



City Attorney's Communication #2021-445

March 10, 2021

TO: Cassandra LeMasurier, Real Property Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution – Contract for Sale and Purchase / 142 SE 14th Street
Marvin R. Burkholder Estate

As requested in your memorandum of March 10, 2021, Real Property Manager #21-016, 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 THE MARVIN R. BURKHOLDER ESTATE IN THE AMOUNT OF \$1,200 FOR PROPERTY LOCATED AT 142 SE 14th STREET, FOR THE PURPOSE OF SUPPLEMENTING PROPERTY NEGATIVELY IMPACTED BY THE MCNAB ROAD BRIDGE PROJECT,; 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/2021-445

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 THE MARVIN R. BURKHOLDER ESTATE IN THE AMOUNT OF \$1,200 FOR PROPERTY LOCATED AT 142 SE 14th STREET, FOR THE PURPOSE OF SUPPLEMENTING PROPERTY NEGATIVELY IMPACTED BY THE MCNAB ROAD BRIDGE PROJECT, 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, the City intends to acquire the property located at 201-203 McNab Road (the McNab Road Property) owned by P.I.W. Restaurant, Inc. to satisfactorily address the relocation of access to the private property immediately to the east of the McNab Road Property; and

WHEREAS, the property located at 142 SE 14th Street (the Property) owned by the MARVIN R. BURKHOLDER ESTATE (the Burkholder Estate) is adjacent to and immediately north of the McNab Road Property and is also necessary to satisfactorily address the relocation of access to the private property immediately to the east of the McNab Road Property; now therefore,

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 the Marvin R. Burkholder Estate (Seller), a copy of which Contract is attached hereto and incorporated by reference as if set forth in full, is 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.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2021.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

:jrm
3/10/21
L:reso/2021-138

CONTRACT FOR SALE AND PURCHASE

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

MARVIN R. BURKHOLDER ESTATE of 520 Fieldcrest Drive,
Pittsburgh, PA 15209, 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 TWELVE HUNDRED DOLLARS (\$1,200.00), 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 mortgagors, 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. 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. 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 Intentionally deleted.

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 Intentionally deleted.

3.1.2 The CITY shall, at CITY's option, provide and pay for: (1) 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 120th 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) All security codes and keys, if any, are turned over to CITY at closing.

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 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:

Marvin R. Burkholder Estate
Brad Burkholder, Executor
520 Fieldcrest Drive
Pittsburgh, PA 15209

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 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 all real estate commissions 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 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:

Marvin R. Burkholder Estate
Brad Burkholder, Executor
520 Fieldcrest Drive
Pittsburgh, PA 15209

ARTICLE 26
EXECUTION

- 26.1 This document, consists of twenty one (21) 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.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: Brad Burkholder as Executor of Marvin R. Burkholder Estate, duly authorized to execute same, and CITY, through its Commissioners, Commissioners, signing by and through its Mayor, Manager and Clerk, authorized to execute same by Commission action on the _____ day of _____ 20__, Resolution No. _____.

WITNESSES:

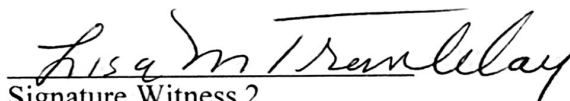
SELLER

MARVIN R. BURKHOLDER ESTATE


Signature Witness 1


Brad Burkholder, Executor

Daniel J. Watson
Print/Type Name Witness 1


Signature Witness 2

LISA M. TREMBLAY
Print/Type Name Witness 2

9 day of March, 2021

“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

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

THE NORTH 30 FEET OF THE WEST 30 FEET OF ALL THAT PORTION OF THE E-1/2 OF THE SW-1/4 OF THE SW-1/4 OF SECTION 1, TOWNSHIP 49 SOUTH, RANGE 42 EAST, LYING SOUTH OF THE SOUTH LOT LINE IN BLOCK 2, ACCORDING TO THE PLAT OF CYPRESS HARBOR 1ST SECTION, AS RECORDED IN PLAT BOOK 45 AT PAGE 40 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Folio No.: 4942 01 00 0723

Naviline Address: 142 SE 14 Street, Pompano Beach, FL 33060

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 0723

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

(x) Affiant presently resides at: 520 Fieldcrest Drive
Pittsburgh, PA 15209

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 \$1,200.00.

(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. _____

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)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, on the _____ day of _____, 20__, by _____ as Executor of Marvin R. Burkholder Estate, 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)

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