

AGREEMENT FOR EXCHANGE OF PROPERTY

This Agreement for Exchange of Property (“Agreement”) is entered into this ___ day of _____ 2024, 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 **HOLIDAY BUILDERS, INC.**, a Florida corporation, whose address is 2293 W Eau Gallie Blvd., Melbourne, FL 32935 (“Holiday Builders”). The City and Holiday Builders 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:

1. Lot 11, Block 2200, Port St. Lucie Section Thirty-Three, according to the Plat thereof, recorded in Plat Book 15, Page 1, of the Public Records of St. Lucie County, Florida, a.k.a 1673 SW Daysland Avenue, Port St. Lucie, Florida.
2. Lot 10, Block 2199, Port St. Lucie Section Thirty-Three, according to the Plat thereof, recorded in Plat Book 15, Page 1, of the Public Records of St. Lucie County, Florida, a.k.a 4573 SW Babylon Street, Port St. Lucie, Florida.
3. Lot 15, Block 2199, Port St. Lucie Section Thirty-Three, according to the Plat thereof, recorded in Plat Book 15, Page 1, of the Public Records of St. Lucie County, Florida, a.k.a 4574 SW Cacao Street, Port St. Lucie, Florida.
4. Lot 9, Block 1353, Port St. Lucie Section Fourteen, according to the Plat thereof, recorded in Plat Book 13, Page 5, of the Public Records of St. Lucie County, Florida, a.k.a 1673 SW Escobar Lane, Port St. Lucie, Florida.
5. Lot 10, Block 1353, Port St. Lucie Section Fourteen, according to the Plat thereof, recorded in Plat Book 13, Page 5, of the Public Records of St. Lucie County, Florida, a.k.a 1673 SW Escobar Lane, Port St. Lucie, Florida.

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

1. Lot 1, Block 2084, Port St. Lucie Section Twenty-One, according to the Plat thereof, recorded in Plat Book 13, Page 27, of the Public Records of St. Lucie County, Florida, a.k.a 3911 SW Port St. Boulevard, Port St. Lucie, Florida.
2. Lot 2, Block 2084, Port St. Lucie Section Twenty-One, according to the Plat thereof, recorded in Plat Book 13, Page 27, of the Public Records of St. Lucie County, Florida, a.k.a 3901 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.
3. Lot 3, Block 2084, Port St. Lucie Section Twenty-One, according to the Plat thereof, recorded in Plat Book 13, Page 27, of the Public Records of St. Lucie County, Florida, a.k.a 884 SW McCall Road, Port St. Lucie, Florida.
4. Lot 6, Block 1463, Port St. Lucie Section Fifteen, according to the Plat thereof, recorded in Plat Book 13, Page 6, of the Public Records of St. Lucie County, Florida, a.k.a 3525 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

5. Lot 7, Block 1463, Port St. Lucie Section Fifteen, according to the Plat thereof, recorded in Plat Book 13, Page 6 of the Public Records of St. Lucie County, Florida, a.k.a 3533 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

WHEREAS, the City desires to acquire the Holiday Builders Property and Holiday Builders desires to acquire the City Property; 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 Holiday Builders 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 Holiday Builders the City Property. The City will convey the City Property to Holiday Builders 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, 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 Holiday Builders Property. Subject to the terms, provisions and conditions set forth in this Agreement, Holiday Builders agrees to convey to the City the Holiday Builders Property. Holiday Builders will convey the Holiday Builders 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 Holiday Builders, 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 conveyed to Holiday Builders for no additional cash consideration, and the Holiday Builders Property will be conveyed to the City for no additional cash consideration.

3. INSPECTIONS. The City will be permitted to inspect the Holiday Builders Property at the City's sole cost and expense and Holiday Builders will be permitted to inspect the City Property at Holiday Builder's sole cost and expense, for a period beginning on the Effective Date and ending on the sixtieth (60th) day after the Effective Date (said period of time herein

referred to as the "Inspection Period"). If the City determines that the Holiday Builders Property, or if Holiday Builders determines that the City Property, is not acceptable for any reason, as determined by the City and Holiday Builders in their sole and absolute discretion, each Party shall have the option to terminate this Agreement by written notice to the other, which must be delivered on or before the expiration of the Inspection Period. Upon receipt of such termination notice, this Agreement shall be cancelled and rendered null and void and the Parties shall be released of all obligations hereunder, and shall have no further claims against each other.

4. **RIGHT TO ENTER THE PROPERTY.** The Parties agree that during the Inspection Period, either Party, its officers, agents, or employees, shall have at all reasonable times, the right to enter the other Party's property for all lawful purposes, including investigation, examination and testing of the other Party's property, in connection with this transaction.

5. **AS-IS SALE TERMS.** The Parties acknowledge and agree that, except as specifically provided in this Agreement and in any documents executed in connection with this transaction: (i) the Parties have made no representations as to the condition or state of repair of the property being conveyed, title or survey matters, or anything else of any nature whatsoever related to the City Property or the Holiday Builders Property; and (ii) the Parties have made no agreements to alter, repair or improve the City Property or the Holiday Builders Property. The Parties agree to accept possession of the City Property and the Holiday Builders Property on the closing date in AS-IS CONDITION WITH ALL FAULTS and WITHOUT EXPRESS OR IMPLIED WARRANTIES AS TO FITNESS FOR ANY PARTICULAR PURPOSE.

6. **CONDITION OF PROPERTY.**

a. From the Effective Date and until closing, the City shall continue to maintain the City Property and Holiday Builders shall continue to maintain the Holiday Builders Property in substantially the same condition as it is as of the Effective Date, subject to normal wear and tear. The Parties shall keep in force all existing hazard and liability insurance maintained in connection with the City Property and the Holiday Builders Property but shall be permitted to replace any policies with similar coverage.

b. The Parties shall promptly provide the other with copies of any written notices, litigation, claims, or actions pertaining to the City Property or the Holiday Builders Property, or any portion thereof, that will not be resolved prior to closing. Following the Effective Date, the Parties shall not enter into any contracts or other documents affecting the City Property or the Holiday Builders Property, or any portion thereof, that will survive the closing, without the other's written consent.

7. **REPRESENTATIONS AND WARRANTIES.** Each Party with respect to the property it is conveying, represents and warrants to the other Party the following representations and warranties which will survive the closing:

- (a) There is ingress and egress to the property;

(b) There is no litigation or proceeding pending or threatened against or relating to the property;

(c) The Party is not subject to any bankruptcy, reorganization, insolvency, or other similar proceedings;

(d) The Party 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 property it is conveying; and

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

8. INTEREST CONVEYED. Holiday Builders is the record owner of the Holiday Builders Property and shall convey to the City at closing, good, marketable, and insurable title by Special Warranty Deed. The City is the record owner of the City Property and shall convey to Holiday Builders at closing, good, marketable, and insurable title by Special Warranty Deed. The Parties agree to convey their respective property, 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.

9. TITLE INSURANCE. Either the City or Holiday Builders 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 good, marketable, and insurable title. The City or Holiday Builders 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”). 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 any parcel 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 any unacceptable title defects. The property owner shall have ten (10) days from the receipt of such notice to notify the other Party that it elects to cure or not cure the defects. Failure to notify the other Party that it elects to cure the defects shall constitute an election not to cure. If one Party does not affirmatively elect to cure the defects, then the other may, by written notice given within five (5) days, terminate this Agreement, thereupon this Agreement shall be cancelled and rendered null and void and the Parties shall be released of all obligations hereunder, and shall have no further claims against each other. If the Parties do not terminate this Agreement pursuant to this section, then any such title defects shall be deemed acceptable. If either Party elects to cure any title defects, that Party shall have until closing to do so, and upon that Party’s failure to so cure, the other shall have the option to proceed to closing, or, upon written notice, terminate this Agreement.

10. CLOSING.

a. The closing of this transaction shall be completed within ninety (90) 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.

b. On the closing date, the Parties shall deliver any amounts due at closing to Foundation Title & Trust, LLC, a Florida limited liability company (the "Closing Agent"), whose address is 14016 Spector Road, Lithia, Florida 33547, by bank wire transfer of immediately available U.S. dollars, for distribution in accordance with the terms hereof and according to any adjustments and prorations to which the Parties may be entitled to under this Agreement.

c. The Closing Agent will prepare the closing documents, including, but not limited to, the deeds, ownership and lien affidavits and the closing statement. The Parties hereby agree that other than the recording fees for documents necessary to cure title, all closing costs shall be shared equally between the Parties, unless otherwise agreed to herein. The City shall be responsible for the recording fees for documents necessary to cure title for the City Property and Holiday Builders shall be responsible for the recording fees for documents necessary to cure title for the Holiday Builders Property.

11. **PRORATIONS.** The Parties hereby agree that typical prorations (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.

12. **LIENS.** All liens of record, including certified municipal, city, and county liens, as well as special assessments, if any, shall be paid in full at or before closing.

13. **RYAN CLAUSE.** Holiday Builders acknowledges and agrees that there may be deed restrictions, restrictive covenants and such other restrictions appearing on the plat or otherwise common to the subdivision affecting the Holiday Builders Property. The City's acceptance of title to the Holiday Builders 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). The Parties hereby agree that this language shall appear on the face of the deed transferring title to the City.

14. **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 or Holiday Builders.

15. **LOSS.** All risk of loss to either Party's property shall be borne by the present property owner until transfer of title.

16. **BROKERS.** The Parties represent to each other that no broker or finder is entitled to a commission or other compensation in connection with this transaction.

17. **DEFAULT.** If either Party defaults under this Agreement, then the other Party may waive the default and proceed with closing, 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 any Party be liable for any damages (actual, special, consequential, punitive, or otherwise) for any default under this Agreement.

18. 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 the City Property 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. **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.

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

25. **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.

26. **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.

27. **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 Manager
772-871-5163
JMerejo@cityofpsl.com

Copies to:

City of Port St. Lucie
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
Attn: Interim City Attorney
772-871-5294
RBerrios@cityofpsl.com

As to Holiday Builders:

(See next page)

Sean Ellis
2320 First Street, Suite 1000
Fort Myers, FL 33901
(239) 338-4245
sellis@ralaw.com

Jared Sands
240 NW Peacock Blvd, Suite 103
Port St Lucie, FL 34986
(407) 745 – 3823
JSands@holidaybuilders.com

Zach Hill-Thiry
2293 W. Eau Gallie Blvd,
Melbourne, FL 32935
Zhill-thiry@holidaybuilders.com

Each such notice shall be deemed delivered by either: (i) on the date delivered if by personal delivery; (ii) on the date mailed, postage prepaid; or (iii) Portable Document Format (“PDF”) sent via e-mail with delivery confirmation requested.

IN WITNESS WHEREOF, the City and Holiday Builders have duly executed this Agreement as of the day and year above written.

[SIGNATURES CONTINUE ON NEXT PAGE]

CITY:

CITY OF PORT ST. LUCIE, a Florida
municipal corporation

ATTEST:

By: _____
Sally Walsh
City Clerk

By: _____
Jesus Merejo
City Manager

SEAL

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Richard Berrios
Interim 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 _____, 2024, by Jesus Merejo, as the 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

Holiday Builders, Inc.:

Signed, sealed and delivered
in the presence of:

[Signature]
Witness
Print Name: TONY PALUMBO

[Signature]
Witness
Print Name: ZACH HILL

By: [Signature]
Name: RICHARD A. BROWN
Title: VICE-PRESIDENT

STATE OF FLORIDA)
) ss
COUNTY OF Brevard)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 29th day of May, 2024, by Richard A. Brown, who is personally known to me, or who has [] produced the following identification

NOTARY SEAL/STAMP

[Signature]
Signature of Notary Public

Name: _____
Notary Public, State of Florida
My Commission expires _____

 REBECCA M. BAUER
Commission # HH 358311
Expires May 3, 2027