

RESOLUTION NO. 11-051**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING THE MILPITAS CITY COUNCIL APPROVE SITE DEVELOPMENT PERMIT NO. SD11-0011, MAJOR TENTATIVE MAP NO. MT11-0002, CONDITIONAL USE PERMIT NO. UP11-0032 AND DENSITY BONUS NO. DB11-0001 FOR THE ABEL AND MAIN STREET APARTMENTS PROJECT, TO ALLOW THE DEVELOPMENT OF 204 UNITS LOCATED AT 1201 SOUTH MAIN STREET**

WHEREAS, on August 5, 2011, an application was submitted by Shea Properties and The Kingsmill Group, A request to allow 204 dwelling units in four stories wrapped around a parking garage and courtyard. The project includes a density bonus in exchange for providing affordable units. The proposal also includes a vacation of right-of-way. This proposal includes development plans and architectural review for the project. The property is located within the Very High Density Residential with Transit Oriented Development Overlay and Site and Architectural Overlay (R4-TOD-S) Zoning district (APN: 086-16-100); and

WHEREAS, Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission recommend that the City Council determine that an addendum to the previously adopted Negative Declaration is appropriate; and

WHEREAS, on October 12, 2011, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: Under CEQA Guidelines Section 15164, an addendum to an adopted negative declaration may be prepared if none of the conditions described in Section 15162 calling for the preparation of a subsequent negative declaration or a subsequent or supplemental EIR apply. With respect to the Project, the modifications do not result in any new significant environmental effect(s); therefore, the refined Project does not require an EIR. Therefore, an addendum analyzes the Project modifications as required under the CEQA Guidelines, Sections 15162 and 15164.

Section 3: With respect to the Site Development Permit:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the project follows the design guidelines identified in the Midtown Specific Plan. The project's architecture complements the surrounding development.

Section 4: With respect to the Site Development Permit, Conditional Use Permit and Major Tentative Map:

1. The project is consistent with the Milpitas Subdivision Ordinance in that the project meets the standards for a Tentative Map.
2. The project is consistent with the Milpitas Zoning Ordinance in that the project meets the development standards.
3. The project is consistent with the Milpitas General Plan in that the project is consistent with the following goals and policies:
 - a. 2.a-G-2: Maintain a relatively compact urban form; and
 - b. 2.a-G-3: Provide for a variety of housing types and densities that meet the needs of individuals and families; and
 - c. 2.a-G-6: Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed use community that includes high density, transit-oriented housing and a central community; and
 - d. 2.a-I-2: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas; and
 - e. 2.a-I-22: Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages.
4. The project is consistent with the Midtown Specific Plan in that the project is consistent with the following goals and policies:
 - a. Goal 2: Provide for a significant component of new housing within the area in order to improve the vitality of the midtown area; address local and regional housing needs; and reinforce the use of transit.
 - b. Policy 3.6: Affordable housing units should be provided with new housing developments. Determine affordable unit requirements on a project-by-project basis, considering the size of the project, the location of the site, and the mix of affordable units in the Midtown Area.

c. Policy 3.7: Integrate affordable units with market rate developments Ensure that affordable units are architecturally integrated and indistinguishable from market rate units.

d. Policy 5.1: Establish a development pattern along Main Street and around the transit stations that is oriented to pedestrians and consistent with the design standards and guidelines. More specifically, buildings should address streets, pedestrian paths, parks and open spaces, and transit stations with entries, windows, bays, balconies, and other articulated features. Parking lots should not dominate the experience along any prominent street or pedestrian route.

Section 5: With respect to the Conditional Use Permit the proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare in that those applicable standards for development will be followed.

Section 6: With respect to the Density Bonus Permit, the proposed project is consistent with the City’s Housing Element in that the project provides affordable housing pursuant to the goals and implementation policies of Section D of Chapter 7.7.

Section 7: The Planning Commission authorizes staff to make minor technical changes as needed to the Conditions of Approval recommended to the City Council to accommodate engineering and regulatory requirements.

Section 8: The Planning Commission of the City of Milpitas hereby recommends the Milpitas City Council approve Site Development Permit No. SD11-0001, Major Tentative Map No. MT11-0002, Conditional Use Permit No. UP11-0032 and Density Bonus No. DB11-0001, subject to the above Findings, Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 12, 2011.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on October 12, 2011, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

EXHIBIT 1

CONDITIONS OF APPROVAL

Main and Abel Apartment Project (SD11-0011, MT11-0002, UP11-0032, and DB11-0001)

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the Planning Commission on October 12, 2011, in accordance with these Conditions of Approval. (P)
2. Any deviation from the approved site plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
3. Site Development Permit SD11-0011 and Conditional Use Permit UP11-0032 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of 18 months if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein for the Conditional Use Permit and Site Development Permit. (P)
5. Major Tentative Map MT11-0002 shall be effective for two years, unless a time extension is requested and approved by the City Council upon recommendation from the Planning Commission. All other extensions shall be in accordance with State law. (P)
6. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)

7. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
8. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required on-site landscaping shall be planted in place pursuant to the approved phasing plan as approved by the Planning Director or designee. (P)
9. Prior to issuance of the building permit, the exact allocations and credits for private and public recreation space will be determined. A detailed plan identifying amenities provided shall be included in a revised submittal. Prior to issuance of the building permit, the developer shall pay the Park In-Lieu Fee. (P)
10. The project applicant shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of Tentative Map MT11-0002, Site Development Permit SD11-0011, Conditional Use Permit UP11-0032, and Density Bonus No. DB11-0001. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The applicant shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the project applicant of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the project applicant, or if City fails to engage in reasonable efforts to cooperate in the defense, then the project applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The project applicant shall not be required to pay or perform any settlement unless the settlement is approved by the project applicant. (CA)

Site Development Permit:

11. Prior to the issuance of a Site Improvement or off-site improvement permit, the developer shall cooperate with staff with staff's preparation of a signage program along Main Street and the corner intersection of Main Street and Abel Street to announce the retail and transit district. (P)
12. All units shall comply with Zoning Ordinance Section 4.05(D)(1)(d) requiring minimum dimensions and area for balconies and patios when requesting credit for private recreation space. (P)

13. Prior to issuance of the building permit, the developer shall submit alternatives to the metal awning at the entry level to the tower element at the corner of Main Street and Abel Street. (P)
14. Prior to the issuance of the building permit, the developer shall revise the landscape plan to incorporate shrubs at the base of the retaining walls at the corner of Main Street and Abel Street. (P)
15. Prior to issuance of the building permit, the developer shall work with staff to refine the entry to the parking garage to the mutual satisfaction of the developer and the Planning Director. (P)

Tentative Map

[Reserved]

Environmental Mitigation Conditions

16. The developer or successor shall be responsible for implementing the mitigation measures identified in the Midtown Specific Plan EIR and project specific Mitigated Negative Declaration applicable to the project as follows: (P)

Biological

17. Pre-construction surveys for Burrowing Owls shall be completed in conformance with CDFG protocols, no more than 30 days prior to the start of construction. If no Burrowing Owls are located during these surveys, no additional action is required. However, if Burrowing Owls are located on or immediately adjacent to the site the following mitigation measures will be implemented:

If Burrowing Owls are present during the nonbreeding season (1 September to 31 January), a 150-foot buffer zone, within which no new activity will be permissible, shall be maintained around the occupied burrow(s). During the breeding season (1 February to 31 August), a 250-foot buffer, within which no new activity will be permissible, will be maintained between project activities and occupied burrows. Owls present on-site after 1 February will be assumed to be nesting on or adjacent to the site unless evidence indicates otherwise. This protected area will remain in effect until 31 August, or at the CDFG's discretion and based upon monitoring evidence, until the young owls are foraging independently.

If construction will directly impact occupied burrows, eviction outside the nesting season may be permitted pending evaluation of eviction plans by, and receipt of formal written approval of the relocation from the CDFG. No Burrowing Owls will

be evicted from burrows during the nesting season (1 February through 31 August) unless evidence indicates that nesting is not actively occurring.

If destruction of occupied (breeding or non-breeding season) burrows, or any burrows that were found to be occupied during pre-construction surveys, is unavoidable, a strategy shall be developed to replace such burrows by enhancing existing burrows or creating artificial burrows on permanently protected lands adjacent to occupied burrowing owl habitat. This strategy will include permanent protection of a minimum of 6.5 acres of Burrowing Owl habitat per pair or unpaired resident owl. A plan shall be developed and approved by the County describing creation or enhancement of burrows, maintenance of burrows and management of foraging habitat, monitoring procedures, funding assurance, annual reporting requirements, and contingency and remediation measures.

Cultural Resources

18. During site clearing, initial grading, and excavation, a qualified archaeologist shall be on-site to monitor all ground disturbing activities to determine if any unknown resources are located on-site.
19. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to State law, then the land owner shall re-intern the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
20. In the event that any archaeological site indicators are found, work will be stopped within 50 feet of the discovery until a qualified archaeologist has inspected the resource and made a determination of significance. If the resource is determined to be insignificant, work can resume with no further action. If the resource is determined to be significant, then recommendations for recordation and preservation of the resource will be made by the archaeologist and a data recovery work plan will be prepared and submitted to the City's Director of Planning for approval. Construction work will not be allowed within the designated 50-foot zone until the archaeologist completes the data recovery.

Geology

21. Buildings shall be designed and constructed in accordance with the design-level geotechnical investigation prepared for the site, which identifies specific design features

that will be required for the project, including: site preparation, compaction, trench excavations, exploration, and borings and test pits of the former creek area. The geotechnical investigation shall be reviewed and approved by the City's Director of Public Works prior to issuance of a building permit for the project.

Hydrology

22. In order to comply with the requirements of the RWQCB, the development shall follow the Best Management Practices (BMPs) for operation and construction as included as part of the proposed project and imposed by the City. Future changes to any of the project BMPs are prohibited, unless otherwise reviewed and approved by the City of Milpitas' Director of Public Works.

Noise

Long term

23. Demonstrate compliance and consistency with the General Plan policies regarding noise.

Short term construction

24. Pursuant to the City of Milpitas Municipal Code, no person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 AM to 7:00 PM on weekdays and weekends.
25. The contractor shall be required to use available noise suppression devices and properly maintain and muffle internal combustion engine-driven construction equipment.
26. The contractor shall be required to use noise barriers or noise control blankets to shield stationary equipment from nearby noise-sensitive receptors.
27. The contractor shall designate a disturbance coordinator and post the name and phone number of this person at easy reference points for the surrounding land uses. The disturbance coordinator would respond to all complaints about noise and take the necessary steps to reduce the problem.

Air Quality -- Construction

28. The following mitigation measures shall be followed:
 - a. The project applicant shall water all active construction areas at least twice daily or as often as needed to control dust emissions.

- b. The project applicant shall cover all trucks hauling soil, sand, and other loose materials (including demolition debris) and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- c. The project applicant shall sweep daily or as often as needed with water sweepers on all paved access roads, parking areas, and staging areas at construction sites to control dust.
- d. The project applicant shall sweep public streets daily or as often as needed to keep streets free of visible soil material.
- e. The project applicant shall enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
- f. The project applicant shall replant vegetation in disturbed areas as quickly as possible.

Biology--Raptors

- 29. Planning staff shall conduct a site visit to determine if any nest structure is visible in the trees to be removed. If a nest is observed, a qualified ornithologist will conduct a focused survey to determine if the nest is active. If nesting raptors are found, no construction or tree removal will occur within 500 feet of the active nest (or such distance as required by state law) until the young have fledged. Nest trees may only be removed during the non-breeding season.

Engineering Conditions

- 30. Proposed development is located within the Special Flood Hazard Zone AO (depth 1), and therefore shall comply with the National Flood Insurance Program (NFIP) Title 44 of the Code Federal Regulations and City's Flood Plain Management Regulations, City of Milpitas Code Title XI Chapter 15. Prior to final map approval, the developer shall obtain a Conditional Letter of Map Revision (CLOMR) from Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain. The developer shall also obtain a Letter of Map Revision (LOMR) prior to issuance of a certificate occupancy, and provide all elevation certificates prior to final building inspection or certificate of occupancy for any portion of the development. The proposed grading plan shown in the tentative map shall comply with the established BFE as determined in the final flood study report.
- 31. Prior to final map approval or building permit issuance, whichever is earlier, owner or designee shall submit the project Flood Study, demonstrating to the satisfaction of the City Engineer that the proposed development complies with requirements for flood plain safety within the Special Flood Hazard Area and flood carrying capacity of the area pursuant to the City of Milpitas Code Title XI Chapter 15 and National Flood Insurance Program Title 44 of the Code Federal Regulations. The scope of the Flood Study shall be subject to the approval of the City Engineer.

32. Prior to final map approval, the developer shall submit a final grading plan and hydrologic/hydraulic study prepared by a registered Civil Engineer, consistent with the approved CLOMR. 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.
33. The developer shall comply with Municipal Regional Permit (MRP) Order R2-2009-0074 for post construction C3 provisions for new development and redevelopment regulated projects storm water treatment requirements, and National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009—0009 NPDES No. CAS000002 or as required by the Regional Board at the time Developer submits the NOI for the project for pre construction storm water treatment requirements.
34. Prior to final map approval, or building permit submittal, developer shall submit a Storm Water Control plan that incorporates best management practices (BMPs) for treatments of stormwater run off from all parcels. The Storm Water Control plan shall incorporate source control, site design and stormwater treatment requirements consistent with MRP requirements with BMPs such as the use of bio-treatment areas into the landscape design elements and the use of permeable pavement BMPs compliant with the current California Stormwater Quality Association (CASQA) BMP handbooks. The site plan shall be consistent with the final Storm Water Control plan to the satisfaction of the City Engineer.
 - A. Developer shall submit a final Storm Water Control Plan package for review and approval with the building permit submittal.
 - B. The Plan shall be prepared by a licensed Civil Engineer qualified and trained professional with storm water treatment process and certifies that measures specified in the report meet the MRP requirements.
 - C. Prior to issuance of Certificate of Occupancy, the developer shall submit a Storm water Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment Best Management Practices (BMPs) and other storm water 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 storm water control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
 - D. Developer shall include in the approved CC&R, language in regard to providing the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the National Pollutant Discharge Elimination System (NPDES) requirements. If the City does receive the report, City will conduct the field inspection and report, and the developer and its successor shall be responsible to pay all associated costs.
 - E. 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.

- F. Developer shall comply with all “Model Conditions of Approval For Stormwater Quality” as shown in the Stormwater Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 and are hereby incorporated as conditions of project approval.
- G. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer’s final Storm Water 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 storm water flow and potential storm water pollutants. Any changes to the final Storm Water Control Plan shall require Site & Architectural (“S” Zone) Amendment application review.
35. 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 1 acres 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 accepted 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.
36. 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. Prior to issuance of any building permits, developer shall obtain approval from the City Engineer, for the water, sewer and storm drain studies of 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.

38. Prior to building final inspection or building permit occupancy of any units, owner or designee shall construct a new trash enclosure to serve the project. The enclosure shall accommodate the required number of bins or two self contained compactors at minimum to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. The enclosure will be subject to the City's review/approval prior to construction of the enclosure.
39. Prior to final map approval or building permit issuance unless otherwise noted the Owner or designee shall comply with the following solid waste requirements as a condition of project approval:
- A. Applicant is proposing front load service. Owner or designee shall provide sufficient facilities for on-site storage and collection of solid waste and recyclables in accordance with City guidelines. Applicant shall procure sufficient service frequency to accommodate the service request.
 - B. Provide a Solid Waste Handling Plan showing how materials will be transferred from each dwelling unit to the trash enclosure, address property management responsibility for residential container deployment and collection, and litter management. The plan shall demonstrate that the site plan provides sufficient space for the solid waste vehicle to perform collection and make any site plan modifications to address this issue. The plan shall demonstrate how recycling shall have a separately maintained process from garbage handling. Owner or designee shall add this language to the deed restriction and CC&Rs and HOA shall be responsible to implement this plan.
 - C. The Solid Waste Handling Plan shall show how the bins will be set for pick up to be able to provide front load service.
 - D. Solid waste enclosure shall be designed to parking garage standards and meet all building & fire codes requirements and to the satisfaction of the City Engineer. The opening shall be designed to accommodate new solid waste for truck turn around and height requirements.
 - E. Prior to building final inspection or building permit occupancy of any units, applicant/property owner shall construct a new trash enclosure to serve the project. The enclosure shall accommodate the required two self contained compactors at minimum to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. The enclosure will be subject to the City's review/approval prior to construction of the enclosure. The enclosure shall be designed such that the drains must discharge to the sanitary sewer line. All storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
 - F. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner 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.

- G. Prior to occupancy permit issuance, the property management shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Allied Waste Services (formally BFI). After the applicant has full occupancy, 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 Allied Waste Services at (408) 432-1234.
40. Owner/Designee agrees and shall make any changes to the site and architectural plan as condition of project approval for the following items and shall be subject to the satisfaction of the City Engineer and Planning Director and developer shall comply with these conditions prior to final map approval and prior to building permit submittal:
- A. Developer shall modify proposed Site and Architectural plan as deemed necessary to accommodate for any modifications needed to satisfy requirements for implementing any design changes recommended in the flood study requirements, storm water control plan, geotechnical engineer requirements, fire access, utility design, solid waste handling plan, or as deemed necessary by the City Engineer to meet all City Standards.
41. Prior to any building permit issuance 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.
42. The final map shall be recorded prior to issuance of any building permit. Provide a current title report with your final map submittal, not more than 90 days old.
43. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements.
44. Prior to final map approval, the developer shall establish necessary homeowner association (HOA). Membership of the HOA shall include all owners of the residential, commercial and office spaces. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets and shall have assessment power. The HOA shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. In

addition to the CC&R document, developer shall record a deed restriction or other recordable document subject to the approval of the City Engineer, at its sole discretion, concurrent with the recordation of the final map that memorializes ownership, repair, replacement and access rights to private utilities within the project site.

45. Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3.
46. Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along S. Main and Abel Streets, including but not limited to the following:
 - A. Removal and installation of new curb, gutter and sidewalk, pavement restoration ***at minimum AC overlay of the entire Main and Abel streets frontage widths***, signage and striping, bus stops and bus pads, traffic signal modification and upgrades, median installation along Main and Abel Street, median and street decorative lighting, median landscaping, Main/Abel corner plaza improvements, street lights, Street trees and tree wells, street furniture installation, fire hydrants, storm drain, sewer and water services.
 - B. The existing sanitary sewer collection system to serve the project is at full capacity. This project will not receive any Certificate of Occupancy until Projects 11A, and 11D as identified in the 2009 Sewer Master Plan have been completed. All projects being served by this collection system have all the same conditions or approvals and comments. The costs for these improvements are estimated at approximately \$2.5 Million. Some of which will be paid as Impact Fees and some by City's sewer fund. The City and Developer will work cooperatively to develop a plan in how these improvements will be completed:
 - i. Sewer project known as 11A, as specified in the City of Milpitas Sewer Master Plan, in its entirety includes replacement of 560 linear feet of 18 inch pipe with 21 inch pipe; replace 992 linear feet of 18 inch pipe with 27 inch pipe; and replace 369 feet of 12 inch pipe with 27 inch pipe, as identified on the sewer master plan.
 - ii. Sewer project known as 11D includes the replacement of 2,060 LF of 8-inch with 12 inch diameter sewer pipeline, as specified in the City of Milpitas Sewer Master Plan includes replacement of they system in its entirety.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall 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 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 City of Milpitas Engineering Plans and Map Procedures and Guidelines, and all public improvements shall be constructed to the city Engineer's satisfaction and*

accepted by the City prior to issuance of any final certificate of occupancy of any unit.

47. Proposed main access of South Main Street will be restricted to right-out movement, and no left turn movement out of the main entrance will be allowed. Median shall be modified to restrict movement.
48. The Owner/Designee shall submit the following items with the building permit application and pay the related fees prior to building permit issuance (Note these fees are estimated fees and will be finalized along with the subdivision improvement agreement):
 - A. Storm water connection fee of **\$46,288** (based on 2.76 acre @ \$16,771/acre), this fee shall be paid prior to building permit issuance or any final map or parcel map recordation..
 - B. Water connection fee of **\$237,456** (based on 204 units at \$1164/U).
 - C. Sanitary Sewer connection fee of **\$286,824** (based on 204 units @ \$1406/U).
 - D. Sanitary Sewer Treatment Plant fee of **\$140,760** (based on 204 units @ \$690/U).
 - E. Water Service Agreement(s) for water meter(s) and detector check(s).
 - F. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
 - G. Sewage Capacity: The developer shall pay its fair share cost of purchasing adequate public system sewage capacity for the development. Fees shall consist of treatment plant fees up to the Master Plan level and connection fees. Impact fees for discharges above master plan levels for sewage collection system infrastructure improvements, and regional plant capacity needs (above the master plan capacities), as determined by the City Engineer. This amount is estimated to be **\$386,925**, as of October 2011, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
 - H. Pump Station: Owner/Designee shall provide for adequate sewage pumping capacity at the Milpitas Main Sewage Pump Station for the respective developments. The developer can fulfill this obligation by payment of **\$117,625** to the City for this purpose. This amount is as of October 2011, and to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
 - I. Water Impact Fees: Owner/Designee shall pay its fair share cost of purchasing adequate public system water for the respective developments, including costs for capacity and storage needs above master plan capacities, as determined by the City Engineer. This amount is estimated to be **\$69,813**, as of October 2011, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
 - J. Traffic Impact Fee:
 - a. Owner/Designee shall contribute a “fair share” traffic impact fee in the amount of **\$116,840** (based on a Midtown impact fee of \$113 per peak hour trip, and Montague Expressway impact fee of \$903 per peak hour trip, assuming 115 PM peak trip).
 - b. Owner/Designee shall contribute a “fair share” traffic impact fee for the Calaveras Widening in the amount of **\$47,940** (based on a \$235 per dwelling unit). This amount is as of October 2008, and to be adjusted by ENR at the time of payment.

- c. In lieu of contribution toward South Main Street and Abel Street Plan Line Study, the developer is required to construct the required improvements along South Main and Abel Street frontage. Proposed median and all improvements along Main and Abel street frontage must be in accordance with the 2007 South Main Street & South Abel Street Plan Line Study, and shall be constructed and accepted by the City prior to building occupancy permit issuance.

Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s).

- 49. Prior to building permit issuance, developer must pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. These fees are part of the secured subdivision 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.
- 50. Prior to final map approval, the developer shall successfully process an application through the City to vacate that portion of S. Main and Abel Street as public streets, and portion of the existing Public Service Utility Easement.
- 51. The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes.
- 52. All existing on-site 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.
- 53. 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.
- 54. Prior to building permit issuance developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. 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). Contact the Utility Engineer at 586-3345 for further information.
- 55. 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.

56. 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 retrofit the entire landscaped area for recycled water connection. If the site is not properly retrofitted 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.
57. In accordance with Milpitas Municipal Code XI-1-7.02-2, 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 do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage.
58. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), 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.
59. Prior to any work within public right of way or City easement, the developer shall obtain necessary encroachment permits from City of Milpitas Engineering Division.
60. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District, Santa Clara Transportation Agency, and City of Milpitas Engineering Division. Copies of approvals or permits from other agencies must be submitted to the City of Milpitas Engineering Division.
61. Prior to final map approval or any building permit issuance, the developer shall submit construction plans to Santa Clara Valley Water District (SCVWD) and obtain necessary permits or approvals. The proposed SD line along the SCVWD easement along

Penitencia Creek shall be subject the District review and approval. Developer is responsible for any site plan changes to comply with District requirements.

62. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
63. 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.
64. 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, personnel 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.
65. Developer shall make changes as noted on Engineering Services Exhibit "T"(dated 9/30/2011) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied.

(P): Planning Division
(E): Engineering Division
(CA): City Attorney Office