

RESOLUTION NO. 12-007**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING APPROVAL TO THE CITY COUNCIL SITE DEVELOPMENT PERMIT NO. SD11-0001/MAJOR TENTATIVE MAP AMENDMENT NO. TM11-0002/CONDITIONAL USE PERMIT NO. UP11-0037, MCCANDLESS MIXED USE PROJECT LOCATED AT 1315 – 1600 MCCANDLESS DRIVE**

WHEREAS, on June 4, 2008, an application was submitted by Glenn Brown of Integral Communities, to allow the future phased development of 1,573 dwelling units (subsequently reduced to 1,328) and 92,000 square feet of commercial development for a 23-acre site. The property is located within the Retail High Density Mixed Use (MXD2) and Multi-Family High Density (R3) with Site and Architectural Overlay (-S) and Transit Overlay (-TOD) Zoning district (APN: 086-33-092 through -095, 086-33-098 through -099 and 086-33-101). A request for financial assistance for the project from the Milpitas Redevelopment Project was also submitted; and

WHEREAS, on August 3, 2010, the City Council and the Board of Directors of the Milpitas Redevelopment Agency held a duly noticed public hearing on the project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence previously presented to the Planning Commission and adopted Resolution No. 8017, approving an Owner Participation Agreement outlining the financial assistance and redevelopment aspects of the overall development and adopting a Mitigated Negative Declaration for the project pursuant to Sections 15074 and 15168 of the CEQA guidelines; and

WHEREAS, on September 7, 2010, the City Council held a duly noticed public hearing on the project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence previously presented to the Planning Commission and adopted Resolution No. 8029 approving a tentative map and a conditional use permit granting a development density for the project with conditions. The application to the City at the did not include any request for site and architectural design approval; and

WHEREAS, on July 15, 2011, Integral Communities submitted an application for the approval of the architectural design of four buildings on 13 acres of the overall project site (APNs: 086-33-092, -093, and -101) zoned Retail High Density Mixed Use (MXD2) with Site and Architectural (-S) and Transit Oriented Development (-TOD) Overlays and a Tentative Map amendment and architectural review of townhome product on the remaining 10 acres of the overall site (APNs: 086-33-94, -099, -098, and -098). A follow up Conditional Use Permit was added to the request to address the operations of an anticipated grocery store for the site and deviations from the TASP development standards; and

WHEREAS, while the project is covered by the Environmental Impact Report certified for the Transit Area Specific Plan and an adopted Mitigated Negative Declaration and subsequent addendum; and

WHEREAS, on February 22, 2012, 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: The project is consistent with the findings of the previously adopted Mitigated Negative Declaration (and subsequent addendum) adopted by the City Council on August 3, 2010. The project is also consistent with the Transit Area Specific Plan EIR and exempted under Section 15168(d) of the CEQA Guidelines.

Section 3: As conditioned, the project is consistent with the Milpitas Zoning Ordinance in that the project site meets the density and land use requirements.

Section 4: The project is consistent with the Milpitas General Plan in that the project meets the density and land use requirements.

Section 5: As conditioned, the project is consistent with the Transit Area Specific Plan in that the project creates a mixed use project with trails along Penetencia Creek. The project provides a grocery store and includes a public plaza along future Street A.

Section 6: With respect to the Site Development Permit, 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's architecture, massing, materials used and landscaping complement the surroundings.

Section 7: 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 the conditions of approval provide basic operational standards for a future grocery store. The grocery store use will be consistent with Transit Area Specific Plan goals for complete and well-rounded neighborhoods with an emphasis on walkable amenities that are also transit accessible. The operational standards set forth herein will ensure the compatibility of a needed source of fresh produce, meats, and/or prepared and canned foods with surrounding residential and commercial retail uses.

Section 8: With respect to the Conditional Use Permit, the deviation from the TASP standard (street setbacks, garage entries and ceiling height for retail) meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development in that the project's higher quality architecture details, pedestrian connectivity complements the overall project design and fulfills the intent of the specific plan.

Section 9: With respect to the Conditional Use Permit, the deviation from the TASP standard allows for a public benefit not otherwise obtainable through the strict application of the zoning standard in that the project will pay for the design and construction of a pedestrian bridge over the Penentecia East Channel Creek between the project site and the future park to the south and will provide enhanced architecture.

Section 10: The Planning Commission of the City of Milpitas hereby approves Site Development Permit No. SD11-0001, Tentative Map Amendment No. TM11-0002, McCandless Mixed Use Project, subject to the above Findings, Conditions of Approval attached hereto as Exhibit 1 (District 1) and Exhibit 2 (District 2).

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 22, 2012.

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 February, 22 2012, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Garry Barbadillo				

EXHIBIT 1

CONDITIONS OF APPROVAL

Site Development Permit No. SD11-0001/Major Tentative Map Amendment No. TM11-0002/Conditional Use Permit No. UP11-0037, McCandless Mixed Use Project (District 1)

(APNs: 86-33-092, 86-33-101, 86-33-093)

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on February 22, 2012, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape 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)

2. **SD11-001/TM11-0002/UP11-0037/TM11-0002** 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.
3. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of **SD11-001/TM11-0002/UP11-0037/TM11-0002** if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
4. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
5. The project shall demonstrate compliance with the project's mitigation monitoring program, including, but not limited to:
 - a. McCandless Drive Tree mitigation; and
 - b. Noise and vibration mitigation (P)

6. 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 Site Development Permit No. SD11-0001, Conditional Use Permit No. UP11-0037 and Tentative Map Amendment No. TM11-0002. 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)**
7. The owner or designee prior to building permit issuance shall demonstrate compliance with the recommendations of the project's Toxic Air Contaminants Study. **(P)**

Conditional Use Permit

8. Alcohol sales for the grocery store shall cease at midnight daily. **(P)**
9. The operator shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. **(P)**
10. The operator of the grocery store shall be responsible to maintain the area in front and behind the tenant space free and clear of debris and litter on a daily basis. **(P)**
11. The operator of the grocery store shall be responsible for ensuring that shopping carts are in cart corrals at least twice daily or as necessary. **(P)**
12. Deliveries to the grocery store shall be restricted to occur between 6AM and 10PM daily. **(P)**

13. The grocery store shall be subject to the performance standards included in Section 6.02-5, Restaurant Uses within Mixed Use Districts, of the City of Milpitas Zoning Ordinance. (P)

Site Development Permit

14. Prior to building permit issuance, the owner or designee shall demonstrate compliance with the private open space minimum requirements, including balcony sizes. (P)
15. Prior to building permit issuance, the owner or designee shall revise the landscape sheets to include 36” and 48” box tree specimens interspersed within the plant palette. (P)
16. Prior to building permit issuance, the owner or designee shall submit for approval a final detailed landscape plan for approval. (P)
17. Prior to building permit issuance, the owner or designee shall revise Sheets L1.02 and 2-A4.2 to reflect the current layout of the project. (P)
18. Prior to building permit issuance, the owner or designee shall demonstrate that the window trims around the building are of smooth finish. (P)

Tentative Map

19. Water Supply and Force Majeure. The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land entitlement approval project. 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. Prior to any building permit issuance, Council’s approval of the water Supply Assessment is required. However, this condition of approval applies in case of emergency declaration of supply assurance in the case of a major catastrophic event that restricts City’s assurance to provide water supply, or allocated treatment plant capacity. (E)
20. Street B. Prior to final map approval or as directed by City Engineer, owner or designee shall complete design of Street B Improvements to serve District 1 and District 2 for review and approval. Owner or designee shall construct a portion of Street B (along project frontage) at the same time prior to Certificate of occupancy of any unit for District 1.
21. Prior to final map recordation, the owner or designee 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 owner or designee will be required to mitigate the overflow or shortage by construction of a parallel line or pay an impact charge, if acceptable to the City Engineer. (E)

22. Prior to final map recordation, the owner or designee shall submit a grading plan and a hydraulic and hydrologic study prepared by a registered Civil Engineer. The study shall analyze the existing and ultimate conditions and facilities and assure no adverse impacts to adjacent properties. The study shall be reviewed and approved by the City Engineer and the owner or designee shall satisfy the conclusions and recommendations of the approved study. **(E)**
23. The submitted grading plan, street sections along McCandless and Great Mall Drive, vehicular Driveway access and pedestrian circulation are preliminary and subject to change. Developer agrees to work with city staff in fine tuning the design of ramps, stairs, and sidewalks prior to final map approval or building permit issuance which ever comes first. Developer shall submit a revised plan for review and approval to the satisfaction of the City Engineer. **(E)**
24. Community Facilities District. Prior to any building permit issuance, the owner or designee shall submit an executed petition to annex the subject property into the Community Facility District 2008-1 (CFD 2008-1), and agree to pay the special taxes levied by CFD 2008-1 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 owner or designee shall comply with all rules, regulations, policies and practices established by 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. Additionally, any maintenance obligation by CFD shall be paid for by developer for a period of one year after building permit final occupancy to cover funding gap cash flow to fund maintenance operations. **(E)**
25. The final map shall be recorded prior to any building permit issuance. The owner or designee shall provide a current title report with the final map submittal, not more than 90 days old. The title report should include the proposed parking and park area at the southeast corner of Great Mall Parkway/McCandless Drive intersection. **(E)**
26. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. **(E)**
27. Prior to final map approval, the owner or designee 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. The HOA shall establish a Private Job account prior to final certificate of occupancy with the City and maintain a minimum balance of \$4,000 to administer compliance for management of the project storm water management facilities, annual reporting and inspection for compliance with NPDES permit regulatory requirements. 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. (E)

28. Prior to recordation of any final map, the owner or designee 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. (E)
29. Prior to final map approval, the owner or designee shall obtain design approval and bond for all necessary public improvements along McCandless Drive and Great Mall parkway, including but not limited to the following and subject to the satisfaction of the City Engineer:
 - a. Removal and installation of new curb, gutter, and sidewalk, new median installation, signage and striping, street lights, fire hydrants, bus stop, traffic signal, Penitencia Creek Trail improvement, and storm, water and sewer service installation. All project major benchmarks used for this project shall be verified and be certified in accordance with the National Spatial Reference System.
 - b. Owner or designee is required to install the sewer project known as 11A, as specified in the City of Milpitas Sewer Master Plan, in its entirety. Owner or designee is required to replace 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.
 - c. Owner or designee is required to install a portion of the sewer project known as 11B, as specified in the City of Milpitas Sewer Master Plan. The work required at this time includes replacement of 360 linear feet of 15 inch diameter pipe with 18 inch diameter pipe; and replacement of 924 linear feet of 10 inch diameter pipe with 18 inch diameter pipe. The upstream portion is not required for this project.
 - d. Owner or designee is required to upsize the existing sanitary sewer line on McCandless Boulevard to accommodate the proposed development, and preserve the needed capacity for and address the project impact on the future developments upstream.
 - e. Plans for all public improvements shall be prepared on Mylar (24" x 36" sheets) with City Standard Title Block and owner or designee shall submit a digital format of the Record Drawings (AutoCAD format latest edition supported by the City) upon completion of improvements. The owner or designee 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 Transit Area Specific Plan, 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. (E)

30. Sewer Capacity and Improvements. The existing sanitary sewer collection system is at full capacity. Owner and City agree to work cooperatively in developing an agreement for the design and construction obligation for the projects defined as Projects 11A and 11B, as identified in the 2009 Sewer Master Plan. Construction of these projects shall be completed prior to issuance of building certificate of occupancy or to the satisfaction of the City Engineer. (E)
31. McCandless Drive Street Improvements. Prior to final map approval or as directed by City Engineer, owner or designee shall complete design of McCandless Street Improvements for review and approval. Owner or designee agrees to coordinate as deemed feasible District 1 and District 2 McCandless Drive improvements if constructed simultaneously. (E)
32. Prior to any final map approval or as directed by the City Engineer, the owner or designee shall prepare all necessary plans and exhibits and submit to the City so the City can process and obtain approval of a joint use agreement between with the Santa Clara Valley Water District (SCVWD) for the proposed trail improvements, and maintenance within the districts right-of-way. Owner or designee is responsible to pay for all costs associated with agreement, trail improvements and any further CEQA requirement needed to implement this plan. (E)
33. Pedestrian Bridges. Two (2) pedestrian bridges will be required as part of the proposed trail along Lower Penitencia Creek and East Penitencia Creek. Currently DR Horton will be contributing \$250,000 for the City to design and permit one bridge at the confluence of the two creeks. As a condition of this project approval, owner or designee agrees to pay an amount of \$250,000 at the time of building permit issuance for the design and construction of the second bridge along East Penitencia Creek east of McCandless to a location to be determined by the City Engineer. (E)
34. The proposed Penitencia Creek Trail improvements shall be built to the Santa Clara Valley Water District's and City's satisfaction. Any improvements on the SCVWD right of way require districts approval and permit. (E)
35. It is anticipated that the on-site private storm drainage system will collect a certain amount of public storm water runoff from proposed trail along creek frontage. Prior to building permit issuance, the owner or designee shall enter into an agreement with the City for collecting, accepting, treating and conveying public runoff through private drainage system at no cost to the City. The storm water control plan (C3) need to include this area and provide adequate treatment area. (E)
36. The owner or designee shall submit the following items with the building permit application and pay the related Engineering and Impact Fees (does not include Building Permit fees) prior to building permit issuance unless otherwise stated:

- a. Storm water connection fee of **\$287,421** (based on 13.33 acres @ \$21,562/acre), to be paid prior to final map recordation.
 - b. Water connection fee based on 954 units @ \$1,164/Unit, and \$5.97 per GPD use of the non-residential areas with \$14,328/AC credit for previous use.
 - c. Sewer connection fee based on 954 units @ \$1,406/Unit, and \$8.52 per GPD use of the non-residential areas with \$20,448/AC credit for previous use.
 - d. Water Service Agreement(s) for water meter(s) and detector check(s).
 - e. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
 - f. Transit Area Specific Plan Impact Fees (TASPIF): Residential impact fee of approximately \$23,163,120.00 based on 954 units at \$24,280 per unit; and Commercial impact fee of approximately \$1,482,871.90 based on 87,023 square feet at \$17.04 per square foot. Total estimated TASPIF is estimated at **\$24,645,991.90. (E)**
 - g. Fees will be finalized and calculated as part of the subdivision improvement agreement approval. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). **(E)**
37. Prior to building permit issuance, owner or designee 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. **(E)**
38. In accordance with Milpitas Municipal Code XI-1-7.02-2, the owner or designee 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. **(E)**
39. 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 owner or designee shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at (408) 586-3345 for further information. **(E)**

40. It is the responsibility of the owner or designee to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Santa Clara Valley Water District and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. **(E)**
41. Prior to start of any construction, the owner or designee 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 establishment of a neighborhood hotline to record and respond to neighborhood construction related concerns. The owner or designee shall coordinate their construction activities with other construction activities in the vicinity of this project. The owner or designee'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)**
42. Prior to submittal for building permit issuance, the owner or designee shall submit plans to Santa Clara Valley Water District for review and approval. Provide their comments to the City. **(E)**
43. The owner or designee shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping and signs as determined by sight distance shall not exceed two feet when measured from street elevation. **(E)**
44. 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 shrubs are permitted within City utility easements, where the easement is located within landscape areas. **(E)**
45. Prior to any work within public right of way or City easement, the owner or designee shall obtain an encroachment permit from City of Milpitas Engineering Division. **(E)**
46. If necessary, the owner or designee shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755. **(E)**
47. Prior to any building permit issuance unless otherwise noted the developer shall comply with the following solid waste requirements and modify plans as a condition of project approval:
 - a. Project is required to design for roll-off compactor service for both trash and recyclables. Developer 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.

- b. Prior to final map approval, owner designee shall demonstrate adequate safe access to solid waste collection enclosure to provide service. Enclosure shall accommodate a 40 feet safe staging area for pick up and drop off the roll-off compactor.
- c. The developer shall estimate the weekly volume of trash and recyclables, determine container sizes, provide sufficient enclosure space, and include utility hook-ups.
- d. Developer shall 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 bin management (ie sufficient number, size of bins, storage, positioning), compaction, chute design & maintenance requirements, and litter management. The plan shall demonstrate that the site plan provides sufficient space for the solid waste vehicle to perform collection and turn around on-site excluding public and private streets and make any site plan modifications to address this issue.
- e. The solid waste collection areas shall be designed to parking garage standards and meet all building and fire code requirements. The collection areas shall be designed to accommodate new solid waste truck turn around and height requirements. The collection areas shall include a minimum forty (40) feet straight approach. No vehicle backing onto public/private streets is allowed. The largest roll-off container that can be accommodated in an internal trash area is thirty (30) cubic yards. No collection equipment shall be placed in public view. The enclosure areas 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.
- 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 any building permit issuance**, Owner/Developer shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. Particularly showing how trash and recyclables will be transferred from each dwelling unit to the trash enclosure area. The Solid Waste Handling Plan shall also address other requirements, such as compaction, chute design & maintenance requirements, sufficient number & size of bins, property

- c. Prior to issuance of Certificate of Occupancy, the owner or designee 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. Owner or designee 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 owner or designee 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. Owner or Designee 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 owner or designee'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. **(E)**
50. 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)**

51. The project shall be served by SCVWD Zone 1 water supply. The project shall be served by master water meters, with separate services for commercial domestic, fire, and interim potable irrigation. Each residential building shall have a separate domestic service. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer and Fire Marshal of water system 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 City's public water distribution system. These studies shall also demonstrate that the multiple on-site water system improvements (ie commercial domestic, fire, residential domestic, and interim potable irrigation) provide sufficient capacity and pressure to meet minimum domestic and fire demands at the top story of each tower. If the results of the study indicate that minimum water pressure cannot be maintained at the water meters, the developer shall construct necessary off-site public water system improvements to achieve minimum water supply pressures. Design and construction of all public water system facilities shall be in accordance with State and City standards and guidelines (including but not limited to placement within right-of-way, pipeline material, depth, and spacing; water meter type, and backflow protection). Design and construction of the on-site water systems shall be in accordance with the approved studies, and applicable building, plumbing, and fire codes. The City makes every effort to deliver a continuous and sufficient supply of water. However, temporary interruptions may be necessary for the purpose of making repairs or improvements. If it is important to maintain uninterrupted water supply to this development (except in case of emergency), the developer is encouraged to design and install a redundant water service system. Regardless of the water system study results, at a minimum, the developer shall:
- a. Dedicate all public improvements to the City.
 - i. Design and construct all water system improvements necessary to serve this project.
 - ii. The developer shall submit for City approval detailed utility plan and profiles showing the sizes & locations of all existing and proposed water mains, services, meter(s) and backflow devices. Also, show horizontal and vertical clearances from other utilities; and depth and material of existing main for wet/hot taps or isolation valves for cutting in tee's. All domestic and irrigation services shall include reduced pressure principle backflow prevention device as per City Standard Drawing #734. Fire services shall be protected from backpressure/back-siphonage in accordance USC Manual of Cross-Connection and City requirements. **(E)**

52. 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 owner or designee shall:

- a. Provide separate water meters for domestic water service and irrigation service. Owner or designee is also required to provide separate domestic meters for each proposed use (Residential, Food Services, Commercial/Office).
- 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 owner or designee 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.
- c. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. **(E)**

53. Recycled Water. 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. To meet the recycle water guideline the owner or designee shall:

- a. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape.
- b. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the California Department of Public Health (CDPH) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and CDPH approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
- C. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing or eating areas, walkways, pavements, and any other uncontrolled access areas. **(E)**

54. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the owner or designee 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)**

55. The owner or designee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hours prior to construction for location of utilities. **(E)**

56. 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 building permit issuance, 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. Developer agrees to make a good faith effort to work cooperatively with the City and outside agencies in evaluating options to assist in flood plain alleviation improvements deemed feasible in dealing with cumulative impacts.
57. Prior to any building permit submittal, Developer/Subdivider shall submit the project Flood Study, demonstrating to the satisfaction of the City Engineer that the proposed development has NO adverse impact to the surrounding flood plain within the Special Flood Hazard Area and flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments (DR Horton @ McCandless, Montague/Piper TASP sub-district, and the BART Project) demonstrating the combined effects will not increase the water surface elevation of the Base Flood (BFE) more than one/tenth of a foot at any point. Additionally, for the AO Flood Zone, the flood study is required in order to establish the BFE and development requirements. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS.
58. Prior to any building permit submittal, 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. (E)
59. Prior to final map approval owner or designee shall:
- a. Comply with the submitted focused traffic study and any of its recommendations. Owner or designee agrees to modify street geometry to address any impact identified in the traffic study.
 - b. Submit plans for Great Mall Parkway improvements, including but not limited to median island modifications, street curb modifications, and roadway marking modifications, as determined by a focused traffic operations study to address potential weaving impacts that may result from the installation of new driveways along Great Mall Parkway. All such improvements shall be incorporated into the subdivision improvement agreement for this project.

- c. Maintain the existing lane configurations on McCandless Drive at the Great Mall Parkway intersection to ensure compliance with the Transit Area Specific Plan Environmental Impact Report (TASP EIR).
 - d. Maintain the bike lane along McCandless Boulevard. **(E)**
60. At the 65% build-out of the project, the owner or designee shall provide a performance bond for half (1/2) of the cost of a traffic signal (assumed fair-share) at the future McCandless Drive/Future Public Park intersection south of the project site; OR at the City's request provide an escrow account naming the City of Milpitas as designee to use the funds for the design and construction of the traffic signal. **(E)**
61. All utilities shall be properly disconnected before the building can be demolished. Demonstrate 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 if it is not to be used. 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)**
62. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
 - a. What materials will be salvaged.
 - b. How materials will be processed during demolition.
 - c. Intended locations or businesses for reuse or recycling.
 - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
 - e. Applicant/Contractor shall make every effort to salvage materials for reuse and recycling. **(E)**
63. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building

Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division. **(E)**

64. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site. **(E)**
65. The owner or designee shall obtain information from the US Postal Service regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. **(P)**
66. Make changes as noted on Engineering Services Exhibit "T" (dated 2/6/2012) and submit a Mylar of the revised tentative map to the Planning Division for approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. **(E)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney

EXHIBIT 2

CONDITIONS OF APPROVAL

Site Development Permit No. SD11-0001/Major Tentative Map Amendment No. TM11-0002/Conditional Use Permit No. UP11-0037, McCandless Mixed Use Project (District 2)

(APNs: 86-33-94, 86-33-99, 86-33-95, and 86-33-98)

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on February 22, 2012, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape 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)**

2. **SD11-001/TM11-0002/UP11-0037** 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.
3. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of **SD11-001/TM11-0002/UP11-0037** if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
4. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
5. The project shall demonstrate compliance with the project's mitigation monitoring program, including, but not limited to:
 - a. McCandless Drive Tree mitigation; and

- b. Noise and vibration mitigation; and **(P)**
6. 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 Site Development Permit No. SD11-0001, Conditional Use Permit No. UP11-0037 and Tentative Map Amendment No. TM11-0002. 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)**
7. The owner or designee prior to building permit issuance shall demonstrate compliance with the recommendations of the project's Toxic Air Contaminants Study. **(P)**

Site Development Permit

8. Prior to building permit issuance, the owner or designee shall demonstrate compliance with the private open space minimum requirements, including balcony sizes. **(P)**
9. Prior to building permit issuance, the owner or designee shall revise the landscape sheets to include 36" and 48" box tree specimens interspersed within the plant palette. **(P)**
10. Prior to building permit issuance, the owner or designee shall submit for approval a final detailed landscape plan for approval. **(P)**
11. Prior to building permit issuance, the owner or designee shall demonstrate that the window trims around the building are of smooth finish. **(P)**

Tentative Map

12. Water Supply and Force Majeure. The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land entitlement approval project. 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. Prior to any building permit issuance, Council's approval of the water Supply Assessment is required. However, this condition of approval applies in case of emergency declaration of supply assurance in the case of a major catastrophic event that restricts City's assurance to provide water supply, or allocated treatment plant capacity. **(E)**
13. Street B. Prior to final map approval or as directed by City Engineer, owner or designee shall complete design of Street B Improvements to serve District 1 and District 2 for review and approval. Owner or designee shall construct all of Street B (from Great Mall Parkway) at the same time if District 1 has not commenced construction prior to Certificate of occupancy of any unit for District 2. **(E)**
14. Prior to final map recordation, the owner or designee 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 owner or designee will be required to mitigate the overflow or shortage by construction of a parallel line or pay an impact charge, if acceptable to the City Engineer. **(E)**
15. Prior to final map recordation, the owner or designee shall submit a grading plan and a hydraulic and hydrologic study prepared by a registered Civil Engineer. The study shall analyze the existing and ultimate conditions and facilities and assure no adverse impacts to adjacent properties. The study shall be reviewed and approved by the City Engineer and the owner or designee shall satisfy the conclusions and recommendations of the approved study. **(E)**
16. The submitted grading plan, street sections along McCandless Drive, vehicular Driveway access and pedestrian circulation are preliminary and subject to change. Developer agrees to work with city staff in fine tuning the design of ramps, stairs, and sidewalks prior to final map approval or building permit issuance which ever comes first. Developer shall submit a revised plan for review and approval to the satisfaction of the City Engineer. **(E)**
17. Community Facilities District. Prior to any building permit issuance, the owner or designee shall submit an executed petition to annex the subject property into the Community Facility District 2008-1 (CFD 2008-1), and agree to pay the special taxes levied by CFD 2008-1 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 owner or designee shall comply with all rules, regulations, policies and practices established by 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. Additionally, any maintenance obligation by CFD shall be paid for by developer for a period of one year after building permit final occupancy to cover funding gap cash flow to fund maintenance operations. **(E)**

18. The final map shall be recorded prior to issuance of any building permit. The owner or designee shall provide a current title report with your final map submittal, not more than 90 days old. The title report should include the proposed parking and proposed new Street B area at the and any other are affected by the project not under the control of developer or designee. **(E)**
19. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. **(E)**
20. Prior to final map approval, the owner or designee 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. The HOA shall establish a Private Job account prior to final certificate of occupancy with the City and maintain a minimum balance of \$4,000 to administer compliance for management of the project storm water management facilities, annual reporting and inspection for compliance with NPDES permit regulatory requirements. 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. **(E)**
21. Prior to recordation of any final map, the owner or designee 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. **(E)**
22. Prior to final map approval, the owner or designee shall obtain design approval and bond for all necessary public improvements along McCandless Drive and Great Mall parkway, including but not limited to the following:
 - a. Removal and installation of new curb, gutter, and sidewalk, new median installation, signage and striping, street lights, fire hydrants, bus stop, traffic signal, Penitencia Creek Trail improvement, and storm, water and sewer service installation. All project major benchmarks used for this project shall be verified and be certified in accordance with the National Spatial Reference System.

- b. Owner or designee is required to install the sewer project known as 11A, as specified in the City of Milpitas Sewer Master Plan, in its entirety. Owner or designee is required to replace 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.
 - c. Owner or designee is required to install a portion of the sewer project known as 11B, as specified in the City of Milpitas Sewer Master Plan. The work required at this time includes replacement of 360 linear feet of 15 inch diameter pipe with 18 inch diameter pipe; and replacement of 924 linear feet of 10 inch diameter pipe with 18 inch diameter pipe. The upstream portion is not required for this project.
 - d. Owner or designee is required to upsize the existing sanitary sewer line on McCandless Drive to accommodate the proposed development, and preserve the needed capacity for and address the project impact on the future developments upstream.
 - e. Plans for all public improvements shall be prepared on Mylar (24" x 36" sheets) with City Standard Title Block and owner or designee shall submit a digital format of the Record Drawings (AutoCAD format latest edition supported by the City) upon completion of improvements. The owner or designee 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 Transit Area Specific Plan, 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. (E)*
23. Sewer Capacity and Improvements. The existing sanitary sewer collection system is at full capacity. Owner and City agree to work cooperatively in developing an agreement for the design and construction obligation for the projects defined as Projects 11A and 11B, as identified in the 2009 Sewer Master Plan. Construction of these projects shall be completed prior to issuance of building certificate of occupancy or to the satisfaction of the City Engineer. **(E)**
24. McCandless Drive Street Improvements. Prior to final map approval or as directed by City Engineer, owner or designee shall complete design of McCandless Street Improvements for review and approval. Owner or designee agrees to coordinate as deemed feasible District 1 and District 2 McCandless Drive improvements if constructed simultaneously. **(E)**
25. Prior to any final map approval or as directed by the City Engineer, the owner or designee shall prepare all necessary plans and exhibits and submit to the City so the City

can process and obtain approval of a joint use agreement between with the Santa Clara Valley Water District (SCVWD) for the proposed trail improvements, and maintenance within the districts right-of-way. Owner or designee is responsible to pay for all costs associated with agreement, trail improvements and any further CEQA requirement needed to implement this plan. (E)

26. Pedestrian Bridges. Two (2) pedestrian bridges will be required as part of the proposed trail along Lower Penitencia Creek and East Penitencia Creek. Currently DR Horton will be contributing \$250,000 for the City to design and permit one bridge at the confluence of the two creeks. As a condition of this project approval, owner or designee agrees to pay an amount of \$250,000 at the time of building permit issuance for the design and construction of the second bridge along East Penitencia Creek east of McCandless Drive to a location to be determined by the City Engineer. (E)
27. Prior to any final map approval or as directed by the Public Works Director, the owner or designee shall process and obtain approval of a joint use agreement between the City and Santa Clara Valley Water District (SCVWD) for the proposed Penitencia Creek Trail improvements and their maintenance within the districts right-of-way to the satisfaction of City Engineer. Owner or designee is responsible for occurred costs associated with agreement and trail improvements. (E)
28. The proposed Penitencia Creek Trail improvements shall be built to the Santa Clara Valley Water District's and City's satisfaction. Any improvements on the SCVWD right of way require districts approval and permit. (E)
29. It is anticipated that the on-site private storm drainage system will collect a certain amount of public storm water runoff from proposed trail along creek frontage. Prior to building permit issuance, the owner or designee shall enter into an agreement with the City for collecting, accepting, treating and conveying public runoff through private drainage system at no cost to the City. The storm water control plan (C3) need to include this area and provide adequate treatment area. (E)
30. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
 - a. Storm water connection fee of **\$208,720** (based on 9.68 acres @ \$21,562/acre).
 - b. Water connection fee of **\$94,105** (based on 200 units @ \$1,164/U, with \$14,328/AC credit for previous use).
 - c. Sewer connection fee of **\$83,263** (based on 200 units @ \$1406/U, with \$20448/AC credit for previous use).
 - d. Water Service Agreement(s) for water meter(s) and detector check(s).
 - e. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

- f. Transit Area Specific Plan Impact Fees (TASPIF): Residential impact fee of approximately **\$4,856,000** based on 200 units at \$24,280 per unit.
 - g. Fees will be finalized and calculated as part of the subdivision improvement agreement approval. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). **(E)**
31. 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. **(E)**
32. Prior to any building permit issuance or as directed by the Public Works Director, the owner or designee shall pay a Transit Area Development Impact fee in accordance with the stipulations in the Owner's Participation Agreement for the project. **(E)**
33. In accordance with Milpitas Municipal Code XI-1-7.02-2, the owner or designee 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. **(E)**
34. 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 owner or designee shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at (408) 586-3345 for further information. **(E)**
35. It is the responsibility of the owner or designee to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Santa Clara Valley Water District and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. **(E)**
36. Prior to start of any construction, the owner or designee 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 establishment of a neighborhood hotline to record and respond to neighborhood construction related concerns. The owner or designee shall coordinate their construction activities with other construction activities in the vicinity of this project. The owner or designee'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)

37. Prior to submittal for building permit issuance, the owner or designee shall submit plans to Santa Clara Valley Water District for review and approval. Owner or designee shall provide the District's comments to the City. (E)
38. The owner or designee shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping and signs as determined by sight distance shall not exceed two feet when measured from street elevation. (E)
39. 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 shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)
40. Prior to any work within public right of way or City easement, the owner or designee shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
41. If necessary, the owner or designee shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755. (E)
42. Prior to any building permit issuance unless otherwise noted the developer shall comply with the following solid waste requirements and modify plans as a condition of project approval:
 - a. Project is required to design for roll-off service for both trash and recyclables. The 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.
 - b. Prior to final map approval, owner or designee shall demonstrate adequate safe access to solid waste collection enclosure to provide service. Enclosure shall accommodate a 40 feet safe staging area for pick up and drop off the roll-off compactor.
 - c. The owner or designee shall estimate the weekly volume of trash and recyclables, determine container sizes, provide sufficient enclosure space, and include utility hook-ups.

- d. The owner or designee shall 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 bin management (i.e. sufficient number, size of bins, storage, positioning), compaction, chute design & maintenance requirements, and litter management. The plan shall demonstrate that the site plan provides sufficient space for the solid waste vehicle to perform collection and turn around on-site excluding public and private streets and make any site plan modifications to address this issue.
- e. The solid waste collection areas shall be designed to parking garage standards and meet all building and fire code requirements. The collection areas shall be designed to accommodate new solid waste truck turn around and height requirements. The collection areas shall include a minimum forty (40) feet straight approach. No vehicle backing onto public/private streets is allowed. The largest roll-off container that can be accommodated in an internal trash area is thirty (30) cubic yards. No collection equipment shall be placed in public view. The enclosure areas 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.
- 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 any building permit issuance**, Owner or designee shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. Particularly showing how trash and recyclables will be transferred from each dwelling unit to the trash enclosure area. The Solid Waste Handling Plan shall also address other requirements, such as compaction, chute design & maintenance requirements, sufficient number and size of bins, property management responsibility for bin management, storage and positioning, and litter control. Owner or designee shall add this language to the deed restriction and CC&Rs and HOA shall be responsible to implement this plan.
- h. 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.

43. The owner or designee 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. **(E)**
44. Prior to any building permit submittal, the owner or designee 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. **Site design shall also include Low Impact Development (LID) Section C3.c.i.(2)(b) measures of harvesting and reuse, infiltration, or evaporate-transpiration. Biotreatment systems may be considered if the other LID measures are demonstrated to be infeasible.** The site plan shall be consistent with the final Storm Water Control plan to the satisfaction of the City Engineer.
- a. The owner or designee 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 owner or designee 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. The owner or designee 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 owner or designee 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. The owner or designee 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. **(E)**
45. 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)**
46. The project shall be served by SCVWD Zone 1 water supply. The project shall be served by master water meters, with separate services for commercial domestic, fire, and interim potable irrigation. Each residential building shall have a separate domestic service. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer and Fire Marshal of water system 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 City’s public water distribution system. These studies shall also demonstrate that the multiple on-site water system improvements (i.e. commercial domestic, fire, residential domestic, and interim potable irrigation) provide sufficient capacity and pressure to meet minimum domestic and fire

demands at the top story of each tower. If the results of the study indicate that minimum water pressure cannot be maintained at the water meters, the developer shall construct necessary off-site public water system improvements to achieve minimum water supply pressures. Design and construction of all public water system facilities shall be in accordance with State and City standards and guidelines (including but not limited to placement within right-of-way, pipeline material, depth, and spacing; water meter type, and backflow protection). Design and construction of the on-site water systems shall be in accordance with the approved studies, and applicable building, plumbing, and fire codes. The City makes every effort to deliver a continuous and sufficient supply of water. However, temporary interruptions may be necessary for the purpose of making repairs or improvements. If it is important to maintain uninterrupted water supply to this development (except in case of emergency), the developer is encouraged to design and install a redundant water service system. Regardless of the water system study results, at a minimum, the developer shall:

- a. Dedicate all public improvements to the City.
 - b. Design and construct all water system improvements necessary to serve this project.
 - c. The owner or designee shall submit for City approval detailed utility plan and profiles showing the sizes & locations of all existing and proposed water mains, services, meter(s) and backflow devices. Also, show horizontal and vertical clearances from other utilities; and depth and material of existing main for wet/hot taps or isolation valves for cutting in tee's. All domestic and irrigation services shall include reduced pressure principle backflow prevention device as per City Standard Drawing #734. Fire services shall be protected from backpressure/back-siphonage in accordance USC Manual of Cross-Connection and City requirements. (E)
47. 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 owner or designee shall:
- a. Provide separate water meters for domestic water service & irrigation service. Owner or designee is also required to provide separate domestic meters for each proposed use (Residential, Food Services, Commercial/Office).
 - 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 owner or designee 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.

- c. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. **(E)**
48. 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. To meet the recycle water guideline the owner or designee shall:
 - a. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape.
 - b. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the California Department of Public Health (CDPH) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and CDPH approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards. **(E)**
49. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the owner or designee 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)**
50. The owner or designee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hours prior to construction for location of utilities. **(E)**
51. 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 building permit issuance, 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. Developer agrees to make a good faith effort to work cooperatively with the City and outside agencies in evaluating options to assist in flood plain alleviation improvements deemed feasible in dealing with cumulative impacts. **(E)**
52. Prior to any building permit submittal, owner or designee/Subdivider shall submit the project Flood Study, demonstrating to the satisfaction of the City Engineer that the proposed development has NO adverse impact to the surrounding flood plain within the Special Flood Hazard Area and flood carrying capacity of the area. The study should

include cumulative effects of existing and proposed developments (DR Horton @ McCandless Drive, Montague/Piper TASP sub-district, and the BART Project) demonstrating the combined effects will not increase the water surface elevation of the Base Flood (BFE) more than one-tenth of a foot at any point. Additionally, for the AO Flood Zone, the flood study is required in order to establish the BFE and development requirements. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. **(E)**

53. Prior to any building permit submittal, the owner or designee 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. **(E)**

54. Prior to final map approval owner or designee shall:

- a. Comply with the submitted focused traffic study and any of its recommendations. Owner or designee agrees to modify street geometry to address any impact identified in the traffic study.
- b. Submit plans for Great Mall Parkway improvements, including but not limited to median island modifications, street curb modifications, and roadway marking modifications, as determined by a focused traffic operations study to address potential weaving impacts that may result from the installation of new driveways along Great Mall Parkway. All such improvements shall be incorporated into the subdivision improvement agreement for this project.
- c. Maintain the existing lane configurations on McCandless Drive at the Great Mall Parkway intersection to ensure compliance with the Transit Area Specific Plan Environmental Impact Report (TASP EIR).
- d. Maintain the bike lane along McCandless Drive. **(E)**

55. At the 65% build-out of the project, the owner or designee shall provide a performance bond for half (½) of the cost of a traffic signal (assumed fair-share) at the future McCandless Drive/Future Public Park intersection south of the project site; OR at the City's request provide an escrow account naming the City of Milpitas as designee to use the funds for the design and construction of the traffic signal. **(E)**

56. All utilities shall be properly disconnected before the building can be demolished. Demonstrate 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 if it is not to be used. 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)**

57. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
- a. What materials will be salvaged.
 - b. How materials will be processed during demolition.
 - c. Intended locations or businesses for reuse or recycling.
 - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
 - e. Applicant/Contractor shall make every effort to salvage materials for reuse and recycling. **(E)**
58. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of “end dumps.” Actual reuse, recycling and disposal tonnage amounts (and estimates for “end dumps”) shall be submitted to the Building Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division. **(E)**
59. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site. **(E)**
60. The owner or designee shall obtain information from the US Postal Service regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. **(P)**

61. Make changes as noted on Engineering Services Exhibit "T" (dated 2/6/2012) and submit a Mylar of the revised tentative map to the Planning Division for approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. **(E)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney