

PREDEVELOPMENT MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN UNDEVELOPED  
PROPERTY REFERRED TO AS THE CONDIT-EVERGREEN SITE IN THE CITY OF MORGAN HILL,  
SANTA CLARA COUNTY, CALIFORNIA

This Predevelopment Memorandum of Understanding (the "MOU") is effective this 4th day February, 2015, by and between the City of Morgan Hill, a municipal corporation (the "City") and Presidio Evergreen, LLC, a Delaware limited liability company (the "Owner").

**Recitals**

- A. Description of Owner's Property. Owner has optioned approximately 18 acres of land located in the incorporated limits of the city of Morgan Hill (the "City"), Santa Clara county (the "County"), which 18 acres of land consists of two adjacent parcels, Assessor's Parcel Numbers 817-12-006 and 817-12-009 (collectively, the "Property"). The Property is bordered by Murphy Avenue on the east, San Pedro Avenue on the south, Condit Road on the west, and approximately 13 acres of commercially designated property to the north.
- B. Description of Current Land Use Designation. On February 4<sup>th</sup>, 2015, Owner's application for an amendment to City's General Plan to change the General Plan designation for the Property on City's General Plan Land Use Diagram from "Commercial" use to "Multi-family medium density" on Assessor's Parcel No 817-12-006 ("Parcel A") of the Property and to "Multi-family low density" on Assessor's Parcel No. 817-12-009 ("Parcel B") of the Property was approved by City's City Council after a duly noticed and held public hearing on the application.
- C. Purpose. The purpose of this MOU is to memorialize a mutual understanding of Owner and City in connection with the processing of a series of applications relating to the development of the Property, including applications necessary for Zoning Map amendments, Measure C allocations, subdivision, and environmental review.

**NOW THEREFORE**, in consideration of the mutual covenants and understandings contained herein, the parties, the City and the Owner, agree as follows:

1. Development of the Property.

As an overview, the Owner desires to create a residential development opportunity within the Property and the City desires to secure community benefits within such development pursuant to requirements of the Morgan Hill Municipal Code, including those provisions relating to the conversion of commercially designated lands. The contemplated goals of the Owner and the City regarding the Property are as follows:

- a. *City's Goals.* The City desires for the Property to be developed in a manner that is compatible with nearby attractions, such as the Aquatic Center and Outdoor Sports Complex, and provide services to support the area including some commercial development. Further, the City's concerns with public accommodations and access, both residential and commercial, are shared with the Owner. As evidenced by the Owner's Goals set forth herein and as generally depicted on the illustrative Site Map attached hereto as "Exhibit A," which Site Map is incorporated herein by this reference, the City's goals are shared by the Owner.
- b. *Owner's Goals.* Owner desires to address the needs of the community by providing a viable residential village that will be part of a greater mixed-use neighborhood. Owner has bifurcated the Property into Parcel A and Parcel B to include both rental and for-sale housing, which will each be separately processed through the RDCS process. The adjacent property owners (of the real property to the north of the Property) prefer to maintain commercial zoning on their property (the "Northern Property"). Owner hopes to plan for the coordinated development of the Property and the Northern Property through the PD process. The Owner will bear the entire costs of the PD overlay. The Owner agrees that all applications to develop the property will include the below mentioned attributes:
  - i. Commercial Component. The Owner will provide at least 10,000 square feet of commercial space within the Property as long as it complies with the PD overlay and General Plan. The majority of the commercial uses will be located on the 13 acre Northern Property located closest to Dunne Avenue. In addition, the Owner will make its commercially best effort to acquire and or develop the Northern Property and the Property in unison.
  - ii. Residential Component.
    - 1. The south portion of the Property will include up to 220 units of multifamily residential apartments units; and will include up to 100 units of for-sale townhouse units.
    - 2. Within the residential component of the Property, Owner will provide a walkable community, with tree lined streets and parks for both an aesthetic and utility purpose, as the trees will buffer light and noise. The majority of the homes will have front doors oriented toward the streets.
    - 3. The east half of the residential component of the Property will be developed with attached or detached housing (i.e., townhomes or row homes) consistent with the City's Multi-Family Low General Plan land use designation.

4. The west half of the residential component of the Property will be developed with multi-family residential rental housing consistent with the City's Multi-Family Medium General Plan land use designation contingent upon approval of the General Plan Amendment by the City in 2015, and the establishment of a set aside category for large Multi-Family rental housing and allotment of units for the project within the 2015 Measure C process.
5. The entire southern border of the residential component of the Property will consist of a linear green belt, providing community resources within the developed Property such as a children's play area, demonstration garden, picnic benches, and/or other similar uses. The actual uses will be determined during the planning process.
6. A total of at least 165 parking spaces will be provided along San Pedro Avenue and at least ~~1~~<sup>1</sup> acre(s) of land will be dedicated by the Owner to the City for this purpose.
7. The Owner will provide at least a 250 foot setback from the Sports Complex for any residential housing. All homes will be oriented and designed to allow for minimum impact from the Sports Complex lighting. This setback will be beyond the 150 feet of lighting defined within manufactures lighting leakage analysis.
8. The Owner will provide a grove of mature trees within the linear park to allow for an additional noise buffer. The trees will be fast growing, allowing maximum noise and light buffer. In addition, the linear park will be designed with noise whiting features such as a water fountain.
9. The Owner will develop the project on the Property utilizing high quality architectural and site planning design practices, consistent with the City's General Plan and Architectural Review Handbook and any other design guidelines in effect at the time of development. The overall site plan will facilitate pedestrian, bicycle and vehicle movement through the site and to adjacent land uses.
10. In the case that development of the Residential Component on the Property precedes the development of the commercial ~~component, component;~~ the Owner shall as part of the residential development construct a street along the northern edge of the Property consistent with City street design standards. Concurrently, the Owner shall also construct a street, consistent with City street design standards, between Parcel A and Parcel B.

2. Submittal of Applications. Owner, their agents or successors in interest shall submit to City on City's standard application forms, applications with all supplementary information, fees, and documents required by the City to process the same, for the developments described in Section 1 above.
3. Processing Costs. Owner shall pay City regarding submittal of any applications, the costs customarily charged by the City for processing such applications, including the cost for environmental review.
4. Development Agreement. A development agreement pursuant to Government Code Section 65864 *et seq.*, with an anticipated term of approximately 10 years would be prepared and executed in connection with any development approvals granted by City for the Property. It is further anticipated that the development agreement would comply with applicable state and local law and be in general accord with the terms contained in this MOU, as well as contain other such terms as are agreed upon by the parties to the agreement.
5. Limitations. This MOU requires the City to process and take future action on development requests for which completed applications have been submitted relating to the Property. The parties acknowledge and agree that execution of this MOU by the City does not alter the application of CEQA to development of the Property, nor alter the discretion of the City, the City Council, the City Planning Commission, or any department, agency, employee, or instrumentality of the City to determine whether to enact the ordinances, adopt resolutions, or grant the entitlements required to accomplish any of the actions set forth in Section 1, or to make any of the findings required in order to do so. By entering into this MOU, neither Owner nor City shall obtain from each other any right or entitlement, nor shall either obtain from the other any expectancy other than as specifically set forth herein. This MOU is a non-binding understanding between the parties, and is intended only to show the parties' good faith moving forward in connection with the subject matters described herein.
6. Termination. This MOU shall terminate if and when a development agreement as described in Section 4 above is effective in connection with all development contemplated in Section 1 above or may be terminated by the City or the Owner upon 60 days' prior written notice to the other. Any effective development agreement between Owner and City in connection with the Property shall supersede and terminate the terms and provisions of this MOU.
7. Assignment. This MOU is assignable by the Owner to any successor in interest.
8. Notices. Any notice to be served on the City shall be served upon it at City Hall, 17555 Peak Avenue, Morgan Hill, California 95037. Any notice to be served upon Owner shall

be served upon them c/o Orville Power at 5927 Balfour Court, Suite 208, Carlsbad, California 92008.

9. Authority. Each person signing this MOU on behalf of an entity represents that he or she is authorized to execute this MOU on behalf of such entity.

CITY:

City of Morgan Hill, a municipal Corporation

for By: 

Mayor

Attest

By: 

City Clerk

Approved as to Form:

By: 

City Attorney

OWNER:

Presidio Evergreen, LLC, a Delaware limited liability company

By: Mana Evergreen, LLC, a California limited liability company, its Authorized Member

By: Mana Investments, Inc., a California corporation, its Managing Member

By: 

Orville Power,  
CEO