

SALES AND TRANSIENT OCCUPANCY TAX REVENUE SHARING AGREEMENT

This SALES AND TRANSIENT OCCUPANCY TAX REVENUE SHARING AGREEMENT (“**Agreement**”) dated 9/9/2024, 2024 (“**Effective Date**”), is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation (“**City**”), and MOHI Hotel Management LLC, a Limited Liability Company (“**Developer**”). City and Developer may each be referred to as a “**Party**” or collectively as the “**Parties**”.

R E C I T A L S

A. Hotel MOHI, a California corporation (formerly known as Granada Marketplace and Hotel, Inc.) (“**Leal**”) is the fee owner of the real property located at 17490 Monterey Road in Morgan Hill, California, identified as Assessor Parcel Number 726-14-074, and depicted on Exhibit A (“**Site**”), which was formerly improved with the downtown mall.

B. Developer plans to develop on the Site an approximately 76-room Luxury Boutique Hotel (defined below), with approximately 14,000 square feet of food and beverage service areas, including an on-site Fine Dining Restaurant, a swimming pool, an approximately 2,100 square foot spa, and approximately 11,000 square feet of event space (the “**Project**”).

C. The City approved land use entitlements for the Project in 2016 and construction began in 2017. At the time of Santa Clara County’s first shelter-in-place order in 2020, utility work and construction of the first two floors of the hotel had been completed. Construction halted in 2020 because the COVID-19 pandemic severely impacted the lodging and construction industries.

D. The City’s business recovery emergency order extended building permits for all development projects during the COVID-19 pandemic. In November 2022, the City adopted a Planned Development ordinance (“**PD Ordinance**”) to allow the Project to have five stories instead of the four stories permitted under the 2016 entitlements. The PD Ordinance’s conditions of approval required Leal to enter into a Memorandum of Understanding with City. City and Leal subsequently entered into a Memorandum of Understanding dated December 16, 2022 (the “**MOU**”), which, among other things, requires Leal to resume construction on or before August 31, 2023, and complete exterior façade improvements within twenty-four (24) months after resumption of construction and imposes liquidated damages if Leal fails to meet either deadline.

E. Leal resumed construction of the Project on or about August 28, 2023.

F. City has determined that facilitating development of the Project as a Luxury Boutique Hotel with a Fine Dining Restaurant will further the City’s Downtown Specific Plan goals of revitalizing the downtown area to create a vibrant downtown with main commercial spines on Monterey Road and Third Street and encouraging visitor-serving lodging and restaurant uses.

G. City has further determined that City's provision of financial assistance to the Project in accordance with this Agreement will assist in the creation of additional jobs and economic opportunities for City residents; increase assessed property values, leading to higher property tax revenues for the City and other property tax-collecting entities; and provide an ongoing stream of transient occupancy tax (TOT) revenue and sales tax revenue to the City General Fund. This Agreement is therefore in the vital and best interest of City and the health, safety and welfare of its residents, and in accordance with the public purposes and provisions of applicable Laws.

H. The Parties now desire to enter into this Agreement providing, among other things, for City to rebate to Developer a portion of the TOT (defined below) and Sales Taxes (defined below) generated by the Project over the Term of this Agreement, subject to certain terms and conditions set forth herein.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

“**Affiliate**” means any entity that is directly or indirectly under the Control of Developer.

“**Agreement**” is defined in the preamble.

“**Base Sales and TOT Revenue**” means, for the Initial Period, an amount of Sales Taxes and TOT equal to \$282,000 that the City shall retain for its own use. On each anniversary of the Commencement Date, the Base Sales and TOT Revenue amount for the applicable Period that City shall retain for its own use shall increase by 3.0% over the Base Sales and TOT Revenue in effect for the prior Period.

“**CDTFA**” means the California Department of Tax and Fee Administration.

“**City**” is defined in the preamble.

“**City's Determination**” is defined in Section 5.3.

“**City Payment**” is defined in Section 5.

“**Claims**” means any and all manner of liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, fines, penalties, obligations, orders, judgments, liens, costs, expenses, including attorneys' fees, and disbursements.

“**Commencement Date**” is defined in Section 2.

“**Conditions Precedent**” is defined in Section 5.1.

“Continuously Operate” and variations thereof mean (a) with respect to the Luxury Boutique Hotel, the hotel is Open at least 360 days of a Period except during periods of Force Majeure or temporary closures not to exceed a total of forty-five (45) days for planned repairs or renovations of which City has received at least thirty (30) days prior written notice, and (b) with respect to the restaurant is open at least five (5) days per week and at least ten (10) hours per day during the Period except during periods of Force Majeure, transition periods between restaurant operators which shall not exceed 3 months in duration, and temporary closures not to exceed a total of fifteen (15) days for planned repairs or renovations of which City has received at least thirty (30) days prior written notice.

“Control” means any of the following (a) direct or indirect management or control of the managing member or members in the case of a limited liability company; (b) direct or indirect management or control of the managing general partner or general partners in the case of a partnership, and (c) in the case of a corporation (i) boards of directors that overlap by more than fifty percent (50%) of their directors, or (ii) direct or indirect control of a majority of the directors.

“County” shall mean the County of Santa Clara.

“Default” is defined in Section 7.

“Developer” is defined in the preamble.

“Developer Party” is defined in Section 9.5.

“Developer’s Share” means the portion of the Sales Taxes and TOT to be paid to Developer in excess of the Base Sales and TOT Revenue. Until such time as the Payment Reduction Threshold is achieved, Developer’s Share of TOT and Sales Taxes in excess of the Base Sales and TOT Revenue shall be 100%. From and after such time as the Payment Reduction Threshold has been met, Developer’s Share of TOT and Sales Taxes in excess of the Base Sales and TOT Revenue shall be reduced to 50%.

“Effective Date” is defined in the preamble.

“Fine Dining Restaurant” means a full-service restaurant that includes table wait staff, a host, a full bar, and that offers a high caliber level of service, cuisine and prices comparable to that offered by Charlie Palmer Steak restaurant in Napa, California, the Dry Creek Kitchen restaurant in Healdsburg, California, and The Archer Hotel in Napa, California as of the Effective Date.

“Force Majeure” is defined in Section 9.2.

“Indemnitees” means City and its officers, elected and appointed officials, employees, volunteers, representatives, attorneys, and consultants.

“Initial Period” means the 12-month Period that commences on the Commencement Date and ends twelve months thereafter.

“**Law(s)**” means any and all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County, City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, this Agreement, or the Site.

“**Luxury Boutique Hotel**” means a hotel offering, at minimum, the level of quality and service found in a hotel with at least Four Diamonds on the AAA Diamonds scale and that has an intimate setting, personalized guest service, fashionable décor, at least one full-service Fine Dining Restaurant with a bar, a spa, a swimming pool, and meeting and event spaces. Comparable hotel brands, such as: Hotel Valencia Santana Row, MacArthur Place Sonoma, and the Estate Yountville.

“**Material Default**” is defined in Section 7.2.

“**MOU**” is defined as the agreement between the City and Developer dated December 16, 2022

“**Notice of Default**” is defined in Section 7.

“**Open(s)**” means open for business to the public, adequately staffed, fully furnished, fully fixtured, adequately stocked with inventory and supplied with water, gas, and electricity.

“**Payment Reduction Threshold**” Means the Payments paid to Developer has reached Six Million Dollars (\$6,000,000) in net present value.

“**Period**” means each 12-month period during the Term.

“**Sales Tax Law**” means the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code section 7200, *et seq.*). If the Bradley-Burns Uniform Local Sales and Use Tax Law is further amended, terminated or rescinded, and Sales Taxes are calculated in an alternate manner or are replaced by an alternate revenue stream (i) arising from the retail sale, use or other consumption of tangible personal property from or on the Site, or (ii) designated as being a replacement for Sales Taxes previously generated by the retail sale, use or other consumption of tangible personal property on or from the Site, then “Sales Taxes” shall also mean those revenues attributable to sales, services or consumption of tangible personal property on or from the Site, collected for City in the alternate manner of calculation, so long as City receives its portion of such revenues and has the legal right under California and/or federal Law to retain and control the disposition of all of its portion thereof.

“**Sales Taxes**” means for each 12-month Period during the Term, that portion of taxes actually received by City from the imposition of Sales Tax Law attributable to the sales, services or business activities of any restaurant or retail tenant at the Site to the extent allocated and paid by the CDFTA to City for its use, in a particular 12-month Period. The defined term “Sales Taxes” shall not include any of the following: (i) any sales tax levied by, collected for or allocated to the State of California, the County, or any district or entity (including an allocation to a statewide or Countywide pool) other than City; (ii) any administrative fee charged by the

CDFTA or the County; (iii) any portion of sales tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable Law; (iv) any sales tax (or other funds measured as sales tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into City's general fund; and (v) any sales taxes which City cannot pay to Developer consistent with the requirements of Government Code Section 53084 and 53084.5. No Sales Taxes shall be considered to have been received by City until City is able to confirm City's actual receipt thereof from the CDFTA.

"**Site**" is defined in Recital A.

"**State Legislation**" is defined in Section 5.6.

"**Tax Administrator**" shall have the meaning set forth in Section 3.24.010(F) of the Morgan Hill Municipal Code.

"**Tax Return**" shall mean any of the returns described in Section 5.1c or 5.1d.

"**Term**" is defined in Section 2.

"**TOT**" means for each 12-month Period during the Term, the transient occupancy taxes actually received by City attributable to transients' occupancy of hotel rooms in the Project during the applicable Period pursuant to Morgan Hill Municipal Code Chapter 3.24.

2. **Term.** The "**Term**" of this Agreement shall commence on the earlier of the date the Luxury Boutique Hotel component of the Project Opens or June 30, 2026 ("**Commencement Date**") and shall expire on the date that is fifteen (15) years following the Commencement Date. For avoidance of doubt, the Term shall not be extended if Developer fails to satisfy the Conditions Precedent for one or more Periods or for any other reason.

3. **Representations.**

3.1 **Developer Representations.** Developer represents, warrants and covenants to City as follows:

a. **Authority.** Developer is a Limited Liability Company duly organized within and in good standing under the Laws of the State of California and qualified to do business in California. The copies of the documents evidencing the organization of Developer that have been delivered to City are true and complete copies of the originals, as amended to the Effective Date. Developer has full right, power and lawful authority to undertake all of its obligations as provided herein, the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer, each and all of the persons signing on behalf of Developer are authorized to do so, and such execution is binding upon Developer.

b. **No Conflict.** To the best of Developer's knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a

default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

c. No Bankruptcy. Developer is not the subject of a bankruptcy proceeding or in the process of filing for any bankruptcy protection.

d. No Litigation. There are no Claims, causes of action or other litigation or proceedings pending or threatened against Developer, or any Affiliate thereof, that would affect Developer's ability to undertake and satisfy all of its obligations pursuant to this Agreement.

e. Developer Sophistication. Developer is a sophisticated owner, builder, developer, and operator of retail property, and is familiar and experienced with operation of the Site and Project, including requirements for construction and installation of the Project and performance of Developer's other obligations and duties under this Agreement. Developer is familiar with and has made such independent investigation as it deems necessary or appropriate concerning the foregoing, including any Laws or physical conditions existing on or about (or which affect or may affect) the Site and the Project, limitations on title, restrictions or requirements concerning the use of the Site, and all other matters concerning the conditions or use of the Site and the Project.

f. Truth of Representations and Warranties. Developer shall, upon learning of any material fact or condition which would cause any of the warranties and representations in this Section 3.1 not to be true, immediately give written notice of such fact or condition to City.

3.2 City Representations, Warranties and Covenants. City represents, warrants and covenants to Developer as follows:

a. No Conflict. To the best of City's knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

b. No Bankruptcy. City is not the subject of a bankruptcy proceeding or in the process of filing for any bankruptcy protection.

c. No Litigation. There are no claims, causes of action or other litigation or proceedings pending or threatened against City that would affect City's ability to undertake and satisfy all of its obligations pursuant to this Agreement.

d. Right to Enter Agreement. City has the legal right, power, and authority to enter into this Agreement and this Agreement has been duly authorized and approved by the City following a properly noticed and conducted public hearing.

e. Truth of Representations and Warranties. City shall, upon learning of any material fact or condition which would cause any of the warranties and representations in this Section 3.2 not to be true, immediately give written notice of such fact or condition to Developer.

4. **Developer Covenants and Agreements.**

4.1 **Compliance With Laws; Waiver and Release and Covenant Not to Sue.** Developer, at its expense, shall obtain all Project approvals required under applicable Law. In addition, Developer, at its expense, shall construct, operate, and manage the Project in conformity with all applicable Law. In exchange for City's financial commitments under this Agreement, Developer hereby waives and releases all rights or claims that Developer has or may have in the future against City or the Indemnitees under applicable Laws as a result of, arising out of, or connected with Developer's development or operation of, or City's financial contributions to, the Project, including but not limited to any claims under applicable California Labor Code Provisions including Labor Code section 1720 *et seq.* Developer further covenants and agrees that it will not bring, commence, maintain or prosecute, directly or indirectly, any action at law or proceeding in equity or any legal administrative proceeding or any claim for damages or any other relief against City or any Indemnitees, based in whole or in part on any actual or alleged failure to comply with Laws. The waiver and release set forth in this Section 4.1 may, and shall be plead, as a full and complete defense to, and may be used as a basis for an injunction against any action, suit or proceeding which may be instituted, prosecuted, or maintained in breach of the covenants contained in this Section 4.1.

Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

As such relates to this Section 4.1, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Developer's Initials: _____

4.2 **Indemnity.** Developer shall defend (with counsel reasonably acceptable to City), indemnify, assume all responsibility for, and hold harmless City and the Indemnitees, from and against, any and all Claims, arising directly or indirectly from approval or implementation of this Agreement or construction or operation of the Project, including the Developer's actual or alleged failure to comply with applicable Laws as required under Section 4.1 above, including any and all Claims made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781, whether such Claims shall accrue or be discovered before or after expiration or termination of this Agreement. Developer's obligations under this Section 4.2 shall survive termination or expiration of this Agreement.

5. **City Payments.**

5.1 **Conditions Precedent.** City's obligation to make each Payment during the Term is subject to the fulfillment by Developer (or written waiver by City) of each and all of the conditions precedent described below (collectively, the "**Conditions Precedent**").

a. Hotel Operating Requirements. Throughout the entirety of the applicable Period, Developer shall have Continuously Operated the hotel component of the Project in a manner fully consistent with the Luxury Boutique Hotel standard.

b. Restaurant Operating Requirement. Throughout the entirety of the applicable Period, Developer shall have Continuously Operated the restaurant component of the Project.

c. Filing Sales Tax Returns. Developer and/or the entity or entities operating the Fine Dining Restaurant and any other component of the Project that generates Sales Taxes shall have filed a sales tax return with the California Department of Tax and Fee Administration (CDTFA) for each filing period during the applicable Period.

d. Payment of TOT; Filing of Associated Tax Returns. Developer or the operator of the Luxury Boutique Hotel shall have remitted transient occupancy tax to the Tax Administrator and submitted a return in the form required by the Tax Administrator for each month (or any other increment of time required by City) during the applicable Period.

e. Extended Stays subject to TOT. Developer agrees to require guests with extended stays in excess of 30 days to re-register and apply TOT and Tourism Business Improvement District (TBID) related taxes beyond the original 30 days and for the entirety of the stay.

f. No Default. Developer is not in Default under this Agreement.

5.2 Payment. Subject to satisfaction of each of the Conditions Precedent, City shall make an annual payment to Developer of Developer's Share for the applicable Period as provided in this Section and Section 5.3 below (each, a "**City Payment**"). Each City Payment shall be paid in arrears within the time set forth in Section 5.3 below out of available TOT and Sales Taxes for such Period.

5.3 Reimbursement Process. As soon as practicable following the end of each Period during the Term, the City Manager or their designee shall provide Developer with a statement of the aggregate Sales Taxes and TOT received by the City during the preceding Period and City's determination of Developer's Share for the applicable Period (herein referred to as the "**City's Determination**").

a. Developer shall review and approve or disapprove City's Determination within forty-five (45) days of receipt of City's Determination. Developer's failure to send written notice of disapproval within such 45-day period shall be deemed Developer's approval of City's Determination. Any disapproval shall state in writing the reasons for disapproval and the Developer's requested changes and shall provide any additional information or documentation available to the Developer to support Developer's requested changes. City, promptly following receipt of a notice of disapproval by Developer and the additional supporting information shall review all information provided by the Developer and either re-determine the City Determination for the Period or provide the Developer with a statement of disagreement with respect to the Sales Taxes and TOT for the applicable Period and Developer's Share. Any

disagreement between the City and the Developer shall be resolved by the payment of the City's Determination pursuant to an audit conducted by the Developer pursuant to Section 6 below.

b. Payment of the amount determined by City to be owing to Developer for each Period during the Term shall be made by City within forty-five (45) days after City has received all of the following: (i) from the State of California, the Sales Taxes generated from the Project for the Period; (ii) from the CDTFA, the payment data to verify receipt of such Sales Taxes; (iii) from Developer, all Tax Returns for the Period. City anticipates that such payment can be made within one hundred sixty-five (165) days after the end of each Period; however, nothing contained in this Agreement shall obligate or otherwise commit City to pay any amount to Developer unless and until City receives (1) all Sales Taxes attributable to the Period, (2) all TOT attributable to the Period, and (3) any and all associated Tax Returns pertaining to that Period.

c. City's Determination for any given Period may include adjustments to Sales Taxes or TOT for prior Periods.

d. If the Payment Reduction Threshold has not been met at the commencement of a Period, but a City Payment will cause the Payment Reduction Threshold to be exceeded, the Developer's Share shall be prorated so that Developer receives 100% of TOT and Sales Taxes in excess of the Base Sales and TOT Revenue for amounts below the Payment Reduction Threshold and 50% of TOT and Sales Taxes in excess of the Base Sales and TOT Revenue for amounts above the Payment Reduction Threshold.

5.4 Termination of City Payments; Proration. City's obligation to make the City Payments shall automatically terminate upon expiration of the Term or other termination of this Agreement, provided however, if this Agreement is terminated before the payment of a City Payment owed for a Period in which this Agreement was in full force and effect, the City shall pay Developer the City Payment or prorated portion thereof for the time period that this Agreement was in effect.

5.5 Tax Implications of City Payments. Developer acknowledges that City has made no representation or warranty regarding tax treatment of the City Payments and Developer assumes the obligation to pay all federal and state taxes, if any, with respect to such City Payments.

5.6 State Legislation and Impact on Payment. Developer acknowledges that the State of California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Taxes which would otherwise be payable to City, and that it is possible the State of California legislature may enact other legislation in the future which would cause a reduction of and/or delay in the payment of the Sales Taxes and/or TOT Taxes or a claw back or taking of Sales Taxes and/or TOT Taxes already in the City's possession, which will cause a corresponding reduction for Developer and/or delay in the City Payment ("State Legislation"). Developer further acknowledges and agrees that it is possible State Legislation may be enacted and effective one or more subsequent times during the Term that may materially and negatively impact the amount of Sales Taxes and/or TOT Taxes available to City and, accordingly, the City Payment. City does not make any representation,

warranty or commitment concerning the future actions of the State of California legislature with respect to the allocation or payment of any Sales Taxes and/or TOT Taxes to City, City's ability to control or retain Sales Taxes and/or TOT Taxes allocated or paid to City, or any State Legislation. Developer agrees that it is undertaking its obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of State Legislation.

6. **Books and Records; Audit Rights.**

6.1 **City Audit Right.** City shall have the audit rights described in Chapter 3.24 of the Morgan Hill Municipal Code with respect to TOT. If the audit reveals an underpayment of taxes in excess of ten percent of the total amount owed to the City for any consecutive three-month period during the audit period, the operator shall pay the City actual costs to perform the audit as well as the full amounts, plus penalties and interest of tax, that the audit reveals should have been remitted to City pursuant to this chapter. Failure to collect TOT, or to comply with the provisions of Chapter 3.24 of the Morgan Hill Municipal Code shall constitute a material breach of this Agreement.

6.2 **Schedule of Performance:** No later than June 30, 2025, Developer will provide evidence that there is sufficient debt and equity contributions to fund 100% of the Project's estimated development costs.

6.3 **State Audit.** Developer acknowledges that if total compensation under this agreement is greater than \$10,000, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to Government Code section 8546.7. In order to facilitate these potential examinations and audits, Developer shall maintain, for a period of at least three (3) years, or for any longer period required for final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

6.4 **Survival.** The provisions of this Section 6 shall survive termination or expiration of this Agreement.

7. **Defaults.**

7.1 **General Default; Remedies.** A "**Default**" means a failure in the due, prompt and complete observance or performance of any condition, covenant or obligation of the defaulting Party set forth in this Agreement for a period of thirty (30) days after written notice to the defaulting Party specifying the nature thereof, provided that the defaulting Party shall not be in Default under this Section 7.1 if the failure to observe or perform the condition, covenant or obligation in question is curable but is of such a nature that it is incapable of being cured with reasonable diligence within said 30 day period and the defaulting Party commences such cure within said 30 day period and diligently and continuously pursues the same to completion. If a Default occurs under this Agreement, then the non-defaulting Party may exercise any equitable right or remedy which it has under this Agreement, including injunctive relief and specific performance, and all of the non-defaulting Party's rights and remedies shall be cumulative.

Notwithstanding any other provision hereof to the contrary, neither Party shall be entitled to any actual, consequential, special or punitive damages.

7.2 Additional City Remedies for Material Default. In addition to City's rights and remedies under Section 7.1 above, City shall have the right to terminate this Agreement on the occurrence of any Material Default without further notice to Developer or opportunity to cure. Each of the following Defaults shall be a "**Material Default**":

a. Developer's failure to Open the Luxury Boutique Hotel component of the Project on or before January 1, 2028.

b. Developer's failure to Open the Fine Dining Restaurant within thirty-six (36) months after the Effective Date;

c. Developer's failure to re-Open a Fine Dining Restaurant within twelve (12) months after a prior Fine Dining Restaurant operator's cessation of operations; and

d. The closure of the Luxury Boutique Hotel component of the Project for twelve (12) months after the Luxury Boutique Hotel component Opens.

7.3 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

7.4 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8. Assignment by Developer. Except as otherwise provided in this Section 8 this Agreement, and Developer's interest hereunder, shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the prior written consent of City. Any attempt to assign or delegate this Agreement in violation of this provision shall be void and of no force or effect. Assignments of this Agreement by Developer shall be subject to the following requirements:

8.1 City Approval of Assignments. Prior to completion of construction of the Project, Developer may only assign this Agreement with City's consent in its sole and absolute discretion. Following completion of construction of the Project, Developer may assign this Agreement to a transferee acquiring Developer's fee interest in the Site and Project and that has been previously approved by City in writing. City shall approve an assignment to a transferee that, in City's reasonable estimation, has at least five (5) years experience managing Luxury Boutique Hotels of similar size and scope as the Project.

8.2 Permitted Assignments. An assignment or transfer of this Agreement to an Affiliate of Developer shall not require the consent of the City but shall be subject to the requirements of Section 8.3 below. Provided the transferee assumes all ongoing and future Developer obligations under this Agreement, any assignment that complies with the requirements of this Section 8.2 shall fully release Developer from any obligation hereunder accruing on or after the date of assignment.

8.3 General Conditions. The following requirements shall apply to any assignment or transfer of this Agreement regardless of whether City consent is requested or required:

a. If Developer desires to assign this Agreement, then at least thirty (30) days prior to the date Developer desires the assignment to be effective, Developer shall give City written notice, setting forth the name, address and business of the proposed assignee and such other information as City may reasonably request.

b. Consent to one assignment shall not be deemed consent to any subsequent assignment.

c. Any assignee pursuant to an assignment consented to by City or otherwise permitted hereunder shall deliver to City, before the assignment shall be effective, a written original of the assignment of this Agreement and the assignee's agreement to be bound by, assume and perform and observe all terms, covenants and obligations of Developer hereunder, which instrument must be in a form reasonably acceptable to the City Attorney, and approved by the City Manager.

8.4 Changes in Organization. Developer shall notify City of any changes in organization, or any other business actions requiring notification to the CDFTA, California Secretary of State, the County Recorder's Office, California Franchise Tax Board, the County Assessor, or any other state or local entity required to be notified of any change in business organization or action, within ten (10) days following the date of such change.

9. General Provisions.

9.1 Notices, Demands and Communications. Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent (i) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (ii) by first-class United States mail, postage prepaid, return receipt requested; or (iii) by a nationally recognized overnight courier service, marked for next day business delivery. All notices shall be addressed to the Party to whom such notice is to be given at the address stated in this Section 9.1 or to such other address as a Party may designate by written notice to the other; notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

For the avoidance of doubt, telephone numbers are supplied below only for the purpose of accommodating a courier's or delivery service's request for a telephone number for the party receiving notice.

City Notice Address:

City of Morgan Hill
Attn: Economic Development Director
17575 Peak Avenue
Morgan Hill, CA 95037
Telephone: 408-310-4652

with copies to all of the following:

City of Morgan Hill
Attn: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Telephone: (408) 779-7271

Developer Notice Address:

MOHI Hotel Management LLC
Attn: Frank Leal, President
300 Maranatha Drive
Hollister, CA 95023

with a copy to:

Noland, Hamerly, Etienne & Hoss
333 Salinas, Street
Salinas, CA 93901
Attention: Randy Meyenberg
Phone (831) 424-1414

All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; (c) if sent by first class mail, the third day on which regular United States mail delivery service is provided after the day of mailing; or (d) if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

9.2 Force Majeure. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; pandemics, epidemics, or quarantine restrictions that require closure of similarly situated businesses; freight embargoes or lack of transportation; inability to secure necessary labor, materials or tools; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform (each, an event of "**Force Majeure**"). Any extension of time for any such cause hereunder shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) calendar days of the commencement of the cause. If notice is not timely given, such extension shall not

commence until and if the other Party has actual knowledge of the cause. Developer and City acknowledges that adverse changes in economic conditions, either of the affected party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the Project or thereafter Continuously Operate the Luxury Boutique Hotel and Fine Dining Restaurant components of the Project shall not constitute grounds of Force Majeure. Times of performance under this Agreement may be extended by mutual agreement in writing by and between City and Developer.

9.3 Days. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next business day.

9.4 Successors and Assigns. Subject to the limitations on Developer's rights to assign this Agreement set forth in Section 8 above, all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include its permitted successors and assigns as herein provided.

9.5 No Joint Venture. It is expressly agreed that City is not, in any way or for any purpose, a partner of Developer or any of Developer's partners, officers, members, directors, shareholders, principals, agents, employees, contractors or subcontractors, or its or their successors or assigns (each, a "**Developer Party**") in the conduct of its or their business or a member of a joint enterprise with Developer or any Developer Party. Neither City nor Developer shall be deemed or construed for any purpose to be the agent of the other, and City does not assume any responsibility for Developer or any Developer Party's conduct or performance of this Agreement. Developer shall defend (with counsel reasonably acceptable to City), indemnify, and hold harmless the Indemnities from and against Claims arising out of or in any way connected with a claimed relationship of partnership or joint venture between City and Developer, including with respect to the development, operation, maintenance or management of the Project or the Site. Developer's indemnity obligations under this Section 9.5 shall survive the expiration or earlier termination of this Agreement.

9.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

9.7 No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No waiver by City of any of the Conditions Precedent shall be effective unless in a writing expressly identifying the scope of the waiver and signed by the City.

9.8 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

9.9 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the full extent permitted by Law.

9.10 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, officials, agents, employees, volunteers, representatives, attorneys, or consultants, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

9.11 Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, shall promptly execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. In addition, City and Developer, at Developer's expense, shall cooperate in the event of any court action instituted by a third Party or other governmental entity or official challenging the validity of this Agreement or the subject matter hereof. Nothing herein shall authorize Developer or any insurer to settle, consent to settlement of, or admit any liability in connection with such legal challenge, or take any action that would constitute an amendment or modification of this Agreement, absent approval by City in writing.

9.12 Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

9.13 Applicable Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

9.14 No Third-party Beneficiaries. There are no third-party beneficiaries to this Agreement.

9.15 Venue. Any legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement shall be brought in the Superior Court for Santa Clara County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

9.16 Interpretation. The captions preceding the sections of this Agreement have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement. Except where explicit reference is made to business days, provisions in this Agreement relating to number of days shall be calendar days. Use of the word "including" means "including, without limitation." As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The recitals to this Agreement and all exhibits attached hereto are incorporated by reference, as though fully restated herein.

9.17 Time of Essence. Time is of the essence with respect to all obligations of Developer and City under this Agreement.

9.18 Brokers. The Parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction. If any other person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Developer or City, then the Party through whom such person makes his or her claim shall defend the other Party from such Claim and shall indemnify and hold such other Party harmless from Claims incurred by such other Party in defending against the Claim.

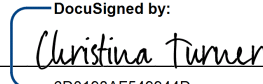
9.19 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, including any action by the City Manager, the City Manager or his or her designee is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

9.20 Integration. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement. For avoidance of doubt, the Parties' respective rights and obligations under the MOU remain in full force and effect, including City's right to impose liquidated damages if Leal does not satisfy its obligations by the deadlines set forth in the MOU.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.


CITY:

CITY OF MORGAN HILL, a municipal corporation

By:  6D0198AF549944D...


Christina Turner, City Manager

Approved as to form:

DocuSigned by:

Donald A. Larkin, City Attorney

DEVELOPER:

MOHI Hotel Management, a California Limited Liability Company

By: 
A945A6E17A02439...

Name: Frank Leal

Title: President

EXHIBIT A

SITE MAP



Exhibit B

DRAFT DEAL POINTS PROPOSED HOTEL MOHI BY APPELLATION JUNE 12, 2024

CONSTRUCTION AND OPERATIONAL STANDARDS

1. A Scope of Development will be included in the City of Morgan Hill (City) assistance agreement. The “Project” will be required to consist of the following uses:
 - a. An approximately 76 room boutique hotel;
 - b. Food and beverage service areas totaling approximately 14,000 square feet of gross building area;
 - c. Event and meeting space totaling approximately 11,000 square feet of gross building area;
 - d. An approximately 2,100 square foot spa; and
 - e. A swimming pool and pool deck area.
2. The hotel must meet and maintain the quality standards associated with a four star or above lifestyle luxury hotel. A list of comparable hotel brands shall be identified as part of the agreement between the City and the development team.
3. One restaurant within the Project must meet and maintain the scope, construction quality, and operational standards associated with a Charlie Palmer restaurant. A list of comparable restaurant brands shall be identified as part of the agreement between the City and the development team.
4. The balance of the commercial and event space uses shall be developed and operated as typically provided within four star and above lifestyle luxury hotels.

FINANCIAL REQUIREMENTS

1. A Schedule of Performance will be included in the City assistance agreement that establishes a timeframe by which the development team must provide evidence of sufficient debt and equity contributions to fund 100% of the Project's estimated development costs.
2. To verify that the proposed assistance package is warranted, upon completion of construction, the City shall have the right to review the actual costs incurred to construct the Project.

PROPOSED PUBLIC ASSISTANCE PACKAGE

The fundamental terms of the proposed assistance package can be described as follows:

1. The City will provide assistance to the Project that is measured in terms of the transient occupancy tax (TOT) and sales tax revenues generated by the Project.
2. The City assistance will be provided over a maximum 15 year term, commencing in the first year of the Project's operation.
3. Prior to any funds being distributed to the Project, the City will receive the following share of the TOT and sales tax revenues generated by the Project:
 - a. A \$282,000 base will be applied in the first year of the Project's operation; and
 - b. The base will be increased by 3% annually.
4. During the 15-year term the City assistance will be structured as follows:
 - a. An amount equal to 100% of the TOT and sales tax revenue generated by the Project above the base level will be provided to the Project each year until the Project has received \$6 million measured in net present value terms.¹
 - b. In the event \$6 million in assistance is provided prior to the end of the 15th year of the Project's operation, the City assistance will be reduced to 50% of the TOT and sales tax revenue generated by the Project above the base level until the end of the 15th year of the Project's operation.

¹ The discount rate will be set at 6.5%.

DEFAULT

In the event the Project defaults on any of the development scope and/or operational standards imposed by the City assistance agreement, and that default is not cured within a defined time period, the City assistance payments to the Project will terminate.

Certificate Of Completion

Envelope Id: 6DB9EE72FD53480DBC238AD329CBC8EE

Status: Completed

Subject: Complete with DocuSign: Sales and Transient Occupancy Tax Reimbursement Agreement - Final.pdf

Source Envelope:

Document Pages: 21

Signatures: 3

Envelope Originator:

Certificate Pages: 5

Initials: 0

City Clerk's Office

AutoNav: Enabled

17575 Peak Ave

Envelopeld Stamping: Enabled

Morgan Hill, CA 95037

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

cityclerk@morganhill.ca.gov

IP Address: 35.131.77.142

Record Tracking

Status: Original

Holder: City Clerk's Office

Location: DocuSign

8/30/2024 3:29:51 PM

cityclerk@morganhill.ca.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of Morgan Hill

Location: DocuSign

Signer Events

Frank Leal

Signature

Timestamp

Franco@liveloveleal.com

DocuSigned by:

Frank Leal

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Sent: 8/30/2024 3:33:31 PM

President

Viewed: 8/30/2024 4:58:12 PM

Security Level: Email, Account Authentication (None)

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Signature Adoption: Pre-selected Style

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ID: a59ac809-ba3d-4528-b10b-a86d6758bed3

Donald Larkin

Signature

Sent: 8/30/2024 4:58:32 PM

donald.larkin@morganhill.ca.gov

DocuSigned by:

Donald Larkin

45E6F0273EA2464...

Viewed: 9/3/2024 9:44:37 AM

City Attorney/Risk Manager

Signed: 9/3/2024 9:45:01 AM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 35.131.77.142

Electronic Record and Signature Disclosure:

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Christina Turner

Signature

Sent: 9/3/2024 9:45:02 AM

christina.turner@morganhill.ca.gov

DocuSigned by:

Christina Turner

6D0198AF549944D...

Resent: 9/6/2024 4:22:19 PM

City Manager

Viewed: 9/9/2024 1:14:31 PM

City of Morgan Hill

Signed: 9/9/2024 1:15:57 PM

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Signature Adoption: Pre-selected Style

Using IP Address: 138.229.181.219

Electronic Record and Signature Disclosure:

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp
Carbon Copy Events		
Matt Mahood matt.mahood@morganhill.ca.gov City of Morgan Hill Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 9/20/2023 8:23:37 AM ID: 3ab7b777-36dd-4062-a609-3bd43d8b00a9	COPIED	Sent: 9/9/2024 1:15:58 PM
Randy Meyenberg rmeyenberg@nheh.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/9/2024 1:15:59 PM
Angel Echavarria angel.echavarria@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 7/18/2024 2:25:26 PM ID: 066f48c2-1e16-415d-a140-5dc49c4c5dc0	COPIED	Sent: 9/9/2024 1:16:01 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events		
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Certified Delivered	Security Checked	9/9/2024 1:14:31 PM
Signing Complete	Security Checked	9/9/2024 1:15:57 PM
Completed	Security Checked	9/9/2024 1:16:01 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.