications for the Commerce Building Project or the Residential Project required for submission to the City Plan Board and/or the City Development Review Board submitted by the DEVELOPER, including any changes approved by

the CITY.

1.10. "Residential Project" or "Project" means the redevelopment of the Project Site in accordance with the Project Plans, including the acquisition of the Project Site and constructing and equipping thereon of multilevel residential buildings, and other improvements appurtenant thereto, as more particularly described in Exhibit "A", and with no substantial changes or reduction in quality of building design or materials from those described in Exhibit "A".

1.11. "Project Site" generally means tax parcel Nos. 14672, 14707, 14714, and 14714-1, less any ceded right-of-way for streetscape and roadway improvements, as more specifically described in Exhibit "B".

1.12. "Proposal" means the DEVELOPER's proposals for redevelopment of the Project Site as submitted by the DEVELOPER to the AGENCY in response to the AGENCY RFP attached as Exhibit "A", and as amended pursuant to negotiations with the AGENCY and CITY.

1.13. "Storm Water Retention Requirements" means the requirements of the CITY and St. John's Water Management District for stormwater infrastructure improvements necessary for the DEVELOPER to obtain a permit to construct the Project.

1.14. "Streetscape Improvements" means the improvements to be made by the AGENCY, CITY and/or DEVELOPER to public rights-of-way adjacent to the Project Site as set forth herein.

1.15. "Substantial Changes", as determined at the sole discretion of the AGENCY means an increase or decrease in the residential character, quality, or number of residential units, any significant change to the exterior appearance of the buildings in either the Commerce Building Project or the Residential Project, and/or any change which results in a material reduction of anticipated tax increment revenues from either the Commerce Building Project or the Residential Project not resulting from the acts or the Agency or City.

ARTICLE 2. PURPOSE.

The purpose of this Agreement is to provide for the development of the Residential Project on the Project Site, and Commerce Building Project in accordance with the Plan by constructing a new and enlarged office building and adding high quality residential units to downtown as set forth in the Proposal. This construction will enhance the quality of life and the aesthetic and useful enjoyment of the downtown by preventing the spread of conditions of slum and blight and eradicating conditions of slum and blight found there.

ARTICLE 3. DEVELOPER'S PROPOSAL.

The DEVELOPER's proposal for the redevelopment of the Project Site, as amended with consent of the CITY and the AGENCY, is hereby found to be consistent with and to further the objectives of the Plan, to conform to the provisions of the Act, and is hereby approved and accepted, subject to such changes and revisions as are contemplated by this Agreement. A copy of the proposal for redevelopment is attached to this Agreement as Exhibit "A".

ARTICLE 4. DEVELOPER'S OBLIGATIONS.

4.01. In consideration of the terms and obligations contained in this Agreement, the DEVELOPER shall acquire the Project Site from the AGENCY, acquire the site for the Commerce Building Project from the current owners, and construct, equip, and otherwise complete the Commerce Building Project and the Residential Project. The DEVELOPER's obligation under this Section is unconditional, except as set forth herein, so long as the CITY and AGENCY are not in material default. The DEVELOPER's obligations may be tolled as the result of failure of the CITY or AGENCY to timely complete review of the Project Plans or complete construction of stormwater retention requirements, streetscape and area roadway improvements, or as the result of Force Majeure, and shall be terminated and released as the result of a valid termination of this Agreement.

4.02. Prior to construction of either the Commerce Building Project or the Residential Project, the DEVELOPER will submit final site and architectural plans to the AGENCY staff for review and approval by the Downtown Redevelopment Advisory Board and the AGENCY. Those final site and architectural plans must clearly demonstrate that the building design and materials are of a quality at or above those described in the DEVELOPER's proposal (Exhibit "A") and the plan for the Commerce Building Project presented to the City Commission on October 13, 1997 (Exhibit "C"). If the AGENCY determines that the plans do not meet the requirements of the Plan, the Proposal or this Agreement, the AGENCY shall notify the DEVELOPER within 5 days of its determination. The DEVELOPER shall then amend the plans and resubmit them within 10 days of receipt of the AGENCY's notice. The AGENCY shall have 10 days to review the amended plans and determine whether they meet the requirements of the Plan, the Proposal or this Agreement. This procedure shall continue until the AGENCY approves the submitted plans.

The DEVELOPER must also submit all necessary plans and documentation to the Historic Preservation Board and the Plan Board or Development Review Board for approval, as required by City ordinance, rule or regulation. Submittal to the Plan Board or Development Review Board may not occur prior to approval of the plans by the AGENCY.

4.03. The DEVELOPER agrees the AGENCY will include on the deeds conveying the Project Site to DEVELOPER restrictive covenants to run with the land that limit the Residential Project to residential use and prevent any Substantial Changes to the building exterior without prior review and approval by the AGENCY.

4.04. Prior to construction, the DEVELOPER shall provide the AGENCY a bond or other security acceptable to the AGENCY for an amount equal to the cost of the streetscape and area roadway improvements described in Exhibit "D" as well as the cost of real estate acquisitions for replacement of parking for City Hall employees described in this agreement. The security shall be in effect during the construction period (from the Commencement Date to the Completion Date) to provide a guaranteed source of revenue for the construction of said improvements and acquisition of said properties should the Project fail to be completed.

4.05. The DEVELOPER agrees to construct the Residential Project in two phases to

commence after completion of the Commerce Building Project. The first phase will include construction of the 27-unit building and associated improvements. The second and last phase will include construction of the 19-unit building and associated improvements. All construction will be commenced and completed per the schedule attached as Exhibit "F", provided, however, the DEVELOPER may request this schedule to be revised; and the proposed revision shall be effective upon written approval by the CITY and the AGENCY which approval shall not be unreasonably withheld. The DEVELOPER will use its best efforts to minimize the impact of constructing the Commerce Building on the City Hall employee parking lot located on tax parcel number 14707. If any of tax parcel 14707 is needed for the Commerce Building construction, the DEVELOPER agrees that the limit of use will be the south 20'.

4.06. The DEVELOPER agrees not to ask for, apply for or accept any exemption from City and/or County ad valorem taxes except for the first floor space (or an equivalent square footage) for the Commerce Building project. If City and/or County ad valorem tax exemption exceeds the first floor space (or an equivalent square footage) the DEVELOPER agrees to pay the AGENCY an amount equal to the proportionate reduction in tax increment revenues. The DEVELOPER also agrees to include in the condominium documents that the Commerce Building condominium association will not ask for, apply for or accept any exemption from City and/or County ad valorem taxes except for the first floor space (or an equivalent square footage) for the Commerce Building project. The Commerce Building condominium association documents will require that if City and/or County ad valorem tax exemption exceeds the first floor space (or an equivalent square footage) the association will pay the AGENCY an amount equal to the proportionate reduction in tax increment revenues. The DEVELOPER shall include in the Commerce Building condominium association documents a provision that the limitation on tax exemption described in this paragraph may not be amended without prior written consent of the CITY and AGENCY. This section shall remain in effect until the AGENCY loan has been repaid.

ARTICLE 5. AGENCY'S OBLIGATION

5.01. In consideration of the DEVELOPER acquiring the Project Site and developing the Commerce Building Project and the Residential Project, the AGENCY, in addition to any other obligations imposed by this Agreement, agrees to sell its interest in parcel Nos. 14672, 14707, 14714, and 14714-1, further described in Exhibit "B", to the DEVELOPER for \$25,000 (\$5,000 for parcel 14672; \$10,000 for parcel 14707; and, \$10,000 for parcels 14714 and 14714-1). This conveyance shall be done in phases, to correspond with the Commencement Date of each phase of the Residential Project notwithstanding, those portions of the above referenced tax parcels dedicated to the Commerce Building project shall be conveyed upon commencement of construction of the Commerce Building Project. If, as part of the phasing, it becomes necessary to convey a portion of a tax parcel, the price for the area conveyed will be in proportion to the total area of the phased parcel or parcels listed above. The deeds of conveyance shall include a reversionary interest to the AGENCY in the Project Site, or any portion thereof in the event the DEVELOPER fails to 1) commence construction of the Residential Project by September 1, 2000; 2) abandons the Project, or 3) otherwise is in default as provided in Article 15 below. The AGENCY agrees to release this reversionary interest after the Completion Date as appropriate given the phase of construction completed, provided the DEVELOPER is not in material breach

of this Agreement.

5.02. In consideration of the development of the Project, the AGENCY agrees to reimburse that portion of the development and permitting fees for the Residential Project in excess of \$20,000. The AGENCY's obligation shall not exceed \$25,000. The DEVELOPER shall submit written invoices to the AGENCY with appropriate attachments. The AGENCY agrees to reimburse the DEVELOPER within 30 days of receipt of a proper invoice.

5.03. In consideration of the development of the Project, the AGENCY agrees to reimburse the DEVELOPER that portion of the impact fees and utility fees for the Residential Project in excess of \$50,000. The AGENCY's obligation shall not exceed \$20,000. The DEVELOPER shall submit written invoices to the AGENCY with appropriate attachments. The AGENCY agrees to reimburse the DEVELOPER within 30 days of receipt of a proper invoice.

5.04. In consideration of the development of the Project, the AGENCY agrees to pay the \$44,400 cost to relocate the utilities generally described in Exhibit "E. 5.05. The AGENCY agrees to fund the installation and/or construction of streetscape and area roadway improvements as described in Exhibit "D".

5.06. The AGENCY agrees to acquire properties as shown in Exhibit "G" to be used as parking for City Hall employees to replace parking now existing on the Project Site. The AGENCY and CITY agree that the properties acquired by the AGENCY will be exchanged for the Project Site properties listed in paragraph 5.01 above with the CITY. Any difference in value of the exchanged properties, as mutually determined by the CITY and AGENCY, shall be compensated by contribution of "in-kind" services by one or the other party.

5.07. The AGENCY will borrow money from the CITY in an amount sufficient to cover the AGENCY's financial obligation described in Sections 5.02, 5.03, 5.04, and 5.05 above. The AGENCY agrees to pledge the tax increment revenues from the Residential Project and the Commerce Building Project to repay the loan.

ARTICLE 6. CITY'S OBLIGATIONS.

6.01. In addition to any other obligations imposed by this Agreement, the CITY shall finance the permitting, design and construction of an off-site stormwater management basin for the Residential Project and Commerce Building Project as described in Article 9 below. The CITY also agrees that, with funds provided by the AGENCY, it will design and/or oversee the design of public on-street parking, roadway, and streetscape improvements, as shown by the preliminary drawings in Exhibit "D", and will design and/or oversee the design of improvements to properties acquired by the AGENCY for City Hall employee parking. The CITY will also construct and/or supervise the construction of public on-street parking, roadway, and streetscape improvements, as shown by the preliminary drawings in Exhibit "D", and will construct and/or supervise the construction of improvements to properties acquired by the AGENCY for City Hall employee parking, if any. Construction will commence and be completed in conjunction with the construction of the Commerce Building and phases of the Residential Project as shown in Exhibit "D" Streetscape Plan.

6.02. The CITY agrees to grant the DEVELOPER a temporary construction easement over a portion of the right-of-way around the perimeter of the Project Site during construction to accommodate construction activity, in substantially the form in Exhibit "H". The CITY also agrees to temporarily close portions of NE 1st Avenue and NE 4th Street to traffic during construction to accommodate construction staging.

6.03. The CITY agrees to grant the DEVELOPER a license to use the property located at the northeast corner of the block where City Hall is located for parking of motor vehicles to serve the Commerce Building Project. The license will be substantially in the form in Exhibit "I".

6.04. The CITY agrees to conduct a study to determine if an area around the Project meets the criteria for establishing a controlled vehicular parking area (per Division 4 Article 3 Chapter 26 of the Code of Ordinances). The City Commission will consider Ordinance changes to allow controlled parking with metering. If a controlled vehicular parking area is established, the residents and tenants of the Project and the Commerce Building Project may purchase decals / permits or pay the meter price for parking as provided by law. The City will install the parking meters for the new on-street parking spaces. The CITY shall notify the DEVELOPER of the results of the study and proposed ordinance changes detailed in that Section. The DEVELOPER shall notify the CITY within 10 days of any objection to the results, failing which the CITY may assume that the DEVELOPER is satisfied with the results.

6.05. The CITY agrees to exchange the parcels listed in paragraph 5.01 above for parcels acquired by the AGENCY pursuant to paragraph 5.05. The CITY will retain ingress, egress, utilities and drainage easements over the portion of Northeast 4th Street from Northeast 1st Avenue to Northeast 2nd Avenue (currently a part of parcels 14707, 14714, and 14714-1). In addition, the City will use its best efforts to vacate and close the portion of the Northeast 1st Avenue right-of-way from Northeast 3rd Street to Northeast 4th Street upon proper petition submitted by the DEVELOPER. The CITY will retain ingress, egress, utilities, and drainage easements within any vacated right-of-way, in substantially the form shown in Exhibit "J". All improvements within those easements will be constructed, owned and controlled by the DEVELOPER, subject to the CITY's rights under the easements.

6.06. This Agreement is not a general obligation of the CITY, nor does it constitute a pledge of the full faith and credit of the CITY. It shall be a commitment only as to such funds, manpower etc., necessary for the stormwater retention, on-street parking, public roadway and streetscape improvements described herein.

ARTICLE 7. PROJECT PLANS.

The AGENCY is not responsible for any error or omission in the Project Plans or failure of the Project Plans to comply with any building, zoning, or other regulations of the CITY or other regulatory agency.

If Substantial Changes are made to the Project Plans, they shall be resubmitted to AGENCY staff. The staff shall review the amended Project Plans within five business days of

receipt. If the staff determines that the amended Project Plans do not meet the requirements of the Plan, the Proposal, or this Agreement, the staff shall so notify the DEVELOPER within three business days of such determination. Upon receipt of such notification, the DEVELOPER shall have 15 calendar days to amend the Project Plans accordingly and resubmit them to the staff.

If any Substantial Changes are required to be made to the Project Plans during the construction of the Project, the amended Project Plans shall be submitted to the AGENCY prior to the commencement of the construction of the changes. The AGENCY shall review the amendments for conformance with the standards and procedures of this Agreement and the Plan, as described in the above paragraph.

ARTICLE 8. PROJECT FINANCING

8.01. The DEVELOPER has represented and hereby represents to the CITY and AGENCY that without CITY and AGENCY participation in the Project as provided herein, the Project is not economically feasible. Such participation is essential to the successful development of the Project. The CITY and AGENCY agree to participate as set forth herein to the extent permitted by law.

8.02. The DEVELOPER has provided its plan for financing the Project as described in Exhibit "K". The financing plan consists of the equity contribution from the DEVELOPER, one or more loans secured by a first mortgage from a reputable financial institution and the funding obligations of the AGENCY and CITY. The DEVELOPER will provide the CITY with evidence of firm commitment for financing, conditional upon matters which the parties reasonably anticipate can be satisfied, for the Commerce Building Project and each phase of the Residential Project prior to the CITY vacating any street or the AGENCY conveying any portion of the Project Site necessary for construction of that portion of the Projects to the DEVELOPER. The DEVELOPER covenants that the proceeds of such financing, together with any other funds provided by the DEVELOPER, shall be sufficient to pay the cost of construction of the two projects, and provide adequate initial operating capital for the two projects. The CITY and AGENCY funding shall be utilized (a) to design and construct public parking, street and streetscape improvements, (b) to offset the cost of permitting, impact fees, and utility fees, and (c) to design and construct an off-site storm water management basin.

8.03. Financing Default; Notices and Remedies.

(a) If, prior to the Completion Date, the DEVELOPER shall commit any act or fail to act, and such action or failure shall be declared a default of any financing for the Project, the DEVELOPER shall promptly file written notice of such default to the AGENCY and CITY, which notice shall set forth the details of the default, a description of the financing instrument and the provision under which the DEVELOPER is in default, the duration of such default, and whether DEVELOPER is expected to cure such default. The DEVELOPER shall provide the AGENCY and CITY with copies of all pleadings relative to any legal proceedings to enforce any financing instruments relating to the Project. Upon receipt of such notice, the CITY or AGENCY shall have 30 days in which to cure the default, if it shall elect to do so. If the CITY or AGENCY elects to cure the default, the DEVELOPER shall be liable to and shall promptly reimburse the

CITY and AGENCY for the cost of curing such default plus interest at 12% per annum, plus reasonable attorneys fees and costs.

(b) If any default of the DEVELOPER materially affects the AGENCY'S or CITY'S interests prior to completion of the Project, the AGENCY and/or CITY may elect by notice to the Mortgagee to complete or cause construction of the Project or any part thereof to be completed. If the CITY or AGENCY elects to complete or cause construction of the Project to be completed after the DEVELOPER's default, the DEVELOPER shall be liable to, and shall promptly reimburse, the CITY and AGENCY the cost of completion plus interest at the Statutory rate as it may change from time to time, plus reasonable attorneys fees and costs.

(c) Whenever the CITY or AGENCY delivers any notice or demand to the DEVELOPER with respect to any breach of covenant or default by the DEVELOPER, the AGENCY or CITY shall, at the same time, furnish a copy to any Mortgagee whose name and address has been provided by the DEVELOPER to the CITY or AGENCY.

(d) Any Mortgagee shall have, at its option, the right to cure or remedy any default by the DEVELOPER or assume the position of the DEVELOPER for a default that is possible for such Mortgagee to cure. Such Mortgagee shall have 30 days after receipt of notice of said default to give written notice to the CITY, AGENCY, DEVELOPER, and any other Mortgagee of its intention to cure the default and commence action with respect thereto, and shall thereafter diligently pursue such action to completion.

(e) During the period in which any Mortgagee elects to cure any default by the DEVELOPER, such Mortgagee may elect to continue or cause to be continued, construction of the Project, if construction is not completed; or to foreclose its mortgage, and the AGENCY and CITY shall not be entitled to terminate this Agreement solely by reason of such default so long as the Mortgagee is pursuing with due diligence such foreclosure proceedings or construction to completion.

(f) Amounts advanced by the CITY or AGENCY under Section (a) or (b) above shall be a construction lien against the Commerce Building Project and Residential Project subject to foreclosure if the DEVELOPER fails to reimburse the CITY and AGENCY upon demand.

ARTICLE 9. STORM WATER RETENTION REQUIREMENTS.

9.01. The CITY shall submit within 45 days of execution of this Agreement, an application complete and accurate to the best efforts of staff, to St. John's Water Management District to construct a storm water facility to satisfy the requirements for issuance of a building permit for the Project. The DEVELOPER agrees to work closely with City staff and provide all data and information necessary to complete the design of the stormwater retention facility.

9.02. The CITY shall pay up to \$75,000 for construction of the storm water facility required for the Commerce Building Project and the Residential Project. The stormwater facility shall be located off-site due to the size and design constraints of the two Projects.

9.03. The DEVELOPER agrees not to commence construction until the CITY has acquired a permit from the St. John's Water Management District for the storm water facility. The DEVELOPER also agrees that any on-site development conditions of said permit will be the DEVELOPER's responsibility.

ARTICLE 10. INDEMNIFICATION.

In consideration of the CITY granting certain development rights pursuant to this Agreement to DEVELOPER in connection with the development of the Project, the DEVELOPER shall pay, indemnify and save harmless the CITY, AGENCY, its agents, elected and appointed officers, attorneys and employees from all suits, actions, claims, demands, damages of every kind and description to which the CITY, or AGENCY, or both, or their agents, officers, attorneys or employees may be held liable by a court of competent jurisdiction by reason of injury to persons or death or property damage, resulting from or growing out of any negligence or fault of the DEVELOPER, its agents or employees, or its contractors or subcontractors occurring in connection with (i) any building, construction, installation or development work, service or operation being undertaken or performed by or for the DEVELOPER, in, on or over the Project Site, or (ii) any uses, occupancy, maintenance, repair and improvements, or operation of the Commerce Building Project or the Residential Project.

Provided, however, that the indemnification provided in and contemplated by this section shall not be applicable to the extent that a decision or judgment of a court of competent jurisdiction holds that any injury to persons or death or property damage was solely attributable to acts of negligence or fault of the CITY, or AGENCY, or their agents, officers, attorneys or employees or was not attributable to acts of negligence or fault of the DEVELOPER, its agents or employees, or its contractors or subcontractors.

In the event that a decision or judgement of a court of competent jurisdiction holds that any injury to persons or death or property damage was the result of joint acts of any or all of the parties, then each party shall be responsible for its proportionate share of those damages to the extent provided by law.

Neither the CITY nor the AGENCY waives the limits of sovereign immunity set forth in section 768.28, Florida Statutes.

No recourse shall be had for any damages or claims based upon any representation, obligations, covenant or agreement in this Agreement against any past, present or future officer, member, legal counsel, employee, director or agent, as such, of the CITY or the AGENCY, either directly or through the CITY or the AGENCY or respectively, any successor public or private corporation thereto under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, legal counsels, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of the Agreement.

This Article shall survive the Completion Date of the Project and shall remain in full force

and effect until all obligations and requirements under this Agreement have been completed.

ARTICLE 11. INSURANCE.

11.01. (a) During the Construction Period for the Commerce Building project and phases of the Residential Project, the DEVELOPER, at its expense shall maintain the following insurance for each construction phase or in its entirety from an insurance company acceptable to the CITY's Risk Manager:

1. Builder's Risk Policy for physical damage or loss, as a result of fire, flood, and other hazards or risks customarily insured against in Gainesville.
2. Comprehensive General Public Liability Coverage of not less than \$1,000,000.
3. Workers' Compensation Coverage as required by the laws of the State of Florida.

(b) The DEVELOPER shall include in the condominium documents for the Commerce Building and the Residential Project a requirement for the condominium associations to procure and maintain at their own expense Commercial Property Policies insuring their respective buildings and structures for physical damage or loss as a result of fire, flood and other hazards or risks customarily insured against in Gainesville, in a sum equal at least to the replacement value of their respective buildings and structures. The policies shall list any Mortgagee, the CITY and the AGENCY as loss payees. If any money becomes payable under either policy, the condominium association receiving the money shall first use the proceeds to repair or replace the insured buildings and structures. The DEVELOPER shall include in the condominium documents a provision that the requirements for insurance may not be amended without prior written consent of the CITY and AGENCY.

(c) Each policy shall include the CITY and AGENCY as certificate holders (to the extent such provision is obtainable) or as loss payees as set forth above.

Paragraph 11.01(b). shall survive the Completion Date of the Project and shall remain in full force and effect until all obligations and requirements under this Agreement have been completed including repayment by the AGENCY of any debt incurred to fund the acquisition of properties or construction of improvements related to the Project.

11.02. All policies shall provide (to the extent obtainable) that such policies cannot be substantially modified or canceled until after at least 30 days notice has been given to the CITY, AGENCY, and DEVELOPER.

11.03. Prior to commencement of construction of each construction phase if appropriate, the DEVELOPER shall furnish to the CITY's Risk Manager and AGENCY all certificates of insurance or other acceptable proof of compliance with these insurance provisions for review and approval.

11.04. If the DEVELOPER refuses, neglects or fails to maintain any of the insurance required by this Agreement, and the AGENCY loan secured by the tax increment is outstanding, the CITY and AGENCY may procure or renew such insurance and all money paid therefore shall be payable forthwith by the DEVELOPER with interest at the Statutory rate as it may change from time to time, to the date of payment. The AGENCY or CITY shall notify the DEVELOPER of the date, purposes and amounts of such payments. The DEVELOPER shall include a similar provision in the condominium association documents.

ARTICLE 12. REPRESENTATION, WARRANTIES AND COVENANTS OF DEVELOPER.

12.01. The DEVELOPER represents and warrants to the CITY and AGENCY that the following statements are true:

(a) The DEVELOPER is a validly existing corporation under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold property and to enter into and perform the obligations of this Agreement and each instrument to which it is or will be a party, and has consented to service of process in the State of Florida.

(b) Each document to which the DEVELOPER is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the DEVELOPER, and neither the execution and delivery, nor compliance with the terms and provisions: (i) requires the approval of any other party, except as have been obtained or as are noted herein, (ii) contravenes any law, judgment, governmental rule, regulation or order binding on the DEVELOPER, or (iii) results in any default under or creates any lien upon any property of the DEVELOPER.

(c) Each document to which the DEVELOPER is or will be a party constitutes a legal, valid, and binding obligation of the DEVELOPER, enforceable against the DEVELOPER, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.

(d) There are no pending or threatened actions before any court or administrative agency against the DEVELOPER, or against any officer of the DEVELOPER that question the validity of any document contemplated herein, or that are likely to materially adversely affect this Agreement or the financial condition of the DEVELOPER.

(e) The DEVELOPER has filed all tax returns required to be filed by the DEVELOPER, and has paid all taxes shown to be due on such returns.

(f) The chief place of business and the chief executive offices of the DEVELOPER and the office where records are kept concerning the Commerce Building Project and the Residential Project and all contracts, licenses, and similar rights relating thereto are in Gainesville,

Florida.

(g) The DEVELOPER is financially capable of carrying out all obligations in connection with the acquisition, construction and equipping of the Commerce Building Project and the Residential Project contemplated by this Agreement.

12.02. The DEVELOPER covenants with the AGENCY and the CITY that:

(a) The DEVELOPER shall timely fulfill all the conditions herein that are within the control of DEVELOPER and are the responsibility of DEVELOPER.

(b) During the period the obligations of the DEVELOPER shall be in effect, the DEVELOPER shall cause to occur and to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to, and the responsibility of, the DEVELOPER.

(c) The DEVELOPER shall use its best efforts to accomplish the development of the Commerce Building Project and the Residential Project, and will not violate any laws, ordinances, rules, regulations or orders that are or will be applicable thereto, including the Plan and the Act.

(d) The DEVELOPER shall pay any costs of acquisition of the Project Site and construction and equipping of the Commerce Building and the Residential Project except for those costs which are the responsibility of the AGENCY or CITY as stated herein.

ARTICLE 13. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF CITY.

13.01. The CITY represents and warrants to the DEVELOPER and AGENCY that the following statements are true:

(a) The CITY is a validly existing municipal corporation under the laws of the State of Florida, and has all requisite corporate authority to carry on its business as now conducted and to perform its obligations under this Agreement.

(b) This Agreement and each document to which the CITY is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the CITY and neither the execution and delivery, nor compliance with the terms and provisions; (i) requires the approvals and consent of any other party, except as have been duly obtained or as are noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the CITY, or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon the CITY, under any indenture, mortgage, deed of trust, bank loan or credit agreement, the CITY's charter, ordinances, resolutions or any other agreement or instrument to which the CITY is a party, including any covenants of any bonds, notes, or other forms of indebtedness of the CITY outstanding on the date of this Agreement.

(c) This Agreement and each document contemplated to which the CITY is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the CITY enforceable against the CITY in accordance with the terms thereof, except as such enforceability may be limited by law or public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles if equitable remedies are involved.

(d) There are no pending or, to the knowledge of the CITY, threatened actions or proceedings before any court or administrative agency against the CITY that question the validity of this Agreement or any other document contemplated hereunder or that are likely to materially adversely affect the consummation of the transactions contemplated.

13.02. The CITY covenants with the DEVELOPER and AGENCY that:

(a) The CITY shall use its best efforts to timely fulfill all of the conditions in this Agreement which are within the control of the CITY or which are the responsibility of the CITY.

(b) During the time the obligations of the CITY under this Agreement shall be in effect, the CITY shall cause to occur and to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of the CITY.

ARTICLE 14. REPRESENTATIONS, WARRANTIES AND COVENANTS OF AGENCY.

14.01. The AGENCY represents and warrants to the DEVELOPER and CITY that the following statements are true:

(a) The AGENCY is a validly existing body corporate and politic of the State of Florida, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations under this Agreement.

(b) This Agreement and each document to which the AGENCY is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the AGENCY and neither the execution and delivery thereof, nor compliance with the terms and provisions hereof (i) requires the approval and consent of any other party, except as have been duly obtained or as are noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the AGENCY or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance upon the AGENCY, under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or any other agreement or instrument to which the AGENCY is a party, including any covenants of any bonds, notes, or other forms of indebtedness of the AGENCY outstanding on the date of this Agreement.

(c) This Agreement and each document contemplated to which the AGENCY is or will be a party constitutes, or when entered into will constitute a legal, valid and binding obligation of the AGENCY enforceable against the AGENCY in accordance with the terms thereof, except as such enforceability may be limited by law, public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles if equitable remedies are involved.

(d) There are no pending or, to the knowledge of the AGENCY, threatened actions or proceedings before any court or administrative agency against the AGENCY that question the validity of this Agreement or any document contemplated hereunder, or that are likely to materially adversely affect the consummation of the transactions contemplated.

14.02. The AGENCY covenants with the DEVELOPER and CITY that:

(a) The AGENCY shall use its best efforts to timely fulfill all of the conditions herein which are within the control of AGENCY or which are the responsibility of AGENCY.

(b) During the time the obligations of the AGENCY under this Agreement shall be in effect, the AGENCY shall cause to occur and to continue to be in effect those instruments, documents, certificates and events contemplated herein that are applicable to and the responsibility of the AGENCY.

ARTICLE 15. DEFAULT; TERMINATION.

15.01. There shall be a default by the DEVELOPER upon the occurrence of any one or more of the following:

(a) The DEVELOPER fails to perform or comply with any material provision of this Agreement.

(b) Prior to the Completion Date, there is a default by the DEVELOPER as provided in the documents evidencing the Project Financing, which has not been remedied.

(c) The DEVELOPER does not commence construction of the Commerce Building Project by September 1, 1999 and complete construction of the Commerce Building Project by August 31, 2000, commence construction of the first Residential Project phase by September 1, 2000, complete construction of the first Residential Project phase by August 31, 2001, and commence construction of the second Residential Project phase by September 1, 2001, and complete construction of the second Residential Project phase by August 31, 2002.

15.02. There shall be a default by the CITY if the CITY fails to perform or comply with any material provision of this Agreement.

15.03. There shall be a default by the AGENCY if the AGENCY fails to perform or comply with any material provision of this Agreement.

15.04. If a default occurs, upon giving 30 days written notice of such default to the defaulting party, and upon expiration of such 30 day notice period, if the default has not been cured, the non-defaulting party may terminate this Agreement or become entitled to actual money damages incurred by such party due to the default. No default shall be considered a material default until expiration of the 30-day notice period.

15.05. The failure of the CITY, AGENCY or DEVELOPER to promptly insist upon strict performance of any provision shall not be deemed a waiver of any right or remedy that they may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.

15.06. (a) The undertaking and completion of the Project and performance by the DEVELOPER in accordance with the provisions of this Agreement are dependent upon the timely completion and approval of Plans and permits and successful financing. In addition to a termination upon a default, this Agreement may be terminated by the DEVELOPER, CITY or AGENCY if the DEVELOPER does not commence construction of the Residential Project by September 30, 2000.

(b) The Agreement may be terminated by the DEVELOPER if, prior to September 1, 1999:

1. The Project Financing is not reasonably available after good faith efforts of the DEVELOPER.
2. A permit is not granted by the St. John's River Water Management District for the use of an off-site storm water retention facility, and in the sole opinion of the DEVELOPER, no technically feasible alternative for storm water management is available.
3. Any portion of the Project Site is determined to contain hazardous materials to such an extent that the Project should not be constructed on the site. The costs of any environmental audit shall be borne by the DEVELOPER, and the results of any environmental audit shall be provided to the CITY and AGENCY.
4. The City Plan Board and/or the City Development Review Board does not approve the Project Plans submitted by the DEVELOPER, or an approval causes a Substantial Change as defined by this Agreement.
5. Controlled vehicular parking is not established to the satisfaction of the DEVELOPER pursuant to section 6.04 above.

(c) The Agreement may be terminated by the AGENCY if, prior to June 1, 1999:

1. The AGENCY is unable to obtain a tax increment loan as described in Article 5 paragraph 5.06 above.

2. The estimated cost of a feasible stormwater retention facility exceeds \$75,000

(d) Upon the occurrence of an event described in this Section and receipt by the CITY and the AGENCY, of a notice from the DEVELOPER, or receipt by the DEVELOPER of notice from the CITY and/or AGENCY of the occurrence of such event and the election to terminate this Agreement as a result thereof, this Agreement shall terminate and all obligations of the parties shall cease and be released and no longer of any force and effect, except as otherwise provided herein.

In the event of a termination pursuant to this Section, neither the DEVELOPER, CITY or AGENCY shall be obligated or liable one to the other in any way, for any claim or matter arising from this Agreement or any actions taken by the DEVELOPER, CITY or AGENCY thereunder or contemplated hereby. Each party shall be responsible for its own costs.

ARTICLE 16. DISPUTE RESOLUTION

Any disagreement between the AGENCY, CITY, or DEVELOPER, or all of them, under this Agreement, shall be arbitrated in the manner set forth in the American Arbitration Standards, and all parties agree to be bound by the result of such arbitration unless all parties agree to terminate such proceedings prior to decision. The non-prevailing party in any proceeding shall pay all costs, including attorney's fees to a maximum of \$1,000, and other expenses which may be incurred by the prevailing party and any money due under any judgment or decree rendered in enforcing compliance with provisions of this Agreement. Any time periods provided herein for performance by any party hereto shall be tolled during these proceedings where the proceeding affects such performance. However, this Article does not waive or release either the AGENCY's, CITY's or DEVELOPER's rights to remedies available in law or equity in any court of competent jurisdiction.

ARTICLE 17. FORCE MAJEURE.

Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration of hostilities, revolt, civil strife, altercation or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of act of God shall be deemed to be events of Force Majeure and such delays shall be excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required shall be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance on the basis of Force Majeure shall give written notice to the other parties specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

ARTICLE 18. ANTIDISCRIMINATION.

The DEVELOPER agrees there shall be no discrimination against or segregation of any person, or group of persons, on account of age, sex, sexual orientation, race, color, marital status, creed, national origin, ancestry or disability in the employment of persons for the construction, sale or lease of any space in the Commerce Building Project or the Residential Project.

ARTICLE 19. MISCELLANEOUS.

19.01. Prior to the Completion Date, the DEVELOPER may not sell, convey, assign, or otherwise transfer or dispose of any of its rights, title, and interest in the Commerce Building Project or the Residential Project, or any duty or obligation of the DEVELOPER pertaining to the Project, or any part thereof without prior written consent of the AGENCY, which consent the AGENCY shall not unreasonably withhold or delay. Provided however, DEVELOPER may sell condominium units to bona fide third party purchasers in the ordinary course of business. The DEVELOPER may mortgage its interest in the Commerce Building Project or the Residential Project or Project Site, or any part thereof, to any Mortgagee. The DEVELOPER may assign its rights and obligations to a limited partnership to which AMJ, Inc., is general partner. The DEVELOPER may enter into leases on the Commerce Building.

19.02. All notices, demands, requests for approvals, or other communications shall be deemed given and delivered on the date delivered in person or on the date mailed by registered or certified mail, postage prepaid, return receipt requested, and addressed:

To the DEVELOPER:
c/o AMJ Inc., of Gainesville
502 N.W. 16th Avenue
Gainesville, FL 32601

With copy to:
Ronald A. Carpenter
5608 NW 43rd Street
Gainesville, FL 32653

To the AGENCY:
Executive Director
Community Redevelopment Agency
P.O. Box 490
Gainesville, FL 32602

With copy to:
Office of the City Attorney
City of Gainesville
P.O. Box 1110
Gainesville, FL 32602

To the CITY:
City Manager
City of Gainesville
P.O. Box 490
Gainesville, FL 32602

With copy to:
Office of the City Attorney
City of Gainesville
P.O. Box 1110
Gainesville, FL 32602

These addresses may be changed from time to time in writing delivered to the other party. Until written notice is received, a party may rely upon the last address given. Notice shall be deemed given, if notice is by mail, on the date mailed to the address set forth above or as changed pursuant to this Section.

19.03. If any provision of this Agreement is held invalid, the remainder shall not be affected if such remainder would then continue to conform to the requirements of applicable laws and if the remainder can be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties.

19.04. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by each party. It shall not be deemed to have been prepared by the AGENCY, CITY or DEVELOPER, and each of them shall be deemed to have participated equally in the preparation hereof.

19.05. (a) Each party submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(b) If at any time, the DEVELOPER is not a resident of the State of Florida or has no agent available for service of process as a resident of the State of Florida, or if any permitted assignee shall be a foreign corporation, partnership, or other entity or shall have no agent available for service in the State of Florida, the DEVELOPER consents to service on its designated agent for such purpose and designates the Secretary of State, State of Florida, its agent for service in any court action between it and the AGENCY and/or CITY relating to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a non-resident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the DEVELOPER at the address for notices.

19.06. The DEVELOPER, AGENCY or CITY shall from time to time, upon not less than 10 days notice by any party hereto, execute and deliver a statement in recordable form certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, the dates on which any modifications were made) and that neither it nor any other party is then in default if that be the case. It being intended statements delivered pursuant to this Section may be relied on by any prospective purchaser, mortgagee, assignee of any mortgage or assignee of the respective interests in the Project.

19.07. This Agreement, including the Exhibits attached, constitutes the full and complete agreement between the parties, and supersedes and controls any prior agreements, representations and statements, whether written or oral.

19.08. The section headings and captions of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of this Agreement.

19.09. The terms AGENCY, CITY and DEVELOPER shall include their successors and

assigns and all benefits and obligations shall inure to and bind such successors and assigns.

19.10. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed in the City of Gainesville, Florida, it shall be postponed to the next business day.

19.11. Each exhibit referred to in this Agreement is an essential part of this Agreement. The exhibits and any amendments, even if not physically attached, shall be treated as a part of this Agreement.

19.12. No real estate broker or other person is entitled to a commission as a result of the execution of this Agreement or the purchase of the Project Site.

19.13. The DEVELOPER and any contractor hired by the DEVELOPER are not agents or contractors of the AGENCY or CITY, and are not subject to nor shall be required to comply with any laws, ordinances, regulations, orders, or policies applicable to contractors or agents of the AGENCY or CITY.

19.14. This Agreement satisfies, fulfills, and is pursuant to and for a public and municipal purpose and is in the public interest, and is a proper exercise of the AGENCY'S redevelopment powers and the CITY'S corporate powers and authority under Florida law.

19.15. If there are minor inaccuracies herein or changes required due to technical matters or unforeseen circumstances which do not change the substance of this Agreement, the Mayor, or designee, as to the CITY, and the Executive Director, or designee, as to the AGENCY, and other appropriate CITY or AGENCY officials are authorized to approve such changes and to execute any required instruments.

19.16. Except as otherwise provided herein, this Agreement shall expire when the Project and associated public improvements are complete as outlined herein.

19.17. This Agreement is effective on execution and delivery by the AGENCY, CITY and DEVELOPER.

19.18. At the request of any party, the parties shall record a short form memorandum outlining their obligations under this agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and had their seals affixed this ____ day of _____, 1999.

CITY OF GAINESVILLE:

ATTEST:

Mayor

Approved as to Form and Legality:

Marion Radson, City Attorney

**COMMUNITY REDEVELOPMENT
AGENCY**

ATTEST:

Wayne Bowers, Executive Director

Approved as to form and legality:

Patricia Carter, CRA Attorney

DEVELOPER:

ATTEST: