

Planning Commission Date: May 23, 2007

Item No. 

## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: Public Hearing

Report Prepared by: Felix Reliford

Public Hearing: Yes:  No:

Notices Mailed On: 5/11/07 Published On: 4/26/07 Posted On: 5/11/07

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**TITLE: "S" ZONE AMENDMENT NO. SA2007-18 AND MINOR TENTATIVE MAP AMENDMENT NO. MM2007-2**

**Proposal:** A request to amend "S" Zone No. SZ2007-1 and Minor Tentative Map No. MI2007-2 special conditions of approval for Aspen Family Apartments, 101 affordable units.

**Location:** 1666 S. Main St.

**APN:** 086-22-023

**RECOMMENDATION:** **Close the public hearing. Approve S-Zone Amendment No. SA2007-18 and Minor Tentative Map Amendment No. MM2007-2: Request to Amend the Special Conditions of Approval for 90-Days**

**Applicant(s):** Global Premier Development, Inc., 5 Park Plaza, Suite 980, Irvine, CA 92614 – Project Manager: Charles Hutchison

**Property Owner(s):** Martin & Mary Baccaglio, 15030 Montebello Rd., Cupertino, CA 95014

**Previous Action(s):** EIR, GPA, Rezoning for Midtown Specific Plan. 'S' Zone for one of the existing buildings.

**General Plan Designation:** Multi-Family Very High Density. Located in Midtown Specific Plan area.

**Present Zoning:** Multi-Family Very High Density with 'S' Zone combining district (R4-S)

**Existing Land Use:** Two multi-tenant industrial buildings and storage areas

**Agenda Sent To:** Applicant and Owners (as noted above)  
- Donna Vingo, Warmington Homes, 2010 Crow Canyon Place, Suite 450, San Ramon, CA 94583  
- Robert Dulalia, Saf-Keep Storage, 1680 S. Main St., Milpitas, CA 95035

**Attachments:** Letter from Global Premier Development, Inc-dated April 5, 2007 Findings and Approved Special Conditions

**BACKGROUND:**

This item was continued from the Planning Commission meeting of May 9, 2007. At its meetings on March 14 and 28, 2007 the Planning Commission approved the “S” Zone, Use Permit and Tentative Map applications for the development of Aspen Apartments 101 unit affordable housing project located at 1666 S. Main Street. The project was approved subject to 72 special conditions of approval.

Based on the required timing to comply with several of the special conditions of approval and the need to obtain a conditional building permit to secure the \$24 million tax credit funding for the project, the applicant has required an extension of time for 90-days (May 23 to August 23, 2007) to comply with several special conditions. Pursuant to the requirements of the State of California Tax Credit Allocation Committee, the developer must have the development constructed by December 31, 2008. The amendment to the special conditions would allow the developer to meet the construction time schedule without delays.

The majority of the special conditions are related to preparing the specific site improvement plan, obtaining permits and/or approval from outside agencies and preparation of studies/reports.

City Staff has reviewed the request to grant the extension of the special conditions of approval for 90-days and has no objections. The approval requested by the developer does not change or impact the site plan, design, architectural or affordability the Planning Commission previously approved for the project.

If approved, the 90-day extension will be granted from May 23, 2007 until August 23, 2007. All of the amended special conditions of approval would be required to be complied with by August 23, 2007 date.

Included in the Planning Commission’s agenda packet is a letter from the Developer, Global Premier Development, Inc. identifying the requested amended special conditions of approval for the 90-day time extension.

**RECOMMENDATION:**

Approve S-Zone Amendment No. SA2007-18 and Minor Tentative Map Amendment No. MM2007-2: Request to Amend the Special Conditions of Approval for 90-Days until August 23, 2007 as recommended by staff.

## FINDINGS

1. The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 of the State Planning and Zoning Law and Article 11, Section 15168(c)(2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines.
2. The proposed project is consistent with Guiding Policies and Implementing Principles 2.a-G-2, 2.a-G-3, 2.a-G-6 and 2.a-G-6 of the General Plan in that the proposed overall density is consistent with the Multi-Family Very High Residential General Plan designation and meets the intent of the Midtown Specific Plan of densities over 30 DU/acre. It will provide family housing, with two and three bedroom units, assist in meeting the City's regional housing obligations and is 100% affordable. In addition, the overall development will be an in-fill project replacing an existing industrial type uses.
3. As conditioned, the proposed project is consistent with the intent and specific requirements of the Midtown Specific Plan in that it complies with the development standards of the "R4" Midtown zoning district, with the exception of number of setbacks and parking, it conforms with the Midtown Specific Plan's Land Use Goals 2 and 3, Circulation Goal 1 and 2, Circulation Policies 4.5 and 4.9, Parking Policy 4.19, Community Design Goal 4, Residential Policies 3.1 and 3.4 through 3.6, and Park and Open Space Policy 3.24 and is conformance with all applicable design guidelines.
4. As conditioned, the proposed project is consistent with the City of Milpitas Zoning Ordinance in terms of land use and development standards, with the exception of setbacks and parking, for "R4-S" zoning.
5. As conditioned, the layout of the site, design of the proposed building, and landscaping would be compatible and aesthetically harmonious with the future development of the surrounding area as envisioned by the Midtown Specific Plan and would greatly improve the current aesthetics of the site.
6. The proposed project exceeds the 20% minimum affordability requirements of the Zoning Ordinance<sup>11</sup>, the "R4" development standards and the Midtown Affordable Housing Policies 3.5 and 3.6.

### Use Permit Findings

7. The exceptions meet the design intent identified within the Midtown Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
8. The exceptions from the Midtown Specific Plan allow for a public benefit not otherwise obtainable through the strict application of the specified standards.
9. The exceptions, in the proposed project, will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

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<sup>11</sup> MMC XI-10-8.10

10. The proposed exceptions will be consistent with the intent of the Milpitas General Plan and the Milpitas Zoning Ordinance.

## SPECIAL CONDITIONS

- 1) **“S” Zone Approval:** This “S” Zone Approval No. SZ2007-1 is for a multifamily residential development for 101 affordable family apartments and associated site improvements in accordance with the plans approved on March 14, 2007, and as amended by the conditions below. Any modification to the project as approved will require an “S” Zone Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)
- 2) **Use Permit Approval:** This Use Permit No. UA2003-37 is for:
  - a. Reduce the required number of parking spaces by 20 for residents and 16 for guests.
  - b. Credit on-street parking spaces adjacent to the development as guest parking.
  - c. Modify required building setbacks from public streets.Any modification to the above exceptions will require approval of a Use Permit Amendment by the Planning Commission. (P)
- 3) **Parking:** Prior to certificate of occupancy issuance, the applicant shall submit a copy of a lease agreement that requires a statement for each unit rented that limits the number of parking spaces provided per unit and shall submit a copy to the City. (P)
- 4) **Legal compliance:** This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
- 5) **Asbestos:** Prior to any demolition or removal of any structures onsite, the applicant submit the asbestos survey and if asbestos-containing materials are present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. (P)
- 6) **Lead:** Prior to building permit issuance, the applicant shall submit documentation of the removal of all lead contamination and a “Notice of Completion” letter from the Department of Toxic Substance Control. (P)
- 7) **Park Fee:** Prior to certificate of occupancy issuance, the applicant shall pay a park-in-lieu fee based on the latest Fair Market Appraisal (March 2007) and with credit for private open space. (P)
- 8) **Private Job Account:** If at the time of application for building permit and for occupancy permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
- 9) **Noise and Vibration:** Prior to building permit issuance, a detailed analysis of railroad noise and vibrations must be submitted and recommended mitigation measures incorporated in the project plans. (P)

- 10) **Signs:** Prior to occupancy permit issuance, the project sign program must be approved by the Planning Commission. (P)
- 11) **Solid Waste:** The trash/recycling chutes, bins and enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
- 11) **Landscape Irrigation:** Prior to building permit issuance, the applicant shall submit an irrigation plan for all landscape areas. The irrigation plan shall show that all landscape areas, including planter areas and containerized planters, will have an automatic, self-watering system installed that is serviced by a sprinkler head or drip system equipped with a moisture sensor. (P)
- 12) **Landscaping:** Prior to issuance of an occupancy permit, the required landscaping shall be planted and in place. (P, C.3 Standard Condition No. 4)
- 13) **Landscaping:** All required landscaping shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. Proper maintenance of landscaping requires minimal pesticide use and shall be the responsibility of property owner in perpetuity. The pest reducing landscape maintenance techniques listed in the "Fact Sheet on Landscape Maintenance Techniques for Pest Reduction" in the City of Milpitas *Stormwater C.3 Guidebook*, are incorporated by reference into this condition. (P, C.3 Standard Condition No. 7)
- 14) **Landscaping:** City Planning staff shall have approval authority for the installation of comparable substitute pest-resistant plant materials to satisfy the requirements of the approved landscape plan when the approved plants and materials are unavailable for installation, or when other unforeseen conditions prevent the exact implementation of the landscape plan. (P, C.3 Standard Condition No.6)
- 15) **Decorative Surfaces:** Prior to building permit issuance, applicant shall add decorative elements (i.e., pavers or tile accents) to plans for private walkways and planter areas, to the approval of the Planning Division. (P)
- 16) **Building Features:** Prior to building permit issuance, applicant shall revise building elevations to include:
  - a. Windows recessed four inches (per Midtown Specific Plan Guidelines).
  - b. Roof downspouts draining to landscape areas to the greatest extent possible.
  - c. Covered bicycle parking. (P)
- 17) **Screening:** On-site utility transformers, boxes, etc. shall be placed underground (subsurface vaults) or be located at the rear of the property and screened from public view in a manner to the approval of the Planning Division. (P)
- 18) **Emergency Access Gates:** Prior to building permit issuance, the applicant shall provide plans for emergency access gates to the approval of the Fire and Planning Departments. (P)
- 19) **Stormwater:** Prior to building permit issuance, permit plans shall incorporate the following BMP'S for post construction storm water impacts: (P)
  - a. Labeling and maintenance (annual inspections) of storm drain facilities;
  - b. Storm drain inlet cleaning on an annual basis;
  - c. Street sweeping.

- 20) **Vector Control:** Prior to any construction or grading of the site, a vector control plan shall be submitted to and approved by the City. (P)
- 21) **Air Quality:** Prior to building permit issuance, permit plans shall implement the following Best Management Practices (BMP's) at all project construction sites: (P, MM AQ-1)
- a. Water all active construction areas;
  - b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard;
  - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas;
  - d. Sweep daily;
  - e. Hydro seed or apply non-toxic soil stabilizers to inactive construction areas;
  - f. Enclose, water or apply non-toxic soil binders to exposed stockpiles;
  - g. Limit traffic speeds on unpaved roads to 15 miles per hour;
  - h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
  - i. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. (P)
- 22) **Air Quality:** Prior to any permit issuance, incorporate into building plans appropriate Bay Area Air Quality Management District (BAAMQD) Best Management Practices (BMP's) to reduce vehicle trips as identified in the Summary of Impacts and Mitigation Measures (Section 1.2 of the DEIR and FEIR, Subsection "Air Quality", MM "Regional Development Impacts" for commercial development). Possible measures are (P, MM AQ-2):
- a. Provide physical improvements such as sidewalks, landscaping and bicycle parking that will act as incentives for pedestrian and bicycle modes of travel;
  - b. Connect the site with regional bikeway and pedestrian trail systems;
  - c. Provide a transit information kiosk;
  - d. Provide showers and lockers for employees bicycling or walking to work;
  - e. Provide secure and conveniently located bicycle parking and storage for workers and patrons;
  - f. Provide electric vehicle charging facilities;
  - g. Provide preferential parking for Low Emission Vehicles;
  - h. Use specialty equipment (utility carts, forklifts, etc.) that are electrically, CNG or propane powered;
  - i. Use reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand. (P)
- 23) **Construction Noise:** During construction, the applicant shall implement the following measures to reduce construction noise: (P)
- a. Construction shall be limited to the hours of 7:00AM to 7:00PM on weekdays, and 9:00AM to 5:00PM on Saturdays, with no noise generating construction on Sundays and holidays.
  - b. Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.

- c. Utilize quiet models of air compressors and other stationary noise sources where the technology exists.
- d. Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
- e. Prohibit unnecessary idling of internal combustion engines.
- f. Prior to issuance of a building permit, designate a noise disturbance coordinator who will be responsible for responding to any local complaints about construction noise. During construction, the coordinator will determine the cause of the noise complaints and institute reasonable measures to correct the problem. Maintain during all construction a conspicuously posted telephone number for the public to call the coordinator at the construction site. (P)

24) **Biology:** Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to the U.S. Fish and Wildlife Service and the California Department of Fish and Game (CDFG), to determine the presence and/or absence of special status plant species. If presence is detected, notification and appropriate protocols for relocation and/or mitigation and monitoring plan, to the approval of the City, for the plant species shall be prepared for long-term protection. The plan shall be implemented either before or concurrently with ground disturbing activities on the property. (P)

25) **Biology and Hydrology:** The applicant shall modify the existing Stormwater Pollution Protection Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources and water quality resulting from project related runoff. Measures shall include the following: (P)

- a. The use of silt fencing, fiber rolls, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats.
- b. Installation of grit and oil trap systems, which shall be maintained in perpetuity.
- c. Implementation of BMP's to prevent the discharge of construction debris and soils into Penitencia Creek during site clearing, grading and construction.
- d. As required, dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be to the approval of the City.
- e. The applicant shall retain a construction manager familiar with NPDES permit requirements to monitor construction activities.

24. **Stormwater:** During all construction activities, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD: (P)

- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
- b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
- c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;

- e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
- f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- h. Limit traffic speeds on unpaved areas to 15 mph;
- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- j. Plant vegetation in disturbed areas as quickly as possible; and
- k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes.

25) **Affordability:** Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 101 affordable rental-housing units (100% of total number of units) will be available at a housing cost affordable to very low and low-income households. (H)

26) **Affordability:** The applicant shall provide the following information in the final Owner Participation Agreement, as it relates to the number of affordable housing units, types of units (two and three bedrooms) and the income levels of the proposed affordable housing units as illustrated below. (H)

Income	No. of Units	Type of Units
Very Low and Low-Income	50 Units	Two & three bedrooms
Very Low and Low-Income	50 Units	Two & three bedrooms
Manager Unit	1 Unit	Two bedroom

27) **Affordability:** As part of the identified public benefit for this project, prior to occupancy, the applicant shall provide to the City of Milpitas City Council for review and approval, an dispersment plan by affordability (i.e., very low, low) exhibit illustrating the location of the affordable housing units within the development. The various levels of affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities. (H)

28) **Affordability:** Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low income limits established by the U.S. Department of Housing and Urban Development (HUD), are the stated limits for that income category. (H)

29) **Affordability:** The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable rental units. The Restriction Agreements shall be approved to form by the Milpitas

City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the rental housing units shall remain in effect for the entire lifetime of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (H)

- 30) **Affordability:** The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (H)
- 31) **Affordability:** The established affordable rents for the rental apartment shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable rents established for the apartment units shall not exceed the maximum allowable rents for "very low" households as defined in the above code sections. Said rents shall be approved for consistency with the definitions by the Housing Division staff. (H)
- 32) **Property Management Agreement:** Prior to issuance of a building permit, the developer/property owner shall submit to City Housing Division staff, a copy of the same Property Management Agreement that is sent to the property investors defining the general maintenance and up-keep of the property. Said agreement shall also address maintenance of the Emergency Vehicle Access area. (H)
- 33) **Water and Wastewater:** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
- 34) **Water, Sewer and Storm Drains:** Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
- 35) **Drainage:** At the time of grading building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)

- 36) **Public Improvements:** Prior to any building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)
- 37) **Underground Parking:** All proposed underground-parking structures should be designed for the additional surcharge due to traffic loading from proposed and future public streets. (E)
- 38) **Community Facilities District:** Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
- 39) **Traffic Impact Fee:** Prior to building permit issuance, the developer shall contribute its "fair share" of traffic impact fee in the amount of \$22,579 (based on a Midtown impact fee of \$113 per peak hour trip and Montague Expressway impact fee of \$903 per peak hour trip). (E)
- 40) **Street Improvements:** Prior to building permit issuance, the developer shall contribute \$115,092 toward its "fair share" costs of South Main Street median improvement (based on a South Main Street Median Island contribution fee of \$278.00 per peak hour trip). At City's option, the developer may be required to construct the subject improvement in lieu of payment of contribution. (E)
- 41) **Fees:** The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
- a. Storm water connection fee of \$45,114 based on 2.69 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
  - b. Water Service Agreement(s) for water meter(s) and detector check(s).

c. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)

- 43) **Fees:** Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. (E)
- 44) **Tentative Map:** Prior to any building permit issuance, the developer shall submit a tentative parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade. (E)
- 45) **Access Easement:** Prior to building permit issuance, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed Emergency Vehicle Access (EVA) or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping, and other common area facilities. (E)
- 46) **Under grounding:** Prior to building occupancy permit issuance, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more. All proposed utilities within the proposed development must also be under grounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
- 47) **Sight Distance:** The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
- 48) **Easements:** Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)
- 49) **Wall:** Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)
- 50) **Utilities:** All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)

- 51) **Wastewater:** If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (E)
- 52) **Water:** Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
- 53) **Solid Waste:** Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (E)
- 54) **Solid Waste:** Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
- 55) **Solid Waste:** Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
- 56) **Stormwater:** The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb one acre or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the

RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

- 57) **Stormwater:** The developer shall comply with Regional Water Quality Control Board's C-3 requirements and implement the following:

At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements. (E)

- 58) **Stormwater:** Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities. (E)

- 59) **Stormwater:** Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)

- 60) **Stormwater:** Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)

- 61) **Stormwater:** Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)

- 62) **Demolition:** All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer

shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)

- 63) **Landscape Irrigation:** In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
- a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
  - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.  
Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)
- 64) **Landscape Irrigation:** Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system *when available*. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)
- 65) **Public Right-of-Way Work:** Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
- 66) **Utilities:** The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
- 67) **Other Approvals and Permits:** It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
- 68) **Tree Removal:** Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
- 69) **Construction Monitoring:** Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The

construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)

70) **Flood:** The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)

71) **Postal Service:** The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)

72) **Exhibit "S":** At the time of building plan check submittal, the developer shall incorporate the changes shown on Engineering Services Exhibit "S"(dated 3/5/2007) in the design plans and submit three sets of civil engineering drawings showing all proposed utilities to the Land Development Engineer for plan check. (E)

#### Acronyms

ADA	Americans with Disabilities Act
BMP	Best Management Practices
CDFG	California Department of Fish and Game
C3	Stormwater
DEIR	Draft Environmental Impact Report for the Elmwood Residential and Commercial Development Project
E	Engineering Dept. Special Conditions
EIR	Environmental Impact Report for the Elmwood Residential and Commercial Development Project
FEIR	Final Environmental Impact Report for the Elmwood Residential and Commercial Development Project
H	Housing Division Special Conditions
MM	Mitigation Measure from the Final Environmental Impact Report for the Midtown Specific Plan
MMC	Milpitas Municipal Code
NPDES	National Pollutant Discharge Elimination System
P	Planning Division Special Conditions
SWPPP	Stormwater Pollution Protection Plan

6.



# Global Premier Development, Inc.

April 5, 2007

Address: Felix J. Reliford  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411



Felix;

Below is the list of conditions we are requesting a 90 day deferral after the issuance of building permits, anticipated 4-20-07.

**“S” ZONE NO. SZ2007-1 AND USE PERMIT NO. UP2006-22: PJ # 3199**

Conditions;

**6) Lead:** Prior to building permit issuances, the applicant shall submit documentation of the removal of all lead contamination and a “Notice of Completion” letter from the Department of Toxic Substance Control.

**9) Noise and Vibration:** Prior to building permit issuance, a detailed analysis of railroad noise and vibrations must be submitted and recommended mitigation measures incorporated in the project plans (P)

**12) Landscape Irrigation:** Prior to building permit issuance, the applicant shall submit an irrigation plan for all landscape areas. The irrigation plan shall show that all landscape areas, including planter areas and containerized planters, will have an automatic, self-watering system installed that is serviced by a sprinkler head or drip system equipped with a moisture sensor. (P)

**17) Building Features:** Prior to building permit issuance, applicant shall revise building elevations to include;

- a. Windows recessed four inches (per Midtown Specific Plan Guidelines).
- b. Roof downspouts draining to landscape areas to the greatest extent possible.
- c. Covered bicycle parking. (P)

**19 Emergency Access Gate;** Prior to building permit issuance, the applicant shall provide plans for emergency access gates to the approval of the Fire and Planning Departments. (P)

**20) Stormwater:** Prior to building permit issuance, permit plans shall incorporate the following BMP’s for post construction storm water impacts: (P)

**22) Air Quality:** Prior to building permit issuance, permit plans shall implement the following Best Management Practices (BMP’s) at all project construction sites: (P, MM AQ-1)

- a. Water all active construction areas;
- b. Cover all trucks hauling soil, and, and other loose materials, or require all trucks to maintain at least two feet of freeboard;
- c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas;
- d. Sweep daily;
- e. Hydro seed or apply non-toxic soil stabilizers to inactive construction areas;
- f. Enclose, water or apply non-toxic soil binders to exposed stockpiles;
- g. Limit traffic speeds on unpaved roads to 15 miles per hour;
- h. Install sandbags or other erosion control measures to prevent silt runoff to public roadway;
- i. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. (P)

**23) Air Quality:** Prior to any permit issuance, incorporate into building plans appropriate Bay Area Air Quality Management District (BAAMQD) Best management Practices (BMP's) to reduce vehicle trips as identified in the Summary of Impacts and Mitigation Measures (Section 1.2 of the DEIR and FEIR, Subsection "Air Quality", MM "Regional Development Impacts" for commercial development). Possible measures are (P, MM AQ-2):

- a. Provide physical improvements such as sidewalks, landscaping and bicycle parking that will act as incentives for pedestrian and bicycle modes of travel;
- b. Connect the site with regional bikeway and pedestrian trail systems;
- c. Provide a transit information kiosk;
- d. Provide showers and lockers for employees bicycling or walking to work;
- e. Provide secure and conveniently located bicycle parking and storage for workers and patrons;
- f. Provide electric vehicle charging facilities;
- g. Provide preferential parking for Low Emission Vehicles;
- h. Use specialty equipment (utility cars, forklifts, etc.) that are electrically, CNG or propane powered;
- i. Use reflective (or high albedo) and emissive roofs and light colored construction material to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand. (P)

**28) Affordability:** Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 101 affordable rental-housing units (100% of total number of units) will be available at a housing cost affordable to very low and low-income households. (H)

**35) Property Management Agreement:** Prior to issuance of a building permit. The developer/ property owner shall submit to City Housing Division staff, a copy of the same Property Management Agreement that is sent to the property investors defining the general maintenance and up-keep of the property. Said agreement shall also address maintenance of the Emergency Vehicle Access area. (H)

**36) Water and Wastewater:** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

**37) Water, Sewer and Storm Drains: Prior to issuance of any building permits,** the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)

**39) Public Improvements:** Prior to any building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24" X 36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of the public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)

**41) Community Facilities District:** Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)

**43) Street Improvements:** Prior to building permit issuance, the developer shall contribute \$115,092.00 towards its "fair share" costs of South Main Street median improvement (based on a South Main Street Median Island contribution fee of \$278.00 per peak hour trip). At City's option, the developer may be required to construct the subject improvement in lieu of payment of contribution. (E)

**45) Fees;** Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm),

treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. (E)

**46) Tentative Map:** Prior to any building permit issuance, the developer shall submit a tentative parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade.

**47) Access Easement:** Prior to building permit issuance, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed Emergency Vehicle Access (EVA) or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping and other common area facilities. (E)

**50) Easements:** Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)

**51) & 16) Wall:** Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)

**60) Stormwater:** Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities. (E)

### **Minor Tentative Map NO. MI2007-2 PJ #3199**

Conditions;

**7) Prior to any Building Permit Issuance:** the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24" X 36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (Auto CAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)

**15) Prior to an building permit issuance:** the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever ever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)

**22) Prior to any building permit issuance:** the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purpose. (E)

**23) Prior to building permit issuance:** the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)

**31) b prior to building permit issuance:** the developer shall submit an Operation and Maintenance (O&M) Plan for long-term operation and maintenance of C-3 treatment facilities.

Please let me know if there is anything else you will need! Please contact me anytime!

Sincerely,



Charles Hutchison  
Project Manager

6.

## FINDINGS

1. The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 of the State Planning and Zoning Law and Article 11, Section 15168(c)(2) (Program EIR) of the California Environmental Quality Act (CEQA) Guidelines.
2. The proposed project is consistent with Guiding Policies and Implementing Principles 2.a-G-2, 2.a-G-3, 2.a-G-6 and 2.a-G-6 of the General Plan in that the proposed overall density is consistent with the Multi-Family Very High Residential General Plan designation and meets the intent of the Midtown Specific Plan of densities over 30 DU/acre. It will provide family housing, with two and three bedroom units, assist in meeting the City's regional housing obligations and is 100% affordable. In addition, the overall development will be an in-fill project replacing an existing industrial type uses.
3. As conditioned, the proposed project is consistent with the intent and specific requirements of the Midtown Specific Plan in that it complies with the development standards of the "R4" Midtown zoning district, with the exception of number of setbacks and parking, it conforms with the Midtown Specific Plan's Land Use Goals 2 and 3, Circulation Goal 1 and 2, Circulation Policies 4.5 and 4.9, Parking Policy 4.19, Community Design Goal 4, Residential Policies 3.1 and 3.4 through 3.6, and Park and Open Space Policy 3.24 and is conformance with all applicable design guidelines.
4. As conditioned, the proposed project is consistent with the City of Milpitas Zoning Ordinance in terms of land use and development standards, with the exception of setbacks and parking, for "R4-S" zoning.
5. As conditioned, the layout of the site, design of the proposed building, and landscaping would be compatible and aesthetically harmonious with the future development of the surrounding area as envisioned by the Midtown Specific Plan and would greatly improve the current aesthetics of the site.
6. The proposed project exceeds the 20% minimum affordability requirements of the Zoning Ordinance<sup>11</sup>, the "R4" development standards and the Midtown Affordable Housing Policies 3.5 and 3.6.

### Use Permit Findings

7. The exceptions meet the design intent identified within the Midtown Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
8. The exceptions from the Midtown Specific Plan allow for a public benefit not otherwise obtainable through the strict application of the specified standards.
9. The exceptions, in the proposed project, will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

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<sup>11</sup> MMC XI-10-8.10

10. The proposed exceptions will be consistent with the intent of the Milpitas General Plan and the Milpitas Zoning Ordinance.

## SPECIAL CONDITIONS

- 1) **“S” Zone Approval:** This “S” Zone Approval No. SZ2007-1 is for a multifamily residential development for 101 affordable family apartments and associated site improvements in accordance with the plans approved on March 14, 2007, and as amended by the conditions below. Any modification to the project as approved will require an “S” Zone Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)
- 2) **Use Permit Approval:** This Use Permit No. UA2003-37 is for:
  - a. Reduce the required number of parking spaces by 20 for residents and 16 for guests.
  - b. Credit on-street parking spaces adjacent to the development as guest parking.
  - c. Modify required building setbacks from public streets.Any modification to the above exceptions will require approval of a Use Permit Amendment by the Planning Commission. (P)
- 3) **Parking:** Prior to certificate of occupancy issuance, the applicant shall submit a copy of a lease agreement that requires a statement for each unit rented that limits the number of parking spaces provided per unit and shall submit a copy to the City. (P)
- 4) **Legal compliance:** This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
- 5) **Asbestos:** Prior to any demolition or removal of any structures onsite, the applicant submit the asbestos survey and if asbestos-containing materials are present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. (P)
- 6) **Lead:** Prior to building permit issuance, the applicant shall submit documentation of the removal of all lead contamination and a “Notice of Completion” letter from the Department of Toxic Substance Control. (P)
- 7) **Park Fee:** Prior to certificate of occupancy issuance, the applicant shall pay a park-in-lieu fee based on the latest Fair Market Appraisal (March 2007) and with credit for private open space. (P)
- 8) **Private Job Account:** If at the time of application for building permit and for occupancy permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
- 9) **Noise and Vibration:** Prior to building permit issuance, a detailed analysis of railroad noise and vibrations must be submitted and recommended mitigation measures incorporated in the project plans. (P)

- 10) **Signs:** Prior to occupancy permit issuance, the project sign program must be approved by the Planning Commission. (P)
- 11) **Solid Waste:** The trash/recycling chutes, bins and enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
- 11) **Landscape Irrigation:** Prior to building permit issuance, the applicant shall submit an irrigation plan for all landscape areas. The irrigation plan shall show that all landscape areas, including planter areas and containerized planters, will have an automatic, self-watering system installed that is serviced by a sprinkler head or drip system equipped with a moisture sensor. (P)
- 12) **Landscaping:** Prior to issuance of an occupancy permit, the required landscaping shall be planted and in place. (P, C.3 Standard Condition No. 4)
- 13) **Landscaping:** All required landscaping shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. Proper maintenance of landscaping requires minimal pesticide use and shall be the responsibility of property owner in perpetuity. The pest reducing landscape maintenance techniques listed in the "Fact Sheet on Landscape Maintenance Techniques for Pest Reduction" in the City of Milpitas *Stormwater C.3 Guidebook*, are incorporated by reference into this condition. (P, C.3 Standard Condition No. 7)
- 14) **Landscaping:** City Planning staff shall have approval authority for the installation of comparable substitute pest-resistant plant materials to satisfy the requirements of the approved landscape plan when the approved plants and materials are unavailable for installation, or when other unforeseen conditions prevent the exact implementation of the landscape plan. (P, C.3 Standard Condition No.6)
- 15) **Decorative Surfaces:** Prior to building permit issuance, applicant shall add decorative elements (i.e., pavers or tile accents) to plans for private walkways and planter areas, to the approval of the Planning Division. (P)
- 16) **Building Features:** Prior to building permit issuance, applicant shall revise building elevations to include:
  - a. Windows recessed four inches (per Midtown Specific Plan Guidelines).
  - b. Roof downspouts draining to landscape areas to the greatest extent possible.
  - c. Covered bicycle parking. (P)
- 17) **Screening:** On-site utility transformers, boxes, etc. shall be placed underground (subsurface vaults) or be located at the rear of the property and screened from public view in a manner to the approval of the Planning Division. (P)
- 18) **Emergency Access Gates:** Prior to building permit issuance, the applicant shall provide plans for emergency access gates to the approval of the Fire and Planning Departments. (P)
- 19) **Stormwater:** Prior to building permit issuance, permit plans shall incorporate the following BMP'S for post construction storm water impacts: (P)
  - a. Labeling and maintenance (annual inspections) of storm drain facilities;
  - b. Storm drain inlet cleaning on an annual basis;
  - c. Street sweeping.

- 20) **Vector Control:** Prior to any construction or grading of the site, a vector control plan shall be submitted to and approved by the City. (P)
- 21) **Air Quality:** Prior to building permit issuance, permit plans shall implement the following Best Management Practices (BMP's) at all project construction sites: (P, MM AQ-1)
- a. Water all active construction areas;
  - b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard;
  - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking and staging areas;
  - d. Sweep daily;
  - e. Hydro seed or apply non-toxic soil stabilizers to inactive construction areas;
  - f. Enclose, water or apply non-toxic soil binders to exposed stockpiles;
  - g. Limit traffic speeds on unpaved roads to 15 miles per hour;
  - h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
  - i. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. (P)
- 22) **Air Quality:** Prior to any permit issuance, incorporate into building plans appropriate Bay Area Air Quality Management District (BAAMQD) Best Management Practices (BMP's) to reduce vehicle trips as identified in the Summary of Impacts and Mitigation Measures (Section 1.2 of the DEIR and FEIR, Subsection "Air Quality", MM "Regional Development Impacts" for commercial development). Possible measures are (P, MM AQ-2):
- a. Provide physical improvements such as sidewalks, landscaping and bicycle parking that will act as incentives for pedestrian and bicycle modes of travel;
  - b. Connect the site with regional bikeway and pedestrian trail systems;
  - c. Provide a transit information kiosk;
  - d. Provide showers and lockers for employees bicycling or walking to work;
  - e. Provide secure and conveniently located bicycle parking and storage for workers and patrons;
  - f. Provide electric vehicle charging facilities;
  - g. Provide preferential parking for Low Emission Vehicles;
  - h. Use specialty equipment (utility carts, forklifts, etc.) that are electrically, CNG or propane powered;
  - i. Use reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand. (P)
- 23) **Construction Noise:** During construction, the applicant shall implement the following measures to reduce construction noise: (P)
- a. Construction shall be limited to the hours of 7:00AM to 7:00PM on weekdays, and 9:00AM to 5:00PM on Saturdays, with no noise generating construction on Sundays and holidays.
  - b. Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.

- c. Utilize quiet models of air compressors and other stationary noise sources where the technology exists.
- d. Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
- e. Prohibit unnecessary idling of internal combustion engines.
- f. Prior to issuance of a building permit, designate a noise disturbance coordinator who will be responsible for responding to any local complaints about construction noise. During construction, the coordinator will determine the cause of the noise complaints and institute reasonable measures to correct the problem. Maintain during all construction a conspicuously posted telephone number for the public to call the coordinator at the construction site. (P)

24) **Biology:** Appropriately timed surveys shall be conducted by a qualified botanist according to protocols acceptable to the U.S. Fish and Wildlife Service and the California Department of Fish and Game (CDFG), to determine the presence and/or absence of special status plant species. If presence is detected, notification and appropriate protocols for relocation and/or mitigation and monitoring plan, to the approval of the City, for the plant species shall be prepared for long-term protection. The plan shall be implemented either before or concurrently with ground disturbing activities on the property. (P)

25) **Biology and Hydrology:** The applicant shall modify the existing Stormwater Pollution Protection Plan (SWPPP). This plan shall include provisions to minimize on-site and off-site impacts to biological resources and water quality resulting from project related runoff. Measures shall include the following: (P)

- a. The use of silt fencing, fiber rolls, sediment basins, and other measures to reduce the movement of construction-related sediments into Penitencia Creek and other sensitive habitats.
- b. Installation of grit and oil trap systems, which shall be maintained in perpetuity.
- c. Implementation of BMP's to prevent the discharge of construction debris and soils into Penitencia Creek during site clearing, grading and construction.
- d. As required, dewatering the section of creek channel surrounding the work areas associated with outfall and bridge construction. The dewatering structure shall be to the approval of the City.
- e. The applicant shall retain a construction manager familiar with NPDES permit requirements to monitor construction activities.

24. **Stormwater:** During all construction activities, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD: (P)

- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
- b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
- c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;

- e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
- f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- h. Limit traffic speeds on unpaved areas to 15 mph;
- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- j. Plant vegetation in disturbed areas as quickly as possible; and
- k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes.

25) **Affordability:** Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 101 affordable rental-housing units (100% of total number of units) will be available at a housing cost affordable to very low and low-income households. (H)

26) **Affordability:** The applicant shall provide the following information in the final Owner Participation Agreement, as it relates to the number of affordable housing units, types of units (two and three bedrooms) and the income levels of the proposed affordable housing units as illustrated below. (H)

Income	No. of Units	Type of Units
Very Low and Low-Income	50 Units	Two & three bedrooms
Very Low and Low-Income	50 Units	Two & three bedrooms
Manager Unit	1 Unit	Two bedroom

27) **Affordability:** As part of the identified public benefit for this project, prior to occupancy, the applicant shall provide to the City of Milpitas City Council for review and approval, an dispersement plan by affordability (i.e., very low, low) exhibit illustrating the location of the affordable housing units within the development. The various levels of affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities. (H)

28) **Affordability:** Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low income limits established by the U.S. Department of Housing and Urban Development (HUD), are the stated limits for that income category. (H)

29) **Affordability:** The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable rental units. The Restriction Agreements shall be approved to form by the Milpitas

City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the rental housing units shall remain in effect for the entire lifetime of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (H)

- 30) **Affordability:** The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (H)
- 31) **Affordability:** The established affordable rents for the rental apartment shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable rents established for the apartment units shall not exceed the maximum allowable rents for "very low" households as defined in the above code sections. Said rents shall be approved for consistency with the definitions by the Housing Division staff. (H)
- 32) **Property Management Agreement:** Prior to issuance of a building permit, the developer/property owner shall submit to City Housing Division staff, a copy of the same Property Management Agreement that is sent to the property investors defining the general maintenance and up-keep of the property. Said agreement shall also address maintenance of the Emergency Vehicle Access area. (H)
- 33) **Water and Wastewater:** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
- 34) **Water, Sewer and Storm Drains:** Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
- 35) **Drainage:** At the time of grading building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)

- 36) **Public Improvements:** Prior to any building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along South Main Street, including but not limited to curb and gutter, pavement, sidewalk, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, street lights, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Milpitas Midtown Specific Plan and Main Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)
- 37) **Underground Parking:** All proposed underground-parking structures should be designed for the additional surcharge due to traffic loading from proposed and future public streets. (E)
- 38) **Community Facilities District:** Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
- 39) **Traffic Impact Fee:** Prior to building permit issuance, the developer shall contribute its "fair share" of traffic impact fee in the amount of \$22,579 (based on a Midtown impact fee of \$113 per peak hour trip and Montague Expressway impact fee of \$903 per peak hour trip). (E)
- 40) **Street Improvements:** Prior to building permit issuance, the developer shall contribute \$115,092 toward its "fair share" costs of South Main Street median improvement (based on a South Main Street Median Island contribution fee of \$278.00 per peak hour trip). At City's option, the developer may be required to construct the subject improvement in lieu of payment of contribution. (E)
- 41) **Fees:** The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
- a. Storm water connection fee of \$45,114 based on 2.69 acres @ \$16,771 per acre. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
  - b. Water Service Agreement(s) for water meter(s) and detector check(s).

c. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)

- 43) **Fees:** Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. (E)
- 44) **Tentative Map:** Prior to any building permit issuance, the developer shall submit a tentative parcel map for review and approval, and record the parcel map prior to construction of building structure above street grade. (E)
- 45) **Access Easement:** Prior to building permit issuance, the developer shall either record a reciprocal easement and maintenance agreement with the adjacent property owner on the south regarding the proposed Emergency Vehicle Access (EVA) or provide a recorded document regarding the access and maintenance/installation of private utility. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to roadway, wall along railroad, drainage, lighting, landscaping, and other common area facilities. (E)
- 46) **Under grounding:** Prior to building occupancy permit issuance, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more. All proposed utilities within the proposed development must also be under grounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
- 47) **Sight Distance:** The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
- 48) **Easements:** Prior to any building permit issuance, the developer shall dedicate necessary easements for public street right of way, public service utilities, water, and sanitary sewer purposes. (E)
- 49) **Wall:** Prior to building permit issuance, the developer shall record a 5-foot wide Private Wall Maintenance Easement (PWME), and enter into an encroachment permit agreement with the city for the maintenance of subject wall within the public right of way. The proposed wall plan needs to be included with the building site plan for review and approval. Prior to any building final inspection/occupancy permit issuance, the developer shall construct the proposed wall to the satisfaction of the Building Chief Official and Planning Department requirements. (E)
- 50) **Utilities:** All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)

- 51) **Wastewater:** If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (E)
- 52) **Water:** Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
- 53) **Solid Waste:** Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (E)
- 54) **Solid Waste:** Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
- 55) **Solid Waste:** Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
- 56) **Stormwater:** The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb one acre or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the

RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

- 57) **Stormwater:** The developer shall comply with Regional Water Quality Control Board's C-3 requirements and implement the following:

At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements. (E)

- 58) **Stormwater:** Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities. (E)

- 59) **Stormwater:** Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)

- 60) **Stormwater:** Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)

- 61) **Stormwater:** Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)

- 62) **Demolition:** All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer

shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)

- 63) **Landscape Irrigation:** In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
- a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
  - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)
- 64) **Landscape Irrigation:** Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system *when available*. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)
- 65) **Public Right-of-Way Work:** Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
- 66) **Utilities:** The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
- 67) **Other Approvals and Permits:** It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
- 68) **Tree Removal:** Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
- 69) **Construction Monitoring:** Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The

construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)

70) **Flood:** The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)

71) **Postal Service:** The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)

72) **Exhibit "S":** At the time of building plan check submittal, the developer shall incorporate the changes shown on Engineering Services Exhibit "S"(dated 3/5/2007) in the design plans and submit three sets of civil engineering drawings showing all proposed utilities to the Land Development Engineer for plan check. (E)

#### Acronyms

ADA	Americans with Disabilities Act
BMP	Best Management Practices
CDFG	California Department of Fish and Game
C3	Stormwater
DEIR	Draft Environmental Impact Report for the Elmwood Residential and Commercial Development Project
E	Engineering Dept. Special Conditions
EIR	Environmental Impact Report for the Elmwood Residential and Commercial Development Project
FEIR	Final Environmental Impact Report for the Elmwood Residential and Commercial Development Project
H	Housing Division Special Conditions
MM	Mitigation Measure from the Final Environmental Impact Report for the Midtown Specific Plan
MMC	Milpitas Municipal Code
NPDES	National Pollutant Discharge Elimination System
P	Planning Division Special Conditions
SWPPP	Stormwater Pollution Protection Plan