FIFTH AMENDMENT TO

CONTRACT FOR PURCHASE AND SALE

THIS FIFTH AMENDMENT TO CONTRACT FOR PURCHASE AND SALE (“Amendment”) is made by and between CITY OF PALM COAST, a Florida municipal corporation (hereinafter referred to as "City"), and PALM TOWN CENTER, LLC, (hereinafter referred to as "Developer").

**RECITALS**

A. City and Developer have entered into a certain Contract for Purchase and Sale with an Effective Date of December 19, 2016, for the sale and purchase of certain real property described therein, as amended by First Amendment to Contract for Purchase and Sale dated March 14, 2017; Second Amendment to Contract for Purchase and Sale dated April 21, 2017; Third Amendment to Contract for Purchase and Sale dated May 22, 2017; and Fourth Amendment to Contract for Purchase and Sale dated July 25, 2017 (the “Contract”).

B. City and Developer agree to extend the Phase I closing date.

C. City and Developer agree to amend the legal description for the Phase I property to include a portion of Bulldog Drive right of way.

D. City and Developer wish to amend Section 5.9 regarding Extensions of Closing Date.

E. City and Developer agree to amend the Contract to provide that City will grant an easement to Developer for purposes of ingress/egress and for stormwater purposes, which is needed for the Project.

F. City and Developer agree that some of the Phase II deadlines set forth in the Contract need to be extended.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties agree as follows:

1. The above Recitals are true and correct, are incorporated herein by reference and form a material part of this Amendment.
2. The Parties agree that the Phase I closing date is hereby extended to September 18, 2017, to allow time to provide an easement across Phase II property for stormwater and driveways.
3. The Parties agree that the Contract is amended to substitute the legal description for Phase I with the legal description which is attached hereto as Exhibit 1.
4. The Parties agree that section 5.9 is hereby amended to read as follows:

5.9. **Extensions of Closing Date**. The Parties shall each be entitled to one 30 day extension of both closings. Any other extensions shall be by mutual agreement of the Parties. The City Manager is delegated the authority to sign ~~one month~~ 90 day extensions of this Contract without approval by the City Council at a public meeting. Contract amendments will not be recorded in the Public Records.

1. The Parties agree that a new section 5.20 is hereby added to read as follows:

5.20. **Easement Contingency.** The City will grant Developer a permanent non-exclusive easement for ingress/egress and for stormwater purposes over the property generally depicted on Exhibit “2” attached to this Amendment. The legal description of the easement area will be inserted once the site plan is approved by the City. The City attorney will prepare the easement.

1. The Parties agree that the following Phase II deadlines or due dates referenced in the Contract are hereby extended by ninety (90) days from the current due date as follows:

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| --- | --- | --- |
| **Agreement Term** | **Current or Original Due Date** | **New Due Date** |
| Title Insurance – Phase II  (Sec. 4.4) | August 17, 2017 | November 17, 2017 |
| Inspection Period - Phase II  (Sec. 5.3) | September 16, 2017 | December 16, 2017 |

All other deadlines or due dates remain unchanged.

1. To the extent that the last day of any time period stipulated in the Contract or this Amendment falls on a Saturday, Sunday or legal holiday (State or Federal), the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
2. Time is of the Essence. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Amendment.
3. Except as modified by this Amendment, the terms and conditions of the Contract are ratified and confirmed by the Parties. In the event of a conflict between the terms of this Amendment and the terms of the Contract, the terms of this Amendment shall govern. All defined terms used in this Amendment shall have the meaning assigned to them in the Contract, unless otherwise expressly stated herein.
4. Counterpart Execution. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one instrument. Facsimile signatures may be deemed binding for this Amendment, or any modification or amendment hereto, provided that originals of same are delivered within a reasonable time.

**IN WITNESS WHEREOF**, the parties have executed this instrument as of the day and year indicated below.

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| WITNESSES:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print) | CITY OF PALM COAST, FLORIDA  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Jim Landon, City Manager  ATTEST:  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Virginia A. Smith, City Clerk  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

STATE OF FLORIDA

COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, by Jim Landon, City Manager of the City of Palm Coast, Florida, who is personally known to me.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public – State of Florida

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission expires:

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| --- | --- |
| WITNESSES:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print) | PALM TOWN CENTER LLC, a Florida limited liability company  By: CW FAMILY LLLP, a Florida limited partnership, its Manager  By: CW FAMILY, LLC, a Florida limited liability company, its General Partner  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Charles Whittall, Manager  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Ronna M. Whittall, Manager |
|  |  |

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, by Charles Whittall, Manager of CW FAMILY LLC, a Florida limited liability company (check one) □ who is personally known to me or □ who produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public – State of Florida

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission expires:

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, by Ronna M. Whittall, Manager of CW FAMILY LLC, a Florida limited liability company (check one) □ who is personally known to me or □ who produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public – State of Florida

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission expires:

EXHIBIT “1”

[Phase I Legal Description]

EXHIBIT “2”

[Easement Area]