



City Attorney's Communication #2020-775

June 16, 2020

TO: Cassandra LeMasurier, Real Property Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution – City Purchase from Pompano Ford Lincoln, Inc.
2601 NE 16th Avenue

As requested in your memorandum of June 8, 2020, Finance Department Memorandum 20-020, the following form of Resolution has been prepared and is attached:

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 OF POMPANO BEACH AND POMPANO FORD LINCOLN, INC. FOR THE PURCHASE OF PROPERTY LOCATED AT 2601 NE 16TH AVENUE; PROVIDING AN EFFECTIVE DATE.

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

MARK E. BERMAN

/jrm
l:cor/finance/rpm/2020-775

Attachment

RESOLUTION NO. 2020-_____

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 OF POMPANO BEACH AND POMPANO FORD LINCOLN, INC. FOR THE PURCHASE OF PROPERTY LOCATED AT 2601 NE 16TH AVENUE; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a Contract for Sale and Purchase between the City of Pompano Beach and Pompano Ford Lincoln, Inc. for the purchase by the City of property located at 2601 NE 16th Avenue, a copy of which contract is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Contract for Sale and Purchase thereto between the City of Pompano Beach and Pompano Ford Lincoln, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2020.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

CONTRACT FOR SALE AND PURCHASE

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

POMPANO FORD LINCOLN, INC., a Florida corporation, of 2741 N. Federal Highway, Pompano Beach, FL 33064, 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 designee. 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 special 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 executed by the last of 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 Real Property 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," SELLER, the title insurance underwriter and title agent selected by CITY, 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 Acceptable Exceptions 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 reasonably 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 TWENTY THOUSAND DOLLARS (\$820,000.00), 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 by wire transfer of good federal funds to an account designated by SELLER to CITY in writing.

2.2.2 Any and all mortgages, liens or monetary claims, affecting the title to the Property which arise by, through or under SELLER ("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. The closing agent shall cause to be issued separate checks payable to such respective mortgagors, lienees, lienors or encumbrancers, the

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

- 2.2.3 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. The Property shall be vacant at the time of such delivery.
- 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. No invasive testing of the Property may be performed without the prior written consent of SELLER, which consent shall not be unreasonably withheld, delayed or conditioned. 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. 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 on or before the date of expiration of the Inspection Period.
- 2.3.3 CITY shall keep the Real Property free and clear of any liens and will indemnify, defend and hold SELLER harmless from all third party claims and liabilities asserted against SELLER as a result of any such entry by CITY, its agents, employees or representatives. CITY or any party conducting any inspection on behalf of the CITY, will coordinate a time for the inspection with SELLER. CITY or any party conducting any inspection on behalf of the CITY, will also provide to SELLER, prior to entry upon the Real Property, a certificate evidencing liability insurance with a coverage of not less than \$1,000,000 covering any such claims and liabilities, with SELLER named as an additional insured. If CITY’s inspections or tests disturb the Real Property and the Closing does not occur, CITY will restore the Real Property to substantially the same condition as existed prior to CITY’s inspections or tests. CITY’s obligations under this subparagraph shall survive the Closing and any termination of this Contract.
- 2.3.4 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 and damage from casualty 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 represents and warrants to the CITY that, as of the Effective Date and as of the Closing, SELLER has no actual knowledge of the existence of any hazardous substances or contamination affecting the Property in violation of applicable law.

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 mortgageor. 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. SELLER's responsibility for the cost of the items described in (1) and (2) shall not exceed \$500.
- 3.2 INSURANCE OF TITLE: CITY may obtain, at CITY's expense, 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 fifteen (15) 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. SELLER will reasonably cooperate with CITY, without expense to SELLER in attempting to cure such defects, but SELLER shall have no obligation to do so, except for encumbrances described in Section 2.2.2. SELLER shall have five (5) days after receipt of CITY's title objections within which to notify CITY in writing of which objections it will cure at or prior to Closing. In the event that SELLER fails to timely respond to CITY's notice of objections, it will be deemed that SELLER has declined to cure any of the title objections. If, at the end of said period, SELLER has declined (or is deemed to have declined) to cure or remove the defects, CITY shall 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.

ARTICLE 4 **CONVEYANCES**

- 4.1 SELLER shall convey marketable title to the Property by special warranty deed, 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) All matters shown as exceptions in the Title Commitment obtained by CITY, other than those which SELLER has agreed to cure or are otherwise cured prior to Closing.

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

- (1) Construction Lien Affidavit and Foreign Investment in Real Property Tax Act (“FIRPTA”) Affidavit;
- (2) Such other customary documents as shall be reasonably requested by CITY (including, but not limited to, bill of sale, 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 reasonably satisfactory to CITY; and,
- (4) The public disclosure certificate required by Section 13.1 hereof.

4.3 At Closing, the parties shall each execute a closing or settlement statement in customary form.

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, provided, however, that if such assessments are payable in installments, SELLER shall pay all installments for years prior to the year of Closing, the parties shall prorate the installment for the year of Closing and CITY shall pay all installments for the years after the date of Closing.

5.2 GENERAL PRORATIONS:

Any rents, revenues, and liens, or other charges to be prorated, shall be prorated as of the date of closing.

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 Encumbrance. Any estoppel letter or statement shall set forth the amount of principal, interest, and/or penalties necessary to be paid to fully discharge such Encumbrance, or to release the Property from the lien of such Encumbrance.

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 which arose by, through or under SELLER, 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 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) Between the date of any environmental report(s) obtained by CITY and the date of Closing, there shall have been no new environmental contamination of the Property in violation of applicable law.

- (4) The status of title to the Property shall not have changed from the status of same as shown in the title commitment obtained by the CITY.
- (5) Intentionally omitted.
- (6) All security codes and keys, if any, are turned over to CITY at closing.
- (7) CITY has obtained formal approval from the Broward County Board of Commissioners for the CITY's use of the southern 45.5 feet of the County's property located at 2600 NE 16th Avenue, Pompano Beach, FL 33064, for the construction of an access road to connect public roadway NE 26th Street to the CITY's property at 2669 N Federal Highway, Pompano Beach, FL 33064.

7.3 In the event that at the time of closing any of SELLER's representations and warranties hereunder shall not be true, or, if any of the conditions set forth in Section 7.02 have not been satisfied or waived by CITY, or if any other state of facts 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 SELLER is obligated hereunder to record. CITY shall pay for the cost of recording the special 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 SELLER shall pay the cost of all evidence of title under Section 3.1. CITY shall pay the cost of the premium for any title insurance obtained by CITY.

ARTICLE 9
SPECIAL ASSESSMENT LIENS

- 9.1 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 paid and discharged as set forth in Section 5.1.3.

Pending liens as of Closing shall be the responsibility of CITY and assumed and paid by CITY.

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 for which any bills remain unpaid 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 permitted in Section 4.1, 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:

Pompano Ford Lincoln, Inc., a Florida corporation
2741 N. Federal Highway
Pompano Beach, FL 33064

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 neither has dealt with any broker in connection with this transaction, and that each of SELLER and CITY (“Indemnifying Party”) agree to indemnify and hold the other party (“Indemnified Party”) harmless from any claim or demand for commissions made by or on behalf of any broker or agent arising from the acts of the Indemnifying Party in connection with this sale and purchase.

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 fails or refuses to carry out the terms and conditions of this Contract, then this Contract may be terminated at CITY’s election, upon written notice and SELLER’s failure to cure within five (5) business days, or the CITY shall have the right to seek specific performance against SELLER. In the event the CITY fails or refuses to carry out the terms and conditions of this Contract, SELLER shall have the right, after having given CITY notice and CITY’s failure to cure within five (5) business days, to terminate this Contract or to seek specific performance against CITY. No notice shall be required in the event the default is the CITY’s failure to timely close on the Closing Date.

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 for a period of six (6) months.

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 by the Parties 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 at least fifteen (15) days prior to Closing, in which event the SELLER shall have the option (to be exercised prior to Closing) of:

(1) cleaning up the environmental contamination itself, in which event the Closing shall be extended to the date which is fifteen (15) days following the completion of cleanup; 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 SELLER elects to proceed under Article 22.1(1) above, SELLER and CITY shall be required to enter into an amendment to this Contract prior to the Closing Date providing for the terms and conditions of the payment and performance of the clean-up.

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 33360

FOR SELLER Before and After Closing:

Pompano Ford Lincoln, Inc.
911 N.E. 2nd Avenue
Fort Lauderdale, FL 33301
Attention: Glenn Gardner, COO of Retail Operations

ARTICLE 26
EXECUTION

- 26.1 This document, consists of twenty two (22) pages including **Exhibits "A," "B," and "C,"**. 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.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: Pompano Ford Lincoln, Inc. signing by and through its VP Dealership Ops, 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

POMPANO FORD LINCOLN, INC.
A Florida corporation

ATTEST:

By



Print Name and Title

Kenneth J. Loiseau, VP Dealership Operations
10 day of June, 2020.

Secretary

(SEAL)

OR

WITNESSES:

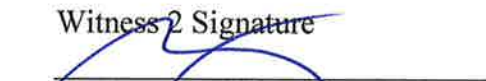
Witness 1 Signature



Witness 1 Print/Type Name

Kimberly J. McCurley

Witness 2 Signature



Witness 2 Print/Type Name

Margaret Tracz

“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 _____, 2020, 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:

The West 200 feet of the South One-Half (S 1/2) of the Northeast One-Quarter (NE 1/4) of the Southwest One-Quarter (SW 1/4) of the Southwest One-Quarter (SW 1/4) of Section 19, Township 48 South, Range 43 East, excepting therefrom the South 170 feet thereof. Reserving a 15 foot utility easement along the West property line and providing for a 15 foot ingress and egress easement across the South 15 feet of Lot 13, Block 5, Collier Manor First Addition as recorded in Plat Book 35, Page 28 according to the Public Records of Broward County, Florida.

Address: 2601 NE 16 Avenue, Pompano Beach, FL 33064

Folio No.: 4843 19 00 0240

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 Pompano Ford Lincoln, Inc., (Owner) is/are the owner(s) of the following described property, to wit:

FOLIO NO. 4843 19 00 0240

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 2020 and matters shown in the title commitment obtained by the City of Pompano Beach in connection with its purchase of the above described property from Owner;

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 \$820,000.00.

(X) That this affidavit is also made for the purpose of inducing _____ 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 that would adversely affect title to the subject real estate, 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:

Tax I.D. No. 59-1458361

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 and 8, only those portions marked by an "X" are applicable. "Affiant" is used for the singular or plural.

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 Pompano Ford Lincoln, Inc., a Florida Corporation, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY PUBLIC, STATE OF FLORIDA

Print Name

(Commission Number)