

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into as of this 16th day of December, 2022, by and between the City of Morgan Hill, a municipal corporation (the "City"), and Leal Vineyards (the "Developer").

BACKGROUND

In April of 2016, the Developer received Design Permit and a Conditional Use Permit approval from the Planning Commission for a new 60-room Downtown Hotel. The approvals included a new 67,940 square foot, four-story building with restaurants, bars, retail, banquet halls(s), and hotel lobby with guest rooms, services including valet parking and amenities. The Conditional Use Permit allows for an outdoor green event space, banquet rooms, and ancillary prep kitchens with one main kitchen to serve the hotel. The hotel also included a pool with outdoor living/lounge area. The project was approved by the City Council on May 18, 2016. Construction commenced in March 2019.

In March 2020, the COVID 19 pandemic halted construction while also decimating the hospitality and lodging industry. The project, which had completed all underground and utility work and two floors of foundation work, became a pop-up restaurant over the last two years, while the Developer pursued new construction financing. To complete the project, the Developer requested an addition of a partial fifth story to gain eleven (11) guest rooms, plus the conversion of a gym to two (2) additional guest rooms, creating thirteen (13) new guest rooms in total.

On November 16, 2022, the City Council introduced Ordinance No. 2339, approving a Zoning Map Amendment for a Planned Development Combining District on the site, to allow for the additional 5th floor ("PD Ordinance").

As a condition of approval of the PD Ordinance, the City is requiring the Developer to enter into this MOU to further define the parties' expectations, parameters and timeline of the project moving forward.

PURPOSE

Developer is entering into this MOU as a condition of approval for the PD Ordinance. The purpose of this MOU is to memorialize the understanding of the Performance Standards and the Penalties that may be invoked should the Performance Standards not be achieved.

PERFORMANCE STANDARDS

Under the terms of the PD Ordinance, the developer is required to meet the following performance standards:

1. The Developer is required to submit building permit application(s) and construction document(s) for the modifications and addition of the 5th floor by April 30, 2023.
2. The Developer shall secure building permit(s) for the 5th floor by September 30, 2023.
3. Construction to resume no later than August 31, 2023.
4. The Developer to complete exterior facade before interior improvements, 24-months after construction resumes.

5. Non-essential hotel amenities (restaurant, bar, meeting rooms, etc.) should not be completed prior to the completion of hotel rooms.
6. Hotel rooms to be operational by December 31, 2025.

EXCEPTIONS

Under the terms of the PD Ordinance, a one-time, 2-year administrative time extension to a Performance Standard may be granted by the Development Services Director if:

- 1) The property owner/designee proceeded in good faith and has exercised due diligence in efforts to achieve each performance standard in a timely manner; and
- 2) The property owner/designee provides proof to demonstrate that the performance standard milestone(s) could not be achieved due to circumstances outside of their control. If additional time is needed for any performance standard listed above after a 2-year time extension was approved.

LIQUIDATED DAMAGES

The Developer acknowledges that delayed performance will negatively impact the City. Damages, including the potential for blight, vandalism, and reduced economic activity are uncertain and impossible to determine at this time. Due to this uncertainty, the parties to this MOU agree that in addition to any other remedies, if the Performance Standards are not met within the timelines provided in the PD Ordinance (or approved extended timelines), the following liquidated damages may be assessed:

- a) If the Developer does not complete the exterior facade within 24-months after construction resumes, the Developer may be required to pay liquidated damages of one hundred dollars (\$100) per day until the exterior façade is complete.
- b) If the Developer does not achieve hotel room operations by the date required under the PD Ordinance, the Developer may be required to reimburse the City for fifty percent (50%) of the uncollected Transient Occupancy Tax (TOT)* after the required completion date until which time the hotel is operational and collecting TOT. Uncollected TOT will be collected from future hotel revenues.

*Uncollected TOT will be calculated by using the average of the City's top four (4) performing hotel's Average Daily Rate (ADR) and Occupancy Rate (OR).

Example	Formula	Example Calculation
Avg ADR = \$150 Avg OR = 70% City TOT Rate = 11% Hotel Rooms = 73	$\text{Rooms (73)} \times \text{Avg OR (70\%)} \times$ $\text{Avg ADR (\$150)} \times \text{City TOT}$ $(11\%) \times 50\% = \underline{\hspace{2cm}}$	$\$150 \times 73 \times .7 \times .11 = \$843.15 @ 50\%$ $= \$421.58 \text{ daily penalty}$

FORCE MAJEURE

Notwithstanding the above, the Developer will not be responsible for liquidated damages to the extent that the non-performance is caused by a condition (for example: natural disaster, act of war or

terrorism, riot, labor condition, or governmental action) that was beyond the Developer's reasonable control, provided the Developer provides timely and reasonable notice of the condition.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be signed, sealed, and delivered by their duly authorized representatives the day and year first above written.

The City of Morgan Hill

By: 

Christina Turner
City Manager

Approved as to Form

By: 

Donald A. Larkin
City Attorney

Title: _____

Leal Vineyards

By: 

Name: FRANK LEAL

Title: OWNER

By: 

Name: ALFONSO CASTILLO

Title: VP OF HOSPITALITY