

APPROVED in Open Session on
11/12/2024 by the
Manatee County Port Authority

November 12, 2024

CONSENT

AGENDA ITEM 3.B.: FIRST AMENDMENT TO THE PURCHASE AND SALE AGREEMENT OF REAL PROPERTY

BACKGROUND:

On October 17, 2024, the Authority approved a Purchase and Sale Agreement with Fortress 2020 Landco LLC (Fortress) for approximately 103 acres in the vicinity of SeaPort Manatee. The property will be beneficial and useful to the Authority for the future expansion of seaport facilities, conservation matters, environmental mitigation, seaport security requirements, and other public purposes of the Authority. The parties agreed to a sale price of \$21,650,000 (plus closing costs), with a nonrefundable deposit of \$250,000. The Agreement includes a 30-day due diligence period. Due to the scope and magnitude, both parties have agreed to a due diligence extension for completion of the title survey. In consideration of the extension, an additional \$250,000 nonrefundable deposit was agreed upon.

ATTACHMENT:

First Amendment to the Agreement for the Purchase and Sale of Real Property

COST AND FUNDING SOURCE:

\$250,000 port cash

CONSEQUENCES IF DEFERRED:

Delay in updating the agreement to reflect an extension of the due diligence period.

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to approve the First Amendment to the Agreement for the Purchase and Sale of Real Property between the Manatee County Port Authority and Fortress 2020 Landco LLC.

**FIRST AMENDMENT
TO
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

THIS FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (“First Amendment”) is entered into as of the 12th day of November, 2024, by and between FORTRESS 2020 LANDCO LLC, a Delaware limited liability company (“**Seller**”), and the MANATEE COUNTY PORT AUTHORITY, a dependent special district of the State of Florida (“**Buyer**”).

RECITALS:

WHEREAS, Seller and Buyer are parties to that certain Agreement for Purchase and Sale of Real Property dated October 17, 2024 (“**Purchase and Sale Agreement**”) for the purchase of land identified on Exhibit A of the Purchase and Sale Agreement; and

WHEREAS, Seller and Buyer acknowledge that as of the Effective Date of this First Amendment the deadline for Buyer to provide title objections has passed, and Buyer has requested an extension to the deadline for title objections, the inspection period, and the closing date, and Seller agrees to provide Buyer with such extensions subject to the terms of this First Amendment; and

WHEREAS, in consideration for entering into this First Amendment, Buyer agrees to pay, and Seller agrees to accept, an increase of the nonrefundable deposit toward the Purchase Price of the Purchase and Sale Agreement; and

WHEREAS, the Seller and Buyer wish to modify certain provisions of the Purchase and Sale Agreement for clarity and consistency in accordance with this First Amendment.

NOW, THEREFORE, for the good and valuable consideration provided herein, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree to the following:

1. Recitals. The recitals set forth above are true and correct and incorporated herein by reference.
2. Amendment to Recitals. The 8th recital of the Purchase and Sale Agreement is hereby amended and restated to read in its entirety as follows:

WHEREAS, a purchase price of \$21,651,550.00 plus closing costs for the Real Property to be purchased by the Port Authority upon consideration of the unique location of the Real Property, the needs therefor by the Port Authority and other related factors is a

reasonable amount to be paid by the Port Authority for the acquisition of the Real Property, and

3. Amendment to Deposit. Section 3 of the Purchase and Sale Agreement is hereby amended to read in its entirety as follows:

DEPOSIT. The Port Authority tendered a non-refundable deposit in the amount of Two Hundred and Fifty Thousand Dollars xx/100 (\$250,000.00) within five (5) business days of the Effective Date of this Agreement. An additional Two Hundred and Fifty Thousand Dollars xx/100 (\$250,000.00) is due from the Port Authority to Fortress on or before November 17, 2024. The deposits described in this section are hereinafter collectively referred to as the “**Deposit**”. The Deposit shall be paid by either a cashier’s check or through a wire into an escrow account designated by Fortress, or an attorneys’ trust account. In the event that this Agreement is terminated for any reason, other than a breach by Fortress, the Deposit shall be retained by Fortress and not as a penalty. The Parties agree that Fortress shall be entitled to keep the Deposit in full and shall not be required to refund any portion thereof to the Port Authority. This provision shall apply regardless of the reason for termination. Upon closing, the Deposit shall be applied toward the Purchase Price.

4. Amendment to Balance of Purchase Price. Section 5 of the Purchase and Sale Agreement is hereby amended to read in its entirety as follows:

BALANCE OF PURCHASE PRICE. Following the Port Authority’s timely payment of the Deposit and the Downpayment, the balance of the Purchase Price will be Fourteen Million One Hundred Fifty One Thousand Five Hundred and Fifty Dollars xx/100 (\$14,151,550.00) plus interest that shall accrue at a rate of 6.9% per annum (the “**Balance**”). The Balance and accrued annual interest is payable by the Port Authority to Fortress in four (4) equal payments of Three Million Five Hundred Thirty Seven Thousand Eight Hundred and Eighty Seven Dollars 50/100 (\$3,537,887.50) due on or before March 1, 2026, March 1, 2027, March 1, 2028, and March 1, 2029.

5. Amendment to Inspection Period. Section 10.1 of the Purchase and Sale Agreement is hereby amended to read in its entirety as follows:

Entry Upon Land. The Port Authority and its authorized agents shall have until 11:59PM EST on January 31, 2025 (“**Inspection Period**”) to enter upon the Real Property to examine the Real Property and the condition thereof, to conduct surveys and engineering studies, surface and subsurface soils and groundwater tests and all other inspections, tests, appraisals, surveys or studies, of or pertaining to the Property or its development or use, including an examination of all licenses, permits, approvals, sewer services, water services, commitments for utilities, impact fees and assessments and all additional studies or tests deemed necessary by Port Authority. Prior to Port Authority's entry onto the Property, Port Authority shall deliver to Seller evidence reasonably acceptable to Seller of Port Authority's commercial general liability insurance, against claims for bodily injury, death and property damage occurring in or about the Property in a combined single limit of at least \$2,000,000. Port

Authority agrees it is responsible for damage arising out of the entry onto the Property by Port Authority (or its agents) or exercise of the rights granted to Port Authority (or its agents) in this Section. However, nothing contained herein shall be construed as a waiver of any defense or limitation pursuant to the doctrine of sovereign immunity, or Section 768.28, Florida Statutes.

6. Amendment to Deadline to provide Title Commitment. Section 9.1 of the Purchase and Sale Agreement is hereby amended to read in its entirety as follows:

Within thirty (30) days after the Effective Date of this Agreement or the Effective Date of any subsequent amendments to this Agreement, whichever is later, the Port Authority shall obtain and provide to Fortress an owner's title insurance commitment for the Real Property. The title commitments shall be issued by Blalock Walters, PA as agent for Old Republic National Title Insurance, agreeing to issue to the Port Authority, following the recording of the deed to the Port Authority, a standard 2021 ALTA Form owner's title insurance policy in the amount of the Purchase Price and insuring the Port Authority's fee title interest in the Land. Delivery of such title commitment to the Port Authority shall include copies of all title exception documents. The Port Authority may, at its sole cost and expense, elect to obtain a property lien search and provide a copy to Fortress within such fifteen (15) day period. Fortress shall provide necessary documentation to cause all "standard exceptions" to be deleted from the title insurance policy as further set forth in Section 14.1 hereof.

7. Amendment to Title Objections. Section 9.2 of the Purchase and Sale Agreement is hereby amended to read in its entirety as follows:

In compliance with the Agreement before the First Amendment was executed, the Port Authority provided Title Objections to Fortress and the Port Authority shall have until 11:59PM EST on January 8, 2025 to deliver to Fortress a final written notice of any and all Title Objections. Fortress shall have twenty (20) days after receipt of the final written objection to correct at its expense all matters described in any such notice of Title Objections. The Inspection Period shall be extended automatically to permit the full running of any such twenty (20) day period if necessary to cure such objections. If Fortress fails to correct a Title Objection within the allowed time, then the Port Authority may (at the Port Authority's option to be exercised by notice to Fortress):

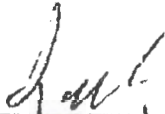
- (a) terminate this Agreement and decline to purchase the Real Property; or
- (b) purchase the Real Property subject to such matters.


8. Purchase and Sale Agreement Ratified. Except as modified and amended herein, the terms and conditions of the Purchase and Sale are hereby ratified and affirmed and remain in full force and effect.

9. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The receipt of an electronic or PDF signature of either party to this First Amendment shall be deemed to be effective to bind such party to the terms hereof.

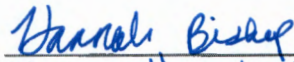
IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date first written above.

Signed, sealed and delivered in the presence of:


Print name: Jay Washam



Print name: Michelle Ayala

Print name: _____


Print name: Hannah Bishop
Deputy clerk

FORTRESS

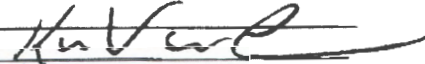
FORTRESS 2020 LANDCO LLC, a
Delaware limited liability company


By: MARK STOUT
Its: PRESIDENT

Date executed: 11/11, 2024

PORT AUTHORITY

MANATEE COUNTY PORT
AUTHORITY, a dependent special district


By: _____
Its: Chairman

Date executed: 11/12/, 2024

