

AGREEMENT FOR EXCHANGE OF PROPERTY

This Agreement for Exchange of Property (“Agreement”) is entered into this ___ day of _____ 2021, by and between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation, whose address is 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984 (the “City”) and **WALTER RODRIGUEZ**, whose address is 104 Paradise Harbour Blvd., Apt. 114, North Palm Beach, FL 33408 (“Rodriguez”). The City and Rodriguez may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, the City is the owner of real property (the “City Property”) legally described as follows:

Becker Road Turnpike Interchange No. 1 according to Plat Book 56, Page 37, Tract C (Map 44/33N) as per Plat Dedication dated 04-30-2007 of the Public Records of St. Lucie County, Florida

a/k/a Tract “C” on Bradshaw Circle
Parcel ID No. 4433-501-0006-000-2

WHEREAS, Rodriguez is the owner of real property (the “Rodriguez Property”) legally described as follows:

Lot 25, Block 2447, Port St. Lucie Section Thirty-Four, a subdivision according to the plat thereof recorded in Plat Book 15, Pages 9, 9A through 9W, inclusive, of the Public Records of St. Lucie County, Florida

a/k/a 120 SW Becker Road
Parcel ID No. 3420-665-3092-000-5

WHEREAS, the City desires to acquire the Rodriguez Property for drainage purposes;
and

WHEREAS, pursuant to the terms and conditions contained herein, and subject to City Council’s approval, the Parties desire to exchange the City Property for the Rodriguez Property.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. EXCHANGE OF PROPERTY.

(a) The City Property. Subject to the terms, provisions and conditions set forth in this Agreement, the City agrees to convey to Rodriguez the City Property containing

approximately 0.43 acres. The City will convey the City Property to Rodriguez by a Special Warranty Deed without representations and warranties (express or implied) except as to the special warranty of title contained in such deed. In the event certain statutory disclosures or any other disclosures required by law were not made by the City herein, the Parties for themselves and for their heirs, representatives, successors and assigns hereby waive any and all such required disclosures and release each other from any claims or right to terminate this Agreement on the basis that such disclosures have not been made.

(b) The Rodriguez Property. Subject to the terms, provisions and conditions set forth in this Agreement, Rodriguez agrees to convey to the City the Rodriguez Property containing approximately 0.23 acres. Rodriguez will convey the Rodriguez Property to the City by a Special Warranty Deed without representations and warranties (express or implied) except as to the special warranty of title contained in such deed. In the event certain statutory disclosures or any other disclosures required by law were not made by Rodriguez herein, the Parties for themselves and for their heirs, representatives, successors and assigns hereby waive any and all such required disclosures and release each other from any claims or right to terminate this Agreement on the basis that such disclosures have not been made.

2. CONSIDERATION. The Parties agree that notwithstanding the ancillary expenses allocated as set forth in this Agreement, the City Property will be transferred to Rodriguez for no additional cash consideration, and the Rodriguez Property will be transferred to the City for no additional cash consideration. Notwithstanding the foregoing, the City will:

- (a) Transfer to the City Property any building permit fees paid by Rodriguez for the Rodriguez Property; and
- (b) Remove, at its own expense, the concrete driveway on the City Property, add fill, and compact the fill.

3. REPRESENTATIONS AND WARRANTIES. Subject to City Council approval, each Party with respect to the parcel it is conveying, represents and warrants to the other Party the following representations and warranties which will survive the Closing:

(a) That it has good, marketable fee simple title to, and is in possession of, the parcel free and clear of all liens, security interest and encumbrances, excluding only those:

- i. Which will be satisfied or released at closing; and
- ii. To which the other Party's title shall be subject as otherwise provided in this Agreement.

(b) That there is ingress and egress to the parcel.

(c) That there is no litigation or proceeding pending or threatened against or relating to the parcel.

(d) That it has full power and authority to enter into and perform this Agreement in accordance with its term and the completion of this transaction will not violate any law, regulation or agreement affecting it or the parcel it is conveying.

(e) Possession of the Property shall be delivered at the time of closing.

4. INTEREST CONVEYED. Rodriguez is the record owner of 120 SW Becker Road and shall convey to the City, at closing good, marketable and insurable title by Statutory Warranty Deed. City is the record owner of Tract "C" and shall convey to RODRIGUEZ at closing good, marketable and insurable title by City Deed.

5. CLOSING. The closing of this transaction ("Closing Date") shall be completed within no more than thirty (30) days after the Effective Date of this Agreement, unless otherwise extended by a written mutual agreement between the Parties. The date, time and place of closing shall be set by both parties. The closing agent designated by the City shall prepare the closing documents, including, but not limited to, the deeds, ownership and lien affidavits and the closing statement. The Parties hereby agree that all closing costs shall be shared equally between the parties, unless otherwise agreed to herein. Except as otherwise disclosed in this Agreement.

6. PRORATIONS. The Parties hereby agree that typical pro-rations (such as, but not limited to, utility service, water and sewer costs, solid waste service, electricity, ad valorem taxes, assessments) shall be prorated as of the Closing Date. However, as to 120 SW Becker Road, all intangible personal property taxes, delinquent ad valorem taxes, outstanding assessments and/or tax certificates, if any, shall be satisfied and paid for by RODRIGUEZ no later than the Closing Date.

7. LIENS. All liens of record, including certified municipal, city, and county liens, as well as special assessments, if any, on 120 SW Becker Road shall be paid in full at or before closing by RODRIGUEZ. If a pending lien has been filed against 120 SW Becker Road which has not been certified as of the date of closing, and the work and improvements for which the lien was filed have been completed prior to the Closing Date, despite the fact that the pending lien has not been certified, such lien shall be paid by RODRIGUEZ.

8. TITLE INSURANCE. Either the City or RODRIGUEZ may, at its sole cost and expense, obtain a marketable title insurance commitment and, upon either Party's written request, furnish a copy to the requesting party. Said commitment shall show a good, marketable and insurable title to the other Party. The City or RODRIGUEZ may, at its sole cost and expense, obtain an owner's marketable title insurance policy from a title insurance company licensed by the State of Florida ("Title Company") in the amount of the Purchase Price, if applicable. The Parties shall have thirty (30) days from receipt of the title commitment to inspect said title documents and report defects, if any, in writing to the other Party. If the title commitment shows title to the Properties to be unmarketable, uninsurable, or unacceptable to either Party, then each Party shall, within said thirty (30) day period, provide to the other Party written notification of the unacceptable title defects. The property owner shall have fifteen (15) days from the receipt of such notice to cure the defects, and if after said period the property owner shall not have cured the defects, the Parties shall have the option of: (i) accepting title "as is," or (ii) declining to

accept title and thereupon this Agreement shall be cancelled and rendered null and void and all Parties shall be released of all obligations hereunder, and shall have no further claims against each other.

9. **RYAN CLAUSE.** The parties acknowledge and agree that there may be deed restrictions, restrictive covenants and such other restrictions appearing on the plat or otherwise common to the subdivision affecting the Property. The Parties acceptance of title to the property, which may be subject to such restrictions, shall not be construed as a waiver of the City's claim of exemption as a governmental unit, from any cloud or encumbrance created by the above-mentioned matters pursuant to *Ryan v. Manalapan*, 414 So.2d 193 (Fla. 1982). All Parties hereby agree that this language shall appear on the face of the deed transferring title to the property.

10. **HAZARDOUS MATERIALS, COMPLIANCE & INSPECTIONS.** The term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, and it shall also include solid waste or debris of any kind with regard to the following provisions:

A. **Compliance:** RODRIGUEZ represents, to the best of RODRIGUEZ'S knowledge, that the 120 SW BECKER ROAD and all uses of the 120 SW BECKER ROAD have been and presently are in compliance with all Federal, State and Local environmental laws; that no hazardous substances or materials have been generated, stored, treated, or transferred on the Property except as specifically disclosed to the CITY or permitted under the applicable environmental laws; that RODRIGUEZ has no knowledge of any spill or environmental law violation on any Property contiguous to or in the vicinity of the 120 SW BECKER ROAD to be conveyed to the CITY; that RODRIGUEZ has not received any notice and otherwise has no knowledge of (i) any unlawful spill of hazardous or corrosive substance on the 120 SW BECKER ROAD, (ii) any existing or threatened environmental lien against the RODRIGUEZ, or (iii) any legal proceeding or investigation regarding the generation, storage, treatment or transfer of hazardous substances on the 120 SW BECKER ROAD. This article provision shall survive closing and is not deemed satisfied by conveyance of title.

B. **Inspections:** The CITY may, at CITY'S sole cost and expense, and within sixty (60) days after the CITY'S execution of this Agreement, perform an environmental site assessment of the 120 SW BECKER ROAD. RODRIGUEZ may, at its sole cost and expense, and within sixty (60) days after the execution of this Agreement by all Parties, perform an environmental site assessment. The CITY and RODRIGUEZ shall each use the services of competent, professional consultants with expertise in the environmental site assessing process to determine the existence and extent, if any, of hazardous materials on the property. Should such inspections show the existence of hazardous materials on either the 120 SW BECKER ROAD or Tract C, which either of the Parties are unable or unwilling to accept, either the CITY or RODRIGUEZ may elect to terminate this Agreement by giving all Parties written notice prior to the expiration of the Inspection Period, whereupon all Parties shall be released from all further obligations hereunder, except those which expressly survive the termination hereof, unless the violating Party, in its sole discretion elects in writing to remediate such hazardous waste to the satisfaction of the Party that will be accepting the conveyance of the subject Property. If the violating Party is unwilling to remediate such hazardous waste to the accepting Party's satisfaction, then the CITY or RODRIGUEZ may each elect to waive all such remediation and

proceed to closing without adjustment to Additional Consideration, provided that such election must be made in writing within fifteen (15) days of a Party's notice to the violating Party that they are unable or unwilling to remediate the hazardous waste. If the Party does not waive remediation, this Agreement shall terminate as above set forth.

11. SURVEY. Either the CITY or RODRIGUEZ may, at its sole cost and expense, and prior to closing, have the other Party's Exchange Property surveyed. Such Party shall deliver written notice to other Party within ten (10) days from receipt of the survey, but no later than twenty (20) days prior to closing, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restrictions or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and the obligations of the CITY and RODRIGUEZ will be determined in accordance with Paragraph "7" above. The Party whose Property has the encroachment or violation shall have fifteen (15) days from the receipt of such notice to cure the encroachment or violation, and if after said period that Party shall not have cured the defects, the other Party shall have the option of: (i) accepting title "as is," or (ii) declining to accept title and thereupon this Agreement shall be cancelled and rendered null and void and all Parties shall be released of all obligations hereunder, and shall have no further claims against each other.

12. RIGHT TO ENTER THE PROPERTY. The Parties agree that from the date of this Agreement through the date of closing, either Party, its officers, agents, or employees, shall have at all reasonable times, the right to enter the other Party's Exchange Property for all lawful purposes, including investigation, examination and testing of the other Party's Exchange Property and any resources upon the other Party's Exchange Property, in connection with this transaction.

13. TIME. Time is of the essence with regard to all dates or times set forth in this Agreement; however, all obligations are subject to Acts of God or Nature or any other occurrences, which are beyond the control of the City and RODRIGUEZ.

14. LOSS. All risk of loss to either Party's Exchange Property shall be borne by the present Property owner until transfer of title.

15. ACCESS. RODRIGUEZ and the City warrant and represent that there is legal ingress and egress to their respective Property being exchanged under this Agreement.

16. BROKERS. Any and all real estate fees or commissions claimed due, pursuant to this transaction and/or conveyance of the 120 SW BECKER ROAD, to any real estate broker or agent shall be paid by RODRIGUEZ. RODRIGUEZ shall indemnify and hold the CITY harmless from and against any and all claims, liability, cost, expense, damages, judgments and causes of action, including reasonable attorney's fees, based on real estate commissions claimed due pursuant to this transaction to any real estate broker or real estate agent.

17. EXPENSES. The CITY shall be responsible for the costs of any title insurance fees and obtaining an Owner's Policy on the 120 SW BECKER ROAD. RODRIGUEZ shall be

responsible for the costs of any title insurance fees and obtaining an Owner's Policy on Tract "C". At the any remaining closing costs, those shall be shared equally between the parties.

18. DEFAULT. If either Party defaults under this Agreement, then the other Party may waive the default and proceed with closing without adjustment to the agreed upon Additional Consideration, in which event any and all claims with respect to such default shall be deemed extinguished, or either Party may seek specific performance. In no event shall either Party be liable for any damages (actual, special, consequential, punitive, or otherwise) for any default under this Agreement.

19. LITIGATION AND REVIEW. In the event of any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the other Party upon final court judgment, including appellate proceedings. The Parties have had the opportunity to review this Agreement and consult with counsel of their choosing prior to executing this Agreement.

20. SOVEREIGN IMMUNITY AND APPROVALS.

- A.** The Parties understand and expressly hereby agree that any development is subject to various governmental considerations and approvals that are outside of the terms and conditions of this Agreement. Such considerations and approvals may be processed or considered by one or various agencies and/or departments of the City in the normal course of business for those agencies and/or departments.
- B.** The Parties hereby agree that the City of Port St. Lucie shall not be liable in any manner, whatsoever, to any other Party or person for the exercise of its governmental authority, regulatory powers and/or police powers. The City of Port St. Lucie retains all of its sovereign prerogatives and rights as provided for under Florida laws and applicable codes, ordinances and regulations, and shall in no way be estopped or otherwise prevented from withholding or refusing to issue any approvals of applications for building, zoning, planning, or development under present or future laws and regulations of whatever nature applicable to the planning, zoning, design, construction, and development of Tract C or the operation thereof, or be liable for the same. Moreover, in no event shall a failure of the City of Port St. Lucie and its governing bodies, boards or councils to adopt any of the planning and zoning applications, approvals or permits, be construed as a breach or default of this Agreement by the City.
- C.** The City's liability in all instances shall be limited to the monetary amounts set forth in Section 768.28, Florida Statutes. Nothing contained in this Agreement or related documents shall be deemed a waiver of the City's sovereign immunity, whether by contract or by law.

21. DISCLOSURE. The City and RODRIGUEZ each represent that there are no facts which materially and adversely affect the physical condition and present use of their respective Property which have not been disclosed by each to the other or which are not readily observable by each as to the other's Property, or which each cannot discover during customary due diligence.

22. **SUCCESSORS IN INTEREST.** This Agreement will inure to the benefit of and be binding upon and is intended solely for the benefit of the Parties hereto, and their respective heirs, personal representatives, successors, and assigns, and no third party will have any rights, privileges or other beneficial interests herein or hereunder.

23. **GOVERNING LAW.** This Agreement is governed by and will be construed in accordance with the laws of the State of Florida, and in the event of any litigation concerning the terms of this Agreement; proper venue thereof will be in St. Lucie County, Florida.

24. **INVALID PROVISIONS.** In the event any term or provision of this Agreement is held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions will not be affected thereby but will be valid and remain in full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

25. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signatures thereon shall be considered for all purposes as originals.

26. **RECORDING.** This Agreement or notice thereof may be recorded by the CITY in the minutes of the Clerk of the City Council for Port St. Lucie, St. Lucie County, Florida, but shall not be recorded in the official Public Records of the Clerk of the Court of St. Lucie County, Florida.

27. **ASSIGNMENT.** Neither this Agreement nor any interest therein shall be assigned by either the City or RODRIGUEZ without the express written consent of each other.

28. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties hereto as it pertains to the subject matter contained herein and shall supersede and take precedence over any and all prior and contemporaneous agreements and understandings between the Parties hereto.

29. **EFFECTIVENESS.** The effectiveness of this Agreement is contingent upon approval by the City Council of the City of Port St. Lucie, as well as public hearings, if applicable. The date of such approval of the Agreement by the City Council is the Effective Date of this Agreement.

30. **NOTICES.** All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger or courier service, or by United States Mail with postage prepaid (Airmail if international), and shall be directed to:

To the City:

City of Port St. Lucie
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
Attn: City Attorney

As to RODRIGUEZ:
Walter Rodriguez

Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery or (ii) on the date mailed, postage prepaid.

IN WITNESS WHEREOF, RODRIGUEZ, and the CITY have duly executed this Agreement as of the day and year above written.

The parties agree to convey their respective parcels (described herein), subject to the specific representations, warranties and disclosures contained in this Agreement, "As-is," "Where-is" and "With all Faults" as of the Closing Date. Each party has or will inspect the parcels being acquired and is familiar with the physical condition hereof.

[SIGNATURES CONTINUE ON NEXT PAGE]

CITY:

CITY OF PORT ST. LUCIE, a Florida
municipal corporation

ATTEST:

By: _____
Sally Walsh
City Clerk

By: _____
Russ Blackburn
City Manager

SEAL

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

James D. Stokes
City Attorney

STATE OF FLORIDA)
) ss
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 2021, by Russ Blackburn, as City Manager of the City of Port St. Lucie, and on behalf of the City of Port St. Lucie, who is [X] personally known to me, or who has [] produced the following identification _____.

Signature of Notary Public

Name: _____

Notary Public, State of Florida
My Commission expires _____

NOTARY SEAL/STAMP

RODRIGUEZ:

WALTER RODRIGUEZ

Signed, sealed and delivered
in the presence of:

By: _____
Walter Rodriguez

Witness
Print Name: _____

Witness
Print Name: _____

STATE OF FLORIDA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 2021, by Walter Rodriguez, who is [] personally known to me, or who has [] produced the following identification _____.

Signature of Notary Public

Name: _____

Notary Public, State of Florida
My Commission expires _____

NOTARY SEAL/STAMP