

REAL ESTATE PURCHASE AND SALE AGREEMENT

This **REAL ESTATE PURCHASE AND SALE AGREEMENT** (this "Agreement") is entered into as of _____, 2019 (the "Effective Date"), by and between **CITY OF JACKSONVILLE**, a consolidated municipal and county political subdivision of the State of Florida (the "City") and **LOAD KING MANUFACTURING CO.**, a Florida corporation, whose address is 1357 West Beaver Street, Jacksonville, Florida 32209 (the "Buyer").

RECITALS

The City is the owner of Parcel RE # 075510-1500 (the "Rails-to-Trails Parcel") and Parcel RE # 075510-0000 (the "Head Start Parcel") in Jacksonville, Duval County, Florida, more particularly described on Exhibit A attached hereto, together with all improvements, attached fixtures, if any, as may be presently located thereon, together with all appurtenant easements for ingress, egress and utilities, and other appurtenances thereto, together with all development rights, concurrency and other intangibles owned or utilized by or for the benefit of the City in connection therewith (hereinafter referred to collectively as the "Property").

The City desires to sell and the Buyer desires to purchase such Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth in this Agreement, the City and the Buyer agree as follows:

1. Recitals. The above Recitals are true and correct, are material terms of this Agreement reflecting the intent and binding on the Parties in entering into this Agreement.

2. Sale and Purchase. The City agrees to sell, convey, and transfer to the Buyer, and the Buyer agrees to purchase from the City, the Property, on the terms and conditions stated herein.

3. Purchase Price. The total purchase price for the Property shall be Three Hundred Twenty Four Thousand and 00/100 Dollars (\$324,000.00) (the "Purchase Price"). The Purchase Price shall be allocated and paid as follows:

a. Rails-to-Trails Purchase Price: At Closing, the Buyer shall pay (i) the amount of Fifty Nine Thousand and 00/100 Dollars (\$59,000.00) to the City in currency of the United States of America for the Rails-to-Trails Parcel (the "Rails-to-Trails Purchase Price"). The City will deposit the Rails-to-Trails Purchase Price into a specific park project account for Planning District 5 to be designated and/or created by the City.

b. Head Start Purchase Price: At Closing, the amount of Two Hundred and Sixty Five Thousand and 00/100 Dollars (\$265,000.00) shall be paid to City in currency of the United States of America for the Head Start Parcel (the "Head Start Purchase Price").

4. Deposit. Within three (3) business days of the Buyer's execution of this Agreement, the Buyer shall deposit with Rogers Towers, P.A. (the "Escrow Agent" or the

“Closing Agent”) the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) (the “Deposit”). The Deposit shall be non-refundable unless (i) the Buyer is not satisfied in its sole discretion with its inspections as set forth in Section 5. below; (ii) if the title or Survey objections of the Buyer, if any, are not cured by the City as set forth in Section 6. below; (iii) a casualty or condemnation occurs as set forth in Section 13. below; (iv) the City defaults under this Agreement; and/or (v) as otherwise set forth in this Agreement. The Closing Agent shall hold the Deposit in accordance with this Agreement. The Deposit shall be applied to the Purchase Price at Closing.

5. Inspection Period. The Buyer shall have forty five (45) days from the Effective Date (the “Inspection Period”), within which to physically inspect the Property and to conduct its due diligence related thereto. The Buyer and the Buyer’s officers, employees, consultants, attorneys and other authorized representatives shall have the right to reasonable access to the Property, at reasonable times during the Inspection Period for the purpose of inspecting the Property, taking soil and ground water samples, conducting hazardous materials and other environmental inspections, tests and assessments and obtaining a survey of the Property. The Buyer hereby agrees to indemnify and hold the City harmless from any damages, liabilities or claims for property damage or personal injury and mechanics or construction liens caused or created by the Buyer and its agents and contractors in the conduct of such inspections and investigations, other than pre-existing conditions merely discovered by the Buyer or its agents or contractors. Such indemnification shall survive the termination of this Agreement. Within the Inspection Period, the Buyer may, in its sole discretion, for any reason or for no reason, elect whether or not to go forward with this Agreement to Closing, which election shall be made by written notice to the City given within the Inspection Period. If such notice is timely given, this Agreement and all rights, duties and obligations of the Buyer and the City hereunder, except any which expressly survive termination, shall terminate, whereupon Closing Agent shall forthwith return the Deposit to the Buyer. If such notice is not timely given, this Agreement and all rights, duties and obligations of the Buyer and the City hereunder shall, subject to the terms and conditions hereof, become fully binding and the Deposit shall become nonrefundable except as expressly provided for herein. Within a reasonable time after the Effective Date, the City shall deliver to the Buyer copies of all documents and records in the City’s possession or control that relate to the title, the physical condition or the development, leasing and operation of the Property, including, but not limited to, surveys, environmental reports, soils reports, wetlands reports, archeological reports, development agreements, approvals, licenses and leases (collectively, the “Property Materials”). Buyer relies on information in the Property Materials at its own risk; City is not an insurer of the accuracy or reliability of information in the Property Materials. Buyer will rely solely on its inspections and investigations in deciding whether or not to proceed to Closing and acknowledges that it is relying on no representations by City regarding the quality of title, the condition of the Property, the information in the Property Materials, or the suitability of the Property for Buyer’s uses. The Property is being conveyed by City to Buyer **“AS IS, WHERE IS, AND WITH ALL FAULTS.”**

6. Title; Survey. Within ten (10) business days of the Effective Date, the Buyer shall obtain a title insurance commitment issued by a national title insurer acceptable to the Buyer (the “Title Company”). During the Inspection Period, the Buyer may obtain a current survey of the Property from a reputable surveyor (the “Survey”). The Buyer will have until ten (10) days after its receipt of the title insurance commitment and Survey (whichever is last to be received) within which to

notify the City in writing of any conditions, defects, encroachments or other objections to title or Survey not acceptable to the Buyer. Any matter disclosed by the title insurance commitment (other than liens removable by the payment of money, which the City shall be obligated to discharge at closing) or by the Survey that is not timely specified in the Buyer's written notice to the City shall be deemed a "Permitted Exception". In the event the Buyer timely objects to one or more title or Survey defects, the City may elect to cure the same at or prior to Closing. If the City chooses not to cure the title or Survey objections by Closing, then the Buyer may elect to (i) refuse to purchase the Property and terminate this Agreement and receive a return of the Deposit; or (ii) waive such objection(s) and close the purchase of the Property, subject to the objection(s), and without reduction of the Purchase Price. The Property is being conveyed to Buyer "AS IS, WHERE IS, AND WITH ALL FAULTS.", a.

7. Relocation of Head Start Parcel.

a. Beginning on the Effective Date, the City will begin the process necessary to relocate the Head Start program from its current location on the Head Start Parcel ("Head Start Premises") to the Florida C. Dwight Park (the "Dwight Park Property"), or to another location mutually agreeable to the City and the Head Start program, which relocation shall occur within ninety (90) days from the Closing Date (the "Relocation Period"). If Head Start is unable to relocate to a new location within the Relocation Period, Buyer shall lease back the Head Start Premises to Head Start on the same terms and conditions as the existing lease for a lease term not to exceed eighteen (18) months in order to assist Head Start in the relocation process.

b. During Buyer's Inspection Period the City will accomplish the following:

- i. The City will immediately contact Head Start to determine if it is interested in moving to the Florida C. Dwight Park Property or if it has another location in mind.
- ii. If Head Start wishes to move to the Florida C. Dwight Park Property, the City will evaluate the existing facility at the Florida C. Dwight Park Property to determine whether it can be renovated or expanded to accommodate the Head Start program or whether it will need to be demolished and replaced. If the existing facility must be demolished, City will identify what type and quality of building will be required, suitable for preschool and prekindergarten educational uses.
- iii. If Head Start wishes to move to a different location, the City and the Buyer will reconvene to discuss the steps and costs necessary to move the program to the desired location. If the parties are unable to come to agreement on a move to a different location then either party may terminate this Agreement and Buyer shall receive a refund of its Deposit. The inability to come to agreement on a move by Head Start to a different location shall not be a breach of this Agreement.

c. At Closing, the Buyer shall contribute Seventy Thousand and 00/100 Dollars (\$70,000.00) to the City to assist with the construction of a new facility or renovation, expansion, or demolition and replacement of an existing facility for Head Start (the "Head Start Improvements").

8. Approval Period: The City, in its proprietary capacity and not its capacity as a regulatory body, will cooperate with Buyer, who shall have a period of one hundred eight (180) days after the expiration of the Inspection Period to obtain all approvals (the "Approval Period"), including zoning approvals, road closures, FLUM amendments, LUZ approval, and such other approvals, licenses and permits as may be necessary to allow for the Buyer's intended use of the Property, including but not limited to those as outlined in Exhibit B attached hereto and made a part hereof (the "Approvals"). Buyer shall pursue the Approvals with diligence at Buyer's expense. Buyer shall be responsible for all costs and expenses associated with obtaining the Approvals, including but not limited to all filing fees. If Buyer has not obtained the Approvals within the Approval Period, then Buyer may terminate the Purchase and Sale Agreement by notifying the City within five (5) business days after the end of the Approval Period or the parties may agree to extend the Approval Period. The Parties shall cooperate with each other in connection with any effort to obtain the necessary Approvals.

9. Time and Place of Closing. The Closing shall take place at the offices of Closing Agent as soon as practicable after the expiration of the Approval Period, but in no event later than thirty (30) days after the Approval Period (the "Closing Date"), by "mail-away" with the parties executing and mailing closing documents and wiring funds to the Closing Agent. If the Closing has not occurred by the date which occurs twenty four (24) months after the Effective Date (extended, if reasonably necessary to accommodate the Approvals), either party may terminate this Agreement, whereupon the Deposit shall be returned to the Buyer and no party shall have any further obligations under this Agreement except as otherwise specifically provided for herein.

10. Deliveries at Closing.

a. The City's Obligations at the Closing. At the Closing, the City shall deliver to the Buyer each of the following documents:

- i. Deed. A Quitclaim Deed executed by the City conveying the Property to the Buyer subject to the Permitted Exceptions and AS IS, WHERE IS, AND WITH ALL FAULTS.
- ii. Evidence of Authority. A certified copy of the legislation authorizing the Mayor to enter into this Agreement and to sign the deed and other documents to be executed by the City at the Closing.
- iii. Other Documentation. Such other documents within the legislative and constitutional authority of the City as may be reasonable and necessary in the opinion of the Title Company to consummate and close the purchase and sale contemplated herein pursuant to the terms

and provisions of this Agreement. Buyer acknowledges that City cannot sign a title, possession, and lien affidavit or otherwise make any warranties or certifications that would subject City to liability for damages for which it may not legally responsible.

b. The Buyer's Obligations at the Closing. At the Closing, the Buyer shall deliver to City the following:

- i. Purchase Price. The Purchase Price payable in immediately available funds. The Earnest Money Deposit shall be credited to the Purchase Price and delivered by Escrow Agent to Seller at Closing.
- ii. Evidence of Authority. Such consents and authorizations as the City may reasonably deem necessary to evidence authorization of the Buyer for the purchase of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Buyer in connection with Closing.
- iv. Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the City or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

11. Closing Expenses. The Closing expenses shall be paid as follows:

a. City's Closing Expenses. The City shall pay the cost for recording any curative title documents for encumbrances it elects to cure.

b. Buyer's Closing Expenses. The Buyer shall pay for the cost of the Survey; the owner's title insurance policy (in the full amount of the Purchase Price) and all related search and abstract fees and endorsements thereto; any documentary stamp/transfer and intangible taxes due on the deed; all other recording fees; and the Buyer's attorneys' fees.

12. Post Closing Obligation. After Closing, Buyer and the Jacksonville Sheriff's Office ("JSO") shall enter into negotiations for a new lease of additional property, subject to JSO's approval.

13. Risk of Loss. All risk of loss to the Property shall remain upon the City until the conclusion of the Closing. If, before Closing, any material portion of the Property (including the improvements thereon) is damaged by casualty, or if any material portion of the Property is taken or threatened by eminent domain, or if there is a material obstruction of access by virtue of a taking by eminent domain, the City shall notify the Buyer thereof and the Buyer shall have the option to:

a. terminate this Agreement upon notice to the City given within ten (10) business days after such notice from the City, in which case the Buyer shall receive a return of the Deposit; or

b. proceed with the purchase of the Property, in which event the City shall assign to the Buyer all the City's right, title and interest in all amounts due or collected by the City under applicable casualty insurance policies, if any, or as condemnation awards. In such event, the Purchase Price shall be reduced by the amount of any insurance deductible to the extent it reduces the insurance proceeds payable.

14. Default.

a. Breach by the City. If the City breaches this Agreement, the Buyer may as its sole remedy and relief hereunder either terminate this Agreement, seek specific performance, or seek other equitable relief to enforce the obligations of the City under this Agreement.

b. Buyer Default. If the Buyer defaults in its obligations hereunder and such default continues after the expiration of ten (10) days' prior written notice from the City to the Buyer, the City's sole legal and equitable remedy shall be to terminate this Agreement and retain the Buyer's Deposit as AGREED LIQUIDATED DAMAGES for such default, and upon payment to the City of such Deposit, the parties shall have no further rights, claims, liabilities or obligations under this Agreement (except such indemnities as survive termination).

15. Real Estate Broker. Neither party has engaged any broker, finder or other agent whatsoever with respect to this transaction, so as to cause any broker, finder or agent to be entitled to a broker's or finder's fee or commission with respect to this transaction.

16. Notices. Any notice required or permitted to be delivered under this Agreement shall be deemed to be delivered whether or not actually received, when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or with a nationally recognized overnight carrier, all charges prepaid, and when sent by electronic transmission (and accompanied by a copy sent by United States mail, first class mail, postage prepaid) and addressed to the City or the Buyer, as the case may be, at the addresses set forth below or at such other address as such party may designate by written notice to the other:

To the City: Chief of Real Estate
City of Jacksonville
214 N. Hogan Street, 10th Floor
Jacksonville, FL 32202
Reneeh@coj.net

With a copy to: Corporation Secretary
Office of the General Counsel
City Hall-St. James Building
117 West Duval Street, Suite 480
Jacksonville, FL 32202
jmccain@coj.net

To the Buyer: Load King
1357 West Beaver Street
Jacksonville, Florida 32209
Attn: Charles Chupp and Chad Grimm
CChupp@loadking.com
CGrimm@loadking.com

With a copy to: Rogers Towers, P.A.
1301 Riverplace Blvd., Suite 1500
Jacksonville, Florida 32207
Attn : Emily Pierce, Esq. and Meg S. Hixon, Esq.
EPierce@rtalw.com
MHixon@rtlaw.com

Escrow Agent/Closing Agent: Rogers Towers, P.A.
1301 Riverplace Blvd., Suite 1500
Jacksonville, FL 32207
Attn : Meg S. Hixon, Esq.
MHixon@rtlaw.com

17. Entire Agreement. This Agreement contains the entire agreement between the City and the Buyer concerning the sale of the Property, and no statement, agreement, representation, or understanding shall be binding on either party unless it is contained in this Agreement. No modification of this Agreement shall be binding on either party unless in writing and signed by the party to be bound. The parties agree that the description in Exhibit "A" shall be revised to be the legal description in the survey contemplated in section 6. of this Agreement or as approved by the City's surveyor (the "revised legal description"), and such a revision of the legal description of the Property shall not require a written amendment to this Agreement. City's execution and delivery of the closing instruments containing the revised legal description, and the Buyer's acceptance of said instruments containing the revised legal description shall constitute a full and

complete ratification and acceptance of the revised legal description of the Property by the parties.

18. Miscellaneous.

a. Non-liability of City Officials. No member, official or employee of the City shall be personally liable to the Buyer or to any person or entity with whom the Buyer shall have entered into any contract, or to any other person or entity, in the event of any default or breach by the City, or for any amount which may become due to the Buyer or any other person or entity under the terms of this Agreement.

b. Assignment. This Agreement is assignable to any entity controlled or a majority of which is owned by Buyer or an entity which is a parent, subsidiary or affiliate of Buyer. Except as expressly provided in the foregoing, Buyer may not assign its interest in this Agreement without the Seller's prior written consent, which consent shall not be unreasonably withheld.

c. Time. Time is of the essence of this Agreement. If a deadline or a time period would expire on a weekend day or a week day that is not a full business day, the time period will be extended to the next week day that is a full business day.

d. Amendment. No provision of this Agreement may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement thereof is sought, and then only to the extent set forth in the instrument.

e. Governing Law / Exclusive Venue. This Agreement will be governed by, and construed in accordance with, the law of the State of Florida. Venue for any actions arising hereunder, inclusive of claims against the Closing Agent as to the Deposit hereunder, shall be solely and exclusively brought in the Circuit Court for the County in which the Property is located. The Closing Agent joins in this Agreement to acknowledge its duty as Closing Agent pursuant to the terms hereunder and to be bound by this jurisdiction and exclusive venue provision.

f. Counterparts. This Agreement may be executed in any number of paper or electronic counterparts by the different parties hereto, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

g. Binding Effect. This Agreement will be binding on and will inure to the benefit of the parties hereto and their respective, heirs, personal representatives, successors and permitted assigns, subject to approval by the Jacksonville City Council and an appropriation for City expenditures hereunder.

h. Closing Agent. The Buyer and the City agree that the Deposit shall be held by the Closing Agent, who shall place the Deposit in a non-interest bearing account. At Closing, Closing Agent shall deliver the Deposit to City as a credit against the Purchase Price pursuant to

this Agreement. In the event the Closing fails to occur, Closing Agent shall deliver the Deposit in accordance with instructions agreed to by both the Buyer and the City, or in the absence of such instructions, Closing Agent shall either deposit such funds in the registry of a court of competent jurisdiction or hold the same until directed as to its delivery by a court, arbitrator or other entity having authority to determine the entitlement to the Deposit as between the Buyer and the City. The Buyer and the City will be responsible for all costs, losses, claims, damages, liabilities and expenses, including reasonable attorneys' fees which may be incurred by Closing Agent in connection with its duties hereunder, which are not attributable to the willful default or gross negligence of Closing Agent. The City acknowledges that Closing Agent represents the Buyer and may continue to represent the Buyer in the event of a conflict hereunder. By their execution and delivery of this Agreement, the Buyer and the City acknowledge and confirm that under certain circumstances deposits (including the funds subject to this Agreement) may not be insured or fully insured by the Federal Deposit Insurance Corporation ("FDIC"). Each party has made its own analysis of FDIC insurance regulations affecting, or potentially affecting, the funds subject to this Agreement and is not relying upon any advice from the Closing Agent as to FDIC matters. The Buyer and the City understand and agree that Closing Agent is holding the escrow funds as agent and that the funds are not trust funds. Closing Agent shall not be liable for any failure of the depository.

i. Waiver of Jury Trial. THE BUYER AND THE CITY, JOINTLY AND SEVERALLY, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF EITHER PARTY.

(Signatures Appear On The Following Page)

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above appearing.

BUYER:

CITY:

LOAD KING MANUFACTURING CO., a
Florida Corporation

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

Name: _____

Lenny Curry as Mayor

By: _____

Its: _____

ATTEST:

James R. McCain, Jr.
As Corporation Secretary

FORM APPROVED
As to City only:

Office of the General Counsel

GC-#1239583-v3-GC-#1222317-v3-PSA - _Load_King_ - _COJ_ - _Beaver_Street

EXHIBIT A

LEGAL DESCRIPTION/PROPERTY IDENTIFICATION

EXHIBIT B

APPROVALS

Property Identification	Owner	Action
RE #s: 075498-0000; 075499-0000; 075501-0000; 075509-0000; 075508-0000; 075507-0000; & 075506-0000	LKJ Land Trust	FLUM Amendment from MDR to LI Rezoning from RMD-A to IL
075510-0000 (Head Start)	City of Jacksonville	Rezoning from PBF-1 to IL
Brady Street (all) & Union Street West (portion of)	LKJ Land Trust owns the property on each side of the identified roads	Road closure