



**City Attorney's Communication #2021-402**

March 3, 2021

**TO:** Cassandra LeMasurier, Real Property Manager

**FROM:** Mark E. Berman, City Attorney

**RE:** Resolution – Contract for Sale and Purchase / 201-203 E. McNab Road and Lease with P.I.W. Restaurant Inc.

As requested in your memorandum of March 3, 2021, Real Property Manager #21-012, the above-referenced Resolution has been revised and is captioned as follows:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT FOR SALE AND PURCHASE BETWEEN THE CITY AND P.I.W. RESTAURANT, INC. IN THE AMOUNT OF \$840,000 FOR PROPERTY LOCATED AT 201-203 MCNAB ROAD, FOR THE PURPOSE OF SUPPLEMENTING PROPERTY NEGATIVELY IMPACTED BY THE MCNAB ROAD BRIDGE PROJECT, AND TO EXECUTE A LEASE BETWEEN THE CITY AND THE SELLER ALLOWING THE SELLER TO OCCUPY THE PROPERTY UNTIL AUGUST 31, 2021; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance

/s/  
\_\_\_\_\_  
MARK E. BERMAN

/jrm  
l:cor/finance/rpm/2021-402

Attachment

RESOLUTION NO. 2021-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONTRACT FOR SALE AND PURCHASE BETWEEN THE CITY AND P.I.W. RESTAURANT, INC. IN THE AMOUNT OF \$840,000 FOR PROPERTY LOCATED AT 201-203 MCNAB ROAD, FOR THE PURPOSE OF SUPPLEMENTING PROPERTY NEGATIVELY IMPACTED BY THE MCNAB ROAD BRIDGE PROJECT, AND TO EXECUTE A LEASE BETWEEN THE CITY AND THE SELLER ALLOWING THE SELLER TO OCCUPY THE PROPERTY UNTIL AUGUST 31, 2021; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on October 10, 2017, the City of Pompano Beach, (City) adopted Resolution No. 2018-01 (the Referendum Resolution) providing for a referendum on the issuance of general obligation bonds (GO Bonds) for various City projects (the GO Projects Lists) that were described in three categories: Public Safety Projects; Parks, Recreation and Leisure Projects; and Streets, Sidewalks, Bridges and Streetscaping Projects and attached to the Referendum Resolution as Exhibit “A”; and

**WHEREAS**, Exhibit “A” to the Referendum Resolution contains a description of the McNab Road Improvements as follows:

McNab Road Improvements – Construct and equip improvements to McNab Road, including, but not limited to replacing McNab Road bridge, beautifying the McNab Road corridor between Federal Highway and South Cypress Creek Road, paving, related drainage improvements, sidewalks, bus shelters and benches, lighting, landscaping, street furniture and other streetscape improvements.

and

**WHEREAS**, the referendum on the GO Bonds was approved by the qualified electors of the City and on April 24, 2018, the City adopted Ordinance No. 2018-49 (the Master Bond Ordinance); and

**WHEREAS**, attached to the Master Bond Ordinance is Exhibit “A” entitled Proposed G.O. Bond Project Prioritization List and which identifies two phases: Phase I, which represents design and construction project costs to be funded with the 2018 G.O. Bond sale proceeds; and Phase II, which represents construction project costs to be funded with the 2021 G.O. Bond sale proceeds; and

**WHEREAS**, the Proposed G.O. Bond Project Prioritization List includes Phase I and Phase II of the McNab Road Improvements, described as follows:

Replace functionally obsolete bridge on McNab Road and beautifying McNab Road corridor between Federal Highway and South Cypress Road, paving, related drainage improvements, sidewalks, bus shelters and benches, lighting, landscaping, street furniture and other streetscape improvements.

and

**WHEREAS**, the preliminary design of the McNab Road bridge (the Bridge) has been completed and current Florida Department of Transportation (FDOT) regulations require that the Bridge be elevated a minimum of four feet; and

**WHEREAS**, the elevation of the Bridge will result in a change to the off-ramp design of the Bridge and necessitate relocation of access to certain private properties that abut McNab Road; and

**WHEREAS**, acquisition of the property located at 201-203 McNab Road (the Property) owned by P.I.W. Restaurant, Inc. (Seller) is necessary to satisfactorily address the relocation of access to the private property immediately to the east of the Property; and

WHEREAS, a lease with the Seller from the date of closing on the acquisition through August 31, 2021, will allow the Seller adequate time to relocate and will not interfere with the Bridge construction schedule.

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA AS FOLLOWS:**

**SECTION 1.** That the Contract for Purchase and Sale (the Contract) between the City of Pompano Beach (City) and P.I.W. Restaurant, Inc. (Seller), and the Lease between the City and the Seller (the Lease), copies of which Contract and Lease are attached hereto and incorporated by reference as if set forth in full, are hereby approved for the purposes of replacing and modifying existing access, egress and parking which is required for and removed or otherwise obscured as part of construction of the above-described bridge replacement bond project.

**SECTION 2.** That the proper City officials are hereby authorized to execute the Contract and the Lease.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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**REX HARDIN, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

:jrm  
3/3/21  
L:reso/2021-126

## **CONTRACT FOR SALE AND PURCHASE**

THIS CONTRACT FOR SALE AND PURCHASE ("Contract") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between

**P.I.W. RESTAURANT, INC.**, a Florida Corporation, of 201 E McNab Road, Pompano Beach, FL, 33060, hereinafter referred to as "SELLER,"

and

**CITY OF POMPANO BEACH, FLORIDA**, of 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

collectively referred to as the Parties.

SELLER and CITY hereby agree that SELLER shall sell and CITY shall purchase the following described property, situate, lying and being in Broward County, Florida, and more particularly described as follows:

### **LEGAL DESCRIPTION**

Real property as described in Exhibit "A" attached hereto and made a part of this Contract (the "Real Property"), together with all tenements, hereditaments, privileges, rights of reverter, servitudes, and other rights appurtenant to Real Property, all buildings, fixtures, and other improvements existing thereon, all fill and top soil thereon, all oil, gas, and mineral rights possessed by SELLER, all right, title and interest of SELLER in and to any and all streets, roads, highways, easements, drainage rights, or rights of way, appurtenant to the Real Property and all right, title and interest of SELLER in and to any and all covenants, restrictions, agreements and riparian rights benefiting the Real Property (all of the foregoing being referred to as the "Property").

### **ARTICLE 1**

#### **TERMS, DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Contract and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are, therefore, agreed upon by the Parties.

- 1.1 CITY MANAGER: Whenever the term City Manager is used herein, it is intended to mean the City Manager or his appointee. In the administration of this Contract, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the City Manager or the City Manager's designee.
- 1.2 COMMISSIONERS: The Pompano Beach City Commissioners, which are also the governing body of the City of Pompano Beach.
- 1.3 CONVEYANCE: Whenever the term Conveyance is used herein, it shall mean a warranty deed in statutory form properly executed, witnessed and acknowledged.
- 1.4 CITY OF POMPANO BEACH: A body corporate and politic created pursuant to Chapter 166 of the Florida Statutes.
- 1.5 EFFECTIVE DATE: The date upon which this Contract is last executed by the Parties hereto.
- 1.6 PUBLIC RECORDS: Whenever the term Public Records is used herein, it shall mean the Public Records of Broward County, Florida.
- 1.7 SELLER: Whenever the term Seller is used herein, it shall mean the person or entity owning fee simple title to the Real Property and any agent or designee to whom SELLER has delegated authority to negotiate or administer the terms and conditions of this Agreement.
- 1.8 SPECIAL ASSESSMENT LIENS: Whenever the term Special Assessment Liens is used herein, it shall mean all liens on the property which is the subject matter of this Contract arising out of a special improvement or service by any city, town, municipal corporation, CITY or other governmental entity pursuant to any general or special act of the legislature providing a special benefit to land abutting, adjoining or contiguous to the special improvement. Said special improvement shall include, but is not limited to, paving, repaving, hard surfacing, rehard surfacing, widening, guttering, and draining of streets, boulevards, alleys and sidewalks; construction or reconstruction of sanitary sewers, storm sewers, drains, water mains, water laterals, water distribution facilities and all appurtenances thereto.

For the purpose of closing or settlement of this purchase, such special assessment liens shall be designated as either "certified" or "pending."

A "certified" lien is hereby defined as a lien which has been certified, confirmed or ratified pursuant to the statute, special act, ordinance, or resolution creating same and for which the exact amount of same has been determined.

A "pending" lien is a lien which has been created or authorized by an enabling resolution adopted by the appropriate governmental entity, causing said lien to attach to and become an encumbrance upon the subject Real Property but for which there has been no determination of the final amount of same.

- 1.9 **SURVEY**: Whenever the term Survey is used herein, it shall mean a survey certified to "City of Pompano Beach" by a professional land surveyor registered in and licensed by the State of Florida.
- 1.10 **TITLE**: Whenever the term Title is used herein, it shall mean fee simple title, free and clear of all liens, charges and encumbrances, other than matters specified in Section 4.1 of this Contract, if any.
- 1.11 **TITLE BASE**: Either an existing prior Owner's or First Mortgagee Title Insurance Policy, qualified for use as a title base for reissue of coverage on the Real Property at the Purchase Price, from a reputable title company acceptable to CITY. If a prior policy is unavailable as a title base, then any alternate title base that is acceptable to CITY's title insurance underwriter.
- 1.12 **TITLE COMMITMENT**: A commitment or binder for an owner's policy of title insurance written on a company acceptable to CITY, in the amount of the purchase price, covering the Real Property and having an effective date subsequent to the full execution of this Contract, listing and attaching copies of all instruments of record affecting title to the Real Property and listing the requirements, as of the date of the commitment, for conveyance of marketable fee simple title to the Real Property.
- 1.13 **TITLE INSURANCE**: An owner's policy of title insurance issued on the Title Commitment, having an effective date as of the recording of the conveyance insuring title in accordance with standards set forth in Section 4.1.

**ARTICLE 2**  
**TERMS AND CONDITIONS OF PURCHASE AND SALE**

2.1 **PURCHASE PRICE**:

CITY, as purchaser, agrees to pay as and for the total purchase price for the Property in the manner and at the times hereinafter specified the total sum of EIGHT HUNDRED FORTY THOUSAND DOLLARS (\$840,000.00), subject to the prorations, credits, and adjustments hereinafter specified.

2.2 **PROCEEDS OF SALE; SATISFACTION OF ENCUMBRANCES**:

2.2.1 The proceeds of sale, adjusted for prorations, credits or other closing related charges, if any, shall be disbursed by the closing agent at closing in the form of a trust or escrow account check drawn locally from a bank in Broward County and payable to SELLER.

2.2.2 Any and all mortgages, liens and encumbrances or claims or any other debts, affecting the title to the Property ("Encumbrances"), which are outstanding on the date of closing shall be discharged and satisfied from the proceeds of the sale at closing and such additional amounts paid by SELLER as may be necessary. CITY or CITY's designated closing agent or attorney shall cause to be issued separate checks payable to the respective mortgagees, real estate commissions, lienees,

lienors or encumbrancers, the aggregate of which shall not exceed the purchase price less proration or other credits. The closing agent or attorney shall arrange to exchange such checks for the instruments necessary to satisfy such Encumbrances.

- 2.2.3 The SELLER hereby acknowledges and agrees that any payments due as provided in this Section 2.2 shall not be paid from ad valorem taxes nor shall such taxes be pledged or committed for any payment due SELLER. Further, there shall be no pledge of CITY property or otherwise to secure said payments to SELLER nor any mortgage or right to foreclose on the Property to be conveyed by SELLER to CITY or on any property owned by CITY.

### 2.3 ADDITIONAL OBLIGATIONS OF SELLER

- 2.3.1 SELLER agrees to deliver possession of the Property to City on the date of closing provided City allows Seller to continue operation of the SELLER'S restaurant and occupy the cottage as a residence until August 31, 2021 (the "Move Out Date"). If the restaurant stops operation before the Move Out Date, the SELLER shall have the right to occupy the cottage until the Move Out Date. SELLER shall have the right to continue to use and enjoy any personal property until the Move Out Date. SELLER shall have the right to remove and retain personal property up to and including the Move Out Date. Any personal property remaining after the Move Out Date shall become the property of the CITY. SELLER must enter into a lease with CITY prior to and effective upon closing. SELLER will be responsible for all maintenance, repairs, operations, ad valorem and non ad-vaolrem taxes, expenses and liability through Move Out Date. Estimated taxes from date of closing to Move Out Date will be held in escrow from proceeds at closing. The lease has been included as Exhibit "E" attached hereto and made a part of this Contract.
- 2.3.2 SELLER hereby grants to CITY the right to enter on the Property to perform, or have performed, such inspections, surveys and studies of the Property as CITY may elect including, without limitation, an environmental audit of the Property, and SELLER agrees to provide CITY with such information as may reasonably be requested which is in the possession of SELLER in connection with such investigations. CITY shall have forty-five (45) days from the Effective Date of this Contract ("Inspection Period") within which to have such inspections and studies of the Property performed as CITY shall desire and utilities shall be made available by SELLER during the Inspection Period. In the event that the results of such investigations reveal conditions affecting the Property which are not acceptable to CITY, in its sole and absolute discretion, CITY may terminate this Contract by giving written notice to SELLER within thirty (30) days of the expiration of the Inspection Period.
- 2.3.3 Between the Effective Date and the date of closing, SELLER covenants and warrants to keep and maintain the Property in the same condition as it exists on the Effective Date, normal wear and tear excepted, and agrees that SELLER shall not enter into any contract for the Property, including without limitation any lease or



tenancy thereof, without the prior written consent of City Manager, which consent may be granted or withheld by CITY in its sole discretion.

2.4 **REPRESENTATIONS AND WARRANTIES OF SELLER:** In addition to the representations and warranties contained elsewhere in this Contract, SELLER hereby represents and warrants to CITY, as of the date SELLER executes this Contract and as of the closing date, as follows:

2.4.1 SELLER warrants and represents to CITY that SELLER is the owner of fee simple title to the Property, and that no consents of any third party are required in order for SELLER to convey title to the Property to CITY as provided herein.

2.4.2 SELLER warrants and represents to CITY that there are no contracts or agreements, whether written or oral, regarding the use, development, maintenance, or operation of the Property which will survive the closing, other than the contracts or agreements listed in Exhibit "B" hereto, and further that SELLER has provided CITY with true and correct copies of each such written contract or agreement, and any modifications and amendments thereof, or with written summaries of any such oral agreements. If CITY, in its sole and absolute discretion, determines that said contracts or agreements are unsatisfactory, CITY may at its option: (1) terminate this Contract by written notice to the SELLER within thirty (30) days of the delivery of such contracts or agreements to CITY; (2) request that the SELLER modify the terms and conditions of the existing contracts or agreements to a form and content acceptable to CITY; or, (3) proceed to close accepting the contracts or agreements as they are.

2.4.3 SELLER covenants and warrants that there is ingress and egress to the Property over public roads, and title to the Property is insurable in accordance with Section 3.2 without exception for lack of legal right of access.

2.4.4 SELLER warrants that there are no facts known to SELLER materially affecting the value of the Property that are not readily observable by CITY or that have not been disclosed to CITY.

### **ARTICLE 3** **EVIDENCE OF TITLE AND TITLE INSURANCE**

3.1 **EVIDENCE OF TITLE:**

3.1.1 SELLER shall, at SELLER's expense, on or before fifteen (15) days from the Effective Date, deliver an existing prior Owner's or First Mortgagee Title Insurance Policy qualified for use as a title base for reissue of coverage on the Real Property at the Purchase Price of the Real Property ("Prior Policy") together with copies of all exceptions thereto, if requested. SELLER shall, at SELLER's option, pay for either: (1) an abstract continuation or; (2) a computer title search, from the effective date of the prior Owner's Policy or in the case of a First Mortgagee Title Insurance Policy from the date of recording the deed into the mortgagor. The abstract

continuation or title search shall be ordered or performed by CITY's closing agent;  
or

3.1.2 If a prior policy described in Paragraph 3.1.1 above is not available, then SELLER shall, at SELLER's option, provide and pay for either: (1) an alternative title evidence which is acceptable to CITY's title insurance underwriter; or (2) a title insurance commitment issued by a Florida licensed title insurer agreeing to issue to CITY, upon recording of the deed to CITY, an Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring CITY's title to the Real Property, subject only to liens, encumbrances, exceptions or qualifications provided in this Contract and those to be discharged by SELLER at or before Closing.

3.2 INSURANCE OF TITLE: CITY may obtain, at CITY's expense and in reliance on the Evidence of Title referred to in Paragraph 3.1.1 of Section 3.1, a Title Commitment from a title agent selected by CITY, pursuant to which the title insurer agrees to issue to CITY, upon the recordation of the deed hereafter mentioned, an owner's policy of title insurance in the amount of the purchase price, insuring CITY's marketable title to the Property, subject only to matters contained in Section 4.1 and those to be discharged by SELLER at or before closing.

3.3 CITY shall have thirty (30) days from the date of receiving the Evidence of Title to examine the Title Base, the computer title search update, or the Title Commitment. If title is found to be defective, CITY shall within said period notify the SELLER in writing, specifying the defects. If the said defects render the title unmarketable, SELLER shall have a period of thirty (30) days from the receipt of such notice to cure or remove such defects, and SELLER agrees to use diligent efforts to cure or remove same. If, at the end of said period, SELLER has been unable to cure or remove the defects, CITY shall deliver written notice to SELLER either:

- (1) accepting the title as it then is; or
- (2) extending the time for a reasonable period not to exceed 120 days within which SELLER shall use diligent effort to cure or remove the defects; or
- (3) terminating this Contract, whereupon the CITY and SELLER shall be released of all further obligations under this Contract.

3.3.1 If CITY elects to proceed pursuant to Section 3.3(2), then SELLER shall, use diligent effort to correct defect(s) within the extended time provided. If SELLER is unable to timely correct the defect(s), CITY shall, within 5 days after expiration of the extended time provided, deliver written notice to seller either:

- (1) accepting the title as it then is; or
- (2) terminating this Contract, whereupon the CITY and SELLER shall be released of all further obligations under this Contract.

- 3.4 SELLER shall convey marketable title subject only to liens, encumbrances, exceptions, or qualifications as contained in Section 4.1. Marketable title shall be determined according to applicable Title Standards adopted by authority of the Florida Bar and in accordance with law.

**ARTICLE 4**  
**CONVEYANCES**

- 4.1 SELLER shall convey marketable title to the Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of SELLER, subject only to the following matters ("Acceptable Exceptions") and those otherwise accepted by CITY:

- (1) Comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority;
- (2) Restrictions and matters appearing on the plat or otherwise common to the subdivision;
- (3) Outstanding oil, gas and mineral rights of record without right of entry;
- (4) Unplatted public utility easements of record;
- (5) Real property taxes for the year of Closing and subsequent years; and,
- (6) Provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property.

- 4.2 At closing SELLER shall also deliver to CITY the following documents:

- (1) Mechanic's Lien Affidavit and Foreign Investment in Real Property Tax Act ("FIRPTA") Affidavit;
- (2) Such other documents as shall be reasonably requested by CITY (including, but not limited to, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignment of leases, tenant and mortgagee estoppel letters, and corrective instruments) in order for SELLER to convey marketable title to CITY and properly transfer all of the rights being sold in accordance with this Contract;
- (3) Evidence of authority to Convey the Property satisfactory to CITY; and,
- (4) The public disclosure certificate required by Section 13.1 hereof.

**ARTICLE 5**  
**PRORATION AND ADJUSTMENT**

- 5.1 PRORATION OF TAXES:

- 5.1.1 Real estate and personal property taxes applicable to the Property shall be prorated based on the official tax bill(s) for the current year. If not paid, SELLER shall pay or provide for payment of all real estate and personal property taxes applicable to the Property for the calendar years preceding the year of closing by or at closing.
- 5.1.2 In the event the date of closing shall occur between January 1 and November 1, SELLER shall, in accordance with Florida Statute Section 196.295, place in escrow with the Broward County Revenue Collection Division an amount equal to current taxes prorated to the date of transfer of title, based upon the current assessment and millage rates on the Property.
- 5.1.3 All governmental assessments certified prior to the closing date, general or special, shall be paid by SELLER prior to or at closing, and CITY shall not be obligated to pay such assessments.

5.2 GENERAL PRORATIONS:

Any rents, revenues, and liens, or other charges to be prorated, shall be prorated as of the date of closing, provided that in the event of an extension of the date of closing, at the request of or through the fault of either party, such date of proration shall be the date upon which the other party indicated its readiness to close.

**ARTICLE 6**  
**EXISTING MORTGAGES, LEASES AND CONTRACTS**

6.1 MORTGAGES: SELLER shall obtain and furnish at SELLER's expense, not less than fifteen (15) days prior to closing, a statement or letter of estoppel from the holder of any mortgage, lien, or encumbrance affecting the title to the Property. Any estoppel letter or statement shall set forth the amount of principal, interest, and/or penalties necessary to be paid to fully discharge such mortgage, lien, or encumbrance, or to release the Property from the lien of such mortgage.

6.2 LEASES, OPTIONS, CONTRACTS AND OTHER INTERESTS:

6.2.1 SELLER represents and warrants to CITY that there are no party(ies) in possession other than SELLER, leases (written or oral), options to purchase or contracts for sale covering all or any part of the Property, no party(ies) having ownership of any improvements located on the Property and no party(ies) having any interest in the Property or any part hereof except as set forth on Exhibit "B." If there are none, then Exhibit "B" shall state "NONE." SELLER represents and warrants that SELLER has previously furnished to CITY copies of all written leases, options and contracts for sale, estoppel letters from each tenant specifying the nature and duration of said tenant's occupancy, rental rate, advance rents, or security deposits paid by tenant and estoppel letters from each optionee, contract vendors and all others listed on Exhibit "B" (if any) describing in such detail as requested by CITY the nature of their respective interests. In the event SELLER is unable to obtain said estoppel letters, SELLER represents and warrants that SELLER has furnished

the same information, true and correct, to CITY in the form of a SELLER's affidavit.

- 6.2.2 From the date of SELLER's execution hereof, SELLER represents and warrants to CITY that SELLER shall not enter into any lease (oral or written), option to purchase, contract for sale or grant to any person(s) (natural or artificial) any interest in the Property or any part thereof or any improvement thereon or encumber or suffer the Property or any part thereof to be encumbered by any mortgage or other lien, without the prior written consent of CITY which consent may be granted or withheld by CITY in its sole discretion.
- 6.2.3 SELLER agrees that it will take all necessary action, including the expenditure of all reasonable sums of money, to terminate any and all leases, rights of occupancy, options to purchase, contracts for sale and interest(s) of any other person(s) (natural or artificial) in and to the Property, so that at closing the SELLER will convey the Property to the CITY free and clear of any such items and furnish to the CITY written evidence of such termination, and provide to CITY at closing an affidavit in the form attached hereto as Exhibit "C." Further, SELLER's obligation hereunder shall be a condition precedent to the closing of this transaction.

#### **ARTICLE 7** **TIME AND PLACE OF CLOSING**

- 7.1 It is agreed that this transaction shall be closed and the CITY shall pay the purchase price, as adjusted as provided herein, and execute all papers or documents necessary to be executed by CITY, and SELLER shall execute all papers or documents necessary to be executed by SELLER under the terms of this Contract, on or before the 90th day after the Effective Date, at the Pompano Beach City Attorney's Office, located at 100 West Atlantic Blvd., Pompano Beach, Florida, or at such earlier time or other place as CITY may designate. However, nothing contained in this Article shall act or be construed as a limitation of any sort upon CITY's rights under this Contract, including without limitation its rights under paragraph 7.2 hereof, its right to examine the Title Base and computer title search update, Title Commitment, and Survey, or as a limitation of other time established herein for CITY's benefit.
- 7.2 CITY shall have no obligation to close this transaction unless the following conditions hereinafter have been satisfied or have been waived in writing by CITY:
- (1) All representations, warranties and covenants of the SELLER herein shall be true and correct as of the closing date.
  - (2) Between the date of this Contract and the closing date, there shall have been no notice of intention to condemn the Property or any portion thereof.
  - (3) SELLER shall have obtained any consents, special exceptions, variances, etc. that may be required as a matter of law to permit CITY to own and occupy the Property for its intended purposes, and the same shall be final, binding, not subject to appeal, and in all other respects satisfactory to CITY.

- (4) There shall be no environmental hazards on the Property which would require CITY to treat, remove, or otherwise incur any expense relative to meeting current environmental standards as of date of closing.
- (5) The status of title to the Property shall not have changed in a manner which adversely affects the use of the Property for CITY's intended use or renders the title unmarketable from date of approval of same by title agent and/or CITY's counsel in accordance with this Contract.
- (6) An affidavit of SELLER regarding environmental matters in the form attached as Exhibit "D" hereto is delivered at closing.
- (7) All security codes and keys, if any, are turned over to CITY at Move Out Date.

7.3 In the event that at the time of closing any of SELLER's representations and warranties hereunder shall not be true or any condition exists which would allow CITY to terminate this Contract, CITY may deliver to SELLER written notice thereof, and SELLER, using reasonable diligence, shall have thirty (30) days from receipt of such notice to cure such defects. The closing shall, if necessary, be adjourned for a period of thirty (30) days to provide SELLER time within which to render such warranties and representations true and/or cure and remove such other matters so affecting the Premises, as the case may be. If such warranties and representations shall not be rendered true and/or such other matters shall not be cured and removed, CITY may, by notice to SELLER, elect to (a) cancel and terminate this Contract, or (b) accept title to the Property as is.

**ARTICLE 8**  
**DOCUMENTARY STAMPS, TANGIBLE TAXES AND OTHER COSTS**

- 8.1 SELLER shall cause to be placed upon the warranty deed conveying the Property state surtax and documentary stamps as required by law. SELLER shall further pay all tangible personal property taxes and the cost of recording any corrective instruments which CITY deems necessary to assure good and marketable title. CITY shall pay for the cost of recording the warranty deed.
- 8.2 Except as specifically provided in Section 8.1 hereof, all state, county and municipal transfer taxes, documentary stamps taxes, recording charges, taxes, and all other impositions on the conveyance, shall be paid in full by the SELLER. CITY is in no manner responsible for any state, federal or other income, excise, or sales tax liabilities of SELLER.
- 8.3 Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing Insurance of Title in accordance with Section 3.2.

**ARTICLE 9**  
**SPECIAL ASSESSMENT LIENS**

- 9.1 Liens for Special Assessment shall be paid by SELLER prior to closing or credited to CITY, as hereinafter provided.

The amount of certified, confirmed, and ratified special assessment liens imposed by public bodies as of Closing shall be discharged by SELLER prior to closing, and SELLER shall exhibit appropriate receipts, satisfactions, or releases proving such payment, or in the alternative SELLER shall cause said lien(s) to be satisfied out of the proceeds of sale received by SELLER at closing.

Pending liens as of Closing shall be assumed by CITY with an appropriate credit given to CITY against the purchase price. At such time as the final amount of said lien is determined or certified and said amount is less than the amount of the pending lien, the difference in amounts shall be refunded to SELLER; if the final amount is greater than the amount of the pending lien, SELLER shall upon demand pay to CITY the difference in amounts.

#### **ARTICLE 10** **SURVEY**

- 10.1 CITY, at CITY's expense, within the time allowed to deliver Title Base and review same, may have the Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, Contract covenants, or applicable governmental regulations, the same shall constitute a title defect.

#### **ARTICLE 11** **MECHANICS' LIENS**

- 11.1 SELLER hereby represents and warrants to CITY that as of the date hereof and as of closing, there are no claims or potential claims for mechanics' liens, either statutory or at common law, and that neither SELLER nor SELLER's agent has caused to be made on the Property within ninety (90) days immediately preceding the date of this Contract any improvement which could give rise to any Mechanics' Lien. In addition, SELLER represents and warrants to CITY that neither SELLER nor SELLER's agent shall cause any improvement to be made on the Property between the date of full execution of this Contract and closing which could give rise to any Mechanic's Lien for which any bills shall remain unpaid at closing. SELLER shall furnish to CITY at time of closing an affidavit, in the form attached as Exhibit "C," attesting to the absence, unless otherwise provided for herein, of any financing statement, claim of lien, or potential lienors known to seller, and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding date of Closing.
- 11.2 If any improvements have been made within said ninety (90) day period, SELLER shall deliver releases or waiver of all mechanics' liens executed by all general contractors, subcontractors, suppliers and material persons in addition to SELLER's mechanic lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and material persons, further affirming that all charges for improvements or repairs, which

could serve as a basis for a construction lien or a claim for damages, have been paid or will be paid at the Closing on this Contract.

**ARTICLE 12**  
**TIME OF THE ESSENCE**

- 12.1 Time is of the essence throughout this Contract. In computing time periods of less than six (6) days, Saturdays, Sundays, and state or national legal holidays shall be excluded. Any time periods provided for herein that end on a Saturday, Sunday, or a legal holiday shall extend to 5 p.m. of the next business day.

**ARTICLE 13**  
**PUBLIC DISCLOSURE**

- 13.1 SELLER hereby represents and warrants the names and addresses of every person or firm having a beneficial interest in the Property is as follows:

P.I.W. Restaurant, Inc.  
201 E McNab Road  
Pompano Beach, FL 33060

SELLER further agrees that at least ten (10) days prior to closing, in accordance with Section 286.23, Florida Statutes, SELLER shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the name and address of SELLER and the name and address of every person having any beneficial interest in the Property.

**ARTICLE 14**  
**BROKER'S COMMISSION**

- 14.1 SELLER and CITY hereby represent and warrant that each has dealt with no broker other than Mike Rapp, Mohr Partners, Inc., respectively, and SELLER agrees to hold CITY harmless from any claim or demand for commissions made by or on behalf of any broker or agent of SELLER in connection with this sale and purchase. SELLER agrees to pay the real estate commission owed to Mohr Partners, Inc in the amount of four and a half percent (4.5%) of the sales price by check or wire transfer in connection with this transaction.

**ARTICLE 15**  
**ASSIGNMENT**

- 15.1 This Contract, or any interest herein, shall not be assigned, transferred or otherwise encumbered under any circumstances by SELLER or CITY without the prior written consent of the other and only by a document of equal dignity herewith.

**ARTICLE 16**  
**DEFAULT**



- 16.1 If SELLER refuses to carry out the terms and conditions of this Contract, then this Contract may be terminated at CITY's election, upon written notice, or the CITY shall have the right to seek specific performance against SELLER. In the event the CITY refuses to carry out the terms and conditions of this Contract, SELLER shall have the right to terminate this Contract or to seek specific performance against CITY.

**ARTICLE 17**  
**PERSONS BOUND**

- 17.1 The benefits and obligations of the covenants herein shall inure to and bind the respective heirs, personal representatives, successors and assigns (where assignment is permitted) of the Parties hereto. Whenever used, the singular number shall include the plural, the plural, the singular, and the use of any gender shall include all genders.

**ARTICLE 18**  
**SURVIVAL OF COVENANTS AND SPECIAL COVENANTS**

- 18.1 The covenants and representations in this Contract shall survive delivery of deed and possession.

**ARTICLE 19**  
**WAIVER, GOVERNING LAW AND VENUE AND ATTORNEY'S FEES**

- 19.1 Failure of either party to insist upon strict performance of any covenant or condition of this Contract, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Contract shall be waived or modified except by the Parties hereto in writing.
- 19.2 This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Contract shall be in Broward County, Florida. SELLER and CITY hereby waive their right to a trial by jury.
- 19.3 In any litigation, including breach, enforcement, or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Section, shall include SELLER, CITY, and any brokers acting in agency or non-agency relationships authorized by Chapter 475, Florida Statutes, as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs, and expenses. This section shall survive delivery of deed and possession.

**ARTICLE 20**  
**MODIFICATION**

- 20.1 This Contract incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document.

Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

- 20.2 It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**ARTICLE 21**  
**CONTRACT EFFECTIVE**

- 21.1 This Contract or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the Parties hereto until it is approved by the CITY Commissioners and executed by the CITY's Mayor, Manager and Clerk.

**ARTICLE 22**  
**ENVIRONMENTAL CONTAMINATION**

- 22.1 In the event that the environmental audit provided for in Section 2.3.2 hereof results in a finding that environmental contamination of the Property is present or suspected or a recommendation that a Phase 2 audit be conducted, or if there has been environmental contamination of the Property between the Effective Date and the closing, the CITY, at its sole option, may: (1) elect to terminate this Contract without further liability; or, (2) obtain a cost estimate from a reputable licensed environmental consultant as to the cost of cleanup of any environmental contamination and notify SELLER of the cost estimate in writing, in which event the SELLER shall have the option of:

- (1) cleaning up the environmental contamination itself; or
- (2) reducing the purchase price of the Property by the amount of the cost estimate; or
- (3) terminating the contract with no further liability on the part of either party.

- 22.2 In the event that environmental contamination is discovered after closing, and it is determined that said contamination occurred prior to closing or is otherwise attributable to SELLER's ownership and/or use of the subject property prior to and up to the time of closing, SELLER shall remain obligated, with such obligation to survive delivery of the deed and possession by CITY, to diligently pursue and accomplish the clean-up of the environmental contamination.

- 22.3 In the event that SELLER undertakes any environmental remediation pursuant to Sections 22.1 or 22.2, all such remediation shall be done in a manner consistent with all applicable laws, rules, regulations and ordinances and at SELLER's sole cost and expense, and SELLER shall indemnify and save harmless and defend CITY, its officers, servants, agents and employees from and against any and all claims, suits, actions, damages, liabilities, expenditures or causes of action of whatsoever kind arising from the environmental contamination. SELLER shall defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the CITY as a result of any claim, suit, or cause of action for injuries to body, life, limb or property for which the environmental

contamination is alleged to be a contributing legal cause. SELLER shall save the CITY harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities in and about any such claim, suit, investigation, or defense thereof, which may be entered, incurred or assessed as a result of the foregoing.

- 22.4 SELLER represents and warrants to CITY that as of the Effective Date and as of closing that neither SELLER, nor to the best of SELLER's knowledge any third party, has used, produced, manufactured, stored, disposed of, or discharged any hazardous wastes or toxic substances in, under, or about the Property.

**ARTICLE 23**  
**RADON GAS**

- 23.1 Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County public health unit.

**ARTICLE 24**  
**FURTHER UNDERTAKING**

- 24.1 The Parties agree that each shall cooperate with the other in good faith and shall correct any mathematical errors, execute such further documents and perform such further acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Contract.

**ARTICLE 25**  
**NOTICES**

- 25.1 Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, as the place for giving of notice in compliance with the provisions of this paragraph. The party(ies) may change the addresses at which notice is to be given by notice given as provided in this Article. Notices shall be deemed given when mailed properly addressed with postage prepaid.

**FOR CITY Before and After Closing:**

Gregory P. Harrison, City Manager  
100 West Atlantic Blvd.  
Pompano Beach, Florida 33060

**FOR SELLER Before and After Closing:**

Isle Wettengel  
1417 SE 8th Street  
Deerfield Beach, FL 33441

**ARTICLE 26**  
**EXECUTION**

26.1 This document, consists of thirty nine (39) pages including Exhibits "A," "B," "C," "D" and "E". The Contract for Sale and Purchase shall be executed in at least three (3) counterparts, (excluding the exhibits) each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: P.I.W. Restaurant, Inc., signing by and through its President duly authorized to execute same, and CITY, through its Commissioners, signing by and through its Mayor, Manager and Clerk, authorized to execute same by Commission action on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, Resolution No. \_\_\_\_\_.

**SELLER**

P.I.W. RESTAURANT, INC., a Florida Corporation

ATTEST:

By   
Ilse Wettengel, President

\_\_\_\_\_  
Secretary

26 day of Feb, 2021.

(SEAL)

**OR**

WITNESSES:

  
Witness 1 Signature

Carol Ann Salazar  
Witness 1 Print/Type Name

  
Witness 2 Signature

Juan S. Salazar  
Witness 2 Print/Type Name

“CITY”

WITNESSES:

CITY OF POMPANO BEACH

\_\_\_\_\_

BY: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY P. HARRISON  
CITY MANAGER

DATED: \_\_\_\_\_

\_\_\_\_\_  
ASCELETA HAMMOND  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**Legal Description:**

Beginning at the Southwest Corner of the Southeast 1/4, of the Southwest 1/4, of the Southwest 1/4, of Section 1, Township 49 South, Range 42 East;

Thence North 220 feet along the West Line of the Southeast 1/4, of the Southwest 1/4, of the Southwest 1/4, of Section 1.

Thence East 30 feet, at Right Angles;

Thence Southeasterly 69.58 feet along a line forming an included angle of 168 degrees 19 feet 01 inches;

Thence Southwesterly 46.46 feet along a line forming an included angle of 92 degrees 50 feet 28 inches to a point 91 feet East of said West Line of the Southeast 1/4 of the Southwest 1/4, of the Southwest 1/4;

Thence South 157.78 feet along a line parallel to and 91 feet East of Said West Line of the Southeast 1/4, of the Southwest 1/4, to the South Line of aforesaid Section 1;

Thence West 91.03 feet along the South Line of Section 1, to the POINT OF BEGINNING:

Excepting therefrom the South 35 feet thereof.

**Address: 201-203 McNab Road, Pompano Beach, FL 33060**

**Folio No.: 4942 01 00 0720**



**EXHIBIT "B"**

**LEASES, OPTIONS, CONTRACTS  
AND OTHER INTERESTS**

**NONE**



**EXHIBIT "C"**

**AFFIDAVIT**

**(No-Lien, Non-Foreign Status, 1099)**

STATE OF FLORIDA:  
COUNTY OF BROWARD:

**DATE OF CLOSING:** \_\_\_\_\_, 20\_\_

**FILE:**

**BEFORE ME**, the undersigned authority personally appeared the undersigned Affiant, \_\_\_\_\_, who after being duly sworn, depose on oath and say:

1. That \_\_\_\_\_, (Owner) is/are the owner(s) of the following described property, to wit:

**FOLIO NO. 4942 01 00 0720**

2. ( ) Said property is the principal residence of the Affiant; or

( x ) Affiant presently resides at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and the property is not the homestead of Affiant, and the said property is not occupied by tenants or any other parties except as follows: NONE.

3. That the above-described property is free and clear of all liens, taxes, encumbrances and claims of every kind, nature and description whatsoever, including real estate and personal property taxes for the year 20\_\_; and except for the mortgage(s), if any, as follows: NONE.

4. That there have been no improvements, alterations or repairs to the above-described property for which the costs thereof remain unpaid, and that there are no claims for labor or materials furnished for repairing or improving the same which remain unpaid, except the following: NONE.

5. That there are no mechanic's, materialmen's or laborer's liens against the above-described property.

6. That the personal property on the said premises, and which if any, is being sold to the purchaser mentioned below, is also free and clear of all liens, encumbrances, claims and demands whatsoever.

7. The Affiant knows of no violations of county or municipal ordinances pertaining to the above-described property.

8. (X) That this affidavit is made for the purpose of inducing the City of Pompano Beach to exchange property with Affiant for a gross sale price of \$\_\_\_\_\_.

(X) That this affidavit is also made for the purpose of inducing Title Partners of South Florida, Inc. and/or its Underwriter to issue a policy of title insurance on said property.

9. That no judgment or decree has been entered in any court of the states of the United States against said Affiant, and which remains unsatisfied, and that Affiant has no present plan to file proceedings against him/her under the bankruptcy laws, nor are there any other claims of any kind filed, or fileable that would adversely affect the title to the subject real estate.

10. Subsequent to \_\_\_\_\_, Affiant has not and hereby agrees and represents that Affiant will not execute any instrument or do any act whatsoever that in any way would or may affect the title to the property, including but not limited to, the mortgaging or conveying of the property or any interest therein, or causing any liens to be recorded against the property of Affiant.

11. That none of the restrictions, agreements, covenants, easements, declarations or other matters affecting title to the property have been violated or encroached upon as of the date of this affidavit, and that there are no outstanding taxes, levies, assessments, maintenance charges, utility bills or other charges, or liens against the property, other than the following: NONE.

12. Affiant is/are not a non-resident alien for purposes of United States income taxation, nor a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

13. Affiant's Social Security Number(s) or United States Employer Identification Number(s) is/are:

Social Security No. \_\_\_\_\_  
Tax I.D. No. 65-0381015

14. Affiant understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punishable by fine, imprisonment, or both.

15. Section 5045 of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, requires the reporting of certain information on every real estate transaction. From the information you provide below, a Form 1099 will be produced, and a copy of it will be furnished to the Internal Revenue Service and to you no later than January 31 of the next year, and a copy may be sent to third parties. If you fail to furnish adequate information (in particular, a taxpayer

identification number), then you will be subject to all Internal Revenue Service regulations, including the possible withholding of twenty percent (20%) of the current sales price.

As to paragraph numbers 2, 8 and 12, only those portions marked by an "X" are applicable. "Affiant" is used for the singular or plural.

Affiant agrees to indemnify and hold the City of Pompano Beach, Title Partners of South Florida, Inc. and First American Title Insurance Company harmless from all liability, including reasonable attorney's fees and costs, for any and all false statements and/or misrepresentations contained herein, or in the event of any liability imposed on the City of Pompano Beach based upon its reliance upon this affidavit. In the event the City of Pompano Beach is required to use the services of an attorney to defend itself in any claim made against it, Affiant agrees to pay all attorney's fees and costs, whether or not suit is brought.

Under penalties of perjury, I/we declare that I/we have examined this certification and to the best of my/our knowledge and belief it is true, correct, and complete, and I/we further declare that I/we understand that the taxpayer identification number above, will appear on a Form 1099 that will be sent to me/us and the Internal Revenue Service.

**AFFIANT:**

\_\_\_\_\_(SEAL)  
President

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as President of \_\_\_\_\_, a Florida Corporation, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

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

\_\_\_\_\_  
(Commission Number)

**EXHIBIT "D"**

**ENVIRONMENTAL AFFIDAVIT**

STATE OF FLORIDA     )  
  ) SS.  
COUNTY OF BROWARD )

          BEFORE     ME,     the     undersigned     authority,     personally     appeared  
\_\_\_\_\_ , who, being by me first duly sworn  
on oath, depose(s) and say(s):

This Affidavit is made this \_\_\_\_ day of \_\_\_\_\_ pursuant to a Contract for Sale and Purchase ("Contract") made as of \_\_\_\_\_, by and between \_\_\_\_\_, hereinafter called SELLER and CITY OF POMPANO BEACH, acting by and through its CITY Commissioners, hereinafter called CITY, pertaining to property known as \_\_\_\_\_, and being in Broward County, Florida (the "Property").

In order to induce CITY to purchase the Property, SELLER hereby represents and warrants to CITY as follows, to the best of the Seller's knowledge and belief:

1. There are no environmental hazards on the Property which would require CITY to treat, remove, or otherwise incur any expense relative to meeting current environmental standards as of date of closing.
2. SELLER is not aware of any event of environmental contamination of the Property occurring between the Effective Date of the Contract and the Closing.
3. SELLER represents and warrants to CITY, to the best of the Seller's knowledge and belief, that as of the effective date of the Contract and as of closing that neither SELLER, nor to the best of SELLER's knowledge any third party, has used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under or about the Property during the time in which SELLER owned the Property.
4. SELLER represents and warrants to the best of the Seller's knowledge and belief, the truth and accuracy of all matters hereinabove set forth and agrees to and shall defend, indemnify and hold harmless CITY and its successors and assigns from all causes, claims, demands, actions, losses, liabilities, settlements, judgments, damages, costs, expenses and fees (including without limitation reasonable attorney's and appellate attorney's fees) that arise as a result of or in connection with the falsity or inaccuracy of any statement made in the above Affidavit or the breach of any representation or warranty herein made.

FURTHER AFFIANT SAYETH NAUGHT.

**SELLER**

P.I.W. RESTAURANT, INC., a Florida Corporation

ATTEST:

By \_\_\_\_\_  
Ilse Wettengel, President

\_\_\_\_\_  
Secretary

(SEAL)

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**OR**

WITNESSES:

\_\_\_\_\_  
Witness 1 Signature

\_\_\_\_\_  
Witness 1 Print/Type Name

\_\_\_\_\_  
Witness 2 Signature

\_\_\_\_\_  
Witness 2 Print/Type Name

STATE OF FLORIDA        )  
  ) SS.  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

My Commission Expires:

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
(Typed or printed name)

\_\_\_\_\_  
Commission Number

MEB/jrm  
10/25/18  
l:realest/contract-brwd cty form

**EXHIBIT "E"**

**LEASE**

**LEASE AGREEMENT**  
**between**  
**CITY OF POMPANO BEACH**  
**and**  
**P.I.W. RESTAURANT, INC**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as “CITY,”

and

**P.I.W. RESTAURANT, INC.**, a Florida Corporation, whose address is 201 E McNab Road, Pompano Beach, Florida 33060, hereinafter referred to as “Tenant,”

**W I T N E S S E T H:**

City and Lessee, for and in consideration of the covenants and mutual agreements hereinafter contained covenant and agree as follows:

**Recitals**

WHEREAS, Tenant desires to lease certain property in the City of Pompano Beach, Florida (“City”), for use as a restaurant and residence.

WHEREAS, CITY is the owner of a certain parcel of real property in the City, and is willing to rent property to Tenant on the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Lease, the CITY and Tenant agree as follows:

1. The above recitals are true and correct and are incorporated in this Lease.
2. **Lease of Property.** The CITY leases to Tenant, and Tenant leases from the CITY, the following described commercial property: the building and residence located at 201-203 E McNab Road, Pompano Beach, Florida 33060, (collectively, the “Premises”) as further depicted in Exhibit “A”. Tenant acknowledges that it is leasing the Premises in an “AS-IS” condition. Tenant further acknowledges that the CITY shall have no obligation to make additional improvements to the Premises, except to the extent otherwise explicitly stated in this Lease.
3. **Lease Term.** The initial term (“Initial Term”) of this Lease shall commence on the day of the CITY closing on the property (Commencement Date), and end at midnight August 31,



2021.

4. **Renewal Term.** There shall be no renewal of this lease.
5. **Rent.**
  - 5.1 The Tenant shall not be required to pay rent while occupying the property through August 31, 2021.
6. **Termination.** This lease shall terminate at midnight on August 31, 2021 or earlier upon fifteen (15) days written notice by Tenant to CITY.
7. **Taxes and Assessments.** Tenant shall be responsible to pay all municipal, county, and state ad valorem and non-ad valorem taxes which may be assessed against the Premises during the Term of this Lease. Tenant shall be responsible for payment of any taxes levied against the personal property and trade fixtures of Tenant located in and about the Premises during the Term of this Lease. Estimated pro-rated taxes from the time of closing until lease termination shall be held in escrow at closing from the proceeds of the CITY's purchase of the Premises.
8. **Insurance.** Tenant shall maintain insurance coverage in accordance with the coverage and limits described in Exhibit "B", attached and incorporated in this Lease.
9. **Tenant's Maintenance Obligation.** Tenant shall maintain and repair the interior and exterior of the Premises, including but not limited to, painting, conduits, HVAC system, window cleaning, lighting, roof, landscaping, mowing, parking areas, interior ceilings and walls and all Tenant improvements, at its sole cost and expense, except to the extent that this is inconsistent with subparagraph 9.4 below. Tenant shall use commercially reasonable efforts to maintain the Premises in a good, neat, clean, safe and sanitary condition throughout the Term, reasonable wear and tear excepted. Tenant shall keep all furnishings, fixtures and accessories, and any display facilities, in good repair. The Premises shall be maintained in accordance with all applicable code requirements of the Broward County Health Department and all Applicable Laws.
  - 9.1. **Windows.** Intentionally deteted.
  - 9.2. **Pest Control.** Tenant shall obtain and pay for professional exterminators to control vermin and pests on a regular basis, no less than monthly and as needed. Such extermination services shall be supplied in all areas where food is prepared, dispensed, or stored and in all areas of the Premises where trash is collected and deliveries are made.
  - 9.3. **Janitorial.** Tenant shall obtain and pay for all janitorial services required to keep the Premises in clean and sanitary condition, as well as to comply with Applicable Laws.
  - 9.4. **Structural Repairs.** In the event any repairs are necessary to the wiring or plumbing in the walls, floors, underground, ceiling or hard structures of the Premises or any repair involves major penetration of walls, ceilings or floors, or trenching Tenant shall be responsible for the costs and shall notify the CITY of such repair(s).
  - 9.5. **Trash Management.** Tenant shall be responsible for their own trash collection.
10. **Utilities.** Tenant shall be responsible for obtaining and paying the cost of all utilities including, but not limited to water, sewer, electric, gas, telephone, cable, internet, serving the Premises during the Term, together with any taxes, penalties, surcharges and any other charges pertaining to such utilities. If utilities are inadvertently billed to the CITY, Tenant

will reimburse the CITY within ten days after receipt of the invoice or utility bill from the CITY. Tenant will promptly arrange for such utilities to be billed directly to Tenant. Tenant will pay all amounts due directly to the utility company prior to delinquency.

11. **Use of Premises.**

11.1. Tenant shall use the Premises for Tenant's residence. No other use of the Premises is permitted under this Lease without the CITY's express written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant will not commit or permit any waste or damage to the Premises and will not carry on or permit any activity that constitutes a nuisance as defined in the Florida Statutes or violates any Applicable Laws. Tenant, at its expense, shall procure and maintain all governmental licenses or permits required for the proper and lawful conduct of Tenant's use of the Premises.

11.2. Tenant grants to the CITY a lien on all of the Tenant's furniture, fixtures, goods and chattels, which shall or may be brought or put on the Premises as security for the Tenant's performance of the terms of this Lease.

11.3. The Tenant grants to the CITY a security interest in all furniture, fixtures, inventory, and all other tangible personal property or the proceeds therefrom belonging to the Tenant and what shall or may be brought or put upon the leased Premises and in all accounts receivable of the Tenant, as security for all obligations of the Tenant under this Lease, and all other obligations of the Tenant under this Lease, and all such property shall become the property of the CITY immediately upon default. The Tenant agrees that this security interest, at the CITY's option, may be enforced as provided in this Lease or otherwise pursuant to law, or in the manner provided by the Uniform Commercial Code. For the purposes of perfecting the security interest, the Parties agree that this Lease shall constitute a security agreement pursuant to the Uniform Commercial Code, and the Tenant agrees to execute such financing and continuation statements as may be requested from time to time by the CITY, and, in the alternative, the Tenant does irrevocably appoint the CITY as attorney in fact for the Tenant with the full power and authority, without notice to the Tenant, to execute one or more financing statements or continuations thereof in the name of the Tenant, and such other instruments as may be necessary to perfect the security interest of the CITY. In the event that the CITY shall cause a levy, execution or foreclosure upon the Premises, and the property in such Premises, the Tenant shall hold the CITY harmless of and from all liability as a result of any otherwise lawful levy or attachment or foreclosure upon any personal property brought upon the premises which does not in fact belong to the Tenant, and for the protection of the CITY. The Tenant agrees that the Tenant shall not bring upon the premises any personal property owned by one other than the Tenant unless prior to such delivery, the Tenant advises the CITY, in writing, specifically delineating such property. This paragraph shall be in addition to any remedies available to the CITY. The CITY may elect to proceed with any and all remedies available under this Lease.

12. **Parking.** Tenant shall have use of the parking spaces on the Property during the Term.

13. **Improvements.** Tenant has the right to make changes, alterations and additions to the Premises ("Improvements") with the CITY's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall be responsible for obtaining all permits required for the Improvements. Tenant shall be responsible for paying all impact

fees, concurrency fees and any other development costs for such Improvements, if any. All Improvements must be undertaken in a good and workmanlike manner and comply with all Applicable Laws. All Improvements made by Tenant which are permanently attached to the Premises will become the property of the CITY and shall remain on the Premises at the end of the Lease Term. Tenant will have the right to remove any moveable furniture, fixtures and equipment at the end of the Term. In addition, Tenant will have the right to remove from the Premises at the end of the Term any moveable kitchen equipment or appliances, such as ovens, ranges, and refrigerators installed by Tenant, as long as Tenant repairs any damage caused by the removal of such equipment. The CITY agrees to cooperate by executing or authorizing execution of any permit applications, consents, or other documents required in connection with the construction or installation of any CITY-approved Improvements by Tenant.

14. **CITY's Right to Inspect Premises.** The CITY will have the right to enter upon and inspect the Premises at reasonable times and without interference with the conduct of the Tenant's business.
15. **Ownership; Peaceful Enjoyment; Surrender of Premises.** The CITY represents and warrants that it has an ownership interest in the Premises. The CITY will warrant and defend Tenant's right to the peaceful possession and enjoyment of the Premises during the Term of this Lease, where the Tenant complies with the covenants of this Lease. At the end of the Term, Tenant will surrender the Premises in clean condition and good repair, normal wear and tear excepted.
16. **Accidental Damage or Injury.** The CITY shall not be liable for any damage to property, or any injury to persons, sustained by Tenant or others, caused by conditions or activities on the Premises. Tenant shall carry insurance insuring the CITY against any claims of the types and in the amounts stated in Exhibit "B" attached and incorporated in this Lease.
17. **Casualty.** If the Premises shall be destroyed or damaged by casualty, including earthquake or fire, to such an extent as to render the Premises untenable in whole or in substantial part, the CITY shall have the right to terminate the Term of the Lease by giving notice to the Tenant within thirty (30) days after the occurrence of such damage or destruction. If this notice is given, the term of the Lease shall terminate. If CITY terminates the Lease, the Tenant must immediately vacate the Premises, but shall be provided a reasonable amount of time to recover and remove any of its equipment.
18. **Liens.** Tenant shall keep the Premises free and clear of all liens arising out of any work performed, material furnished or obligations incurred by Tenant. Tenant shall have no power to incur any indebtedness giving a right to a lien of any kind upon the CITY's interest in the Premises. All persons contracting with the Tenant or furnishing labor or material to Tenant shall be bound by this Lease. If such a lien is filed against CITY's interest, Tenant shall, within ten (10) days after the date of its filing, pay same in full or have the lien transferred to a bond as permitted by law.
19. **Laws and Ordinances.** Tenant agrees to comply with all applicable state statutes, Broward County and City ordinances, and any safety requirements of all federal, state and local governments. Tenant shall maintain all required licenses from governmental agencies in full force and effect during the term of this Lease.
20. **Indemnification.** Tenant shall indemnify, defend, save and hold harmless City, its Commissioners, officers, agent, employees and representatives, from and against all claims and demands of third persons, except those arising from gross and willful misconduct by

City including, but not limited to, the execution of this Lease, claims and demands for death or personal injuries or for property damages arising out of the use or occupancy of the Premises by Tenant or with its consent or out of any acts or omissions of others upon the Premises with the consent of Tenant, or arising or resulting from any breach or default by Tenant or any of the obligations or duties assumed by or imposed upon it under this Lease, or indemnification arising by operation of law.

20.1. **Lawsuits.** If any lawsuit or proceeding is brought against the CITY, or the Premises on account of any alleged violations of, or failure to comply with, Applicable Laws, or on account of any damage, omission, neglect, or use of the premises by Tenant, its agents, employees, guests and invitees, Tenant agrees that Tenant or any other person on the premises with Tenant's consent will defend the CITY in such lawsuit or proceeding, and pay whatever judgments may be recovered against the CITY or the Premises, and pay for all attorneys' fees in connection with such lawsuit or proceeding, including attorneys' fees on appeal. The venue for any litigation shall be in Broward County, Florida.

20.2. **Limitation.** Nothing in this Lease shall be deemed as a waiver by the CITY of the monetary limits set forth in Section. 768.28, of the Florida Statutes, which monetary limits shall be applicable regardless of whether the limitations would apply in the absence of this provision.

20.3. **Glass Damage.** In case of damage to glass caused by Tenant, or its agents, employees, guests or invitees in the Premises, Tenant agrees to replace the glass with glass of the same kind, size, and quality as quickly as possible at Tenant's expense.

## 21. **Defaults and Remedies.**

21.1. **Events of Default.** The occurrence of any one or more of the following events shall constitute a Default under this Lease:

21.1.1 **Failure by Tenant to pay Rent.** This section intentionally deleted.

21.1.2 Failure by either party to observe or perform in any material respect any covenant, obligation or agreement contained in this Lease.

21.1.3 The filing by Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization under any law relating to bankruptcy; or the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets where such possession is not restored to Tenant within ninety (90) days of such appointment; or

21.1.4 Abandonment or vacating the Premises by the Tenant.

21.1.5 The material breach of any representation or warranty by either Party contained in this Lease Agreement if such material breach is not cured after written notice from the non-defaulting party to the defaulting party and a reasonable opportunity to cure such material breach.

21.2. **Cure Period.** In the event of a Default, the non-defaulting party shall provide written notice to the defaulting party and the defaulting party shall have ten (10) days to cure such Default, provided that the cure period shall be extended if the Default cannot reasonably be cured within ten (10) days and the defaulting party is using commercially reasonable efforts to cure the Default.

- 21.3. **Remedies for Default.** Following the occurrence of a Default and the expiration of any applicable cure period, the non-defaulting party may terminate this agreement. Additionally, the non-defaulting party shall have the right to have provisions of this Agreement enforced by any court having equity jurisdiction it being acknowledged that any such Default will cause irreparable injury to the non-defaulting party and that money damages will not provide an adequate remedy.
22. **No Waiver.** The exercise by either party to this Lease of any right or remedy under this Lease will not be a waiver of or preclude the exercise of any other right or remedy afforded such party by this Lease or by Applicable Laws. The failure of either party in one or more instances to insist on strict performance or observation of one or more of the covenants or conditions of this Lease or to exercise any remedy, privilege, or option conferred by this Lease on or reserved to such party shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that remedy, privilege, or option; that right shall continue in full force and effect. No waiver by either party of any of the provisions of this Lease, or of any of either party's rights, remedies, privileges, or options under this Lease, will be considered to have been made unless made by such party in writing. Notwithstanding such nonwaiver, in the event of any termination of this Lease or any repossession of the Premises, the Tenant, to the extent permitted by law, waives any notice of re-entry or of the institution of legal proceeding to that end, and any right of redemption, re-entry or repossession.
23. **Assignment and Subletting; Transfer of CITY's Interest.** This Lease may not be assigned or subleased. Tenant shall, upon CITY's request, execute and deliver any instrument necessary to cause this Lease to be subordinate to any mortgage or other instrument of security which may be placed on the Premises by CITY. The term, "CITY", as used in this Lease, so far as covenants and obligations on the part of the CITY are concerned, shall be limited to mean and include only the Owner or Owners at the time in question of the fee of the Premises, and in the event of any transfer or transfers of the title to such fee, and in case of any subsequent transfers or conveyance, the then grantor, shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any such covenants and obligations on the part of the CITY required to be performed under the terms of this Lease, provided, however, that any funds in the hands of CITY as the then grantor at the time of such transfer in which the Tenant has an interest, shall be turned over to the grantee, or to the Tenant, as the same shall require.
24. **Acceptance and Surrender**
- 24.1 Tenant shall surrender the Premises on or before the last day of the Term of this Lease and at the expiration of this Lease, surrender the keys to the Premises to the CITY.
- 24.2 If Tenant shall surrender the Premises at the election of the Tenant, the liability for all duties and obligations required of Tenant shall continue until the surrender has been accepted by the CITY in writing.
- 24.3 If Tenant does not surrender the Premises on or before the last day of the Term of this Lease that shall constitute a tenant holdover subject to a monthly rent charge of \$4,800.00 due and payable and the City shall pursue any and all legal remedies. The Tenant shall be responsible for all related costs.
25. **Address for Notices**

- 25.1. **Notices to the CITY.** Notices to the CITY shall be mailed or delivered to the address set forth on the first page of this Lease, unless the CITY changes the address by written notice to Tenant.
- 25.2. **Notices to Tenant.** Notices to Tenant shall be mailed or delivered to the Premises and to Tenant's address set forth on the first page of the Lease, unless the Tenant changes the address by written notice to CITY.
26. **Mailing of Notice.** All notices required under this Lease shall be sent either by (a) certified or registered mail, return receipt requested; (b) hand-delivery with a receipt evidencing delivery, or (c) Federal Express or other nationally recognized overnight mail service.
27. **Radon Gas Notification.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.
28. **Miscellaneous Provisions.**
- 28.1. **Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.
- 28.2. **Governing Law; Venue.** This Lease will be governed by the laws of the state of Florida, as to both interpretations and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.
- 28.3. **Entire Agreement.** This Lease sets forth all of the promises, agreements, conditions, and understandings between the CITY and Tenant relative to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No amendment, change, or addition to this Lease will be binding on the CITY or Tenant unless in writing and signed by both of them.
- 28.4. **Successors and Assigns.** The terms of this Lease will be binding on the respective successors, representatives, and assigns of the parties.
- 28.5. **Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from the performance of any required act by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental regulations or laws, riots, insurrection, war, Act of God, epidemic, pandemic or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of such delay, and the period for the performance shall be extended for a period equivalent to the period of such delay.
- 28.6. **Waiver of Jury Trial.** The Parties unequivocally and with full knowledge and understanding waive any and all rights each may have to a trial by jury with respect to any litigation or counterclaim based on, arising out of, under or in connection with this Lease, or any course of conduct, course of dealing, statements (whether oral or written) or actions of Landlord or Tenant.

- 28.7. **Public Records.** The CITY is a public agency subject to Chapter 119, Florida Statutes. The Tenant shall comply with Florida's Public Records Law, as amended. Specifically, the Tenant shall:
- 28.7.1 Keep and maintain public records required by the CITY;
  - 28.7.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - 28.7.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Lease term and following completion of the Lease if the Tenant does not transfer the records to the CITY; or
  - 28.7.4 Upon completion of the Lease, transfer, at no cost to the CITY, all public records in possession of the Tenant, or keep and maintain public records required by CITY. If the Tenant transfers all public records to the CITY upon completion of the Lease, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Lease, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.
- 28.8. Failure of the Tenant to provide the above described public records to the CITY within a reasonable time may subject Tenant to penalties under 119.10, Florida Statutes, as amended.

(The remainder of this page left blank intentionally)

IN WITNESS WHEREOF, the CITY and Tenant have duly executed this Lease Agreement on \_\_\_\_\_, 20\_\_

**“CITY”**

WITNESSES:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

BY: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY P. HARRISON  
CITY MANAGER

DATED: \_\_\_\_\_

\_\_\_\_\_  
ASCELETA HAMMOND  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number



**"TENANT":**

**P.I.W. RESTAURANT INC.,** a Florida Corporation

Witnesses:

Carol Ann Salazar  
Carol Ann Salazar

Print Name

Juan J Salazar  
JUAN J SALAZAR

Print Name

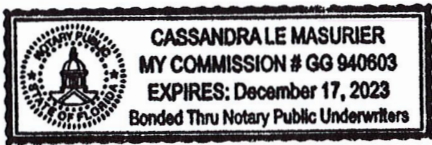
By: Ilse Wettengel  
Ilse Wettengel, President

STATE OF FLORIDA

COUNTY OF Broward

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 26 day of February, 2021, by Ilse Wettengel (name) as President (title) of P.I.W. Restaurant Inc. who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



Cassandra Le Masurier  
NOTARY PUBLIC, STATE OF FLORIDA

Cassandra LeMasurier  
(Name of Acknowledger Typed, Printed or Stamped)

GG 940603  
Commission Number

**EXHIBIT "A" – BCPA AERIAL OF PREMISES**



## EXHIBIT "B" - INSURANCE REQUIREMENTS

### 1. INSURANCE.

#### A. *Insurance Requirements for Tenant.*

- (1) Tenant agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law.
- (2) Tenant will not do or permit anything to be done within or about the Premises or the Property which will increase the existing rate of any insurance on any portion of the Property or cause the cancellation of any insurance policy covering any portion of the Property. Tenant will, at its sole cost and expense, comply with any requirements of any insurer of CITY. Tenant agrees to maintain policies of insurance described in this Article. CITY reserves the right, from time to time, to require additional coverage (including, flood insurance, if the Premises is located in a flood hazard zone), and/or to require higher amounts of coverage. No insurance policy of Tenant shall have a deductible greater than \$5,000.00. Tenant shall maintain the following insurance ("**Tenant's Insurance**"): (a) General Liability Insurance applicable to the Premises and its appurtenances providing, on an occurrence basis, a minimum combined single limit of \$1,000,000.00;; (b) Automobile Liability coverage of not less than \$500,000.00 combined single limit including property damage covering Tenant's owned, non-owned and hired vehicles.. (c) coverage for tenant's personal property and improvements and betterments. Any company writing Tenant's Insurance shall be licensed to do business in the state in which the Premises is located and shall have an A.M. Best rating of not less than A-VIII. Tenant will deliver to CITY (and, at CITY's request, to any Mortgagee or to any other third party), simultaneously with its execution of this Lease and thereafter at least 30 days prior to expiration, cancellation or change in insurance, certificates of insurance evidencing, at a minimum, the coverage specified in this Section. All such certificates shall be in form and substance satisfactory to CITY, shall affirmatively demonstrate all coverage and requirements set forth in this Lease, shall contain no disclaimers of coverage, and shall include a firm and unconditional obligation to give to CITY at least 10 days' prior written notice prior to cancellation or change in any coverage. Tenant hereby assigns to CITY all its rights to receive any proceeds of such insurance policies attributable to any Tenant Improvements and Tenant Alterations if this Lease is terminated due to damage or destruction. All insurance to be carried by Tenant will be primary to, and non-contributory with, CITY's insurance, and contain cross-liability endorsements and will in addition to the above coverage specifically insure CITY against any damage or loss that may result either directly or indirectly from any default of Tenant. Any similar insurance carried by CITY will be considered excess insurance only.

(3) Tenant shall name CITY as additional insured on all insurance policies required of Tenant under this Lease, other than Automobile Liability, and Fire and Extended coverage (except on Tenant Improvements or Tenant Alterations to the Premises for which CITY shall be named an additional insured) insuring CITY and such other additional insureds regardless of any defenses the insurer may have against Tenant and regardless of whether the subject claim is also made against Tenant. All insurance policies carried by Tenant will permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party without invalidating the coverage under the insurance policy, and will release CITY from any claims for damage to any person, to the Property of which the Premises are a part, any existing improvements, Tenant Improvements and Tenant Alterations to the Premises, and to

any furniture, fixtures, equipment, installations and any other personal property of Tenant caused by or resulting from, risks which are to be insured against by Tenant under this Lease, regardless of cause. Tenant is responsible to deliver to the CITY's Risk Manager for his/her timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on such coverage.