



City Attorney's Communication #2020-778

July 16, 2020

TO: Cassandra LeMasurier, Real Property Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution – Parking License Agreement / Pompano Ford Lincoln, Inc.
2671 N. Federal Highway

As requested in your memorandum of July 15, 2020, Real Property Manager Memorandum No. 20-031, the following form of Resolution, relative to the above-referenced matter, 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 PARKING LICENSE AGREEMENT
BETWEEN THE CITY OF POMPANO BEACH AND
POMPANO FORD LINCOLN, INC.; 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/real-prop/2020-778

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 PARKING LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND POMPANO FORD LINCOLN, INC.; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a License Agreement between the City of Pompano Beach and Pompano Ford Lincoln, Inc. for use of a portion of property located at 2671 North Federal Highway, a copy of which Agreement 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 Agreement between the City of Pompano Beach and Pompano Ford Lincoln, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2020.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

PARKING LICENSE AGREEMENT

THIS PARKING LICENSE AGREEMENT ("License Agreement") is made and entered into on the ___ day of _____, 2020 (the "Execution Date") by and between **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation ("Licensor") and **POMPANO FORD LINCOLN, INC.**, a Florida corporation ("Licensee").

1. License.

1.1 **Grant of License.** Licensor hereby grants to Licensee an exclusive license (the "License") to use a portion of the overall property owned by Lessor located at 2671 North Federal Highway, Pompano Beach, FL ("Licensor Property"), such portion being depicted in the sketch attached hereto as **Exhibit A** ("Licensed Area"). Licensee shall not be permitted to use any other portion of the Licensor Property other than the Licensed Area and those areas needed to obtain ingress and egress to the Licensed Area. Licensee's access to the Licensed Area shall be from North Federal Highway. The parties acknowledge that this License Agreement is a license to use the Licensed Area and does not constitute a lease.

1.2 **Permitted Uses.** Licensee may use the Licensed Area for vehicle parking up to eight two (82) vehicles in connection with its nearby automobile sales business, and for no other use during the Term (as hereinafter defined) of the License ("Permitted Use"). Licensee shall: (a) not use the Licensed Area for any purpose other than for vehicle parking; (b) comply with all reasonable rules and regulations promulgated now or in the future by Licensor with respect to the use of the Licensed Area; (c) not obstruct any entranceways, driveways, exits or emergency vehicle access areas located on the Licensor Property or limit ingress or egress to and from the Licensed Area or Licensor Property; (d) use its good faith, best efforts to prevent any act from occurring on or about the Licensed Area or Licensor Property which constitutes a nuisance or creates unpleasant or offensive noises or odors; and (e) will not permit any vehicles entering or exiting the Licensed Area to impede traffic on North Federal Highway.

1.3 **Alterations to Licensed Area.** Licensor shall make the improvements to the Licensed Property described in **Exhibit B** attached hereto and made a part hereof ("Licensor Improvements") at Licensor's sole cost and expense and shall complete such Licensor Improvements on or before the first day of the Term of this License Agreement. Licensee shall make no alterations, improvements, or changes of any kind to the Licensed Area without first having obtained the written consent of Licensor, which consent may be withheld in Licensor's sole and absolute discretion. In the event that Licensee obtains Licensor's consent for any additional alterations or improvements, they shall be constructed in accordance with the requirements of Licensor and of applicable governmental authorities, and at Licensee's sole cost and expense.

1.4 **Term of License.** The term of the License ("Term") shall commence on the date of the Closing of the sale by Licensee to Licensor of that certain real property located at 2601 N.E. 16th Avenue, Pompano Beach, Florida (the "Effective Date"), pursuant to that certain Contract for Sale and Purchase dated June 23, 2020 by and between Licensor and Licensee ("Existing Contract") and shall continue for a period of three (3) years. In the event that the Closing under the Existing Contract fails to occur or the Existing Contract is terminated, this License Agreement shall be deemed terminated and of no force and effect. In the event the Licensor determines the Licensee to be in full compliance with this Agreement then the Licensee shall have the option to extend the License for up to three (3) additional one (1) year terms, upon written consent by both the Licensor and Licensee, by providing written notice to Licensor, not less than ninety (90) days prior to the expiration date of the License.

The Licensor shall apply for a Major Temporary Use Permit from its Development Services Department for each year this agreement is in effect, which is required to authorize such use of the subject area for parking of vehicles. Licensor shall timely make all required applications and pay any required fees to obtain the necessary Major Temporary Permit for Licensees use of the property for the desired parking use of the property during the term of this Agreement, including any extensions of the initial term. The required Major Temporary Use Permit is valid for a maximum of one (1) year. Authorization for Licensee's use of the property under this Agreement is conditioned upon obtaining approval of the required Major Temporary Use Permit for each year this Agreement is in effect.

2. **License Fee.** The license fee payable by Licensee to Licensor for the right to use the Licensed Area during the term of the License ("License Fee") shall be TWO THOUSAND ONE HUNDRED SIXTY-TWO AND 75/100 DOLLARS (\$2,162.75) for each month of the Term, inclusive of sales tax. The License Fee shall be payable in advance on or before the first (1st) day of each month. Any License Fee for a partial month at the beginning of the Term of the License shall be paid within three (3) business days following the Effective Date.

3. **No Representations or Warranties: "AS IS".** Licensee agrees and acknowledges that Licensor would not grant this License except on an "AS IS" basis, and agrees further that: (i) Licensee accepts the Licensed Area "AS IS," except for the Licensor Improvements to be performed by Licensor; (ii) except as may be otherwise set forth herein, neither Licensor nor any of its officers, agents, employees or representatives have made any representations or warranties of any kind or nature, whether expressed or implied, with respect to the Licensed Area or any of the matters relating thereto (including, without limitation, the physical condition of the Licensed Area and the improvements thereon, or compliance with any federal, state or local law, statute, rule or regulation now or hereafter in effect, such as the Americans With Disabilities Act of 1990, 42 U.S.C. Sec. 12101); and (iii) Licensor shall not be required to perform any work of construction, alteration, repair or maintenance of or to the Licensed Area, except as set forth in **Exhibit B.**

4. **Security.** Licensee shall cooperate with Licensor's security and maintenance personnel, if any, regarding security measures and procedures. The Licensed Area shall be available to the Licensee twenty-four (24) hours per day, seven (7) days per week.

5. **Maintenance and Restoration.** Licensee shall maintain the Licensed Area and any other improvements on the Licensed Area in good order and repair during the term of the License. Upon the expiration or earlier termination or revocation of the License, Licensee shall vacate and surrender the Licensed Area in a broom clean condition, restore the Licensed Area and other improvements (if any) to the same condition as received, but subject to normal wear and tear and casualty, and make such repairs or replacements as are necessary to comply with this Section 5, all at no expense to Licensor.

6. **Indemnification and Release.** Licensee shall defend, indemnify, and hold harmless Licensor and its officers, employees, and agents from any and all losses, expenses and costs (including reasonable attorneys' fees and expenses), damages or claims for damages or injury to persons (including death) or property, liens, and liabilities whatsoever, arising from, related to or connected in any manner with Licensee's use and occupancy of the Licensed Area and/or the Licensor Property, except to the extent resulting from the negligence or willful acts of Licensor or its agents, contractors or employees. Licensee further agrees that: (i) Licensor shall not be liable to Licensee for any loss or damage that Licensee may incur arising from (or otherwise occasioned by or through) Licensee's use of the Licensed Area, and (ii) Licensee expressly assumes the full and sole risk of its use of the Licensed Area. Licensee shall be responsible, and shall reimburse Licensor on demand, for any costs or expenses incurred by Licensor in connection with any damage caused by Licensee to the Licensed Area. This indemnification and release shall survive the expiration or earlier termination or revocation of the License. The parties acknowledge and agree that the benefit obtained from Licensee's use of the Licensed Area shall constitute sufficient consideration for the indemnification hereunder.

7. **Insurance.** Licensee shall procure and maintain during the term of this License, at Licensee's sole cost and expense, a policy or policies of Commercial General Liability insurance with limits of liability in amounts not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, covering liability arising from the Licensed Area, its operations, independent contractors, product-completed operations, personal injury, and advertising injury, and also shall include a contractual liability endorsement that insures Licensee's assumed liability under this Agreement. Licensee shall provide Licensor in advance with certificates of insurance confirming the coverage set forth above, and such certificates shall indicate that Licensor is named as an "additional insured" under the Commercial General Liability coverage. Additional insured status shall be primary and non-contributory rather than excess. All insurance policies required by this section (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A-" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary and excess liability policies.

8. **Compliance with Laws and Regulations.** At all times during the term of this License, Licensee shall, at its sole cost and expense: (i) comply with all applicable governmental and quasi-governmental laws, ordinances, codes, regulations and statutes pertaining to Licensee's use of the Licensed Area or the performance of any of Licensee's obligations under this Agreement; and (ii) comply with Licensor's reasonable rules and regulations applicable to the Licensed Area and/or Licensor Property.

9. **No Transfer.** This license is a personal right granted only to Licensee, and may not be transferred or assigned.

10. **General Provisions.**

10.1 **Choice of Law.** This Agreement shall be construed and governed by the laws of the State of Florida.

10.2 **Amendments.** This Agreement may only be modified by a writing executed by Licensor and Licensee.

10.3 **Notices.** All notices or demands of any kind required or desired to be given hereunder shall be in writing and either (i) mailed postage prepaid by certified, (ii) sent by reputable overnight courier, or (iii) sent by registered mail, return receipt requested, or by personal delivery, to the appropriate address set forth below. Notices shall be deemed to be delivered three (3) days after the date of mailing thereof, the date delivered (or attempted to be delivered) if by overnight delivery, or the date delivered (or refused) if by personal delivery.

If to Licensor: City of Pompano Beach
100 West Atlantic Blvd.
Pompano Beach, FL 33060
Attn: Gregory P. Harrison, City Manager

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

10.4 **Time.** Time is of the essence with respect to each term in this Agreement.

10.5 **Attorneys' Fees.** In the event of any litigation between Licensee and Licensor in connection with this License, the prevailing party shall be entitled to recover from the other party hereto, in addition to such other relief as may be granted, such

reasonable attorneys' fees incurred by the prevailing party in instituting or defending such litigation, together with such reasonable costs and expenses of litigation as may be allowed by the court.

10.6 **Entire Agreement.** This Agreement represents the entire understanding of the parties regarding the license, and supersedes all prior or contemporaneous understandings or negotiations, whether oral or written implied or express.

10.7 **Waiver of Jury Trial.** Licensor and Licensee hereby expressly, knowingly, voluntarily and intentionally waive any rights either may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement or any course of conduct, course of dealing, statements (whether verbal or written), or actions of either of the parties to this Agreement. This provision is a material inducement to the parties executing this Agreement.

10.8 **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.9 **Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10.10 **Venue.** Venue for any litigation that may arise under this License Agreement shall be in either the Seventeenth Judicial Circuit in and for Broward County, Florida or the U.S. Southern District of Florida.

10.11 **Additional Taxes.** Licensee shall be responsible for payment of any additional taxes assessed against the Licensed Property as the result of Licensee's use of the Licensed Area hereunder. In the event of any increased assessment, Licensor shall notify Licensee and Licensee shall have the right to timely appeal any such assessment in accordance with applicable law. Licensor shall cooperate with Licensee in any such appeal at no out-of-pocket cost to Licensor.

10.12 **Public Entity.** Licensor is a public entity subject to the requirements of Chapter 119 Florida Statutes (the Florida Public Records Law). This Agreement and any documentation related thereto is subject to disclosure by Licensor upon request, and Licensee shall be responsible to produce any such relevant records requested by Licensor for such purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

WITNESSES:

Printed Name: _____


Printed Name: _____


ASCELETA HAMMOND
CITY CLERK

APPROVED AS TO FORM:

MARK BERMAN
CITY ATTORNEY

WITNESSES:


Printed Name: Rebecca Woskolojnik


Printed Name: Susan Wilson

LICENSOR:

CITY OF POMPANO BEACH, FLORIDA

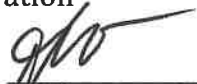
By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON
CITY MANAGER

Dated: _____

LICENSEE:

POMPANO FORD LINCOLN, INC., a Florida corporation

By: 
Name: Henry Tomassini
Title: GM VP
Date: 7-20-20

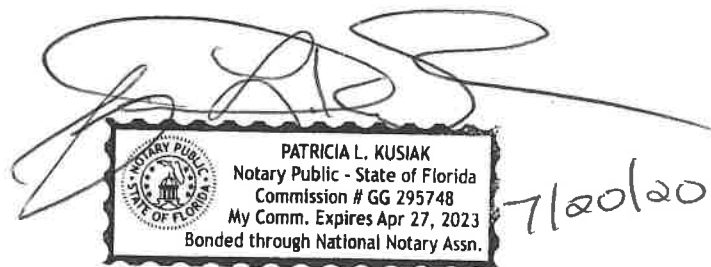


Exhibit A Licensed Area

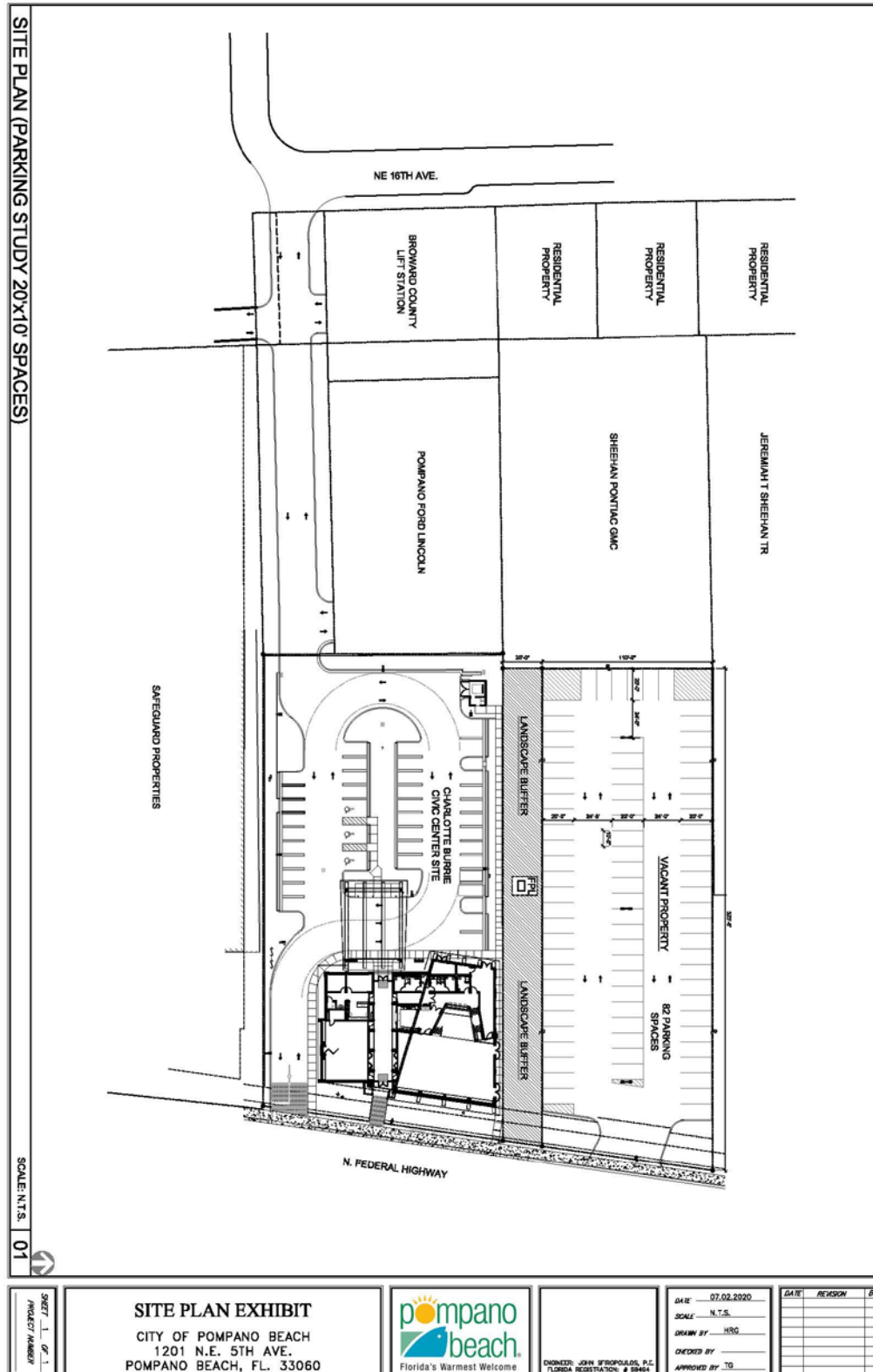


Exhibit B
Licensor Improvements

1. Licensor shall move the entry gate adjacent to North Federal Highway from its current location to the location shown on **Exhibit A** to this License Agreement (i.e., approximately twenty-five feet west of the right-of-way of North Federal Highway). The entry gate shall consist of two (2) twelve (12) foot swing gates.
2. Licensor shall remove all debris currently located upon the Licensed Area so that the Licensed Area shall be in broom-clean condition.
3. Licensor shall cause three (3) solar lights to be installed down the center of the Licensed Area. Such lights will be sufficient to properly light the Licensed Area at night.
4. Licensor shall cause the surface of the Licensed Area to be placed in appropriate condition for the parking of motor vehicles by installing compacted chat/stone in unpaved areas.