

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (“Agreement”), entered into this _____ day of _____, 2024, by and between the CITY OF COCONUT CREEK, a Florida municipal corporation (hereinafter “City”) and POMPANO AUTOPLEX, LLC, a Florida limited liability company its successor and assigns (hereinafter “Pompano Autoplex”):

WITNESSETH:

WHEREAS, POMPANO AUTOPLEX wishes to install and maintain Landscape Improvements on property located in public right-of-way of Hillsboro Boulevard owned and controlled by the State of Florida Department of Transportation (“FDOT”) adjacent to real property owned by POMPANO AUTOPLEX upon which an automobile dealership is being built which property is legally described in **Exhibit “A”** attached hereto (“Property”); and

WHEREAS, FDOT will only accept an application for said work from the City as the responsible public entity; and,

WHEREAS, the City has agreed to become the responsible public entity in exchange for the commitments made by POMPANO AUTOPLEX in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1. RECITALS

- 1.1 The above recitals are true and correct and are incorporated herein by reference.

ARTICLE 2. SCOPE OF SERVICES

- 2.1 POMPANO AUTOPLEX will procure the design and construction of improvements to the area located in FDOT Right-of-Way and more particularly described in **Exhibit “B”**, attached hereto and incorporated herein (“Right of Way Improvement Area”) to include the installation of irrigation, pavers, landscaping and sod as provided in FDOT - SR 834 & SIDEWALK EASEMENT (“Landscape Improvements”) attached hereto as **Exhibit “C”**.
- 2.2 POMPANO AUTOPLEX, or its successors and assigns as owners of the Property will assume responsibility for the maintenance of all Landscape Improvements within the Right of Way Improvement Area including the proper watering and proper fertilization

of all plants and keeping them free as practicable from disease and harmful insects; to properly mulch the plant bed(s); to keep the premises free of weeds; to mow and/or cut the grass to a proper height; to properly prune all the plants which includes (1) removing dead or diseased parts of plants, and (2) pruning such parts thereof which present visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety and removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same grade. To maintain also means to keep litter removed from the landscaped areas in the right-of-way. Plants shall be those items which would be scientifically classified as plants and include but are not limited to trees, grass, or shrubs. POMPANO AUTOPLEX will also maintain the irrigation system within the Right of Way Improvement Area herein once the improvements are completed.

- 2.3 POMPANO AUTOPLEX shall obtain any and all necessary approvals and/or licenses from any entity with a property interest in the Right of Way Improvement Area for both the installation and all on-going maintenance, including, but not limited to, FDOT.
- 2.4 POMPANO AUTOPLEX shall require all contractors performing any portion of the work detailed in this Article to obtain and keep in effect during its performance of any of the work detailed in this Article, a minimum of one million dollars (\$1,000,000.00) general liability insurance policy with the City of Coconut Creek and FDOT listed as additional insureds.
- 2.5 A copy of such proof of insurance and indemnification/hold harmless agreement shall be provided to the City of Coconut Creek prior to any contractor performing any portion of the work. Failure to comply with this Section will create a material breach of this Agreement and subject this Agreement to termination.

ARTICLE 3. TERM AND TIME OF PERFORMANCE OF AGREEMENT

- 3.1 This Agreement shall become effective upon the last date that this Agreement is executed by all parties to this Agreement and shall continue in full force and effect as long as the landscape improvements exist.
- 3.2 All duties, obligations, and responsibilities of the parties to this Agreement, required

by this Agreement, shall remain in full force and effect through the termination date or any extended termination date, as set forth above, unless written notice of termination by a party is provided pursuant to Section 4.5, "Termination," and Section 4.6, "Notices." Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 4. MISCELLANEOUS

- 4.1 Public Records. The parties shall comply with all public records requirements of Chapter 119, Florida Statutes, as may be required by law. The parties agrees to:
- a. Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the services;
 - b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, *Fla. Stat.*, or as otherwise provided by law;
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the POMPANO AUTOPLEX does not transfer the records to the City;
 - d. Upon completion of the services within this Agreement, at no cost, either transfer to the City all public records in possession of the POMPANO AUTOPLEX or keep and maintain public records required by the City to perform the services. If the POMPANO AUTOPLEX transfers all public records to the City upon completion of the services, the POMPANO AUTOPLEX shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the POMPANO AUTOPLEX keeps and maintains public records upon completion of the services, POMPANO AUTOPLEX shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.

- 4.2 Assignment and Performance. This Agreement shall be recorded and shall run with the land. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other parties hereto.
- 4.3 All Prior Agreements Superseded. This document 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 Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 4.4 Amendments. 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.
- 4.5 Termination.
- a. This Agreement may be terminated for cause by the City if POMPANO AUTOPLEX has not corrected a breach within thirty (30) days after written notice from an aggrieved party (with a copy to the City Manager) identifying the breach.
 - b. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by City Manager, which City Manager or his/her designee deems necessary to protect the public health, safety, or welfare may be verbal notice, which shall be promptly

confirmed in writing in accordance with the "Notices" section of this Agreement.

- 4.6 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR POMPANO AUTOPLEX:
Attn: Pat Curtin, Manager
1055 E. Jericho Turnpike
Huntington, NY 11743
tcurtin@mazdaofpalmbeach.com

FOR COCONUT CREEK:
Attn: City Manager
4800 West Copans Road
Coconut Creek, FL 33063
citymanager@coconutcreek.net

With a copy to City Attorney at
the same street address and
cityattorney@coconutcreek.net

- 4.7 Interpretation. The language of this Agreement has been agreed to by the parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

- 4.8 Third Party Beneficiaries. The parties do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.
- 4.9 Materiality and Waiver of Breach. The parties agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement, and that each is, therefore, a material term hereof. A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 4.10 Compliance with Laws. The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations related to this Agreement.
- 4.11 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
- 4.12 Joint Preparation. This Agreement has been jointly prepared by the parties hereto, and shall not be construed more strictly against any one (1) party.
- 4.13 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.
- 4.14 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement

or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS THE PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

- 4.15 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.
- 4.16 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full and legal authority.
- 4.17 Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be an original, but together such counterparts shall constitute only one (1) instrument.
- 4.18 Recording. This Agreement shall be recorded in the Public Records of Broward County, Florida, and is intended to be, and is, a continuing obligation of POMPANO AUTOPLEX, LLC, its successors and assigns, (a) to install, maintain and replace, if necessary, Landscape Improvements, (b) to bear the total financial responsibility for such installation, maintenance and replacement, and (c) to bear the liability for injury, if any, arising from the installation, maintenance and replacement of said Landscape Improvements.
- 4.19 Indemnification. POMPANO AUTOPLEX, its successors and assigns, shall indemnify and hold harmless the City from and against any and all claims, damages, losses and expense, including reasonable attorney's fees and costs actually incurred, whether incurred in litigation, appeals, or otherwise, arising out of, or resulting from, the performance of work under this Agreement; provided that any such claim, damages, loss or expense which (a) is attributable to bodily injury, or to injury to, or destruction

of, tangible property (other than for the work itself) including the loss of use resulting therefrom, and (b) is caused in whole, or in part, by any negligent act or omission of POMPANO AUTOPLEX, any contractor, or subcontractor, employed by POMPANO AUTOPLEX, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for POMPANO AUTOPLEX, or any contractor or subcontractor, under worker's compensation acts, disability benefit acts or any other employee benefit acts. Nothing in this section shall affect the immunity of the City pursuant to Chapter 768, Florida Statutes. In the event POMPANO AUTOPLEX assigns its obligations herein after written agreement of the City, City hereby agrees that POMPANO AUTOPLEX shall have no further obligations or liabilities following the recordation of such assignment in the Public Records of Broward County, Florida. POMPANO AUTOPLEX shall obtain the approval of the City of any assignment of the obligations herein prior to such assignment being effective or the release of POMPANO AUTOPLEX from any obligations hereunder. The City shall not unreasonably withhold such approval upon written request.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

POMPANO AUTOPLEX, LLC

By: _____

Pat Curtin, Manager

Witness

Printed Name: _____

Date: _____

Witness

Printed Name: _____

**MAINTENANCE AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND
POMPANO AUTOPLEX, LLC**

CITY OF COCONUT CREEK,

By: _____
Sheila N. Rose, City Manager

ATTEST:

Joseph J. Kavanagh, City Clerk

DATE: _____

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

Terrill C. Pyburn, City Attorney

EXHIBIT "A"

POMPANO AUTOPLEX PROPERTY

A portion of Tract B, Tartan Coconut Creek Phase IV, according to the Plat thereof as recorded in Plat Book 130, Page 25, Public Records of Broward County, Florida, being more particularly described as follows:

Commence at the centerline intersection of Sample Road and Coraltree Circle as depicted on said Plat of Tartan Coconut Creek Phase IV; thence North $01^{\circ} 29'24''$ West along the centerline of said Coraltree Circle for 135.00 feet; thence South $88^{\circ}30'36''$ West to a point on the Westerly right-of-way line of said Coraltree Circle for 37.00 feet and to the Point of Beginning; thence South $43^{\circ}30'36''$ West for 49.50 feet; thence South $88^{\circ}30'36''$ West along the North right-of-way line of said Sample Road for 296.14 feet; thence North $01^{\circ}29'24''$ West for 730.52 feet to a point on the Southerly right-of-way line of said Coraltree Circle and point on a curve; said point bears North $15^{\circ}50'59''$ East from the radius point; thence Southeasterly along a circular curve to the right having a radius of 845.00 feet a central angle of $7^{\circ}39'37''$ for an arc distance of 112.97 feet to a point of tangency; thence South $66^{\circ}29'24''$ East for 100.00 feet to a point of curvature; thence Southeasterly along a circular curve to the right having a radius of 255.00 feet a central angle of $65^{\circ}00'00''$ for an arc distance of 289.29 feet to a point of tangency; thence South $01^{\circ}29'24''$ East for 131.38 feet; thence South $05^{\circ}21'10''$ West for 100.72 feet; thence South $01^{\circ}29'24''$ East for 150.00 feet to the Point of Beginning, the last six mentioned courses being coincident with the Southerly and Westerly right-of-way line of said Coraltree Circle.

EXHIBIT "B"

RIGHT OF WAY IMPROVEMENT AREA

EXHIBIT "C"

LANDSCAPE IMPROVEMENTS

FDOT - SR 834 & SIDEWALK EASEMENT