

RESOLUTION NO. 25-R31

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA **REGARDING THE REQUEST FOR A THIRD AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF KING'S LANDING AND THE SALE OF PROPERTY FROM AUDUBON DEVELOPMENT, INC TO LIVE OAK HOLDINGS GROUP, LLC**; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Pierce ("City"), the Fort Pierce Redevelopment Agency ("FPRA") (the City and FPRA to collectively hereinafter be referred to as "City") and Audubon Development, Inc. ("Audubon"), all collectively hereafter, the "Parties", entered into an Agreement for Development of King's Landing on December 2, 2019, recorded in the Official Records Book 4353, Page 1200 of the Public Records of St. Lucie County, Florida wherein the City and/or the FPRA agreed to convey certain property (the "Property") to Audubon pursuant to specified terms, to include a Development Timeline; and

WHEREAS, the Parties entered into a First Amendment to Agreement for Development of King's Landing on February 3, 2020, recorded in the Official Records Book 4382, Page 118 of the Public Records of St. Lucie County, Florida amending the Agreement for Development of King's Landing; and

WHEREAS, the Agreement for Development of King's Landing and the First Amendment to Agreement for Development of King's Landing are collectively the "Original Agreement for Development"; and

WHEREAS, the Parties entered into an Amended and Restated Agreement for Development of King's Landing on February 8, 2022, recorded in the Official Records Book 4475, Page 2707 of the Public Records of St. Lucie County, Florida (the "Amended and Restated Agreement"); and

WHEREAS, the Amended and Restated Agreement superseded the Original Agreement for Development; and

WHEREAS, the Parties entered into the First Amendment to Amended and Restated Agreement for Development of King's Landing on November 21, 2022, recorded in the Official Records Book 4919, Page 632 of the Public Records of St. Lucie County, Florida (the "First Amendment"); and

WHEREAS, pursuant to the Amended and Restated Agreement and the First Amendment thereto, Audubon was required to meet certain development timelines for each phase of development; and

WHEREAS, Audubon was required to submit an application for building permit(s) or DPCR approval for construction of Phase 2 no later than March 18, 2024; and

WHEREAS, Audubon failed to submit an application for building permit(s) or DPCR approval for construction of Phase 2 no later than March 18, 2024; and

WHEREAS, a Notice of Default was issued to Audubon on March 21, 2024 informing Audubon of the default under the Amended and Restated Agreement and the First Amendment thereto; and

WHEREAS, Audubon had thirty (30) days to cure the default; and

WHEREAS, Audubon requested a forty-five (45) day extension of the cure period, which was granted by the FPRA on May 14, 2024, to run coterminous with the previously

granted extension by the City Commission on April 19, 2024; said extension to expire on June 4, 2024; and

WHEREAS, Audubon failed to cure the default by the extended cure period of June 4, 2024; and

WHEREAS, the Amended and Restated Agreement and the amendments thereto and the Deed to the Property conveyed by the City to Audubon contain terms authorizing the right to re-enter and retake the property if Audubon defaults in its obligations (the "Reverter"); and

WHEREAS, instead of the City proceeding with the Reverter on the Property, the Parties entered into the Second Amendment to Amended and Restated Agreement for Development of King's Landing on August 13, 2024, recorded in the Official Records Book 5192, Page 666 of the Public Records of St. Lucie County, Florida (the "Second Amendment") that, in part, included an amendment to the Development Timeline, required progress updates from Audubon to the City, required the submission of a Franchise Application to Marriott International no later than January 29, 2025 and proof of such to the City, provided for a waiver by Audubon of claims against the City, and included the approval of Harbert Realty Services, LLC ("Harbert") as a joint venture partner with Audubon pursuant to their Joint Venture Salient Terms Agreement; and

WHEREAS, on January 6, 2025, the City passed Resolution No. 25-R05, approving the sale of a portion of the Project commonly known as the villas plat from Audubon to Kings Landing Ft Pierce, LLC, a Florida limited liability company whose mailing address is 3670 Maguire Blvd., Suite 220, Orlando, FL 32803; and

WHEREAS, pursuant to the Second Amendment, the breach or termination of the Joint Venture Salient Terms Agreement by Audubon or Harbert was a material breach of the Amended and Restated Agreement; and

WHEREAS, pursuant to the Second Amendment, Audubon was required to finalize its Joint Venture Partnership with Harbert through the formation of a Delaware limited liability company within 180 days of the effective date of the Second Amendment; and

WHEREAS, Audubon and Harbert failed to finalize their Joint Venture Partnership pursuant to the Joint Venture Salient Terms Agreement and as required by the Second Amendment; and

WHEREAS, a Notice of Default has not been served from the City to Audubon for the failure to finalize the Joint Venture Partnership with Harbert, as required; and

WHEREAS, in January 2025, Audubon proposed entering into a Joint Venture Partnership with Live Oak Holdings Group, LLC ("Live Oak") instead of Harbert; and

WHEREAS, instead of a Joint Venture Partnership, Audubon and Live Oak subsequently entered into a Purchase and Sale Agreement, for the Property except the villas plat ("Remaining Property"), dated February 21, 2025, as amended by that certain First Amendment to Purchase and Sale Agreement dated February 27, 2025 (collectively, the "Purchase and Sale Agreement"); and

WHEREAS, written notice of Audubon's intent to sell the Remaining Property pursuant to the Purchase and Sale Agreement was received by the City on March 26, 2025; and

WHEREAS, pursuant to the Amended and Restated Agreement and the amendments thereto, the City has fifteen (15) days from receipt of the notice to provide written approval or denial of the request; and

WHEREAS, Audubon has requested a Third Amendment to the Amended and Restated Agreement, attached at Exhibit "1", to approve the sale of the Remaining Property pursuant to the Purchase and Sale Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA THAT:

SECTION 1. The foregoing findings are incorporated herein by reference and made a part hereof.

SECTION 2. The City Commission hereby:

- APPROVES the Third Amendment to the Amended and Restated Agreement, attached at Exhibit "1".
- DENIES approval of the Third Amendment to the Amended and Restated Agreement, attached at Exhibit "1"; and

Denies approval of the sale of the Remaining Property pursuant to the Purchase and Sale Agreement; and

Authorizes and directs the City Manager and/or the City Attorney, or their designee, to issue a Notice of Default for any and all existing breaches and/or defaults and exercise the Reverter under the Amended and Restated Agreement and the amendments thereto to re-enter and retake the Remaining Property by any and all appropriate legal means, to include the initiation of litigation, if necessary.

SECTION 3. If any section, clause, phrase, word, or provision of this Resolution is for any reason held invalid or unconstitutional by a court of competent jurisdiction, whether for substantive or procedural reasons, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution which shall remain in full force and effect.

SECTION 4. This Resolution shall become effective upon adoption.

IN WITNESS WHEREOF, this Resolution was duly adopted this 7th day of April, 2025.

LINDA HUDSON, MAYOR

ATTEST:

LINDA W. COX, CITY CLERK

(CITY SEAL)

APPROVED AS TO FORM
AND CORRECTNESS:

SARA HEDGES, CITY ATTORNEY