

CITY OF FORT PIERCE

CITY COMMISSION AGENDA

Special Meeting - Friday, April 19, 2024 - 3:00 p.m.

City Hall - City Commission Chambers, 100 North U.S.#1, Fort Pierce, Florida

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **COMMENTS FROM THE PUBLIC**

Any person who wishes to comment on any subject may be heard at this time. Please limit your comments to three (3) minutes or less, as directed by the Mayor, as this section of the Agenda is limited to fifteen minutes. The City Commission will not be able to take any official actions under Comments from the Public. Speakers will address the Mayor, Commissioners, and the Public with respect. Inappropriate language will not be tolerated.

5. **NEW BUSINESS**

- a. Discussion on the request to extend the cure period under the default motion sent to Audubon Development, Inc. regarding the Kings Landing project.

6. **ADJOURNMENT**

Any person seeking to appeal any decision by the City Commission with respect to any matter considered at this meeting is advised that a record of proceedings is required in any such appeal and that such person may need to insure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (772) 467-3065 at least 48 hours prior to the meeting.

City Commission Special Mtg

Meeting Date: 04/19/2024

Re:

Information

SUBJECT:

Discussion on the request to extend the cure period under the default motion sent to Audubon Development, Inc. regarding the Kings Landing project.

Attachments

Letter

Letter of Default

Form Review

Form Started By: Tina Rel

Final Approval Date: 04/18/2024

Started On: 04/18/2024 12:22 PM

April 16, 2024

VIA ELECTRONIC MAIL

Sara Hedges, Esq.
shedges@cityoffortpierce.com
City Attorney, Fort Pierce
100 N U.S. 1 Highway
Fort Pierce, FL 34950

Re: **Audubon Development, Inc.'s Request for Extension of Time to Address the City's Notice of Default**

Dear Attorney Hedges:

Jones Foster, P.A. submits this letter request on behalf of Audubon Development, Inc. ("Audubon") and in furtherance of our discussions on Tuesday April 16, 2024.

The purpose of this letter is to request that the City of Fort Pierce toll for 45 days, and otherwise suspend, the running of all deadlines associated with the Notice of Default issued by the City on March 21, 2024. This extension of time is requested to afford Audubon an opportunity to present to the City and the FPRA a plan to address the City's concerns with a view to completing the King's Landing project. In this regard, it is understood that the Board of the FPRA is meeting on May 14. It is Audubon's plan, and consistent with prior comments from the City Manager to Dale Matteson, to appear before the FPRA Board to present a revised plan and timeline for moving forward and to address the City's questions and concerns at such time.

Audubon remains steadfast in its intent to provide the City with a beautiful mixed-use development that enhances the value of the community. With a view to completing this project, Audubon will submit proposed modified deadlines and address the City's concerns at the FPRA meeting on May 14, 2024.

Very truly yours,

JONES FOSTER P.A.

/s/ Scott G. Hawkins

Scott G. Hawkins

Florida Bar Board Certified Business Litigation Attorney

SGH:ZSF

cc: Lainey W. Francisco, Esq



Scott G. Hawkins
D 561 650 0460 O 561 659 3000
shawkins@jonesfoster.com

505 South Flagler Drive, Suite 1100 West Palm Beach, FL 33401
jonesfoster.com



March 21, 2024

Dale Matteson
P.O. Box 981
Palm Beach, FL 33480

VIA EMAIL: dale@audubondevelopment.com

Re: NOTICE OF DEFAULT

Dear Mr. Matteson:

As outlined in the attached First Amendment to the Amended and Restated Agreement for Development of King's Landing, it was expected that the developer would submit the application for building permits or DPCR approval for Phase 2 no later than March 18, 2024.

According to the Amended and Restated Agreement, Phase 2 is defined as the construction of the following:

- Building C – 11 story building with restaurant, retail, and 48 residential units
- Building D – 8 story building with restaurant, retail, and 19 residential units
- Building F – Ground floor restaurant and retail
- Building G – 8 story building with retail and 25 residential units

We are aware that a DPCR application was submitted by your development team for site work for Phase 2; however, all site work is scheduled to be performed and completed within the dedicated timelines for the Phase 1 construction of this development project. Therefore, based on our review, the aforementioned milestone for Phase 2 has not been achieved.

Please accept this letter as written notice of default under this agreement pursuant to Section 10g of the Amended and Restated Agreement for Development of King's Landing. Audubon shall have 30 days to cure this default and come into compliance with the provisions of this agreement.

Sincerely,

Nicholas C. Mimms, P.E., ICMA-CM
City Manager

Attachments

c: City Attorney
City Clerk
Mayor and City Commissioners
Economic Development Manager

**FIRST AMENDMENT TO
AMENDED AND RESTATED AGREEMENT
FOR DEVELOPMENT OF KING'S LANDING**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF KING'S LANDING (the "Agreement") is made and entered into as of this 21st day of November, 2022, by and between AUDUBON DEVELOPMENT, INC., a Florida corporation ("Audubon"), whose mailing address is P.O. Box 981, Palm Beach, FL 33480, the CITY OF FORT PIERCE, a Florida municipal corporation (hereafter referred to as the "City of Fort Pierce"), whose mailing address is City Hall, 100 North U.S. 1, Fort Pierce, FL 34950 and the FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163 (the "FPRA") (collectively, the City of Fort Pierce and the FPRA shall be referred to herein as the "City").

WITNESSETH:

WHEREAS, the City and Audubon entered into an agreement dated December 2, 2019 and recorded in Official Records Book 4353, Page 1200, as amended by that certain First Amendment to Agreement for Development of King's Landing, dated February 3, 2020 and recorded in Official Records Book 4382, Page 118, both of the Public Records of St. Lucie County Florida (collectively, the "Original Agreement for Development"); and

WHEREAS, the City and Audubon entered into an Amended and Restated Agreement for Development of King's Landing dated February 8, 2022 and recorded in Official Records Book 4775, Page 2707, of the Public Records of St. Lucie County (the "Amended and Restated Agreement"); and

WHEREAS, the Amended and Restated Agreement supersedes the Original Agreement for Development; and

WHEREAS, Audubon and the City have agreed to amend the Amended and Restated Agreement by extending certain deadlines reflected Section 9, related to the Development Timeline; and

WHEREAS, Audubon and the City have agreed to amend the Amended and Restated Agreement by revising Section 13, related to Tax Increment Financing;

NOW, THEREFORE, the undersigned parties to this Agreement do hereby amend the Amended and Restated Agreement as set forth herein:

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement as if fully set forth herein verbatim.
2. **Effective Date.** This Agreement shall become effective immediately upon approval and execution by Audubon, the Fort Pierce City Commission and the FPRA Board, whichever is later.
3. **Development Timeline.** Paragraph 9 of the Amended and Restated Agreement provides that all dates set forth in the Construction Schedule and all Development Deadlines shall be automatically adjusted based upon the actual date of the Closing (i.e. for every day that the Closing was delayed after November 1, 2021, the dates set forth in the Construction Schedule and the Development Deadlines shall also be delayed by one day). The Closing date was April 7, 2022 (157 days after November 1, 2021), therefore all dates set forth in the Construction Schedule and all Development Deadlines were delayed by 157 days. The parties hereto agree that the dates set forth in the Construction Schedule and all Development Deadlines shall be further delayed by the number of days from the Closing date

of April 7, 2022 until the date of final approval of this Agreement by the FPRA Board on November 8, 2022 (an additional 215 days, or 372 days total (157 + 215 = 372)). Therefore, Paragraph 9 of the Amended and Restated Agreement is hereby amended as follows:

- a. Phase 1. Audubon shall Commence Construction of Phase 1 no later than September 20, 2023 and shall complete construction of Phase 1 no later than February 5, 2026.
 - b. Phase 2. Audubon shall submit an application for building permit(s) or DPCR approval for construction of Phase 2 no later than March 18, 2024. Audubon shall Commence Construction of Phase 2 no later than June 16, 2024 and shall complete construction no later than December 2, 2026.
 - c. Phase 3. Audubon shall submit an application for building permit(s) or DPCR approval for construction of Phase 3 no later than October 4, 2025. Audubon shall Commence Construction of Phase 3 no later than December 3, 2025 and shall complete construction no later than December 2, 2026.
4. **Adjustments to Exhibit "F"**. The dates in Exhibit "F" to the Amended and Restated Agreement shall adjust automatically to reflect the dates set forth in Paragraph 3, above.
 5. **Economic Development Incentives**. Paragraph 13 of the Amended and Restated Agreement is deleted in its entirety and replaced with the following Paragraph 13:

13. **Tax Increment Financing and Other Incentives**. The FPRA collects certain tax increment revenue ("TIR") from the ad valorem real property taxes paid with respect to property located within the City of Fort Pierce Community Redevelopment Area. Audubon, or the then-owner or owners of the Property as the case may be, shall pay all ad valorem real property taxes, non-ad valorem real property taxes, special assessments, and any other taxes on the Property as they become due and within the year in which they are first due. After confirming that such taxes have been paid with respect a parcel of the Property, FPRA shall rebate to Audubon, or the then-owner of the respective parcel of the Property, TIR received by the FPRA as set forth below.

- a. **The Hotel Parcel**. If Audubon or its successor-in-title presents to the City plans for the construction of a hotel of sufficient quality as determined by the City, in the City's reasonable discretion, the City will provide economic incentives specific to the Hotel Parcel, as set forth in **Exhibit "I"**, attached hereto and made a part hereof (the "Incentive Package"). Subject to such prior approval of the hotel plans, the City shall only commit to providing the portion of the Incentive Package which is within the jurisdiction and control of the City, but the City will cooperate with any other governmental agencies to the extent they are providing other portions of the Incentive Package. With respect to the Hotel Parcel, FPRA shall rebate TIR received by FPRA during each of the first ten (10) calendar years (January 1 through December 31) after the issuance of a certificate of occupancy or similar certificate of completion for vertical improvements and the addition of the improved Hotel Parcel to the County tax rolls. The FPRA shall begin to issue such rebates according to a sliding scale, beginning the first year after issuance of the certificate of occupancy or similar certificate of completion and the addition of the improved Hotel Parcel to the County tax rolls. The sliding scale shall be as follows: one hundred percent (100%) for the first five (5) years; then on a decreasing scale of ninety percent (90%), eighty percent (80%), sixty percent (60%), forty percent (40%), and twenty percent (20%) for each successive year. FPRA shall deliver such rebate payments no later than thirty (30) days after FPRA receives from the County Tax Collector the applicable

TIR for the Hotel Parcel. Such rebate payments shall not count toward the \$200,000.00 annual limit and \$1,000,000.00 five-year cumulative limit set forth in Paragraph 13(b), below.

b. **All Other Parcels.**

No TIR rebate shall be paid with respect to the residential parcels north of Moore's Creek on A.E. Backus Ave. (the "Backus Parcels"). With respect to all other parcels comprising the Property, excluding the Hotel Parcel and the Backus Parcels, FPRA shall rebate fifty percent (50%) of all TIR received by FPRA during each of the first five (5) calendar years (January 1 through December 31), beginning the first year after the issuance of a certificate of occupancy or similar certificate of completion for Phase 2 vertical improvements and the addition of said improved parcel(s) to the County tax rolls. Such rebate payments shall be delivered no later than thirty (30) days after FPRA receives from the County Tax Collector the applicable TIR for each parcel of the Property. Failure of one parcel owner to timely pay property taxes shall not delay the rebate payment of another parcel owner. Such rebate payments shall not exceed two hundred thousand dollars (\$200,000.00) per year for the entire Property (excluding the Hotel Parcel and the Backus Parcels), and shall not exceed one million dollars (\$1,000,000.00) cumulatively for all five (5) years for the entire Property (excluding the Hotel Parcel and the Backus Parcels). If calculation of the rebates in any given year would result in a total rebate for the entire Property (excluding the Hotel Parcel and the Backus Parcels) in excess of either of the forgoing limitations, then any required reduction in the rebates shall be applied in an equal percentage to all affected parcels. (For example, if the rebates for the entire Property, excluding the Hotel Parcel and the Backus Parcels, would exceed \$200,000 in a given year, because one parcel would otherwise be entitled to a \$100,000 rebate and another parcel would otherwise be entitled to a \$200,000 rebate, then the rebates for both parcels shall be reduced by 33.33%, resulting in a rebate of \$66,666.67 for one parcel and \$133,333.33 for the other parcel).

- c. **Rights and Obligations to Run with the Property.** The rights and obligations set forth in this Paragraph 13 shall run with the Property and shall benefit and be enforceable by successors-in-title to Audubon holding title to any portion of the Property (excluding the Backus Parcels), subject to the provisions of this paragraph. Notwithstanding any covenant or provision to the contrary set forth herein, the right to receive TIR rebate payments set forth in this Paragraph shall benefit and be enforceable only by Audubon, and by any successor developer acquiring Audubon's rights and obligations under this Agreement, provided that Audubon assigns its right to receive TIR rebate payments to such successor developer (with respect to all or part of the Property) pursuant to a written instrument delivered to the FPRA and recorded in the public records of St. Lucie County. (For example, Audubon may assign its right to receive TIR rebates with respect to the Hotel Parcel to a future owner and developer of the Hotel Parcel, while retaining the right to receive TIR rebates with respect to the balance of the Property.) In the event that any part of the Property is subdivided pursuant a subdivision plat or divided into condominium units pursuant to the Florida condominium statutes, Audubon, or any successor developer as set forth above, shall continue to have the right to receive the entire amount of the foregoing TIR rebate payments, unless and until such time as Audubon, or any such successor developer, no longer owns any portion of the Property. The owners of the platted lots or condominium units shall not have any right to receive any portion of the TIR rebate payments unless they are the successor developer of such property having been assigned such right to receive TIR rebate payments as set forth above.

6. **No Further Amendments.** Except as specifically modified and amended hereby, the Amended and Restated Agreement shall remain in full force and effect.
7. **Counterparts.** This Agreement may be executed in any number of identical counterparts each of which shall be deemed to be an original for all purposes but all of which shall constitute one and the same instrument, and a copy of such signature received through telefax or electronic transmission shall bind the party whose signature is so received as if such signature were an original. In making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

SIGNATURES CONTINUE ON FOLLOWING PAGES

WITNESSES:

"Audubon"

AUDUBON DEVELOPMENT, INC., a Florida corporation

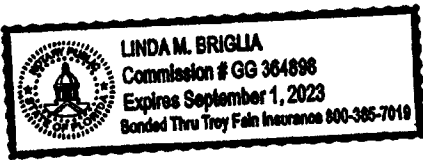
[Signature]
Print Name: Laura A. Kenny

By: [Signature]
Print Name: DALE MATTHESON
Title: President / CEO

[Signature]
Print Name: Linda M. Briglia

STATE OF FLORIDA
COUNTY OF St. Lucie

The foregoing instrument was acknowledged before me this 8th day of November, 2022, by Dale Matteson as President of AUDUBON DEVELOPMENT, INC., a Florida corporation. Said person did not take an oath and (check one) is personally known to me, produced a driver's license issued by a state of the United States within the last five (5) years as identification, to wit:



[Signature]
Notary Public, State of Florida
Print Name: Linda M. Briglia
Commission #: GG364898
My Commission Expires: 9/1/23

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

WITNESSES:

"City of Fort Pierce":

[Signature]
Print Name: Lina Reel

[Signature]
Print Name: Brittany Meredith

CITY OF FORT PIERCE, FLORIDA, a
Florida municipal corporation

By: [Signature]
Linda Hudson, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

By: [Signature]
Tanya Earley, City Attorney

STATE OF FLORIDA
COUNTY OF St. Lucie

The foregoing instrument was acknowledged before me this 21st day of
November, 2022, by LINDA HUDSON, as MAYOR, of CITY OF FORT
PIERCE, a Florida municipal corporation. Said person did not take an oath and (check one) is
personally known to me. produced a driver's license issued by a state of the United States
within the last five (5) years as identification, to wit:

[Signature]
Notary Public, State of Florida
Print Name: _____
Commission #: _____
My Commission Expires: _____



LINDA W. COX
Notary Public
State of Florida
Comm# HH167003
Expires 9/9/2025

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WITNESSES:

"FPRA"

FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163

[Signature]
Print Name: Katoja Ransom

By: Linda Hudson
Print Name: Linda Hudson
Title: Chairwoman

[Signature]
Print Name: Brittany Meredith

STATE OF FLORIDA
COUNTY OF St. Lucie

The foregoing instrument was acknowledged before me this 8th day of November, 2022, by Linda Hudson as Chairwoman of FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163. Said person did not take an oath and (check one) is personally known to me, produced a driver's license issued by a state of the United States within the last five (5) years as identification, to wit:

Linda W. Cox
Notary Public, State of Florida
Print Name: LINDA W. COX
Commission #: _____
My Commission Expires _____
Notary Public
State of Florida
Comm# HJ167003
Expires 9/9/2025





EXHIBIT I

August 26, 2022

EXECUTIVE COMMITTEE

- Robert Barfield, Treasurer, Seacoast Bank
- Javier Cisneros, Fort Pierce Utilities Authority
- Eric Goldman, HCA Florida Lawnwood Hospital
- Chris Fogal, CPA, PA, Chair, Carr, Riggs, Ingram
- Azlina Goldstein, Chair-Elect, GL Homes
- Rob Lord, Past-Chair
- Tim Moore, PhD, Indian River State College
- Madhu Sasidhar, MD, MBA, FCCP, Cleveland Clinic Tradition Hospital
- Peter Tesch, Economic Development Council
- Shrita Walker, Secretary, MIDFLORIDA Credit Union

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BOARD OF DIRECTORS

- Mike Adams, Adams Ranch
- Michael Ansorge, OCULUS Surgical
- Nico Apfelbaum, Esq., Apfelbaum Law
- Terissa Aronson, SLC Chamber of Commerce
- Brian Bauer, CareerSource Research Coast
- Russ Blackburn, City of Port St. Lucie
- Ian Cotner, AT&T Florida
- Peter Crane, Sansone Group
- Marshall Critchfield, Florida Power & Light
- Lee Dobbins, Esq., Dean Mead/TCMA
- Phil Doumar, EDC EXCEL
- Rod Kennedy, Engineering Design & Construction
- Richard Kolleda, FACHE, Spherion
- Leslie Kristof, Keiser University
- Tammy Matthew, Bank of America
- Nick Mimms, City of Fort Pierce
- Neil Morgan, Comcast Business
- Brandon Nobile, Remnant Construction
- Cara Perry, Florida Atlantic University
- Roxanne Peters, SouthState Bank
- Jon Prince, PhD, St. Lucie Public Schools
- Staci Storms, Broward, Palm Beaches & St. Lucie Realtors
- Richard Tambone, Tambone Companies
- Howard Tipton, St. Lucie County
- Jeremy Wiernasz, PGA Golf Club
- Kara Wood, Hi-Tide Boat Lifts
- Amber Woods, Treasure Coast Lexus

Re: [REDACTED] Development Business Assistance and Incentive Package for Hotel Project at King's Landing

Dear [REDACTED]:

On behalf of the Economic Development Council of St. Lucie County (EDC), it is our pleasure to present this letter which contains a comprehensive suite of assistance and incentive programs for the abovementioned project. Along with our partners, the City of Fort Pierce, St. Lucie County and Fort Pierce Utilities Authority (FPUA), we would like to express our very strong desire to have this immensely important economic development project in our community.

As you recall, the EDC commissioned [REDACTED] last year to perform an Economic Impact Study which measured the estimated direct spending and economic output of a full service, 140 room boutique ([REDACTED]) hotel in the mixed-used development of King's Landing in Fort Pierce. With annual economic output of \$20.8 M and direct spending of \$13.3 M, the hotel project generates over 221 jobs and \$6.7 M in supporting wages plus generating \$2.0 M in state and local taxes. Hence, the tremendous direct fiscal benefits as well as very significant economic output potentially accruing to Fort Pierce and the County.



Economic Development Council of St. Lucie County
 772.336.6250 ♦ www.youredc.com
 500 NW California Blvd. ♦ Bldg. F, Suite 109 ♦ Port St. Lucie, FL 34986
 (Located at Indian River State College)




It is the EDC's opinion that to attract a high-end hotel project to Fort Pierce there will have to be an overall aggressive public private partnership approach featuring expedited permitting, a business assistance and incentive package and possibly, securing state and federal infrastructure grants to successfully complete this project. This will be a very significant undertaking, using the concerted efforts of the following entities:

- City of Fort Pierce
- St. Lucie County
- Fort Pierce Utilities Authority (FPUA)
- State & Federal Government Agencies
- Audubon Development
- [REDACTED]
- St. Lucie EDC
- Others

Proposed Business Assistance and Incentive Package:

The King's Landing property, a certified Brownfields site, is located in the City's Community Redevelopment District (CRA) and a Tax Increment Finance (TIF) area. The Fort Pierce Redevelopment Authority (FPRA) collects tax revenue from paid Ad valorem and tangible personal property (TPP) taxes generated in the CRA.

Based on the discussions with our partners in concert with Audubon Development, it is the EDC's recommendation that the following resources be arranged to entice [REDACTED] to make the appropriate investment on the property. The City of Fort Pierce will pursue a developer's agreement with your company which will prospectively feature the following incentives:

- *TIF Revenue Sharing Arrangement:* FPRA through the developer's agreement will provide a series of rebates over a ten-year period (5 years at 100% and a 5-year sliding scale of 90-80-60-40-20%). Based on the project's annual real property tax revenue generation, the rebate will be up to the assessed value of the hotel's ad valorem and TPP taxes for the city and county portion of tax bill. (Subject to provisions of FPRA's TIF in CRA district). With a very conservative assessed value estimate of \$28.0 M, the hotel project would generate annually total ad valorem property and TPP taxes of roughly \$730,353.00 with approximately \$393,612.00 being the City and County portion. (EDC is using a hypothetical assessed value of hotel facility and fixtures/equipment at \$28 M and \$43M for demonstration purposes).
- *Impact Fee Mitigation/ Other Fees & Permits Reductions and Credits:* There are roughly \$2.784 M in local government impact fees alone for both the hotel project (\$723.8K) and King's Landing development. The City plans to credit or waive all City impact fees associated with the hotel project and it is our intent to have St. Lucie County credit their portion of these specific road impact fees pending FPRA approval of the incentive package on or after September 13th.
- *Utilities – Electric, Water/Sewer, Telecommunications Assistance:* Fort Pierce Utilities Authority will eliminate CIC charges as well as certain connection and impact fees relating water and sewer infrastructure. There are other electrical utility and telecommunications items in the form of cost savings. (Waiting for FPUA to confirm)

- *Federal and State Infrastructure Grants:* The City of Fort Pierce has applied to the State of Florida Department of Economic Opportunity's Florida Job Growth Grant Fund program for \$2.74 M in road bridge and infrastructure improvements surrounding the King's Landing area. EDC has also suggested further exploration of New Market Tax Credits for the project and utilization of the State's Brownfields Redevelopment Tax Refund program based on the number of new permanent jobs created by the hotel. Details of these programs will be provided in separate correspondence.
- *Expedited Permitting:* The City will implement a formalized expedited permitting program for the project, establish a person responsible for facilitating the process and coordinate with other governmental agencies in the permitting and regulatory functions.
- *Audubon Development Contribution:* Dale Matteson has agreed to donate approximately 1.5 acres of King's Landing property to [REDACTED] for the development of the hotel. The estimated market value of the property is \$1.5 M.
- *Other Financial and Cost Sharing Arrangements:* As indicated by the City staff, they have identified several conceptual cost sharing approaches between the developers and the City which could result in several mutually beneficial arrangements (parking garage, marina, Brightline train station, etc.) These items will be further articulated by the City.

[REDACTED] understands it must meet certain local government economic development performance standards which may include certain "clawback" provisions, if necessary. This would also include maintaining the intended use for the facility. Many of these standards are based on job creation, capital investment and other relevant factors. As you are aware, the proposed assistance and incentive package presented here is a suggested proposal and must be approved first by both the Fort Pierce City Commission and the St. Lucie County Board of County Commissioners.

The EDC very much appreciates the opportunity to work with you on this critical economic development project. We want you to know the City of Fort Pierce have an unwavering commitment to our community's economic growth including its quality of life and will do everything possible to help create sustainable jobs for our residents. [REDACTED] proposed hotel is an excellent opportunity for downtown Fort Pierce, and we look forward to making it a reality!

Sincerely,



Pete Tesch
President

Attachments

CC:

Dale Matteson, Audubon Development

This Instrument Prepared By:
W. LEE DOBBINS, ESQ.
Dean, Mead, Minton & Moore
1903 South 25th Street, Suite 200
Fort Pierce, Florida 34947
(772) 464-7700

AMENDED AND RESTATED
AGREEMENT FOR DEVELOPMENT
OF KING'S LANDING

THIS AGREEMENT (the "Agreement") is made and entered into as of this 8th day of February, 2022, by and between AUDUBON DEVELOPMENT, INC., a Florida corporation ("Audubon"), whose mailing address is P.O. Box 981, Palm Beach, FL 33480, the CITY OF FORT PIERCE, a Florida municipal corporation (hereafter referred to as the "City of Fort Pierce"), whose mailing address is City Hall, 100 North U.S. 1, Fort Pierce, FL 34950 and the FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163 (the "FPRA") (collectively, the City of Fort Pierce and the FPRA shall be referred to herein as the "City").

This Agreement hereby amends, restates and replaces that certain Agreement for Development of King's Landing executed by and between Audubon, the City of Fort Pierce and FPRA dated December 2, 2019 and recorded in Official Records Book 4353, Page 1200, as amended by that certain First Amendment to Agreement for Development of King's Landing, dated February 3, 2020 and recorded in Official Records Book 4382, Page 118, both of the Public Records of St. Lucie County Florida (collectively, the "Original Agreement for Development"). The parties hereto also agree that certain deadlines and time periods set forth in the Original Agreement for Development were tolled as set forth in that certain Memorandum of Understanding as to Agreement for Development of King's Landing, between the City or Fort Pierce, FPRA and Audubon (the "MOU"), executed on or about March 25, 2020. Audubon, the City of Fort Pierce and FPRA hereby acknowledge and agree that the terms, covenants and conditions of the foregoing Original Agreement for Development, shall hereinafter be deemed to be as set forth herein, The Effective Date of this Agreement shall be the Effective Date of the Original Agreement for Development: December 2, 2019.

WITNESSETH:

WHEREAS, the City of Fort Pierce and the FPRA are the record owners, as their record interests may appear, of fee simple title to the unimproved real property described on **Exhibit "A"**, attached hereto and made a part hereof (the "Real Property"); and

WHEREAS, the City issued a request for proposals ("RFP") requesting that qualified developers submit proposals for the development of the Real Property; and

WHEREAS, after evaluating the responses submitted in the competitive procurement process in response to the City's RFP, the City found that Audubon has submitted the most advantageous proposal; and

WHEREAS, Audubon has proposed the development of a mixed use development on the Real Property referred to as King's Landing, including a hotel, condominiums, restaurants, retail, office, single family residences and apartments, as more generally set forth in the RFP (the "Project"); and

WHEREAS, the City and Audubon both desire to enter into an agreement, allowing Audubon to proceed with obtaining land development approvals more specifically setting forth the master plan and development standards for the Project, providing for the conveyance of the Real Property to Audubon subject to the terms and conditions hereof, and allowing for the construction of the Project on the Real Property in phases, as more specifically set forth herein; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and the mutual benefits hereunder, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do covenant and agree as follows:

1. Agreement to Develop. The City agrees to convey the Real Property to Audubon and Audubon agrees to develop the Real Property in accordance with the terms and conditions set forth herein. The term "Property" shall include the Real Property described in Exhibit "A", together with all right, title and interest, if any, of the City in and to (i) any improvements to the Real Property, (ii) any condemnation award relating to the Real Property, and (iii) all easements, rights-of-way and appurtenances benefitting or appurtenant to the Real Property.

2. Due Diligence Period. Audubon, its agents, employees and contractors shall have one-hundred and twenty (120) days from and after the Effective Date (which one-hundred and twenty (120) day period is hereinafter referred to as the "Due Diligence Period") within which to undertake engineering and other tests, borings, studies, investigations and assessments of and concerning the Property, at Audubon's sole cost and expense, as Audubon determines may be necessary or desirable in order to determine and evaluate (i) compliance of the Property with all zoning, environmental and other codes, ordinances, statutes, rules and regulations affecting the same, (ii) soil compaction, drainage and other physical characteristics of the Property, (iii) the feasibility of developing the Property for Audubon's intended use, including preparing draft site plans, drainage plans, utility plans and financial feasibility studies, and (iv) any other matters as shall be deemed by Audubon, in Audubon's sole and absolute discretion, to be necessary for Audubon to determine the feasibility of Audubon proceeding with the development of the Property. The City hereby grants to Audubon, its agents, employees, contractors and engineers, a right of entry upon the Property and any part thereof during the Due Diligence Period for the purposes of assisting such inspections and review, including environmental studies, soil compaction studies, soil borings and other physical inspections, and to show the Property to third parties (including, without limitation, architects, attorneys, insurers, financial institutions and other lenders or investors), and the City hereby agrees to cooperate with Audubon's studies and investigations, as reasonably required. Audubon shall be responsible for prompt payment for such inspections and for repair of damage to and restoration of the Property resulting from such studies and inspections. Audubon shall not subject the Property to any liens in connection with such studies and investigations and Audubon shall immediately discharge any liens which may be recorded against the Property resulting from such studies and investigations. Audubon agrees

to indemnify and hold harmless the City from all losses, damages, penalties, attorney's fees and costs arising out of property damage, personal injury or wrongful death caused by Audubon, or Audubon's agents or contractors, in connection with any inspections of the Property. No later than five (5) days after the end of the Due Diligence Period, Audubon may, at Audubon's sole discretion and for any reason, terminate this Agreement by giving written notice thereof to the City, in which event this Agreement shall be terminated, and all rights and liabilities of the parties pursuant to the Agreement shall be terminated. No later than fifteen (15) days after such termination of this Agreement, Audubon shall deliver to the City copies of any reports of studies and investigations procured by Audubon relative to the Property during the Due Diligence Period.

3. Copies of Reports. The City agrees to deliver to Audubon, within five (5) days following the Effective Date of this Agreement, copies of (a) any leases, lease amendments, contracts, licenses, governmental or quasi-governmental permits or permit applications, (b) all reports, studies and investigations (including, without limitation, any environmental, engineering or water quality assessments or reports, title abstracts and policies, permits, surveys and soil tests) and (c) specifically, any information evidencing the removal of the title encumbrance that provided a right of reverter in favor of the State of Florida, in the possession of the City relating to the Property or any part thereof. The City shall also, upon request by Audubon, provide any information in the possession of the City relating to the remediation of environmental contamination on the Property.

4. Land Development Approvals.

a. City Obligations. The City shall, at no cost or expense to Audubon, be responsible for completing the following tasks:

i. The City shall give its best efforts to support abandoning of the road right-of-way of the section of Avenue B, shown on Exhibit "B", attached hereto and made a part hereof (the "Avenue B Parcel"), it being the intention of the parties hereto that the Avenue B Parcel shall be included in the Property conveyed to Audubon at Closing, for development by Audubon. The City shall be responsible for completing and filing any required applications, paying any filing fees and processing the approval of the foregoing abandonment. The foregoing abandonment of the public right-of-way of the Avenue B Parcel, so that it may be conveyed to Audubon at Closing, shall be a Condition to Closing which, if not completed, may result in the termination of this Agreement as more specifically set forth in Paragraph 4.c below.

ii. The City shall give its best efforts to support amending the Comprehensive Plan of the City of Fort Pierce to change the future land use designation of the Property to Central Business District (CBD). The City shall be responsible for completing and filing any required applications and paying any filing fees associated with processing the approval of the foregoing future land use amendment, both at the City level and at the State level. The foregoing change in the Property's future land use designation to CBD shall be a Condition to Closing which, if not completed, may result in the termination of this Agreement as more specifically set forth in Paragraph 4.c below.

iii. The City shall give its best efforts to support changing the zoning of the Property to Planned Development (PD), with an underlying zoning classification of Central Commercial Zone (C-4). (The term "Planned Development" as used in this Agreement shall refer to a Planned Development zoning category as defined in Section 22-40 of the City of Fort Pierce Code of Ordinances). The City shall be responsible for completing and filing any required applications and paying any filing fees associated with processing the approval of the foregoing zoning change. The foregoing change of the Property's zoning to Planned Development with an underlying zoning classification of Central Commercial Zone (C-4) shall be a Condition to Closing which, if not completed, may result in the termination of this Agreement as more specifically set forth in Paragraph 4.c below.

iv. The Florida Department of Environmental Protection ("FDEP") issued a Conditional Site Rehabilitation Order ("SRCO") dated May 22, 2018 to the City setting forth various conditions relating to the existing environmental contamination on the Property. The SRCO is attached hereto and made a part hereof as Exhibit "C". Paragraph (c) on page 5 of the SRCO states that additional site rehabilitation may be required if the "level of risk is increased" due to "substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use". The City shall provide such information and documents to Audubon relative to the SRCO as Audubon may request in order for Audubon to notify FDEP of the proposed Project. Audubon shall notify FDEP of the proposed Project, and shall obtain written confirmation from FDEP, in form reasonably satisfactory to Audubon, before the end of the Due Diligence Period, that development of the Project will not require that additional remediation be completed on the Property or that additional restrictions be placed upon the use or development of the Property. The City agrees to cooperate with Audubon's efforts to obtain such written confirmation from FDEP. In the event that FDEP does require additional remediation or additional restrictions not currently set forth in the SRCO, then Audubon and the City shall work in good faith to amend this Agreement to address such remediation and/or conditions. In the event that Audubon and the City do not reach agreement with respect to such amendment to this Agreement, either party shall have the right to terminate this Agreement by giving written notice to the other, in which event all rights and liabilities of the parties pursuant to this Agreement shall be terminated.

b. Audubon Obligations. Audubon shall, at Audubon's sole cost and expense, be responsible for completing the following tasks:

i. Apply to and obtain approval from the City of Fort Pierce of a Planned Development master site plan (the "Site Plan") and development standards for the Property, allowing for a mixed use development, including a hotel, condominiums, restaurants, retail, office and apartments, as more generally set forth in the RFP.

ii. Providing the City with financial information responding to the request for additional information set forth in the memo from WTL+a, attached hereto as Exhibit "D".

c. Right to Terminate. If all of the foregoing tasks set forth in Paragraphs 4.a and 4.b above (collectively the "Conditions to Closing") have not been completed within two-hundred and seventy (270) days after the Effective Date, then either party to this Agreement may terminate this Agreement by giving written notice thereof to the other party, in which event this

Agreement shall be terminated, and all rights and liabilities of the parties pursuant to the Agreement shall be terminated.

5. Evidence of Title. Within thirty (30) days after the Effective Date, Audubon shall obtain, at Audubon's expense, a Title Insurance Commitment (the "Commitment") for an Owner's Title Insurance Policy (the "Policy") issued by a Florida licensed title insurer (the "Title Company") evidencing that the City of Fort Pierce and/or FPRA are vested with fee simple title to all of the Real Property, free and clear of all liens, encumbrances, exceptions or qualifications whatsoever save and except for: (a) "Permitted Exceptions" as defined hereinbelow; and (b) those exceptions to title which are to be discharged by the City at or before the Closing. The Commitment shall also evidence that upon the execution, delivery and recordation of the Deed to be delivered pursuant to the provisions of this Agreement and the satisfaction of all requirements specified in Schedule B, Section 1 of the Commitment, Audubon shall acquire fee simple title to the Real Property, subject only to the Permitted Exceptions.

Audubon shall have a period of fifteen (15) days after receipt of the Commitment within which to cause the same to be examined and to notify the City in writing of any objections that would render title to the Real Property unmarketable or would prevent development of the Project on the Real Property; provided, however, that in the event of any such notice by Audubon, Audubon shall provide the City with a copy of the Commitment together with Audubon's written objections. The City, upon written notification thereof within such fifteen (15) day period, shall use reasonable diligence to remove, discharge or correct such objections, and shall have a period of sixty (60) days after receipt of notice in which to do so. If the City shall be unable to remove or discharge such objections within the foregoing sixty (60) day period, then Audubon may, within ten (10) days from the expiration of the sixty (60) day period, give notice to terminate this Agreement or agree to accept a conveyance of title at Closing in its then existing condition. If Audubon shall elect to terminate this Agreement, then neither the City nor Audubon shall have any further rights or obligations hereunder. Any items shown in the Commitment which Audubon does not timely object to, or which Audubon agrees to accept, in accordance with this paragraph, shall be deemed to be "Permitted Exceptions." The foregoing notwithstanding, if title defects are in the nature of liens or encumbrances arising by, through or under the City which can be discharged by the payment of money and are liquidated in amount (i.e., not contingent or unliquidated), then Audubon shall have the option to pay and discharge the same at or prior to Closing, in which event, a credit for the cost thereof shall be given to Audubon as part of the adjustments and prorations at the Closing.

Audubon may, prior to the date of Closing, obtain an update of the Commitment, and may reexamine title to the Real Property and deliver to the City written objection to any matter revealed by such title reexamination ("Subsequent Title Defect") other than the Permitted Exceptions. In the event that Audubon gives the City written objection to a Subsequent Title Defect, then the provisions set forth in the foregoing paragraph shall apply from and after the date of Audubon's notice thereof to City.

6. Survey. Within ninety (90) days after the Effective Date, Audubon may, at Audubon's sole cost and expense, have the Property surveyed by a registered Florida surveyor (the "Survey"). Audubon shall have a period of fifteen (15) days after receipt of the Survey within which to cause the same to be examined and to notify the City in writing of any

encroachment or any matter which would prevent development of the Project on the Property; provided, however, that in the event of any such notice by Audubon, Audubon shall provide the City with a copy of the Survey together with Audubon's written objections. The Survey objections shall be treated in the same manner as title objections are treated in Paragraph 5 above. Audubon's failure to have the Property timely surveyed in accordance with this paragraph or deliver timely notice of survey objections shall be deemed a waiver of Audubon's rights to object to survey defects as provided in this paragraph.

7. Closing and Conveyance of Property. At Closing (as defined below), the City of Fort Pierce shall first convey its interest in the Property to FPRA, and then FPRA shall convey all of the Property to Audubon. The closing for the conveyance of the Property from FPRA to Audubon (the "Closing") shall be at a date, time and place mutually agreed to by the City and Audubon, but within the municipal limits of the City of Fort Pierce, no earlier than twenty (20) days after the Conditions to Closing, as defined in Paragraph 4 above, have all been satisfied and no later than sixty (60) days after the Conditions to Closing have all been satisfied. At the time of the Closing hereunder, FPRA shall convey fee simple title to the Property to Audubon by Special Warranty Deed, in the form attached hereto as Exhibit "E" (the "Deed"). The consideration for such conveyance of the Property to Audubon is the obligations of Audubon as set forth in this Agreement, and no additional monetary consideration shall be paid from Audubon to the City for the Property. The conveyance of the Property shall be free and clear of all liens, encumbrances, exceptions or qualifications whatsoever, save and except only the following:

- a. Ad valorem real property taxes and assessments for the year of closing and subsequent years.
- b. Local zoning ordinances and regulations.
- c. Permitted Exceptions as defined in Paragraph 5 above.
- d. The Reverter as defined in Paragraph 10 below, and as set forth in the Deed.

8. Closing Costs. Audubon shall pay for the cost of: (a) all documentary stamp taxes required to be paid with respect to the Deed and other instruments of conveyance, if any, it being understood that documentary stamp taxes may be due on the market value of the Property as of the date of Closing, (b) the Title Policy, it being understood that the title premium may be based on the market value of the Property as of the date of Closing, (c) all recording fees with respect to those closing documents which are to be recorded (not including, however, the cost of curative title instruments which are to be paid exclusively by the City), (d) any closing costs associated with third party financing, and (e) the Survey. The City shall pay all costs to obtain and record any documents required to cure any title defects or survey defects objected to by Audubon in accordance with Paragraphs 5 and 6 above. Any real property taxes and assessments shall be prorated as of the date of the Closing.

9. Development Timeline. The Project shall be constructed in phases, as such phases are identified below and in the Construction Schedule attached hereto and made a part

hereof as **Exhibit “F”** (the Construction Schedule). The dates set forth in the Construction Schedule and the Development Deadlines below assume that the date of the Closing will be November 1, 2021. However, all dates set forth in the Construction Schedule and the Development Deadlines below shall be automatically adjusted based upon the actual date of the Closing without any further action or agreement needed on the part of the parties hereto (i.e. for every day that the Closing is delayed after November 1, 2021, the dates set forth in the Construction Schedule and the Development Deadlines shall also be delayed by one day). The proposed site plan for the Project is attached hereto and made a part hereof for reference only as **“Exhibit H”** (the actual final Site Plan will be subject to approval by the City Commission). Subject to the foregoing, Audubon shall develop the Phases in accordance with the following (the deadlines set forth in Paragraphs 9.a through 9.e below shall be referred to as the “Development Deadlines”):

a. **Phase 1.** Audubon shall submit an application for building permit(s) for construction for Phase 1, no later than March 17, 2022. Audubon shall Commence Construction of Phase 1 no later than September 13, 2022. Construction of Phase 1 shall be completed no later than January 29, 2025.. Phase 1 shall include (i) infrastructure improvements serving the entire Project, including street paving, water and sewer facilities and drainage facilities (the “Infrastructure Improvements”), and (ii) construction of a hotel (Building E on Exhibit H), and may also include construction of the townhomes on A.E. Backus Ave at Audubon’s option. Upon completion of the construction of the Infrastructure Improvements for Phase 1, the streets and all infrastructure improvements within such streets (but excluding the sidewalks), shall be conveyed to the City, as more specifically set forth in Paragraph 16 below.

b. **Phase 2.** Audubon shall submit an application for building permit(s) for construction of Phase 2 no later than March 12, 2023. Audubon shall Commence Construction of Phase 2 no later than June 10, 2023. Construction of Phase 2 shall be completed no later than November 25, 2025. Phase 2 shall include Buildings C, D, F and G on Exhibit H.

c. **Phase 3.** Audubon shall submit an application for building permit(s) for the construction of Phase 3, no later than September 27, 2024. Audubon shall Commence Construction of Phase 3 no later than November 26, 2024. Construction of Phase 3 shall be completed no later than November 25, 2025. Phase 3 shall include Buildings A and B on Exhibit H.

d. **Phase 4.** Audubon shall submit an application for building permit(s) for the construction of Phase 4 no later than five (5) years after Commencing Construction of Phase 1. Audubon shall Commence Construction of Phase 4 no later than ninety (90) days after the City issues the building permit(s) for the construction of Phase 4. Construction of Phase 4 shall be completed no later than six (6) years after Commencing Construction of Phase 1. Phase 4 shall include the “Future Development” area shown on Exhibit H, west of N. 2nd Street.

e. **Commencement of Construction.** For the purpose of determining the Development Deadlines set forth in this Paragraph 9, the terms “Commence Construction” or “Commencing Construction” shall mean beginning substantial physical site work, such as clearing, excavating or grading the Property in preparation for pouring foundations and/or

installing utilities, or the installation of best management practices such as silt fences and turbidity barriers.

10. Default.

a. Possibility of Reverter. When the Property is conveyed by the City to Audubon at Closing, the Deed will contain language stating that the City will retain a “possibility of reverter”, as more specifically set forth in Exhibit “E”, giving the City the right to re-enter and retake the property if Audubon defaults on its obligations set forth in this Agreement (the “Reverter”).

b. Release of Reverter for Construction Loan. The construction loan for the Phase 1 Infrastructure Improvements will be secured by a mortgage on the entire Property, except the portion of the Property on which the hotel will be constructed (the “Hotel Parcel”). Upon the closing of the foregoing construction loan, the City will (a) review the loan documents to confirm to the City’s reasonable satisfaction that the loan is for the construction of the Phase 1 Infrastructure Improvements for the Project, in accordance with the approved Site Plan for the Project, (b) confirm issuance of the performance bonds for the Infrastructure Improvements, as described in Paragraph 10.d below, and (c) sign an instrument releasing all of the Property, except the Hotel Parcel, from the encumbrance of the Reverter, which instrument will be recorded in the public record at the time of the closing of the construction loan, so that the construction lender will acquire a construction mortgage encumbering all of the Property except the Hotel Parcel, securing the Construction Loan free and clear of the City’s Reverter.

c. Release of Reverter from Hotel Parcel. Prior to conveyance of the Hotel Parcel to a third party developer, that will construct the hotel (the “Hotel Developer”), Audubon shall obtain approval from the City of a subdivision plat making the Hotel Parcel a separate lot for the development of the hotel (the “Hotel”). Prior to the closing of the foregoing sale of the Hotel Parcel to the Hotel Developer, the City will have the right to review the purchase and sale agreement between Audubon and the Hotel Developer, as more specifically set forth in Paragraph 12 below, to confirm it is consistent with the development of the Project in accordance with this Agreement and the approved Site Plan. Upon the closing of the foregoing sale of the Hotel Parcel to the Hotel Developer, the City will sign an instrument releasing the Hotel Parcel from the encumbrance of the Reverter, which instrument will be recorded in the public record at the time of the closing of the foregoing sale of the Hotel Parcel to the Hotel Developer, so that the Hotel Developer will acquire the Hotel Parcel free and clear of the City’s Reverter.

d. Performance Bond. Audubon shall obtain a performance bond for the construction of the Infrastructure Improvements that equals or exceeds the estimated cost of such construction (currently estimated to be \$2.5 million). Audubon shall also obtain a performance bond for the construction of the first Phase of vertical construction (other than the Hotel) that equals or exceeds the estimated cost of such construction. The City shall be named as an additional obligee on the performance bond for the Infrastructure Improvements. As a condition of obtaining a building permit for each of the future Phases of the Project (Phases 2 through 4), Audubon shall obtain a performance bond for each such future Phase, in the amount of the estimated cost of the construction of such Phase.. Each bond shall be in substantially the form attached hereto as Exhibit “G”, unless Audubon and the City mutually agree to a different form.

Each bond shall be released at the time that a certificate of occupancy or certificate of completion is issued for the bonded construction project.

e. Default by Audubon. In the event of a default or breach of this Agreement by Audubon the City may proceed at law or in equity to enforce its rights under this Agreement against Audubon, including but not limited to the right of specific performance. In addition, the City may exercise its rights pursuant to the Reverter, as defined above, or its rights pursuant to the performance bonds described in Paragraph 10.d above..

f. Default by City. In the event of a default or breach of this Agreement by the City, Audubon may proceed at law or in equity to enforce its rights under this Agreement against the City, including, but not limited to, the right of specific performance.

g. Right to Cure. The foregoing provisions of this Paragraph 10 notwithstanding, neither the City nor Audubon shall be deemed to be in default and/or breach under this Agreement, unless (i) the party alleging such default and/or breach shall have provided written notice of the alleged default and/or breach to the other party, (ii) the alleged defaulting and/or breaching party shall have failed within a period of thirty (30) days after receipt of such notice to cure said default and/or breach and (c) the alleging party is in compliance with the provisions of this Agreement.

11. Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the City and its successors and assigns, and Audubon and its successors and assigns. No assignment of this Agreement by Audubon shall be effective unless and until such assignment shall be approved by the City in writing. The foregoing notwithstanding, Audubon may collaterally assign its rights under this Agreement to any lender providing financing for the development of the Project, and the City shall execute any acknowledgement of such collateral assignment as may be reasonably required by such lender, in a form reasonably acceptable to the City.

12. Approval of Third Party Developers. Audubon intends to obtain approval from the City of a subdivision plat, subdividing the Property into several parcels, consistent with the approved Site Plan. Audubon may sell or ground lease some or all of the subdivided parcels to third party developers, or may enter into joint venture agreements with such third party developers, allowing such third party developers to develop such parcels; provided, however, that Audubon shall ensure that any such agreements for the sale, ground lease, or joint ventures with third party developers shall be in writing and be subject to applicable terms and conditions of this Agreement and the conditions of approval and development standards approved by the City pursuant to the Planned Development approval for the Project. If Audubon wishes to enter into an agreement for a sale, ground lease, or joint venture with third party developers, Audubon shall give the City written notice of any such sale, ground lease or joint venture agreement, and shall deliver a copy of such agreement or lease to the City, so that the City may review such agreement and confirm that it is consistent with the development of the Project in accordance with this Agreement and the Site Plan. The City shall have fifteen (15) days from receipt of the foregoing written notice to deliver to Audubon written approval or denial of Audubon's request, and such approval shall not be unreasonably withheld. If the City does not deliver written denial to Audubon within such fifteen (15) day period, the City shall be deemed to have approved such

request. Any sale, ground lease or joint venture, to or with an unrelated third party, with respect to a portion of the Property pursuant to this paragraph shall not relieve Audubon of its obligations under this Agreement, and such unrelated third party shall be required to develop same in accordance with the Site Plan and this Agreement. Furthermore, with respect to any sale, ground lease or joint venture, to or with an unrelated third party, with respect to a portion of the Property (excluding the Hotel Parcel) pursuant to this paragraph, the bonding requirements set forth in Paragraph 10.d above shall be required to be satisfied, by the posting of a performance bond by either Audubon or the third-party purchaser, ground lessee or joint venturer. In accordance with Paragraph 10.d, no performance bond shall be required with respect to the construction on the Hotel Parcel.

13. Tax Increment Financing. The FPRA collects certain tax increment revenue (“TIR”) from the ad valorem real property taxes paid with respect to property located within the City of Fort Pierce Community Redevelopment Area. Audubon, or the then-owner or owners of the Property as the case may be, shall pay all ad valorem real property taxes, non-ad valorem real property taxes, special assessments and any other taxes on the Property as they become due and within the year in which they are first due. After confirming that such taxes have been paid with respect a parcel of the Property, FPRA shall rebate to Audubon, fifty percent (50%) of all TIR received by FPRA with respect to such parcel of the Property, during each of the first five (5) calendar years (January 1 through December 31) beginning the first year that vertical improvements to that property have received a certificate of occupancy or similar certificate of completion and have been added to the County tax rolls (i.e. excluding the Infrastructure Improvements). (For example, if construction of the Hotel on the Hotel Parcel is completed in 2022 and the value of the Hotel has been added to the tax assessed value of the Hotel Parcel for the 2023 calendar year, then the rebate shall apply to the Hotel Parcel for years 2023 through 2027). Such rebate payments shall be delivered to Audubon no later than thirty (30) days after FPRA receives from the County Tax Collector the applicable tax increment revenue for such property owner’s parcel of the Property. Such rebate payments shall not exceed two hundred thousand dollars (\$200,000.00) per year for the entire Property, and shall not exceed one million dollars (\$1,000,000.00) cumulatively for the entire Property. If calculation of the rebates in any given year would result in a total rebate for the entire Property in excess of either of the forgoing limitations, then any required reduction in the rebates shall be applied in an equal percentage to all affected parcels of the Property. (For example, if the rebates for the entire Property would exceed \$200,000 in a given year, because one parcel would otherwise be entitled to a \$100,000 rebate and another parcel would otherwise be entitled to a \$200,000 rebate, then the rebates for both parcels shall be reduced by 33.33%, resulting in a rebate of \$66,666.67 for one parcel and \$133,333.33 for the other parcel). Notwithstanding any covenant or provision to the contrary set forth herein, the right to receive TIR rebate payments set forth in this Paragraph shall benefit and be enforceable only by Audubon, and by any successor developer acquiring Audubon’s rights and obligations under this Agreement, provided that Audubon assigns its right to receive TIR rebate payments to such successor developer (with respect to all or part of the Property) pursuant to a written instrument delivered to the FPRA and recorded in the public records of St. Lucie County. (For example, Audubon may assign its right to receive TIR rebates with respect to the Hotel Parcel to a future owner and developer of the Hotel Parcel, while retaining the right to receive TIR rebates with respect to the balance of the Property.) In the event that any part of the Property is subdivided pursuant a subdivision plat or divided into condominium units pursuant to

the Florida condominium statutes, Audubon, or any successor developer as set forth above, shall continue to have the right to receive the entire amount of the foregoing TIR rebate payments, unless and until such time as Audubon, or any such successor developer, no longer owns any portion of the Property. The owners of the platted lots or condominium units shall not have any right to receive any portion of the TIR rebate payments unless they are the successor developer of such property having been assigned such right to receive TIR rebate payments as set forth above.

14. Off Site Drainage. The SRCO (defined in Paragraph 4.a.iv above) and the Declaration of Restrictive Covenants recorded in Official Records Book 4111, Page 1502 of the Public Records of St. Lucie County, impose certain conditions and restrictions on the use and development of the Property. Such conditions and restrictions provide that construction of drainage swales or stormwater retention may only occur in the limited space outside of the groundwater restriction area identified therein. Therefore, the City will support Audubon's construction of off-site drainage and stormwater improvements on City land other than the Property, or within City rights of way, if Audubon determines that such off-site drainage and/or stormwater facilities would be beneficial to the Project, so that stormwater retention requirements for the Project may be met using such off site properties; provided, however, that the City retains sole and absolute discretion to designate such City land or City rights of way as well as the scheduling of Audubon's construction. This paragraph shall not require the City to purchase any land, and any such off site drainage or stormwater improvements shall be constructed at Audubon's sole cost and expense.

15. Moore's Creek/Street Trees. The City will support Audubon's efforts, at Audubon's sole cost and expense, to (a) construct a dock within Moore's Creek and/or a pedestrian bridge over Moore's Creek, and (b) install street trees along City streets adjacent to the Project, as Project amenities. The location of the dock, pedestrian bridge and/or street trees will be subject to review and approval by the City pursuant the process for approving the Planned Development master plan for the Project. Upon completion of construction, the dock within Moore's Creek and/or the pedestrian bridge over Moore's Creek shall become and remain property of the City in perpetuity and the City shall maintain such dock and/or pedestrian bridge. Audubon is expressly prohibited from installing any fencing or gates on such dock and/or pedestrian bridge which vary from such fencing/gates approved by the City, and Audubon is expressly prohibited from imposing any charges, costs, expenses, or similar fees to any member of the public to access or use such dock within Moore's Creek and/or the pedestrian bridge. Upon installation of the street trees, the trees shall become and remain property of the City in perpetuity and the City shall maintain such street trees.

16. Streets and Drainage. Upon completion of construction of the streets within the Property, Audubon shall convey the streets to the City, but Audubon shall retain ownership of, and shall maintain, any sidewalks located along such streets within the Property, and any landscaping, lighting or other improvements located within such sidewalks, and such sidewalks shall remain open to the public in perpetuity. Such streets shall be public rights-of-way and all improvements within such rights-of-way, shall become and remain property of the City in perpetuity and the City shall maintain such streets and improvements, subject to any easements for utilities, drainage or landscaping. Audubon may, at Audubon's option, reserve easements over such road rights-of-way for utilities, drainage facilities and/or landscaping serving or

benefitting the Project. The foregoing conveyance of the improved streets to the City shall be subject to any applicable provisions of the City code governing the construction, inspection and conveyance of road improvements to the City. Audubon shall have the right to name the streets within the Property, subject to approval by the City.

17. Force Majeure. Neither Audubon nor the City shall be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by a Force Majeure Event (defined below) that arises after the Effective Date. Deadlines set forth in this Agreement, including the Development Deadlines set forth in Paragraph 9 above, shall be extended by a period of time equal to the period of interruption caused by the Force Majeure Event as provided herein. As used herein, a "Force Majeure Event" shall mean a governmental moratorium, pandemic, unavailability of utilities (e.g. power or water), unavailability of materials, fire (including wildfires), explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, hurricane, tropical storm, tornado or flooding through no fault of the affected party. Any extension of any date or deadline set forth in this Agreement due to a Force Majeure Event shall be only for the delay in performance that is an actual and direct result of such Force Majeure Event. The party prevented from carrying out its obligations hereunder shall give notice to the other party of a Force Majeure Event as soon as practicable but in no event shall such notice exceed fifteen (15) business days after the Force Majeure Event for which such claim is being made (absent a catastrophic Force Majeure Event affecting both parties to this Agreement).

18. Covenants Running With the Land. The rights, agreements, duties and obligations set forth in this Agreement shall run with the Property and shall be binding upon and benefit the parties hereto as herein specified and their successors, assigns, legal representatives and successors-in-title. Any transferee of any portion of the Property shall automatically be deemed, by acceptance of the title to said property, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in said property. The foregoing notwithstanding, no property owner shall have any liability for any breach of this Agreement by another property owner. A breach of this Agreement by one property owner shall not prevent another property owner from developing its property in compliance with this Agreement and the approved Site Plan. For example, if a property owner completes its construction in compliance with all time periods for the applicable phase of development as set forth in Paragraph 9 above, such property owner shall not be deemed in breach of this Agreement due to the failure of another property owner within the same phase to complete its construction within the applicable time periods for that phase. Furthermore, any successor-in-title shall only have the rights under this Agreement that specifically relate to such property owner's property, unless Audubon specifically assigns additional rights to such property owner.

19. Captions and Paragraph Headings. Captions and paragraph headings contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or content of this Agreement nor the intent of any provision hereof.

20. Notices. All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by hand delivery, United States certified mail, postage prepaid, return receipt requested or by overnight courier service (e.g. FedEx, UPS) to the party to be notified at the addresses set forth hereinbelow or at such other addresses as the parties shall designate to each other in the manner prescribed for notice herein:

To Audubon:

Audubon Development, Inc.
P.O. Box 981
Palm Beach, FL 33480
Attn: Dale Matteson

With a copy to:

Dean, Mead, Minton & Zwerner
1903 South 25th Street, Suite 200
Ft. Pierce, FL 34947
Attention: W. Lee Dobbins, Esq.

To City of Fort Pierce:

City of Fort Pierce
City Hall
100 North U.S. 1
Fort Pierce, FL 34950
Attn: City Manager

With a copy to:

City of Fort Pierce
City Hall
100 North U.S. 1
Fort Pierce, FL 34950
Attn: City Attorney

Any notice shall be deemed received on the date of actual receipt or refusal. Changes of address shall be effective when provided in writing to the other party in the manner described herein.

21. Governing Law and Binding Effect. The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Florida and shall bind, and the benefits and advantages shall inure to and be enforceable by, Audubon and the City as well as their respective successors and assigns. Whenever used, the singular name shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS ATTACHED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

22. Survival of Obligations. This Agreement shall survive said Closing and shall not

merge with the delivery of the Deed and other closing documents.

23. Integrated Agreement, Waiver and Modifications. This Agreement represents the complete and entire understanding and agreement between and among the parties hereto with regard to all matters involved in this Agreement and supersedes any and all prior or contemporaneous agreements, representations, covenants, or memoranda, whether written or oral, made by any party hereto. This Agreement may not be modified or amended, nor may any provision contained herein be waived, except in writing signed by all parties hereto.

24. Interpretation. The parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and between parties equally sophisticated and knowledgeable in the matters dealt with in this Agreement, and that each party has been advised by counsel of its choosing with respect hereto. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is hereby waived. The terms of this Agreement shall be interpreted in a reasonable manner in order to effect the intent of the parties as set forth herein.

25. Computation of Time. Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. (where the Property is located) of the next business day. Time shall be of the essence as to all dates and times of performance under this Agreement.

26. Counterparts. This Agreement may be executed in any number of identical counterparts each of which shall be deemed to be an original for all purposes but all of which shall constitute one and the same instrument, and a copy of such signature received through telefax or electronic transmission shall bind the party whose signature is so received as if such signature were an original. In making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

27. Removal of Buried Concrete. The FPRA has set aside \$170,000 in escrow for the removal of buried concrete and other debris located on the Property. After the Closing, but before the commencement of construction on the Property, Audubon shall excavate and remove the buried concrete and other debris located on the Property, using Audubon's contractors, as may be needed for the construction of the Project in accordance with the approved Site Plan (the "Debris Removal"). Upon completion of the foregoing Debris Removal to Audubon's reasonable satisfaction, Audubon will give written notice of completion to the City, together with copies of invoices confirming the cost of the Debris Removal. Upon receipt of such written notice, FPRA shall promptly reimburse Audubon for the cost of the Debris Removal.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

WITNESSES:

“Audubon”

AUDUBON DEVELOPMENT, INC., a
Florida corporation

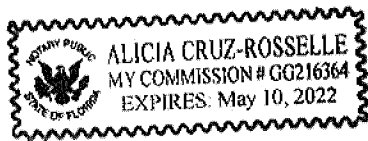
Alicia Cruz Roselle
Print Name: ALICIA CRUZ-ROSSELLE

By: [Signature]
Print Name: DALE MATTESON
Title: PRESIDENT

[Signature]
Print Name: W. Lee Dobbins

STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me this 23 day of
SEPTEMBER, 2021, by DALE MATTESON as PRESIDENT
of AUDUBON DEVELOPMENT, INC., a Florida corporation. Said person did not take an oath
and (check one) is personally known to me, produced a driver's license issued by a state of
the United States within the last five (5) years as identification, to wit:

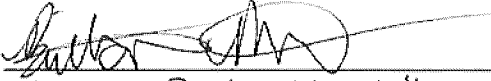
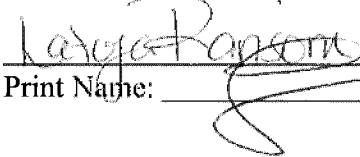


Alicia Cruz Roselle
Notary Public, State of Florida
Print Name: ALICIA CRUZ-ROSSELLE
Commission #: GG216364
My Commission Expires: 5/10/2022


[SIGNATURES CONTINUE ON FOLLOWING PAGES]

WITNESSES:

“City of Fort Pierce”:


 Print Name: Brittany Meredith

 Print Name: _____

CITY OF FORT PIERCE, FLORIDA, a
Florida municipal corporation

By: 
 Linda Hudson, Mayor

APPROVED AS TO FORM AND CORRECTNESS:


By: 
 Tahya Earley, City Attorney

STATE OF FLORIDA
 COUNTY OF St. Lucie

The foregoing instrument was acknowledged before me this 8th day of February, 2022, by LINDA HUDSON, as MAYOR, of CITY OF FORT PIERCE, a Florida municipal corporation. Said person did not take an oath and (check one) is personally known to me, produced a driver's license issued by a state of the United States within the last five (5) years as identification, to wit:



LINDA W. COX
 Notary Public
 State of Florida
 Comm# HH167003
 Expires 9/9/2025


 Notary Public, State of Florida
 Print Name: _____
 Commission #: _____
 My Commission Expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WITNESSES:

“FPRA”

FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163

[Signature]
Print Name: Brittany Meredith

By: Linda Hudson
Print Name: Linda Hudson
Title: Chairwoman

[Signature]
Print Name: LeToya Ransom

STATE OF FLORIDA
COUNTY OF St. Lucie

The foregoing instrument was acknowledged before me this 8th day of February, 2022, by Linda Hudson as Chairwoman of FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163. Said person did not take an oath and (check one) is personally known to me, produced a driver's license issued by a state of the United States within the last five (5) years as identification, to wit:

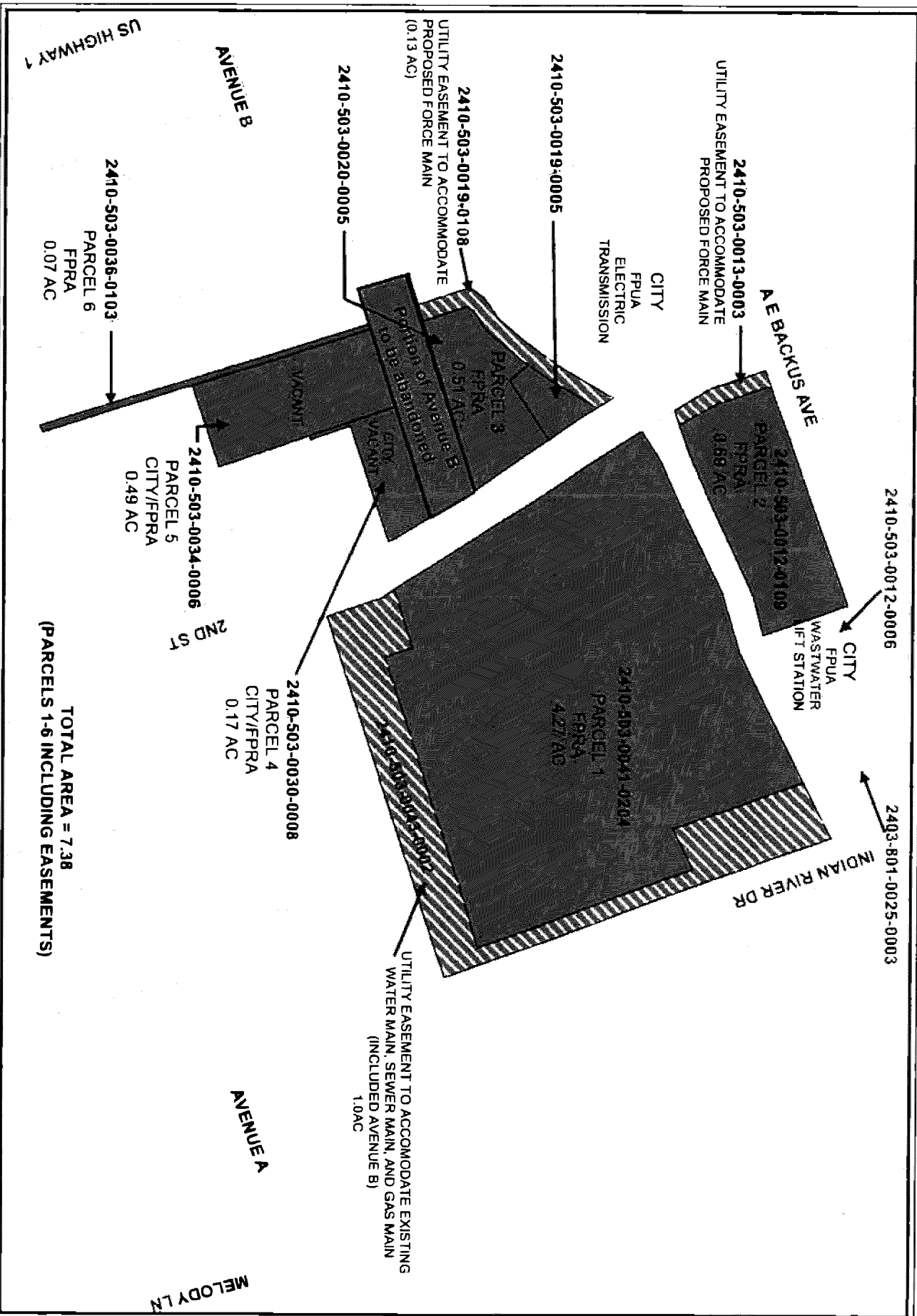


LINDA W. COX
Notary Public
State of Florida
Comm# HH167003
Expires 9/9/2025

Linda W. Cox
Notary Public, State of Florida
Print Name: _____
Commission #: _____
My Commission Expires: _____

EXHIBIT "A"
The "Property"
Parcels to be Conveyed by the City to Audubon
Page 1 of 2

Parcel 1	2410-503-0041-0204
Parcel 1	2410-503-0043-0002
Parcel 2	2410-503-0012-0109
Parcel 2	2410-503-0013-0003
Parcel 3	2410-503-0020-0005
Parcel 3	2410-503-0019-0005
Parcel 3	2410-503-0019-0108
Parcel 4	2410-503-0030-0008
Parcel 5	2410-503-0034-0006
Parcel 6	2410-503-0036-0103
Abandoned Portion of Avenue B	



DATE: OCT 11, 18
SCALE: 1" = 150'

PROPOSED DEVELOPMENT AREA SITE 1
APPROXIMATELY 7.38 ACRES

KING PLANT REDEVELOPMENT



EXHIBIT "B"

N. S. H. G.

W. 10th St.

N. S. H. G.

Portion of Avenue B
to be abandoned

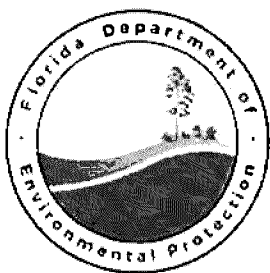


W. 10th St.

W. 10th St.

W. 10th St.

W. 10th St.

EXHIBIT "C"

Florida Department of Environmental Protection

Southeast District Office
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406-3007
561-681-6600

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

May 22, 2018

Via Email: lHUDSON@city-ftpierce.com

Mayor Linda Hudson, Chairwoman of the Fort Pierce Redevelopment Agency
A Dependent Special District of the City of Fort Pierce
100 North US Highway 1
Fort Pierce, FL 33494

Subject: Conditional Site Rehabilitation Completion Order (SRCO)
Former H.D. King Power Plant Site - Parcel 1
Former Address: 311 North Indian River Dr., & 322 North Second Street, Fort Pierce, St. Lucie
County, FL 34950
Site Identification Numbers: COM_82363. BF561101001
Parcel Identification Number(s): 2410-503-0041-020-4

Dear Mayor Hudson:

The Southeast District has reviewed the Combined Document – Site Assessment Addendum and Source Removal Completion Report, dated November 20, 2016, prepared by Cardno, the Combined Document Addendum, dated January 9, 2018, and the Declaration of Restrictive Covenant (DRC), recorded by the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, on March 22, 2018, in Official Record Book File 4415196, Book 4111, Pages 1502 - 1509, Public Records of Saint Lucie County, Florida, for the Former H.D. King Power Plant Site – Parcel 1, former address 311 North Indian River Dr. & 322 North Second Street, Fort Pierce, St. Lucie County, FL 34950. Maps showing the location of the Former H.D. King Power Plant Site – Parcel 1 and the location of the “contaminated site” for which this Order is being issued are attached as Exhibits 1 and 2 and are incorporated by reference herein. Failure to comply with the provisions of this order is a violation of section 376.302, Florida Statutes (F.S.). The contaminated site includes the following parcel or parts of parcel 410-503-0041-020-4 (collectively referred to as the property).

The contamination, which resulted from a discharge that was discovered in December 2007, consisted of Volatile Organic Compounds, Semi-Volatile Organic Compounds, Polychlorinated Biphenyls, Total Recoverable Petroleum Hydrocarbons, Aluminum, Arsenic, Barium, Cadmium, Chromium, Cobalt, Copper, Iron, Lead, Manganese, Mercury, Nickel, Thallium, Silver, Vanadium and Zinc. The discharge resulted from former operations of an electric power generation plant at the property since 1912, when a wood fired power plant began operation. That plant was removed from the site in the early 1930s after which the H.D. King Power Plant

Conditional Site Rehabilitation Completion Order (SRCO)
Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
Former H.D. King Power Plant Site - Parcel 1
Site Identification Numbers: COM_82363, BF561101001
Page 2 of 8

(KP) was built. The KP was a 131-Megawatt electric generating plant that used a mix of petroleum and natural gas fuels to power the electricity generating units. Due to the age of the plant and external and business reasons, the Ft. Pierce Utilities Authority (FPUA) closed and decommissioned the KP. As part of the decommissioning process for the former power plant, the plant operator, FPUA had a Phase I Environmental Site Assessment (ESA) prepared (Beck, December 2007) to document potential areas of interest/concern prior to commencing demolition of the plant.

Demolition activities began in May 2008 and were completed in October 2009. A Brownfields Site Rehabilitation Agreement (BSRA) under the Florida Brownfields Redevelopment Act (Chapter 376.77 - 376.85, Florida Statutes) was executed by the Department on November 29, 2012, to address the contamination. The Combined Document – Site Assessment Addendum and Source Removal Completion Report is supported by earlier submittals, prepared pursuant to the requirements of Chapter 62-780, Florida Administrative Code (F.A.C.), which can be found in the Department's document repository at: <http://depdms.dep.state.fl.us/Oculus/servlet/login>.

Based on the documentation submitted with the Combined Document – Site Assessment Addendum and Source Removal Completion Report and other submitted documents, the Department has reasonable assurance that the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, the Person Responsible for Brownfields Site Rehabilitation, "PRFBSR"), has met the criteria in Chapter 62-780, F.A.C. and has met the terms of the BSRA, including the commitments set forth in the technical submittals with respect to the establishment, use and recordation of institutional controls. The technical submittals indicate that acceptable Soil Cleanup Target Levels (SCTL's) have been met and groundwater contaminants remaining at the contaminated site are managed with appropriate institutional controls. Therefore, you have satisfied the site rehabilitation requirements for the contaminated site and are released from any further obligation to conduct site rehabilitation at the contaminated site, except as set forth below. See attached tables (Exhibit 3), incorporated by reference herein, which includes information regarding the contaminants, affected media, applicable cleanup target levels for the contaminated site that is the subject of this Order.

Based upon the information provided concerning the property located at 311 North Indian River Dr. & 322 North Second Street, Fort Pierce, St. Lucie County, FL 34950, it is the opinion of the Florida Department of Environmental Protection that the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, has successfully and satisfactorily implemented the approved brownfield site rehabilitation agreement schedule and, accordingly, no further action is required to assure that any land use identified in the brownfield site rehabilitation agreement is consistent with existing and proposed uses.

The following, including this Order, establish the institutional controls for the contaminated site and any change to the risk of exposure to any contamination or destabilization of any groundwater contamination that results from either failing to comply with the institutional controls or any change, amendment, revocation, or repeal of the institutional controls will result in the revocation of this Order.

Conditional Site Rehabilitation Completion Order (SRCO)
Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
Former H.D. King Power Plant Site - Parcel 1
Site Identification Numbers: COM_82363, BF561101001
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Declaration of Restrictive Covenant (DRC).

A DRC was recorded by the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, on March 22, 2018, in Official Record Book File 4415196, Book 4111, Pages 1502 - 1509, Public Records of Saint Lucie County, Florida, and is attached and incorporated by reference as Exhibit 4. The DRC applies to the portion of the property identified in said document as the Groundwater Restricted Area. Any current or future real property owner of the contaminated site must comply with the provisions contained within the DRC, (attached) recorded or otherwise established prior to the execution of this Order.

Groundwater Use Institutional Controls.

A permit is required by the South Florida Water Management District to do certain dewatering activities or install certain water production groundwater wells pursuant to Chapter 373, F.S. and the rules promulgated thereunder. The Department will rely upon these, to be collectively referred to as groundwater use institutional controls, to ensure that no contaminant exposure from using the groundwater as a potable drinking water source or using for irrigation or other non-potable water uses resulting in risk to human health, public safety or the environment will occur due to this contaminated site. As such, the PRFBSR must notify the Department if the PRFBSR becomes aware of the repeal or amendment of these groundwater use institutional controls, or if a violation occurs at the subject property of such groundwater use institutional controls such that the potential for exposure to contaminants resulting in risk to human health, public safety, and/or the environment is increased. Repeal, amendment, or violation of these groundwater use institutional controls or failure to notify the Department of such violation, amendment, or repeal may, in addition to other remedies available at law, result in proceedings to revoke this Order and require the immediate resumption of active cleanup or require that other approved institutional controls be implemented, unless demonstrated that the cleanup criteria under Subsection 62-780.680(1), F.A.C., have been achieved.

Dewatering.

The Department will rely on Rule 62-621.300, F.A.C., and the guidance incorporated therein, and prior Department Division of Waste Management review of any dewatering plan as the institutional control to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to dewatering activities on the contaminated site. Department Rule 62-621.300, F.A.C., requires a permit when conducting dewatering in the area of a contaminated site. The Department Division of Waste Management can only approve a dewatering plan that ensures the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated to avoid adversely impacting or increasing the potential for exposure to contaminants resulting in risk to human health, public safety or the environment. Unless it is demonstrated that the cleanup criteria under Subsection 62-780.680(1), F.A.C., have been achieved, the Department, in addition to other remedies available at law, may institute proceedings to revoke this Order and require the resumption of site rehabilitation activities if any dewatering activities are commenced without the Department's

Conditional Site Rehabilitation Completion Order (SRCO)
Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
Former H.D. King Power Plant Site - Parcel 1
Site Identification Numbers: COM_82363, BF561101001
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Division of Waste Management's prior approval. See attached and incorporated by reference Exhibit 4.

Stormwater facilities.

The Department will rely on Department and / or South Florida Water Management District review of any plan to construct new, or modify existing, stormwater facilities to ensure that there is no exposure to contaminated groundwater entering in to new or expanded stormwater facilities resulting in risk to human health, public safety or the environment due to the contaminated site. Construction of stormwater swales, stormwater detention or retention facilities, or ditches on the property could destabilize the groundwater plume or increase potential for exposure to contaminants resulting in risk to human health, public safety, or the environment. For this reason, parties seeking to construct stormwater facilities on the property, should first consult with and receive approval from the Department's Division of Waste Management in addition to obtaining any authorizations that may be required by the Department's Division of Water Resource Management, the Water Management District, or other applicable law. Unless it is demonstrated that the cleanup criteria under Subsection 62-780.680(1), F.A.C., have been achieved, the Department, in addition to other remedies available at law, may institute proceedings to revoke this Order and require the resumption of site rehabilitation activities if any such stormwater facilities are constructed are commenced without the Department's Division of Waste Management's prior approval. See attached and incorporated by reference Exhibit 4.

Removal of controls.

Where the institutional control is a restrictive covenant, if the current or future real property owner of the contaminated site proposes to remove it, the real property owner shall obtain prior written approval from the Department. For all types of institutional controls, the removal of the controls shall be accompanied by the immediate resumption of site rehabilitation or implementation of other approved controls, unless it is demonstrated to the Department that the criteria of Subsection 62-780.680(1), F.A.C., are met.

Well abandonment.

Based on the documentation previously submitted, all monitoring wells have been removed. Accordingly, the submittal of a Well Plugging Report is not required.

Future owners and users of the property should be made aware of the existence and contents of this Order. Additionally, information about the contaminated site will be maintained on the Department's Search Portal at: <http://prodenv.dep.state.fl.us/DepNexus/public/searchPortal> and on the Institutional Controls Registry website at: <https://floridadep.gov/waste/waste/content/institutional-controls-registry>.

Further, in accordance with Section 376.30701(4), F.S., upon completion of site rehabilitation, additional site rehabilitation is not required unless it is demonstrated that:

Conditional Site Rehabilitation Completion Order (SRCO)
Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
Former H.D. King Power Plant Site - Parcel 1
Site Identification Numbers: COM_82363, BF561101001
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- (a) Fraud was committed in demonstrating site conditions or completion of site rehabilitation;
- (b) New information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with Section 376.30701(2), F.S., or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment;
- (c) The level of risk is increased beyond the acceptable risk established under Section 376.30701(2), F.S., due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the site, thereby causing the level of risk to increase beyond the acceptable risk level, may be required by the Department to undertake additional remediation measures to ensure that human health, public safety, and the environment are protected consistent with Section 376.30701, F.S.; or
- (d) A new discharge of pollutants or hazardous substances occurs at the site subsequent to the issuance of this Order.

Legal Issues

The Department's Order shall become final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57, F.S., within 21 days of receipt of this Order. The procedures for petitioning for a hearing are set forth below.

Persons affected by this Order have the following options:

- A. If you choose to accept the Department's decision regarding this Conditional SRCO, you do not have to do anything. This Order is final and effective on the date filed with the Clerk of the Department, which is indicated on the last page of this Order.
- B. If you choose to challenge the decision, you may do the following:
 - 1. File a request for an extension of time to file a petition for hearing with the Department's Agency Clerk in the Office of General Counsel within 21 days of receipt of this Order. Such a request should be made if you wish to meet with the Department in an attempt to informally resolve any disputes without first filing a petition for hearing; or
 - 2. File a petition for administrative hearing with the Department's Agency Clerk in the Office of General Counsel within 21 days of receipt of this Order.

Please be advised that mediation of this decision pursuant to section 120.573, F.S., is not available.

How to Request an Extension of Time to File a Petition for Hearing

Conditional Site Rehabilitation Completion Order (SRCO)
 Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
 Former H.D. King Power Plant Site - Parcel 1
 Site Identification Numbers: COM_82363, BF561101001
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For good cause shown, pursuant to Rule 62-110.106(4), F.A.C., the Department may grant a request for an extension of time to file a petition for hearing. Such a request must be filed (received) by the Agency Clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, shall mail a copy of the request to the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, 100 North US Highway 1, Fort Pierce, FL 33494 at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be made.

How to File a Petition for Administrative Hearing

A person whose substantial interests are affected by this Order may petition for an administrative hearing under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) by the Agency Clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from the Fort Pierce Redevelopment Agency, A Dependent Special District of the City of Fort Pierce, 100 North US Highway 1, Fort Pierce, FL 33494, shall mail a copy of the petition to the Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce, 100 North US Highway 1, Fort Pierce, FL 33494, at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under sections 120.569 and 120.57, F.S.

Pursuant to subsection 120.569(2), F.S., and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

- a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the site owner's name and address, if different from the petitioner; the DEP facility number; and the name and address of the facility;
- b) A statement of when and how each petitioner received notice of the Department's action or proposed action;
- c) An explanation of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;
- d) A statement of the disputed issues of material fact, or a statement that there are no disputed facts;
- e) A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

Conditional Site Rehabilitation Completion Order (SRCO)
Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
Former H.D. King Power Plant Site - Parcel 1
Site Identification Numbers: COM_82363, BF561101001
Page 7 of 8

This Order is final and effective on the date filed with the Clerk of the Department, which is indicated on the last page of this Order. Timely filing a petition for administrative hearing postpones the date this Order takes effect until the Department issues either a final order pursuant to an administrative hearing or an Order Responding to Supplemental Information provided to the Department pursuant to meetings with the Department.

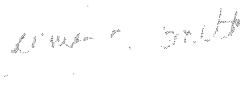
Judicial Review

Any party to this Order has the right to seek judicial review of it under section 120.68, F.S., by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department (see below).

Questions

Any questions regarding this Conditional Site Rehabilitation Completion Order, should be directed to Paul Alan Wierzbicki at the Department of Environmental Protection, Southeast District Office, 3301 Gun Club Road, MSC 7210-1, West Palm Beach, FL 33406-3007, telephone (561) 681-6677, e-mail: paul.wierzbicki@floridadep.gov. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 245-2242. Contact with any of the above does not constitute a petition for administrative hearing or request for an extension of time to file a petition for administrative hearing.

Sincerely,



Jennifer K. Smith
District Director
Southeast District

Conditional Site Rehabilitation Completion Order (SRCO)
Fort Pierce Redevelopment Agency, a Dependent Special District of the City of Fort Pierce,
Former H.D. King Power Plant Site - Parcel I
Site Identification Numbers: COM_82363, BF561101001
Page 8 of 8

FILING AND ACKNOWLEDGMENT
FILED, on this date, pursuant to §120.52
Florida Statutes, with the designated
Department Clerk, receipt of which is
hereby acknowledged.

Mandakum Patel May 22, 2018
Clerk Date

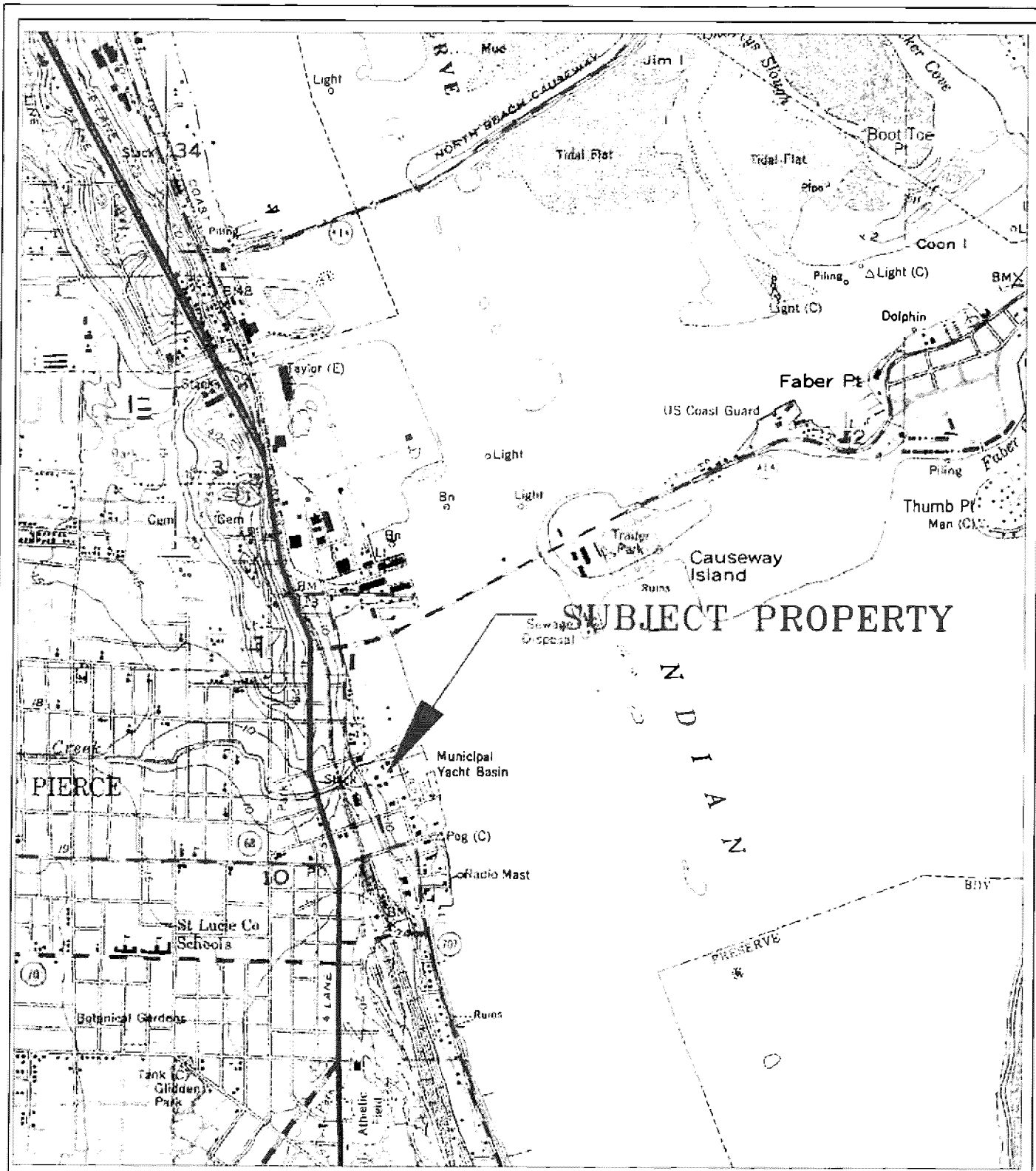
Exhibit 1: Figure 1, Site Vicinity Map.

Exhibit 2: Parcel / Site Boundary Map, dated 11-1-2016

Exhibit 3 – Collective Maps and Tables, (12 pages).

Exhibit 4: Declaration of Restrictive Covenant, File 4415196, Book 4111, Pages 1502 – 1509,
Recorded 03/22/2018.

cc: Michael O. Sznajstajler, Esq., Cobb Cole, Michael.Sznajstajler@Cobbcole.com
Laurie LaFavor, Laurie.Lafavor@cobbcole.com
Greg Schultz, Greg.Schultz@cardno.com
Barbara Alfano, US EPA, Region IV, Alfano.Barbara@epa.gov
David Koerner, Florida Health, St Lucie, david.koerner@flhealth.gov
Alberto Naya, South Florida Water Management District, anaya@sfwmd.gov
Carlos Derojas, P.E., South Florida Water Management District, cderojas@sfwmd.gov
Chad Brcka, P.G., South Florida Water Management District, cbrcka@sfwmd.gov
Stephanie Heidt, AICP, Treasure Coast Regional Planning Council, sheidt@terpc.org
FDEP- Diane Pupa, Carrie L. Kruchell, Justin L. Cross, Lisa Duchene, Lea Crandall (Agency Clerk), Jordan Bennett, Brian Dougherty, Kent Edwards, Paul Wierzbicki

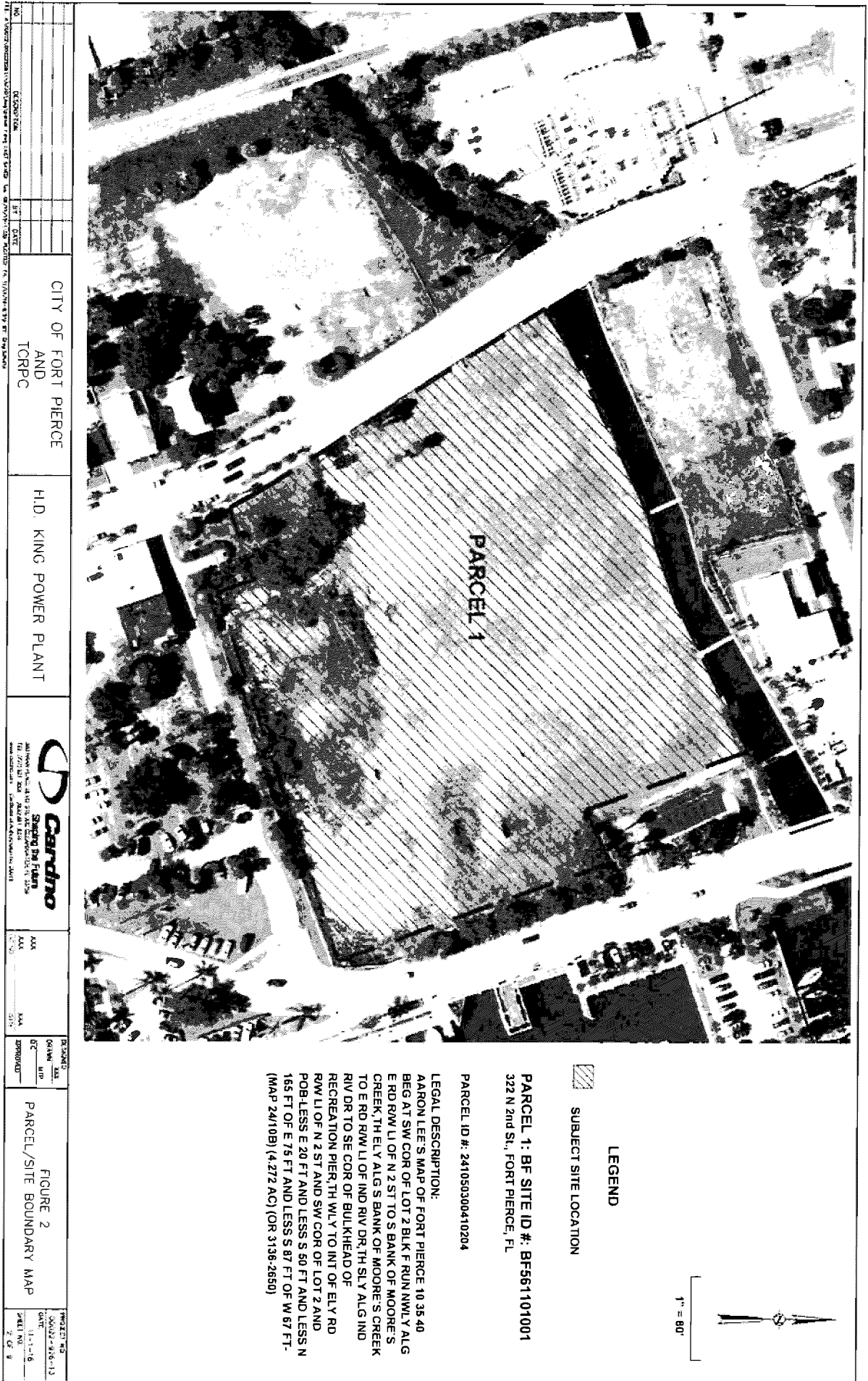


Cardno
 Shaping the Future
 380 PARK PLACE BLVD., 7TH FLOOR, FT. LAUDERDALE, FL 33309
 TEL: (770) 581-3225 (800) 881-8214
 www.cardno.com Certificate of Authorization No. 20815



FORMER HD KING POWER PLANT SITE
311 NORTH INDIAN RIVER DRIVE
FT. PIERCE, FL

FIGURE 1
SITE VICINITY MAP



LEGEND
 [Hatched Box] SUBJECT SITE LOCATION

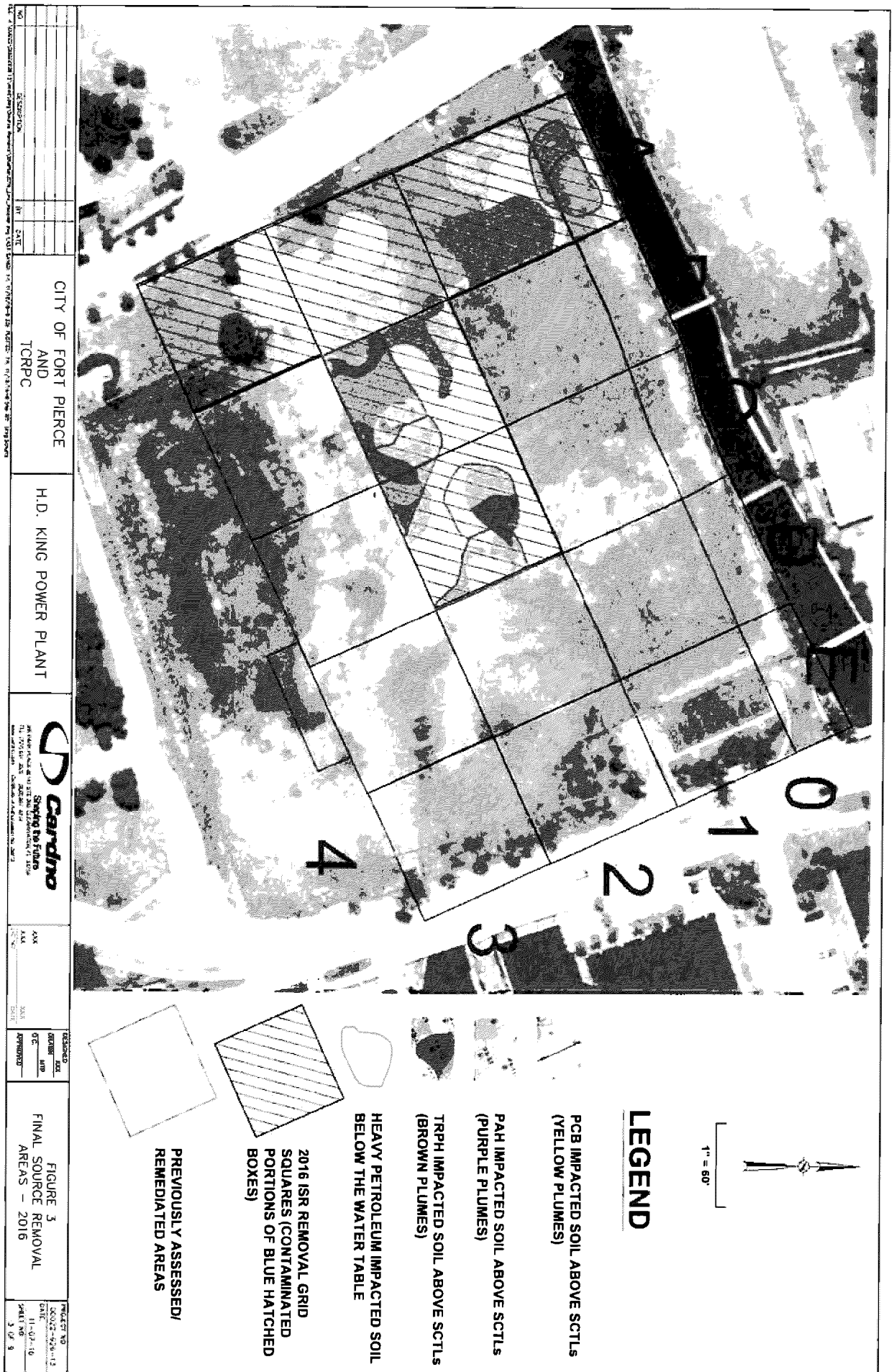
PARCEL 1: BF SITE ID #: BF561101001
 322 N 2nd St., FORT PIERCE, FL

PARCEL ID #: 241050300410204

LEGAL DESCRIPTION:
 AARON LEE'S MAP OF FORT PIERCE 10 35 40
 BEG AT SW COR OF LOT 2 BLK F RUN NWLY ALG
 E RD RW L I OF N 2 ST TO S BANK OF MOORE'S
 CREEK TH ELY ALG S BANK OF MOORE'S CREEK
 TO E RD RW L I OF IND RIV DR TH SLY ALG IND
 RIV DR TO SE COR OF BULKHEAD OF
 RECREATION PIER TH WLY TO INT OF ELY RD
 RW L I OF N 2 ST AND SW COR OF LOT 2 AND
 POB-LESS E 20 FT AND LESS S 50 FT AND LESS N
 155 FT OF E 75 FT AND LESS S 87 FT OF W 67 FT-
 (MAP 24110B) (4.272 AC) (OR 3136-2650)

NO.	DATE	CITY OF FORT PIERCE AND TORPC	H.D. KING POWER PLANT	<p>Cardno Shaping the Future 10000 N. US HWY 1 SUITE 200 FORT PIERCE, FL 34946 TEL: 888-888-8888 WWW.CARDNO.COM</p>	PREPARED BY: [Blank] CHECKED BY: [Blank] DATE: [Blank]	FIGURE 2 PARCEL/SITE BOUNDARY MAP	SHEET NO. 2 OF 8 SCALE: 1" = 80' DATE: 11-1-16
PROJECT NO. DRAWING NO. SHEET NO.	CITY OF FORT PIERCE AND TORPC H.D. KING POWER PLANT	PROJECT NO. DRAWING NO. SHEET NO.	PROJECT NO. DRAWING NO. SHEET NO.		PROJECT NO. DRAWING NO. SHEET NO.	PROJECT NO. DRAWING NO. SHEET NO.	

EXHIBIT 2 HDP Site ID No.: COM_82363, BF561101001



NO.	DESCRIPTION	DATE

CITY OF FORT PIERCE
AND
TORPC

H.D. KING POWER PLANT



DATE	SCALE

FIGURE 3
FINAL SOURCE REMOVAL
AREAS - 2016

PROJECT NO.
30022-428-12
DATE
11-07-16
PAGE NO.
3 OF 9

EXHIBIT 3, Page 1 FDEP Site ID No.: COM_82363, BF561101001

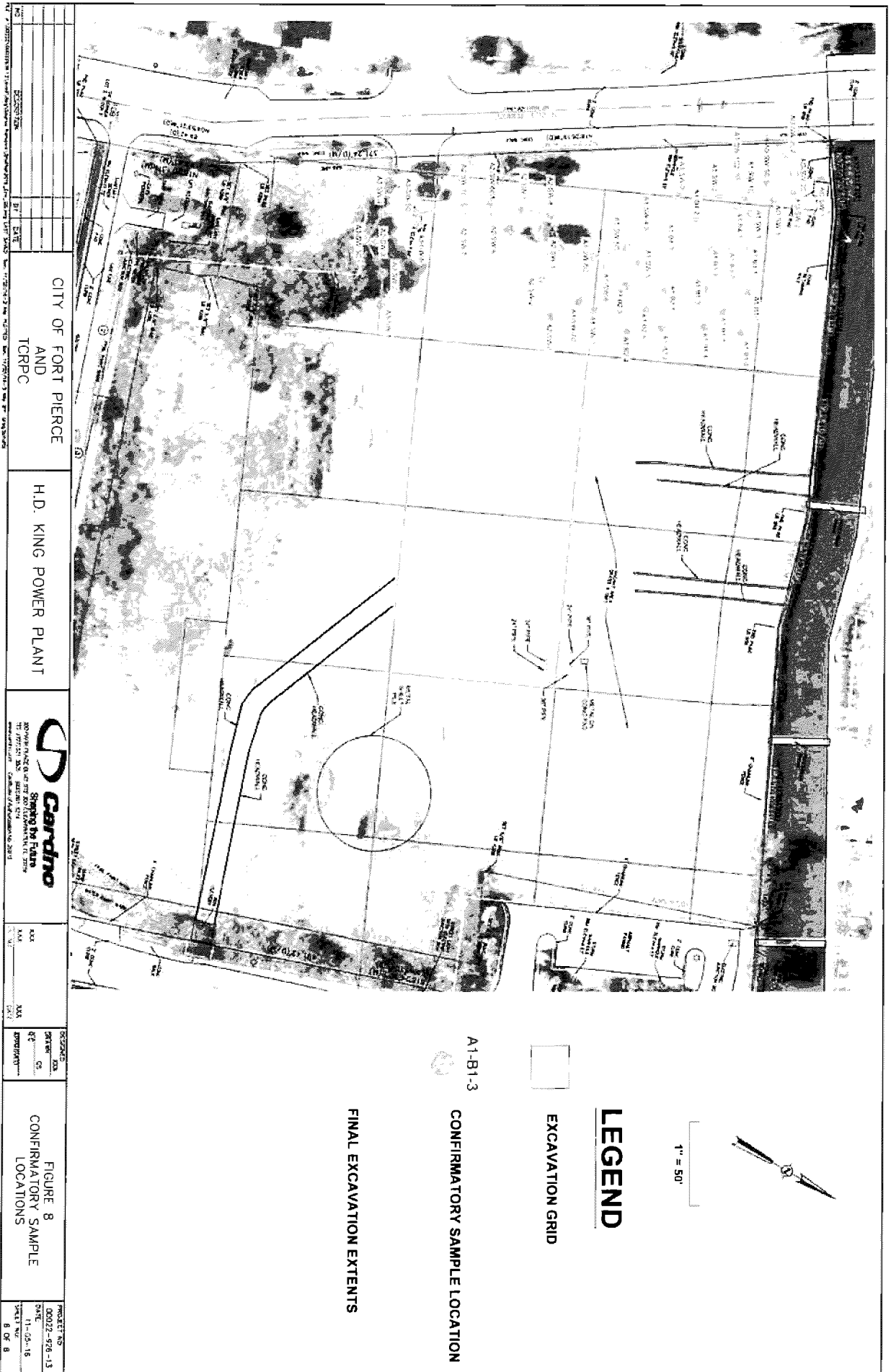


EXHIBIT 3, Page 2 FIDEP Site ID No.: COM_82363, BF561101001



H.D. King: 311 North Indian River Drive, Ft. Pierce, FL
 Table 23: Overburden Stockpile - Sample Analytical
 Results - March 2016

Sample Location	Collect Date	Method	Parameter	CAS No	Units	DE-Residential	DE-Comm/ Industrial	Leach -GC	Result	Qualifier
A1 Overburden	3/3/2016	FLPRO	Petroleum Range Organics		mg/kg	460	2700	340	77	
		EPA 8270C Low Level PAH	1-Methylnaphthalene	90-12-0	mg/kg dw	200	1800	3.1	0.115	U
		EPA 8270C Low Level PAH	2-Methylnaphthalene	91-57-6	mg/kg dw	210	2100	8.5	0.115	U
		EPA 8270C Low Level PAH	Acenaphthene	83-32-9	mg/kg dw	2400	20000	2.1	0.057	U
		EPA 8270C Low Level PAH	Acenaphthylene	208-96-8	mg/kg dw	1800	20000	27	0.057	U
		EPA 8270C Low Level PAH	Anthracene	120-12-7	mg/kg dw	21000	300000	2500	0.057	U
		EPA 8270C Low Level PAH	Benzo(a)anthracene	56-55-3	mg/kg dw	#	#	0.8	0.081	U
		EPA 8270C Low Level PAH	Benzo(a)pyrene	50-32-8	mg/kg dw	0.1	0.7	8	0.055	U
		EPA 8270C Low Level PAH	Benzo(b)fluoranthene	205-99-2	mg/kg dw	#	#	2.4	0.08	U
		EPA 8270C Low Level PAH	Benzo(g,h,i)perylene	191-24-2	mg/kg dw	2500	52000	32000	0.046	U
		EPA 8270C Low Level PAH	Benzo(k)fluoranthene	207-08-9	mg/kg dw	#	#	24	0.034	U
		Calculation	BaP Equivalent		mg/kg dw	0.1	0.7	8	0.08	U
		EPA 8270C Low Level PAH	Chrysene	218-01-9	mg/kg dw	#	#	77	0.07	U
		EPA 8270C Low Level PAH	Dibenz(a,h)anthracene	53-70-3	mg/kg dw	#	#	0.7	0.0082	U
		EPA 8270C Low Level PAH	Fluoranthene	206-44-0	mg/kg dw	3200	59000	1200	0.164	U
		EPA 8270C Low Level PAH	Fluorene	86-73-7	mg/kg dw	2600	33000	160	0.057	U
		EPA 8270C Low Level PAH	Indeno(1,2,3-cd)pyrene	193-39-5	mg/kg dw	#	#	6.6	0.054	U
		EPA 8270C Low Level PAH	Naphthalene	91-20-3	mg/kg dw	55	300	1.2	0.115	U
		EPA 8270C Low Level PAH	Phenanthrene	85-01-8	mg/kg dw	2200	36000	250	0.057	U
		EPA 8270C Low Level PAH	Pyrene	129-00-0	mg/kg dw	2400	45000	880	0.114	U
		EPA 8082 PCB	Aroclor-1016	12674-11-2	mg/kg dw				0.000554	U
		EPA 8082 PCB	Aroclor-1221	11104-28-2	mg/kg dw				0.000554	U
		EPA 8082 PCB	Aroclor-1232	11141-16-5	mg/kg dw				0.000554	U
		EPA 8082 PCB	Aroclor-1242	53469-21-9	mg/kg dw	0.5	2.6	17	0.000554	U
		EPA 8082 PCB	Aroclor-1248	12672-29-6	mg/kg dw				0.000554	U
		EPA 8082 PCB	Aroclor-1254	11097-69-1	mg/kg dw				0.000554	U
		EPA 8082 PCB	Aroclor-1260	11096-82-5	mg/kg dw				0.12	U

Notes:
 I = The reported value is between the laboratory limit of detection (MDL) and the laboratory limit of quantitation (PQL)
 U = Indicates that a specific compound was analyzed for but not detected. The reported value shall be the MDL.
 # = Site concentrations for carcinogenic polycyclic aromatic hydrocarbons must be converted to Benzo(a)pyrene equivalents before comparison with the appropriate direct exposure SCTL
 NA = Not Analyzed
 NC = Not Calculated



1" = 70'




LEGEND

MW-6
 MONITOR WELL LOCATION

 EXCAVATION GRID

EXHIBIT 3 Page 8

Fort Pierce Redevelopment Agency,
 FDEP Site ID NO.: COM. 82363,
 BF561101001

<p>CITY OF FORT PIERCE AND TCRPC</p>		<p>H.D. KING POWER PLANT</p>		 <p>Cardno 300 N. W. 10th St., Suite 200 Ft. Pierce, FL 34946 (888) 888-8888</p>		<p>DESIGNED: XOX</p>	<p>PROJECT NO.: 00022-926-11</p>
<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>	<p>DATE: 8-10-15</p>
<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>	<p>SHEET NO.: 8 OF 9</p>

**FIGURE 8
 MONITOR WELL LOCATIONS**



Table 20: Groundwater Analytical Results June 2014, September 2014, & June 2015
H.D. King: 311 North Indian River Drive, Ft. Pierce, FL

Method	Parameter	CAS No	Units	detection	MCL	MW 5			MW 6			MW 7			MW 8				
						Result	Q	U	Result	Q	U	Result	Q	U	Result	Q	U		
82101	2,4-Dichlorophenoxyacetic acid	11144-2	ug/l	0.01	3	0.20	U	0.10	U	0.20	U	0.25	U	0.20	U	0.20	U	0.20	U
82102	2,4-Dichlorophenoxypropionic acid	36739-1	ug/l	0.1	50	0.66	U	0.66	U	0.66	U	0.66	U	0.66	U	0.66	U	0.66	U
82103	2,4-Dichlorophenoxyethoxyacetic acid	14744-1	ug/l	0.1	50	2.5	U	2.5	U	2.5	U	2.5	U	2.5	U	2.5	U	2.5	U
82104	Butyl Benzyl Phosphate	85-68-7	ug/l	100	1000	0.73	U	0.73	U	0.73	U	0.73	U	0.73	U	0.73	U	0.73	U
82105	Diethyl Phosphate	6274-2	ug/l	100	7000	0.82	U	0.82	U	0.82	U	0.82	U	0.82	U	0.82	U	0.82	U
82106	Di-n-butyl phosphate	11744-0	ug/l	100	1400	0.3	U	0.3	U	0.3	U	0.3	U	0.3	U	0.3	U	0.3	U
82107	Diethyl Phosphate	13242-9	ug/l	100	240	0.3	U	0.3	U	0.3	U	0.3	U	0.3	U	0.3	U	0.3	U
82108	Di-n-butyl phosphate	8448-2	ug/l	100	56000	0.51	U	0.51	U	0.51	U	0.51	U	0.51	U	0.51	U	0.51	U
82109	Di-n-butyl phosphate	13141-0	ug/l	100	20000	0.56	U	0.56	U	0.56	U	0.56	U	0.56	U	0.56	U	0.56	U
82110	Hexachlorocyclopentadiene	11874-1	ug/l	100	100	0.64	U	0.64	U	0.64	U	0.64	U	0.64	U	0.64	U	0.64	U
82111	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82112	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82113	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82114	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82115	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82116	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82117	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82118	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82119	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82120	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82121	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82122	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82123	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82124	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82125	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82126	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82127	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82128	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82129	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82130	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82131	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82132	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82133	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82134	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82135	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82136	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82137	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82138	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82139	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82140	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82141	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82142	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82143	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82144	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82145	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82146	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82147	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82148	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82149	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U
82150	Hexachlorocyclopentadiene	8248-1	ug/l	0.1	40	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U	0.22	U

Notes:
 1. The reported value is between the laboratory limit of detection (MLO) and the laboratory limit of quantitation (PQL).
 2. Estimated value may not be accurate.
 3. Indicates that a specific compound was analyzed but not detected. The reported value shall be the MLO.

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 4415196 OR BOOK 4111 PAGE 1502, Recorded 03/22/2018 01:25:52 PM

This instrument prepared by:
Michael Sznajstajler, Esquire
Cobb Cole
149 S. Ridgewood Avenue, Suite 700
Daytona Beach, FL 32114

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration") is made this 22 day of March, 2018, by Fort Pierce Redevelopment Agency, a dependent special district of the City of Fort Pierce (hereinafter "GRANTOR") and the Florida Department of Environmental Protection (hereinafter "FDEP").

RECITALS

A. GRANTOR is the fee simple owner of that certain real property situated in the County of St. Lucie, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Groundwater Restricted Area");

B. The FDEP Facility Identification Number for the Groundwater Restricted Area is COM_#2363 and BF561101001. The facility name at the time of this Declaration is Former H.D. King Power Plant Site - Parcel #1. This Declaration addresses contamination that was addressed by GRANTOR pursuant to the terms of a Brownfield Site Rehabilitation Agreement entered into between the GRANTOR and FDEP on November 29, 2012 (hereinafter the "BSRA");

C. The presence of vanadium and naphthalene in the Groundwater Restricted Area is documented in the following reports that are incorporated by reference:

1. *Interim Source Removal Report - 2014*, prepared by Cardno, dated October 31, 2014;
2. *Interim Source Removal Report - 2015*, prepared by Cardno, dated August 31, 2015; and
3. *Combined Document - Site Assessment Addendum and Source Removal Completion Report*, prepared by Cardno, dated November 20, 2016.

D. The reports noted in Recital C set forth the nature and extent of the contamination described in Recital C that is located in the Groundwater Restricted Area. These reports confirm that contaminated groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Groundwater Restricted Area. Also, these reports document that the groundwater contamination does not extend beyond the Groundwater Restricted Area boundary, that the extent of the groundwater contamination does not exceed 1/4 acres, and the groundwater contamination is not migrating.

E. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure of users or occupants of the Groundwater Restricted Area and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter "Order") upon recordation of this Declaration. FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of naphthalene and vanadium increase above the levels approved in the Order, or if a subsequent discharge occurs at the Groundwater Restricted Area, FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. COM_82363 and BF561101001, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area; and

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Groundwater Restricted Area that an Order be obtained and that the Groundwater Restricted Area be held subject to certain restrictions, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce FDEP to issue the Order and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. GRANTOR hereby imposes on the Groundwater Restricted Area the following restriction:
 - a. There shall be no use of groundwater under the Groundwater Restricted Area. There shall be no drilling for water conducted on the Groundwater Restricted Area, nor shall any wells be installed on the Groundwater Restricted Area, other than monitoring wells pre-approved in writing by FDEP's Division of Waste Management (DWM), in addition to any authorizations required by the Division of Water Resource Management and the Water Management Districts. Additionally, there shall be no stormwater swales, stormwater detention or retention facilities, or ditches on the Groundwater Restricted Area. For any dewatering activities, a plan approved by FDEP DWM must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.
3. In the remaining paragraphs, all references to "GRANTOR" and "FDEP" shall also mean and refer to their respective successors and assigns.
4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon, over and through and access to the Groundwater Restricted Area at reasonable times and with reasonable notice to GRANTOR. Access to the Groundwater Restricted Area is granted by North Indian River Drive.

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Groundwater Restricted Area, run with the land and with the title to the Groundwater Restricted Area, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP, and to any and all parties hereafter having any right, title or interest in the Groundwater Restricted Area or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and FDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Groundwater Restricted Area or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Groundwater Restricted Area.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall record this Declaration, and reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Groundwater Restricted Area, GRANTOR agrees to notify in writing all proposed tenants of the Groundwater Restricted Area of the existence and contents of this Declaration of Restrictive Covenant.

7. This Declaration is binding until a release of covenant is executed by FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from the FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendments must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Groundwater Restricted Area in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Groundwater Restricted Area. GRANTOR also covenants and warrants that the Groundwater Restricted Area is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR'S rights to impose the restrictive covenant described in this Declaration.

[Remainder of Page Intentionally Blank - Signature Pages Begin on Next Page]

IN WITNESS WHEREOF, Fort Pierce Redevelopment Agency, has executed this instrument, this 21st day of February, 2018.

GRANTOR
Fort Pierce Redevelopment Agency, a dependent special district of the City of Fort Pierce
100 North US 1
Fort Pierce, FL 34954

By: Linda Hudson
Name: Linda Hudson
Chairwoman of the Fort Pierce Redevelopment Agency

Signed, sealed and delivered in the presence of:

Witness: _____ Date: 2/21/18
Print Name: _____

Witness: _____ Date: 2/21/18
Print Name: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 21 day of February, 2018, by Linda Hudson as Chairwoman of the Fort Pierce Redevelopment Agency, a dependent special district of the City of Fort Pierce.

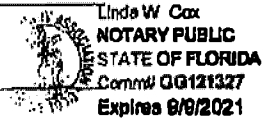
Personally Known OR Produced Identification _____
Type of Identification Produced _____

Linda W. Cox
Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____



APPROVED AS TO FORM AND CORRECTNESS

BY: [Signature]
City Attorney

[Remainder of Page Intentionally Blank]

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this 22 day of MARCH, 2018.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Jennifer K. Smith
Name: Jennifer K. Smith
Title: District Director
FDEP Southeast District
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406

Signed, sealed and delivered in the presence of:

Witness: [Signature] Date:
Print Name: [Name]

Witness: [Signature] Date: 3/22/2018
Print Name: [Name]

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 22nd day of March 2018, by Jennifer K. Smith as representative for the Florida Department of Environmental Protection.

Personally Known OR Produced Identification
Type of Identification Produced

[Signature]
Signature of Notary Public
Rose Blackwood
Print Name of Notary Public
Commission No. GG105296
Commission Expires: 6/10/2021

APPROVED AS TO FORM AND CORRECTNESS

BY: [Signature]
City Attorney

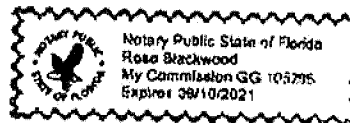


EXHIBIT A
Legal Description and Sketch of the Groundwater Restricted Area

Exhibit A

LEGAL DESCRIPTION

BEING A PARCEL OF LAND LYING IN SECTION 10, TOWNSHIP 35 SOUTH, RANGE 40 EAST, CITY OF FT. PIERCE, SAINT LUCIE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF LOT 8, BLOCK F, ARRON LEE'S MAP OF FORT PIERCE; PROCEED NORTH 18°25'13" WEST, ALONG THE EAST RIGHT-OF-WAY OF NORTH 2ND STREET (FORMERLY KNOWN AS PINE STREET AS SHOWN ON ARRON LEE'S MAP OF FORT PIERCE) (A 60 FOOT WIDE RIGHT-OF-WAY) AND THE WEST LINE OF BLOCK F, A DISTANCE OF 323.41 FEET TO AN ANGLE POINT IN THE EAST RIGHT-OF-WAY LINE OF THE REALIGNED PORTION OF NORTH 2ND AVENUE; THENCE NORTH 31°58'11" WEST, ALONG SAID EAST RIGHT-OF-WAY LINE OF NORTH 2ND AVENUE (A 50 FOOT WIDE RIGHT-OF-WAY) A DISTANCE OF 371.24 FEET TO A POINT ON THE CENTERLINE OF A 2.6 FOOT CONCRETE BULKHEAD ON THE SOUTH TOP OF BANK OF MOORES CREEK (THE FOLLOWING 2 COURSES ARE ALONG THE CENTERLINE OF SAID CONCRETE BULKHEAD AND THE SOUTH TOP OF BANK OF MOORES CREEK) THENCE NORTH 57°01'20" EAST, DEPARTING SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 44.68 FEET; THENCE NORTH 65°32'35" EAST, A DISTANCE OF 93.33 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL;

THENCE SOUTH 68°48'59" EAST, A DISTANCE OF 503.79 FEET; THENCE NORTH 18°24'56" WEST, A DISTANCE OF 190.54 FEET; THENCE SOUTH 64°10'00" WEST, A DISTANCE OF 55.46 FEET; THENCE NORTH 18°24'56" WEST, A DISTANCE OF 166.39 FEET TO A POINT ON THE CENTERLINE OF A 2.6 FOOT CONCRETE BULKHEAD ON THE SOUTH TOP OF BANK OF MOORES CREEK (THE FOLLOWING 3 COURSES ARE ALONG THE CENTERLINE OF SAID CONCRETE BULKHEAD AND THE SOUTH TOP OF BANK OF MOORES CREEK); THENCE SOUTH 64°10'00" WEST, A DISTANCE OF 178.13 FEET; THENCE SOUTH 74°23'11" WEST, A DISTANCE OF 71.16 FEET; THENCE SOUTH 65°29'21" WEST, A DISTANCE OF 85.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.352 ACRES, MORE OR LESS.

NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD WORK, VIEWING OF THE SUBJECT PROPERTY OR MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON.

NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHT-OF-WAY AND/OR EASEMENTS OF RECORD.

THOMAS P. KIERNAN DATE
Professional Surveyor & Mapper
Florida Certificate No. 8188

Page 1 of 2

P:\Proj-2013\13-071 HO King Power Plant\Survey\13-071_sbd.dwg, 3/21/2017 3:45:20 PM



CULPEPPER & TERPENING, INC

CONSULTING ENGINEERS | LAND SURVEYORS

2080 SOUTH 25th STREET • FORT PIERCE, FLORIDA 34981
151 SIX FLAGLER AVENUE • STUART, FLORIDA 34994
PHONE 772-464-3537 • FAX 772-464-9497 • www.c-t-eng.com
STATE OF FLORIDA CERTIFICATION No. 12 016

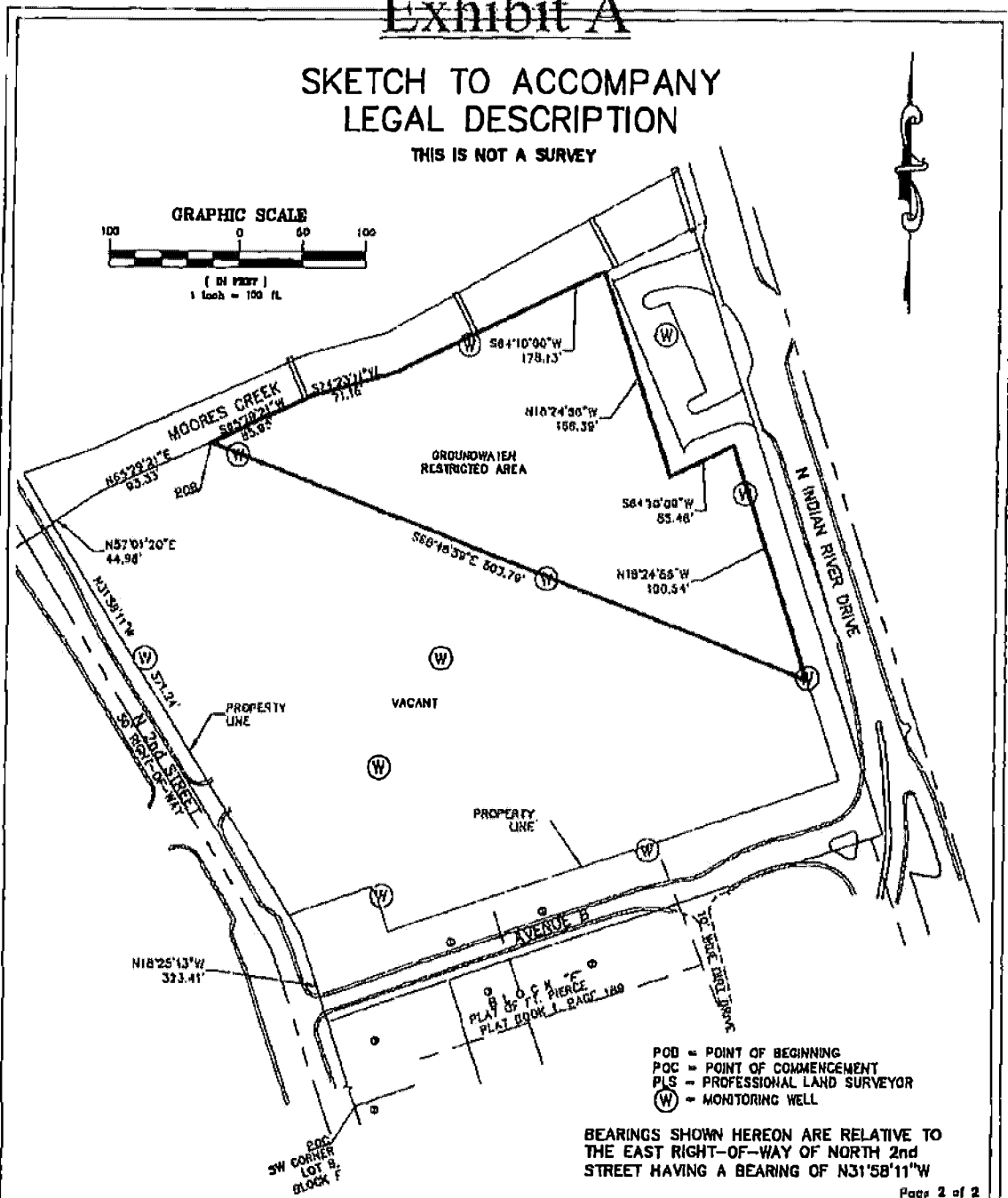
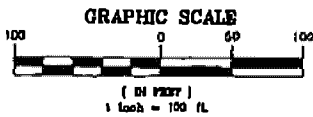
GROUNDWATER RESTRICTED AREA DESCRIPTION

JOB NO: 13-071_sbd.dwg	SCALE: N/A
DRAWN BY: GJM	DATE: 3-17-2017

Exhibit A

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

THIS IS NOT A SURVEY



- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- PLS = PROFESSIONAL LAND SURVEYOR
- W = MONITORING WELL

BEARINGS SHOWN HEREON ARE RELATIVE TO
THE EAST RIGHT-OF-WAY OF NORTH 2nd
STREET HAVING A BEARING OF N31°58'11"W

P:\proj-2015\13-071 HD King Power Plant\Survey\13-071.ssd.dwg, 3/21/2017 3:45:57 PM



CULPEPPER & TERPENING, INC
CONSULTING ENGINEERS | LAND SURVEYORS
2980 SOUTH 11 25th STREET • FORT PIERCE, FLORIDA 34981
151 SW FLAGLER AVENUE • STUART, FLORIDA 34994
PHONE 772-464-3537 • FAX 772-464-3497 • www.ct-eng.com
STATE OF FLORIDA CERTIFICATION No. LD-4746

GROUNDWATER RESTRICTED AREA SKETCH OF DESCRIPTION

JOB NO: 13-071.ssd.dwg	SCALE: 1"=100'
DRAWN BY: GJM	DATE: 3-17-2017

EXHIBIT "D"
Memo Regarding Financial Information

WTL+a

VIA E-MAIL: kdefaney@tcrpc.org

TO: Kim Delaney, Ph.D.
Director, Strategic Development & Policy
Treasure Coast Regional Planning Council

FROM: WTL+a

DATE: August 9, 2019

RE: Summary Comments—Audubon Development Pro Forma Review
H.D. King Site

WTL+a has conducted a review of the draft pro forma prepared by Audubon Development for its proposed redevelopment of the H.D. King site in downtown Fort Pierce. This review has been prepared as part of our scope of services for Treasure Coast Regional Planning Council (TCRPC) on behalf of the Fort Pierce Redevelopment Authority (FPRA).

Based on this review, it is our recommendation that the pro forma be restructured to allow a more accurate analysis of project performance as well as possible financial ramifications to the City. For example, it is industry-standard in any real estate cash flow analysis to prepare a forecast for a 10-year period with "reversion" (or sale) of the asset in year 10 in order to calculate investment rate-of-return (IRR). The Audubon pro forma forecast was for five (5) years only, with sale of the asset identified in year five of the analysis. We urge the City to understand why Audubon would seek such an exit strategy, with disposition of the asset in year five.

Development Program

- As we understand, Audubon Development will not develop the 120-room hotel, but intends to sell a 1.34-acre site to a third-party developer to construct a 107,159 sq. ft. property. The pro forma carries gross revenues of \$1.5 million for disposition of this site to a third-party developer. However, the only revenue stream illustrated in the pro forma for the hotel is an annual reimbursement for common area maintenance

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Washington, DC—Provincetown, MA
202.885.9121 301.502.4171 774.538.6070



(CAM). As a result, WTL+a is unable to evaluate any financial aspect of the project's hotel component;

- As it is not known whether Audubon Development is in negotiations with a third-party developer for the hotel, the validity of the potential revenues generated by sale of the pad site cannot be determined; and
- **WTL+a previously requested information to verify/document potential deal terms associated with this transaction, such as a Letter of Intent (LOI) and/or a draft operating pro forma.** To date, nothing has been provided.

Sources & Uses of Funds

- Many of the inputs in Sources & Uses of Funds have been entered manually and not linked to specific inputs/assumptions. As a result, there is no way to verify how these inputs, such as hard and soft costs, were calculated or to be able to link these inputs to actual values/estimates;
- The pro forma identifies a contingency of \$2,978,751. Based on hard and soft costs of \$60,826,093, this would reflect a contingency of 4.9%. However, the pro forma notes the contingency is 8%. If the 8% factor is applied to the \$60.8 million in hard and soft costs, this would be \$4,866,000, not \$2.97 million;
- In our experience, it is customary to estimate a 10% contingency. This is particularly critical today in light of rapidly-increasing construction costs for materials, significant uncertainties created by the administration's tariff policies, and increasing costs of construction labor due to labor shortages; and
- On the Sources & Uses of Funds tab, financing costs of \$5,917,899 are illustrated and reflect the sum of mortgage broker fees and loan interest reserves. However, in the "Dev Budget Info" tab, total financing costs are actually \$7,927,752. This reflects a difference of \$2,009,752, which comprises the lender origination fee, the lender exit fee and other costs (survey, appraisal, title, recording fees, stamps, etc.). **We cannot determine how these additional costs are accounted for in the pro forma. These additional financing costs are likely to impact project results.**

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Pro Forma

- WTL+a notes that there is no lease-up period illustrated in the pro forma, which results in the full rental revenues being reflected in year one. In mixed-use projects, full rental revenues generated by a project's multi-family units, office space and retail tenancies are typically not achieved until a "stabilized year" (typically defined as year three). It is unknown whether or not Audubon is accounting for "pent-up demand" as identified in the market study as well as the project's small size to justify full lease-up in year one. Nonetheless, we suggest using a lease-up period over a two- to three-year period to reflect the project's "untested" market location, particularly if the project's other (commercial) uses are not pre-leased;
- The pro forma assumes a standard vacancy allowance of 10% over the five-year cash flow. Typically, the industry-standard is 5%, so this would be considered a conservative metric; and
- **WTL+a notes that the pro forma assumes an annual TIF of \$333,333 over the first three years of the cash flow.** As we understand, the development agreement calls for an annual TIF amount not to exceed \$200,000 per year to a maximum of \$1.0 million. By reducing the annual TIF payment to \$200,000 per year and extending it over an additional two years, it reduces the project's stabilized year value (year three) by \$2.2 million—from \$48,651,100 to \$46,449,000.

Profit Analysis

- We note that the pro forma assumes sell-out sales costs for the project's condominium component of 4%. At 4%, these costs are extremely underestimated. While a 4% sell-out cost may cover a blended broker commission rate, there are additional costs associated with marketing, property taxes, HOA, insurance, utilities, management fees, legal fees, and a warranty reserve. A 5% to 6% sell-out sales cost would be customary. This same issue is also applicable to the project's proposed single-family detached units;
- The pro forma also does not consider an annual absorption/sell-off of the condominium units. Similar to the multi-family rental units, the small number of

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condominium units (60) may yield a more rapid sell-off. However, in an untested location such as the H.D. King site, we would recommend a longer absorption (sell-off) period to more conservatively reflect local market characteristics;

- The Profit Analysis also estimates the asset's proceeds upon sale. Interestingly, it uses the net operating income (NOI) in year 3 instead of the NOI in the last year of the pro forma (in this case, year five). As we discovered throughout the pro forma, this calculation was entered as a hard number (\$3,600,000), instead of being linked to the actual NOI in year three;
- Moreover, by reducing the annual TIF payment—from \$333,333 (in years 1—3) to \$200,000 per year (in years 1—5) as identified in the draft development agreement, it reduces the project's reversion/sale value by approximately \$1.7 million, but only \$1.2 million in year five;
- The Profit Analysis also illustrates a return on the developer's initial equity investment (30%, or \$19.1 million) of 10%. It is unclear whether this 10% Return-of-Equity factor is realized only upon reversion/sale of the asset in year five. Typically, there would be a guaranteed annual return payment but it is not clear from the pro forma; and
- Other performance metrics (e.g., capitalization/cap rates, commercial retail and office rents, multi-family rents and condominium unit pricing, etc.) are assumed to be indicative of local market conditions.

Given the concerns noted above, WTL+a is unable to provide a recommendation to the FPRA to proceed with negotiations until these outstanding issues are resolved and/or relevant data is provided.

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Real Estate & Economic Advisors
 Washington, DC—Provincetown, MA
 202.885.9121 301.502.4171 774.538.6070

EXHIBIT "E"

This Instrument Prepared By:
W. LEE DOBBINS, ESQ.
Dean, Mead, Minton & Zwemer
1903 South 25th Street, Suite 200
Fort Pierce, Florida 34947
(772) 464-7700

For Official Use Only
Tax Parcel Identification No.: _____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made as of the ____ day of _____, 20____, by the FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163 ("**Grantor**"), to AUDUBON DEVELOPMENT, INC., a Florida corporation, whose address is P.O. Box 981, Palm Beach, FL 33480 ("**Grantee**").

(Whenever used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, personal representatives and assigns of individuals and the successors and assigns of corporations, limited liability companies, partnerships, governmental and quasi-governmental entities.)

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee, all that certain parcel of real property (the "**Land**") situate in St. Lucie County, Florida and more particularly described in **Exhibit "A"**, attached hereto and made a part hereof.

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND GRANTOR hereby covenants with Grantee that Grantor is lawfully seized of the Land in fee simple; that Grantor has good right and lawful authority to sell and convey Grantor's interest in and to the Land and hereby warrants the title to the Land and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but not otherwise. This conveyance is subject to taxes accruing subsequent to December 31, 20____, and to easements, restrictions, agreements, conditions, limitations, reservations and other matters of record, if any, but this reference to the foregoing shall not operate to reimpose the same.

PROVIDED THAT in the event that Grantee defaults on its obligations set forth in that certain Agreement for Development of King’s Landing, by and between The City of Fort Pierce, the Fort Pierce Redevelopment Agency and Grantee, dated _____, 2019, and recorded in Official Records Book _____, Page _____, of the Public Records of St. Lucie County, Florida, then Grantor shall have the right to re-enter and retake possession of the Land, and fee simple title to such land shall revert to the Grantor.

IN WITNESS WHEREOF, the party referred to above as Grantor has caused this instrument to be executed and delivered in its name and has intended the same to be and become effective as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

**FORT PIERCE REDEVELOPMENT
AGENCY**, a community redevelopment
agency established pursuant to Florida
Statutes Chapter 163

Print Name: _____

By: _____
Print Name: _____
Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of FORT PIERCE REDEVELOPMENT AGENCY, a community redevelopment agency established pursuant to Florida Statutes Chapter 163. Said person did not take an oath and (check one) is personally known to me, produced a driver’s license issued by a state of the United States within the last five (5) years as identification, to wit:

Notary Public, State of Florida
Print Name: _____
Commission #: _____
My Commission Expires: _____

EXHIBIT "G"
Performance Bond Form

BOND NUMBER _____



AIA DOCUMENT A312-2010

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT

Date:

Amount:

Description: *(Name and Location)*

BOND

Date:

Amount:

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

X: _____
Name and Title:

X: _____
Name and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY—Name, Address and telephone

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or Other Party)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract;

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4. and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

SAMPLE

(Space is provided for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: _____ (Corporate Seal)

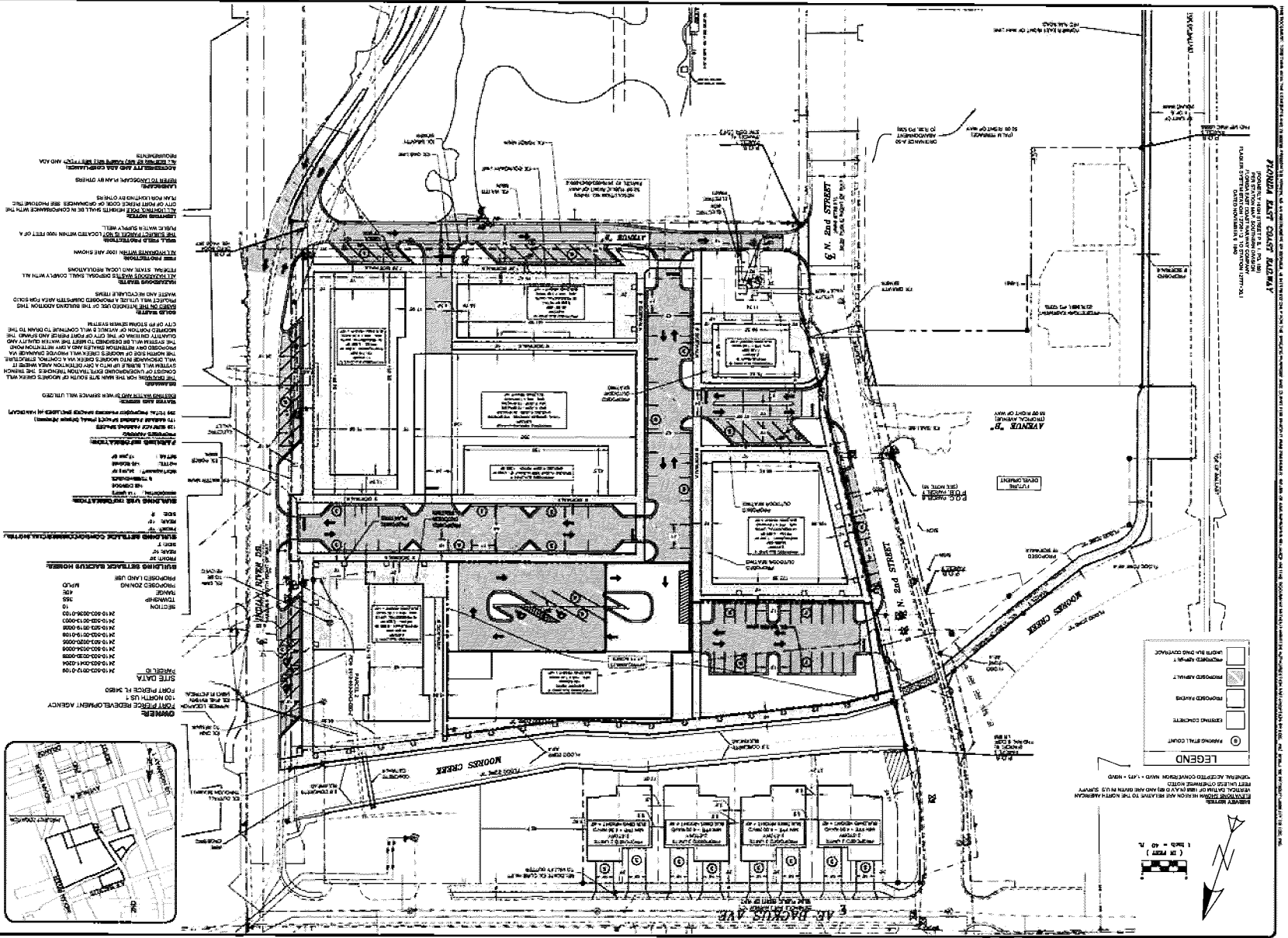
SURETY
Company: _____ (Corporate Seal)

X: _____
Name and Title:

X: _____
Name and Title:

DATE: 02/01/2011 09:51 User: jason - c:\projects\h111\conceptual\conceptual.dwg Plot Date: 02/01/2011 09:51 User: jason - c:\projects\h111\conceptual\conceptual.dwg

EXHIBIT "H"
CONCEPTUAL SITE PLAN



LEGEND

[Symbol]	PROPOSED BLDG FOOTPRINT
[Symbol]	PROPOSED PARKING
[Symbol]	PROPOSED DRIVEWAYS
[Symbol]	PROPOSED DRIVEWAYS
[Symbol]	PROPOSED DRIVEWAYS

REVISIONS

NO.	DATE	DESCRIPTION
1	02/01/2011	ISSUE FOR PERMITS
2	02/01/2011	REVISED PERMITS
3	02/01/2011	REVISED PERMITS
4	02/01/2011	REVISED PERMITS
5	02/01/2011	REVISED PERMITS
6	02/01/2011	REVISED PERMITS
7	02/01/2011	REVISED PERMITS
8	02/01/2011	REVISED PERMITS
9	02/01/2011	REVISED PERMITS
10	02/01/2011	REVISED PERMITS
11	02/01/2011	REVISED PERMITS
12	02/01/2011	REVISED PERMITS
13	02/01/2011	REVISED PERMITS
14	02/01/2011	REVISED PERMITS
15	02/01/2011	REVISED PERMITS
16	02/01/2011	REVISED PERMITS
17	02/01/2011	REVISED PERMITS
18	02/01/2011	REVISED PERMITS
19	02/01/2011	REVISED PERMITS
20	02/01/2011	REVISED PERMITS

COMMENTS:
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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 20. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

1 OF 3

19-361

HID KING
KINGS LANDING
SITE PLAN

FLORIDA

ENGINEERS & ARCHITECTS
15150 WILKIE MANORWAY
SUITE 201
PORT ST. LOUIS, FL 32680
TEL: 352-246-1111
WWW.HIDKING.COM

DATE: 02/01/2011

SCALE: 1" = 40'