

---

**MEMORANDUM OF UNDERSTANDING**

---

TO: Dale Matteson – Audubon Development

FROM: Harbert Realty Services, LLC

SUBJECT: King’s Landing Mixed-Use Development in Ft. Pierce, Florida

DATE: May 9, 2024

---

This Memorandum of Understanding (“MOU”) is an initial summary of a company structure that Harbert Realty Services, LLC. (“HRS”) proposes to develop a mixed-use project known as King’s Landing in Ft. Pierce, Florida (‘Project’) with Audubon Development (AD). This MOU will serve as a guide to facilitate associated operative agreements for a Joint Venture structure and an exclusive due diligence period.

1. Joint Venture: To be formed single-asset Delaware limited liability company (“JV”) for the development of the project.
2. Purpose: JV will develop and own a Class A, mixed-use project to be known as King’s Landing (the “Project”) as an investment property. The JV will finance, develop, construct, market, sell/lease residential and commercial spaces and manage the Project.
3. Property: AD owns an approximate 6.8811 acre property located on North 2<sup>nd</sup> Street in Ft. Pierce, Florida (“Property”) and AD shall contribute the property into the JV at a value of \$6,100,000 as per below:
  - \$4,600,000 allocated to the Project’s uses, excluding the Hotel
  - \$1,500,000 allocated to the Hotel
4. Project: King’s Landing, a Mixed-Use Development in Fort Pierce, FL
  - 106 Condominium Units
  - ±140-Room Tribute Portfolio by Marriott Hotel
  - ±50,000 SF of Retail and Restaurants
  - Land for Future Development
  - 170-Space Structured Parking and 129 Surface Parking Spaces
5. Members: AD and HRS, or their respective affiliates shall be the Members of the JV. The Members ownership percentages shall be memorialized in the JV agreement and are more specifically outlined below. The JV will be a Delaware limited liability company with HRS and AD acting as the company’s Co-Managing Members of the JV.

6. Due Diligence: Prior to the formation of the JV's, HRS shall have ninety (90) days to perform due diligence including further studies and discovery on: the updated City approved project development schedule, the residential condominiums, hotel, retail, and restaurant markets in Ft. Pierce and the Treasure coast of Florida, financial feasibility, confirmation of zoning, density, preliminary design cost and state, county and local incentives. HRS acknowledges receipt of the survey, land appraisal, approved initial site plan (to be reviewed for modification), the initial AD project budget and proforma, and initial Hotel incentive package memorialized in the letter dated August 22, 2022 from St. Lucie EDC to Mainsail.
7. Exclusive/No-Shop: During the Due Diligence period, HRS will have the exclusive right to JV with AD for the development of the Property and AD will not show or discuss the property to other prospects, developers or potential purchasers or partners.
8. Fees: The JV will compensate Members for their expertise and responsibilities per the JV Operating agreements. These fees will include but not be limited to the Development Fee, Financing/Guaranty Fee, Construction Management Fee, Brokerage and Management Fees. Proposed fees are outlined below and the payment of these fees and other fees will be memorialized in the JV agreement.
9. Capital Structure: All amounts are approximate. Total development cost per AD is estimated to be approximately as follows:
- |  |                  |
|--|------------------|
| Condos, Retail & Restaurants, and Parking: |                  |
| • Land Acquisition Costs:                  | \$6,100,000      |
| • Hard Construction Costs:                 | 93,540,000       |
| • Soft Costs:                              | 15,313,600       |
| • TI and FF&E:                             | 1,100,000        |
| • Financing Costs:                         | 2,000,000        |
| • Interest Reserve:                        | <u>9,225,000</u> |
| Total, excluding the Hotel:                | \$127,278,600    |
| Hotel:                                     | \$55,000,000     |
10. Debt/Equity/Structure: Condominiums, Retail/Office/Restaurant and Parking

Assumptions:

\$127,000,000 Estimated Budget

\$ 82,550,000 Leveraged Debt – 65%

\$ 44,450,000 Cash, Land – 35%

HRS and AD will be co-general partners (GP) in the above uses, which excludes the Hotel. HRS and AD will serve as co-managing members and HRS will have a GP interest of 55%, and AD will have a GP interest of 45%.

HRS will invest up to \$2,444,750 of the GP equity in the form of cash; HRS commits to raise an additional \$37,405,525 investor limited partners (LP) funds; AD will invest \$2,000,250 GP equity in the form of the land, and \$2,599,750 LP equity in the form of land. If the construction loan proceeds differ, the GP and LP cash contributions will be modified accordingly. All cost overruns will be funded pro rata based on percentage of ownership. Credits from city incentives or development credits will adjust the GP and LP cash contributions accordingly.

Decision making within the GP will be shared 55% to HRS and 45% to AD.

- a. **Fees** - Fees will be memorialized in the JV agreement and are subject to Lender approval.
- b. **Marketing & Sales** – 4% of the Residential Condominium sales. This fee shall be allocated to AD via its newly formed entity licensed and bonded for this Project.
- c. **Development Fee** - 5% of total design, engineering and construction cost. This fee shall be allocated 85% to HRS, and 15% to AD.
- d. **Guaranty** – HRS will be a loan guarantor and be paid a Loan and Completion Guaranty Fee of 0.75% of applicable costs, to be defined in the JV agreement, at loan closing and an annual Debt Guarantee fee of .025% of the loan balance until guarantee is retired or not required.
- e. **Construction Management Fee**: TBD

11. Debt/Equity Structure Hotel
- a. *Development Fee – TBD*
  - b. *Pre-Opening and Technical Fees - TBD*
  - c. *FF& E/OS&E Sourcing - TBD*
  - d. *Hotel Management Fees - TBD*
12. Promote: The mixed-use components of the Project will be a promote structured pro rata to equity until the equity achieves an 8.0% IRR, then GP distributions increase to 30% thereafter.
- The hotel promote will be determined...
13. Management Responsibilities: Subject to the members of the JV preparing and agreeing to a roles and responsibilities matrix to be defined in the Operative Agreements.
14. Transfer Provision: No Member will have the right to transfer all or any portion of its interest in JV without the prior unanimous written consent of the Members, provided however Members will be permitted to transfer their interest to affiliated entities.
15. Admission of Additional Members: No additional Members may be admitted to the Company without the prior unanimous written consent of the Members.
16. Buy/Sell Provisions: The Operating Agreement of the Company will include mutually agreeable buy/sell provisions.
17. Confidentiality: Prior to the finalization of the JV, HRS and AD agree to keep any information learned about the Property during its due diligence confidential (such information is referred to as the Confidential Information”). HRS agrees: (i) to maintain the Confidential Information in strict confidence, using at least the same degree of care that it would use in safeguarding its own confidential and proprietary information of a comparable degree of sensitivity, but in no event less than a reasonable degree to care; (ii) to use the Confidential Information only for the purpose of evaluating the Property’s suitability for HRS’s due diligence and formation of the JV with AD; and (iii) to disclose the Confidential Information only



Property's suitability for HRS's due diligence and formation of the JV with AD; and (iii) to disclose the Confidential Information only to those of its officers, employees and professional advisors who have a need to know such Confidential Information in connection with the Purpose.

18. Operative Agreements:

- a. *Operating Agreement:* The Members will enter into an Operating Agreement based on the foregoing terms and additional terms agreeable to both Members.
- b. *Development Agreements:* JV will enter into Development Agreements with Members.
- c. *Management Agreements:* The Company will enter into property management and hotel agreements with Members and for the operation of the day-to-day activities of the Project.
- d. *Leasing Agreement:* The Company will enter into a leasing agreement with Members to market, and lease retail and restaurant tenants in the Project.
- e. *Sales Agreement:* The Company will enter into a marketing and sales agreement to market and sell the Residential Condominiums.
- f. *Guaranty Agreement:* The company will enter into a guaranty agreement with HRS to provide a guaranty on the construction loans.

This MOU contains the general understanding of the parties and is not a legally binding agreement. All legally binding obligations between the parties shall arise only upon the execution of Operating and Development Agreements with the exception of Sections 5, 6 and 7 of the MOU, which shall be binding on both parties. Notwithstanding, both parties agree to work exclusively with the other in good faith to negotiate and execute Operating and Development Agreements.

Audubon Development

By: DAVID MATTHESON  
 Name: [Signature]  
 Its: PRESIDENT & CEO  
 Date: 5.9.24

Harbert Realty Services, LLC:

By: WILLIAM WARE  
 Name: WILLIAM E WARE  
 Its: VP OF DEVELOPMENT  
 Date: 5.9.24