



City Attorney's Communication #2020-829

July 14, 2020

TO: Cassandra LeMasurier, Real Property Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution – City Purchase from Regions Bank
West Atlantic Boulevard

As requested in your memorandum of July 13, 2020, Real Property Manager Memorandum 20-022, 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 REGIONS BANK FOR THE PURCHASE OF PROPERTY LOCATED ON W. ATLANTIC BOULEVARD IMMEDIATELY ADJACENT TO AND DIRECTLY NORTH OF CITY FIRE STATION 52; 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/2020-829

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 REGIONS BANK FOR THE PURCHASE OF PROPERTY LOCATED ON W. ATLANTIC BOULEVARD IMMEDIATELY ADJACENT TO AND DIRECTLY NORTH OF CITY FIRE STATION 52; 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 Regions Bank for the purchase by the City of property located on W. Atlantic Boulevard immediately adjacent to and directly north of city fire station 52, 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 Regions Bank.

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

REGIONS BANK, an Alabama corporation authorized to conduct business in the State of Florida, of 1900 Fifth Avenue North, Birmingham, AL 35203, 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, obligations, conditions, 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 special warranty deed in statutory form properly executed, witnessed and acknowledged transferring TITLE to the Property to CITY.
- 1.4 CITY OF POMPAÑO 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 REGIONS BANK.
- 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 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 (a) specified in Section 4.1 of this Contract, if any, (b) set forth in the Survey, (c) appearing in the Public Records which were not placed on the Property voluntarily by SELLER, (d) set forth as exceptions, exclusions, or conditions in the Title Commitment, and (e) subject to Section 2.2.
- 1.11 TITLE BASE: Either an existing prior owners' 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 and SELLER, 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 providing references to 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 SIX HUNDRED TWENTY THOUSAND DOLLARS (\$620,000.00), subject to the prorations, credits, and adjustments in this Contract.

2.2 CONDITION OF PROPERTY. SELLER makes no warranties or representations of any nature as to the condition of the Property. CITY shall accept the Property in "as-is, where-is, with all faults" condition including, but not limited to easements, encroachments, access rights, soil conditions, underground conditions, environmental matters, hazardous materials, toxic substances, flooding, zoning, water retention and runoff, sewer systems, water and electrical systems, fitness for a particular purpose. Any CONVEYANCE will provide that CITY assumes all responsibility for the condition of the Property as of the Closing.

2.3. 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 SELLER placed 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, other than Acceptable Exceptions and subject to Section 1.10 and 2.2. 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 AND CITY

- 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 at such times as may be agreed to in advance by SELLER and 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, provided, however, the CITY shall not rely on such information but shall only use the information as a starting point in conducting its own independent evaluations and inspections of the Property as the CITY deems needed in order for the CITY to make a decision to proceed to Closing under this Contract and not terminated this Contract as provided for in this subsection. 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. In no event shall SELLER be required to make any improvements or take any action as a result of the evaluations and testing performed by the CITY during the Inspection Period. Unless CITY terminates this Contract as provided for in this subsection, CITY will be deemed to have

accepted the condition of the Property and the transaction shall proceed to Closing as provided for in this Contract.

If any individual inspecting or otherwise on the Property at the request of the CITY ("City's Inspectors") is injured in any manner, except by the intentional or willful conduct of SELLER, CITY shall indemnify, defend, and hold harmless SELLER from any and all liability, damages, costs, obligations, and expenses of any nature, including, but not limited to reasonable attorney fees and expense, incurred by SELLER relating to ant and all claims against SELLER by City's Inspectors. If City's Inspectors are third party contractors or vendors, City's Inspectors shall have commercial general liability insurance of at least \$2,000,000.00 per occurrence on an occurrence basis rather than claims made basis during the Inspection Period, and name SELLER as an additional insured as required by the insurance policy. This paragraph of this subsection shall survive termination of this Contract and/or the Closing of the sale and purchase of the Property.

If City's Inspectors damage the Property during an inspection, CITY shall cause the Property to be repaired so as to correct the damage. This paragraph of this subsection shall survive termination of this Contract and/or the Closing of the sale and purchase of the Property.

So long as the purchase and sale transaction contemplated by this Agreement is completed at Closing, CITY will indemnify, defend, and hold harmless SELLER from any claims, demands, investigations, actions, proceedings, lawsuits, liabilities, expenses and/or costs of any nature SELLER may incur or be exposed whether based on contract, tort or strict liability, including, but not limited to, contractual and/or statutory actions for contribution or indemnity, relating in any manner to the condition of the Property, any improvements or substances located on the Property, compliance with any laws, rules ordinances, or regulations from any governmental or quasi-governmental entity, except for any claims or lawsuits relating to personal injuries to a third party other than City's Inspectors, occurring on the Property prior to the Closing, except for any matters relating to, resulting from or arising out of SELLER'S own breach of this Agreement or willful misconduct. This paragraph of this subsection shall survive termination of this Contract and/or the Closing of the sale and purchase of the Property.

- 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 To the best of Seller's knowledge, there are no known environmental hazards on the Property.
- 2.4.4 Omitted

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"), if such policy exists and is under the possession and control of SELLER, 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 mortgage. 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, provided, however, SELLER shall not be required to spend more than \$2,500 under this subsection.

- 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 as provided for in this Contract 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 if SELLER elects to do so in SELLER's sole and absolute discretion. If, at the end of said period, SELLER has not cured or removed the specifically noted 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, except as otherwise expressly provided in this Contract.
- 3.4 SELLER shall convey marketable title subject only to liens, encumbrances, exceptions, or qualifications as contained in Contract.

ARTICLE 4 **CONVEYANCES**

- 4.1 SELLER shall convey TITLE to the Property by special warranty deed subject only to the following matters ("Acceptable Exceptions"), those otherwise accepted by CITY, and as set forth as exceptions, exclusions, and conditions in the Title Commitment:
- (1) Comprehensive land use plans, zoning, restrictions, easements, encroachments, access rights, water rights, prohibitions and other requirements imposed by any 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, if any;
 - (4) Unplatted public utility easements of record; and

- (5) Real property taxes for the year of Closing and subsequent years.
- 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 in a transaction of this nature (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,) in order for SELLER to convey 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.

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 SELLER placed 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 SELLER placed mortgage, lien, or encumbrance, or to release the Property from the lien of such mortgage.

6.2 LEASES, OPTIONS, CONTRACTS AND OTHER INTERESTS:

- 6.2.1 SELLER represents and warrants to CITY that there are no party(ies) in possession other than SELLER, leases (written or oral), options to purchase or contracts for sale covering all or any part of the Property, no party(ies) having ownership of any improvements located on the Property and no party(ies) having any interest in the Property or any part hereof except as set forth on Exhibit "B." If there are none, then Exhibit "B" shall state "NONE." SELLER represents and warrants that SELLER has previously furnished to CITY copies of all written leases, options and contracts for sale, estoppel letters from each tenant specifying the nature and duration of said tenant's occupancy, rental rate, advance rents, or security deposits paid by tenant and estoppel letters from each optionee, contract vendors and all others listed on Exhibit "B" (if any) describing in such detail as requested by CITY the nature of their respective interests. In the event SELLER is unable to obtain said estoppel letters, SELLER represents and warrants that SELLER has furnished the same information, true and correct, to CITY in the form of a SELLER's affidavit.
- 6.2.2 From the date of SELLER's execution hereof, SELLER represents and warrants to CITY that SELLER shall not enter into any lease (oral or written), option to purchase, contract for sale or grant to any person(s) (natural or artificial) any interest in the Property or any part thereof or any improvement thereon or encumber or suffer the Property or any part thereof to be encumbered by any mortgage or other lien, without the prior written consent of CITY which consent may be granted or withheld by CITY in its sole discretion.
- 6.2.3 SELLER agrees that it will take all necessary action, including the expenditure of all reasonable sums of money, to terminate any and all leases, rights of occupancy, options to purchase, contracts for sale and interest(s) of any other person(s) (natural or artificial) in and to the Property, so that at closing the SELLER will convey the Property to the CITY free and clear of any such items and furnish to the CITY written evidence of such termination, and provide to CITY at closing an affidavit in the form attached hereto as Exhibit "C." Further, SELLER's obligation hereunder shall be a condition precedent to the Closing of this transaction.

ARTICLE 7
TIME AND PLACE OF CLOSING

- 7.1 It is agreed that this transaction shall be closed and the CITY shall pay the purchase price, as adjusted as provided herein, and execute all papers or documents necessary to be executed by CITY, and SELLER shall execute all papers or documents necessary to be executed by SELLER under the terms of this Contract, on or before the 90th day after the Effective Date ("Closing 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 ("Closing"). 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) Omitted.
- (4) The environmental condition of the Property is acceptable to the City.
- (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.

ARTICLE 8

DOCUMENTARY STAMPS, TANGIBLE TAXES AND OTHER COSTS

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

ARTICLE 9

SPECIAL ASSESSMENT LIENS

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

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

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

ARTICLE 10 **SURVEY**

- 10.1 CITY, at CITY's expense, within twenty (20) days from the commencement of the Inspection Period shall 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. A copy of the Survey shall be promptly provided to SELLER upon receipt by CITY.

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:

Regions Bank
1900 Fifth Avenue North
Birmingham, AL 35203

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

ARTICLE 14

BROKER'S COMMISSION

- 14.1 SELLER and CITY hereby represent and warrant that each has dealt with no broker other than Will Portfolio of CBRE 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, DISPUTE RESOLUTION 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. 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.
- 19.14 Any and all disputes of any nature under this Agreement shall be resolved by arbitration by one arbitrator in accordance with the applicable rules of the American Arbitration Association in effect when the dispute arises and a party to this Agreement makes a demand for or files a motion to compel arbitration with the American Arbitration Association and/or a court having jurisdiction over the parties. The arbitration shall be conducted in Broward County, Florida at a venue as agreed upon by the parties, or if no

agreement is reached by the parties, as directed by the arbitrator. The arbitration shall take place within ninety (90) days of the demand for arbitration unless otherwise directed by the arbitrator, but in no event more than one hundred and eighty (180) days. The arbitrator shall issue a written opinion and award within thirty (30) days of the conclusion of the arbitration. Any issue relating to whether a dispute under this Agreement is subject to arbitration shall be exclusively decided by the arbitrator. Neither party shall be entitled to recover punitive damages. The prevailing party in any arbitration or other legal proceeding under this section which results in an arbitration award or enforcement of an arbitration award shall be entitled to recover its reasonable attorneys' fees, costs relating to the arbitration proceeding, costs relating to the enforcement of the arbitration decision or award in any court proceeding, filing fees, the arbitrator's fee and expenses, and costs and expenses of any nature incurred in connection with any dispute. Any award by the arbitrator may be enforced in any court having subject matter jurisdiction and personal jurisdiction over the parties.

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

INTENTIONALLY DELETED

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:

Regions Bank
Corporate Real Estate
250 Riverchase Parkway East, Third Floor
Birmingham, AL 35244
Attention: Korey Cox
korey.cox@regions.com
stephen.gardner@regions.com

ARTICLE 26
EXECUTION

- 26.1 This document, consists of twenty three (23) pages including Exhibits "A," "B," "C," and "D" 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: Regions Bank signing by and through its Vice President, duly authorized to execute same, and CITY, through its Commissioners, signing by and through its Mayor, Manager and Clerk, authorized to execute same by Commission action on the 28 ~~45~~ day of July 20 20, Resolution No. _____.

SELLER

REGIONS BANK
an Alabama corporation

By Korey J. Cox

Korey J. Cox, Vice President
Print Name and Title

15th day of July, 20 20.

(SEAL)

OR

WITNESSES:

Randi L Dicus
Witness 1 Signature

Randi L Dicus
Witness 1 Print/Type Name

Kimberly Dunn
Witness 2 Signature

Kimberly Dunn
Witness 2 Print/Type Name

“CITY”

WITNESSES:

CITY OF POMPANO BEACH

BY: _____
REX HARDIN, MAYOR

BY: _____
GREGORY P. HARRISON
CITY MANAGER

DATED: _____

ASCELETA HAMMOND
CITY CLERK

APPROVED AS TO FORM:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 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

Subject to modification by the Survey and/or Title Commitment

Legal Description:

PARCEL A REGIONS ATLANTIC, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 178, PAGE 39, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Also Known As:

A PORTION OF GOVERNMENT LOT 1, OF SECTION 4, TOWNSHIP 49 SOUTH, RANGE 42 EAST MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF TRACT "A", PALM- AIRE NORTH COURSE ESTATES THIRD SECTION, RECORDED IN PLAT BOOK 114, PAGE 39, PUBUC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE EASTERLY ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID TRACT "A", A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG THE SAID EASTERLY EXTENSION, A DISTANCE OF 200.00 FEET; THENCE SOUTHERLY MAKING AN INCLUDED ANGLE OF 91 DEGREES 12 MINUTES 53 SECONDS, A DISTANCE OF 162.00 FEET; THENCE WESTERLY MAKING AN INCLUDED ANGLE OF 88 DEGREES 47 MINUTES 07 SECONDS, A DISTANCE OF 200.00 FEET; THENCE NORTHERLY MAKING AN INCLUDED ANGLE OF 91 DEGREES 12 MINUTES 53 SECONDS A DISTANCE OF 162.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 32, 413 SQUARE FEET OR 0.744 ACRES MORE OR LESS.

Address: W Atlantic Boulevard, Pompano Beach, FL 33069

Folio No.: 4924 04 40 0010

EXHIBIT "B"

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

NONE OTHER THAN IN THE PUBLIC RECORD

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 Regions Bank, (Owner) is/are the owner(s) of the following described property, to wit:

FOLIO NO. 4942 04 40 0010

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

(x) Affiant presently resides at: (on file if required by law)

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 \$620,000.00.

(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. (on file if required by law)
Tax I.D. No. 63-0371391

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 President of _____, an Alabama state banking corporation, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Print Name

(Commission Number)

EXHIBIT D

NOT APPLICABLE