

## **AGREEMENT FOR EXCHANGE OF PROPERTY**

This Agreement for Exchange of Property (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_ 2022, 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 **RM TESORO, LLC**, a Florida limited liability company, whose address is 100 Clearbrook Road, 2<sup>nd</sup> Floor, c/o Robert Martin Company, Elmsford, NY 10523 (“RM Tesoro”). The City and RM Tesoro may be referred to individually as a “Party” or collectively as “Parties.”

### **RECITALS**

**WHEREAS**, the City is the owner of real property legally described on **Exhibit A**, which is attached hereto and incorporated herein (the “City Property”).

**WHEREAS**, RM Tesoro is the owner of real property legally described as follows:

Tract 3 and Tract 4, Tesoro Plat No. 17, according to the plat thereof, as recorded in Plat Book 44, Page 8, of the Public Records of St. Lucie County, Florida (the “RM Tesoro Property”).

**WHEREAS**, the City desires to acquire Tract 4 of the RM Tesoro Property for optional use as a future trail head and/or small neighborhood micro park or for green space purposes and desires to acquire Tract 3 of the RM Tesoro Property for drainage and staging 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 RM Tesoro 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 RM Tesoro the City Property, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference. The City will convey the City Property to RM Tesoro via a Quit Claim Deed, without any representations and warranties (express or implied). 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 RM Tesoro Property. Subject to the terms, provisions and conditions set forth in this Agreement, RM Tesoro agrees to convey to the City the RM Tesoro Property via

a Special Warranty Deed without representations and warranties (express or implied) except as to the special warranty of title contained in such a deed. In the event certain statutory disclosures or any other disclosures required by law were not made by RM Tesoro 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 RM Tesoro for no additional cash consideration, and the RM Tesoro Property will be transferred to the City for no additional cash consideration.

3. **REPRESENTATIONS AND WARRANTIES.**

a. RM Tesoro represents and warrants that:

i. it has good, marketable fee simple title to, and is in possession of, the RM Tesoro Property, free and clear of all liens, security interests and encumbrances, excluding only those:

1. which will be satisfied or released at closing; and

2. to which the other Party's title shall be subject to, as otherwise provided in this Agreement.

b. The Parties represent and warrant that:

i. there is ingress and egress to the property;

ii. there is no litigation or proceeding pending or threatened against or relating to the property;

iii. 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 property it is conveying; and

iv. possession of the property shall be delivered at the time of closing.

4. **CLOSING.** The closing of this transaction ("Closing Date") shall be completed within no more than sixty (60) 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 the 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.

5. **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 the RM Tesoro Property, all intangible personal property taxes, delinquent ad valorem taxes, outstanding assessments and/or tax certificates, if any, shall be satisfied and paid for by RM Tesoro no later than the Closing Date.

6. **LIENS.** All liens of record, including certified municipal, city and county liens, mortgages, as well as special assessments, if any, on the RM Tesoro Property shall be paid in full at or before closing by RM Tesoro. If a pending lien has been filed against the RM Tesoro Property which has not been certified as of the Closing Date, 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 RM Tesoro. This provision shall survive the closing of this transaction.

7. **TITLE INSURANCE.** The City 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 RM Tesoro Property. The City 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 City shall have thirty (30) days from receipt of the title commitment to inspect said title documents and report defects, if any, in writing to RM Tesoro. RM Tesoro shall have until the Closing Date to cure the defects, and if the defects have not been cured, the City may either: (i) accept title "as is," or (ii) decline 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.

8. **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 RM Tesoro Property. The City's acceptance of title to the RM Tesoro 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 of the RM Tesoro Property to the City.

9. **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:** RM Tesoro represents, to the best of its knowledge, that the RM Tesoro Property and all uses of the RM Tesoro Property 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 RM Tesoro Property except as specifically disclosed to the City or permitted under the applicable environmental laws; that RM Tesoro has no knowledge of any spill or environmental law violation on any RM Tesoro Property contiguous to or in the vicinity of the RM Tesoro Property to be conveyed to

the City; that RM Tesoro has not received any notice and otherwise has no knowledge of (i) any unlawful spill of hazardous or corrosive substance on the RM Tesoro Property, (ii) any existing or threatened environmental lien against the RM Tesoro Property, or (iii) any legal proceeding or investigation regarding the generation, storage, treatment or transfer of hazardous substances on the RM Tesoro Property. This 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, prior to the Closing Date, perform an environmental site assessment of the RM Tesoro Property. RM Tesoro may, at its sole cost and expense, prior to the Closing Date, perform an environmental site assessment of the City Property. The Parties 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 property, which either of the Parties are unable or unwilling to accept, the Parties may elect to terminate this Agreement by giving the other Party written notice prior to the Closing Date, whereupon all Parties shall be released from all further obligations hereunder, except those which expressly survive the termination hereof.

**10. SURVEY.** Either Party may, at its sole cost and expense, and prior to the Closing Date, have the other Party's 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 the Closing Date, of any encroachments on the property, encroachments by the property's improvements on other lands, or deed restrictions or zoning violations. 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 defect(s), 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.

**11. RIGHT TO ENTER THE PROPERTY.** The Parties agree that from the Effective Date of this Agreement through the Closing Date, 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 and any resources upon the other Party's property, in connection with this transaction.

**12. 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 RM Tesoro.

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

**14. ACCESS.** RM Tesoro and the City warrant and represent that there is legal ingress and egress to their respective property being exchanged under this Agreement.

**15. BROKERS.** Any and all real estate fees or commissions claimed due, pursuant to this transaction and/or conveyance of the RM Tesoro Property, to any real estate broker or agent shall be paid by RM Tesoro. RM Tesoro 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.

**16. EXPENSES.** The City shall be responsible for the costs of any title insurance fees and obtaining an Owner's Policy on the RM Tesoro Property. The remaining closing costs shall be shared equally between the Parties.

**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 either 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 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 RM Tesoro 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 Attorney

As to RM Tesoro:

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, RM Tesoro, and the City 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

By: \_\_\_\_\_  
Russ Blackburn  
City Manager

**RM Tesoro:**

By: \_\_\_\_\_  
Print Name:  
Title: