

**RESOLUTION NO. 12-041**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT NO. SD12-0009, CONDITIONAL USE PERMIT UP12-0024, AND TENTATIVE MAP NO. MT12-0005 FOR THE LYONS MONTAUGE RESIDENTIAL PROJECT LOCATED AT 450 MONTAGUE EXPRESSWAY**

**WHEREAS**, on October 12, 2012, an application was submitted by Lyon Communities, to allow the development of 474 dwelling units on 7.98 acres (59 dwellings/acre) in a multi-story building located at 450 Montague Expressway (APN: 86-037-004, -020, and -021) zoned Mixed Use Very High Density/Urban Residential with Transit Oriented Development & Site and Architectural Overlays (MXD3/R5-TOD-S) within the Transit Area Specific Plan; and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission recommend that the City Council determine this project exempt; and

**WHEREAS**, on November 28, 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 exempt pursuant to Section 15168(c) (2) of the CEQA Guidelines because staff determined that the project is consistent with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council; and

**Section 3:** 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:** The project conforms to the intent and the specific requirements of the Transit Area Specific Plan, including the Development Standards and Design Guidelines in that the project creates a high density residential project, and a component of public open space with trail.

**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

**Resolution No. 12-041**

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:

a. 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 sidewalks are improved and added to help circulation.

b. The deviation from the Transit Area Specific Plan Standard 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 streetscape treatment to the access off of Montague Expressway will be consistent with the TASP standards.

c. The deviation from the Transit Area Specific Plan Standard allows for a public benefit not otherwise obtainable through the strict application of the Zoning Standard in that the project will provide a feasibility study for the future Montague Expressway pedestrian bridge and extend a sidewalk south of the access road along Montague Expressway.

**Section 8:** The Planning Commission of the City of Milpitas hereby approves Site Development Permit No. SD12-0009, Conditional Use Permit No. UP12-0024, and Tentative Map No. MT12-0005 for the Lyons Montague Residential Project, subject to the above Findings, Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on November 28, 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 November 28, 2012, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Garry Barbadillo				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL**

**Lyons Montague Residential Project (SD12-0009, UP12-0024 & MT12-0005)**

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the City Council, in accordance with these Conditions of Approval. **(P)**
2. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
3. Conditions of Approval. As part of the issuance of building permits, the owner or designee shall include within the first four 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)**
4. Expirations. Site Development Permit No. SD12-0009, Conditional Use Permit No. UP12-0024, and Tentative Map No. MT12-0005 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.
5. Time Extension. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Site Development Permit No. SD12-0009, Conditional Use Permit No. UP12-0024, and Tentative Map No. MT12-0005 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
6. Private Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**

**Resolution No. 12-041**

7. Indemnification. 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. SD12-0009, Conditional Use Permit No. UP12-0024, and Tentative Map No. MT12-0005. 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)**

**Project Conditions**

8. Architectural Details. Prior to issuance of a building permit, the following shall be demonstrated in the construction plans for the project:
  - a. The stucco texture for the walls of the building shall be of 20/30 finish.
  - b. The stucco for all trim features around windows and doors shall be a trowel smooth finish. **(P)**
9. West Leg Milpitas Boulevard Extension. Prior to the final issuance of certificate of occupancy for the project, the owner or designee shall pay to the City of Milpitas 25% fair share contribution for all associated costs for the WLME. The WLME (public street) shall be established with project limits from Capitol Avenue to a new private street along Penitencia Creek, per the TASP street section requirements to the satisfaction of the City Engineer and in coordination with the proposed Milpitas Boulevard Extension that extends from Montague Expressway to Capitol Avenue adjacent to the new proposed Milpitas BART Station. The WLME street section shall include but not be limited to one 11-foot southbound lane, one 11-foot northbound lane, 11-foot northbound right, Class II bike lanes on both directions of travel, minimum four (4) foot raised median island, eight (8) foot parking lane on one side of the street, seven (7) foot planting strip, and five (5) foot sidewalk. The WLME street elevation shall be designed and constructed to

**Resolution No. 12-041**

accommodate future bridge crossing over Penitencia Creek pursuant to the TASP-designated street network. **(E)**

10. Future Traffic Signal at Capitol and WLME. Prior to the final issuance of certificate of occupancy for the project, the owner or designee shall pay a fair share contribution for the construction of a new signal at the E. Capitol Avenue and WLME intersection. **(E)**
11. The owner or designee shall submit project identification signs for the review by the Planning Division prior to any Building Permit issuance. **(P)**
12. 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 Owner or Designee shall obtain a Conditional Letter of Map Revision (CLOMR) from Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain. The Owner or Designee shall also obtain a Letter of Map Revision (LOMR) prior to any building occupancy 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. **(E)**
13. Prior to final map approval or building permit submittal, Owner or Designee 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 (Integral, 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. **(E)**
14. Prior to final map approval, 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 Owner or Designee shall satisfy the conclusions and recommendations of the approved drainage study. **(E)**
15. 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 Owner or Designee submits the NOI for the project for pre construction storm water treatment requirements. **(E)**

16. Prior to final map approval, or building permit submittal, 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. The site plan shall be consistent with the final Storm Water Control plan to the satisfaction of the City Engineer.
  - A. 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. 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 Owner or Designee 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 Development Permit Amendment application review.
- H. The submitted plan shows the Filter Media device to be placed within the future E. Capitol Avenue right of way. No permanent structure is allowed within City right of way or easement. Prior to building permit issuance revise the design to relocate the proposed treatment device within the project foot-print. If City agrees treatment device cannot be relocated out of the right of way, Applicant agrees to enter into an encroachment agreement with the City for the private operation and maintenance of such device. **(E)**
17. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the Owner or Designee, and accepted by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. **(E)**
18. 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. 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)**

19. Water, Sewer and Storm Drain Studies. 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 a mitigation charge, if acceptable to the City Engineer. **(E)**
  
20. Solid Waste. Prior to building final inspection or building permit occupancy of any units, Owner or Designee shall construct a new trash enclosure to serve the project. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. The enclosure will be subject to the City's review/approval prior to construction of the enclosure. If the facility cannot be accommodated within the building, then the exterior location, as shown in Sheet G005 of the project plans, will be refined by the applicant to meet superior design, materials, pavement, and landscaping qualities compatible with the adjacent future park development, subject to the City's review/approval prior to construction of the enclosure facility. **(E)**
  
21. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, Owner or Designee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to any building permit issuance, Owner or Designee shall incorporate following solid waste services requirements to the satisfaction of the City Engineer:
  - A. Proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house all necessary equipment. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to building permit issuance. The enclosure drains must discharge to the sanitary sewer line. Storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
  
  - B. The Property Management Association (PMA) shall be responsible for solid waste management, including transfer of material to the compactors. **Prior to final map approval**, 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. The Plan shall state how the residential waste will be conveyed to the collection area for disposal. Show the path of travel for refuse. Demonstrate how recycling shall have a separately maintained process from garbage handling.

- C. Prior to occupancy permit issuance, the Property Management Association (PMA) shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Republic Services (formally BFI). After the applicant has full occupancy, the Owner or Designee shall contact the Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the Owner or Designee shall increase the service to the level determined by the evaluation. **(E)**
22. Community Facilities District. Prior to final map approval, the Owner or Designee shall submit an executed petition to annex the subject property into the CFD 2008-1, and agree to pay the special taxes levied by Community Facility District (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 the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. **(E)**
23. The final map shall be recorded prior to issuance of any building permit. Provide a current title report with your final map submittal, not more than 90 days old. **(E)**
24. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. **(E)**
25. Property Management Association. Prior to final map approval, the Owner or Designee shall establish necessary Property Management Association (PMA). The PMA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets. The MA shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. **(E)**
26. 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)**
27. All improvements plans shall be prepared using Vertical Datum of 1988 (NAVD 88). The specific city benchmark used for the project shall be indicated on the cover sheet of each improvement plan set. **(E)**
28. The Owner or Designee shall dedicate on the final map necessary public service utility easements, street easements, public access easement (over private streets and walkways) and easements for water and sanitary sewer purposes. **(E)**

**Resolution No. 12-041**

29. Prior to final map approval, the Owner or Designee shall obtain design approval and bond for all necessary public improvements along E. Capitol Avenue and Montague Expressway, including but not limited to the following:
- A. Removal and installation of new curb, gutter, and sidewalk, median modification or installation, signage and striping, street lights, street trees and tree wells, fire hydrants, bus stop, traffic signal modification at E. Capitol and Montague, and storm, water, recycled water, and sewer service installation.
  - B. This project will not receive any Certificate of Occupancy until Projects 11A, B, and C as identified in the 2009 Sewer Master Plan have been completed. The City and Owner or Designee will work cooperatively to develop a plan in how these improvements will be completed.
  - C. Owner or Designee is required to design, permit, and install, Sewer Project 11C if not already constructed. Funding for the project is tied to the TASP Implementation program.
  - D. Projects located in the TASP are required to use recycled water for landscape irrigation. All landscaping located within the building footprint shall be served by potable water. Street frontage landscaping shall be served by recycled water. The Owner or Designee shall clearly delineate the potable irrigation service area and recycled water service areas on the plans and maintain separation with a permanent physical barrier such as a sidewalk or fence. Owner or Designee is responsible to extend the recycled water main from Montague Expressway through the main entry drive to serve the public park and trail.
  - E. Owner or Designee shall obtain a new easement for the potable water pipeline relocation prior to City's agreement to allow relocation of the water pipeline. The water pipeline shall be located in the center of a travel lane in Montague Expressway.
  - F. Owner or Designee will be required to construct sidewalk along Montague frontage. The proposed sidewalk shall be extended to the **East Penitencia Creek Right of Way** with all required ADA ramps improvements. Any work within the County right of way requires their review and approval.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and Owner or Designee shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements; the submitted digital format of the drawings shall be GIS ready. 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 first certificate of occupancy for the project. (E)*

30. Connection Fees. The Owner or Designee 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 **\$133,665** (based on 7.97 acre @ \$16,771/acre).
- B. Water connection fee of **\$472,810** (based on 451 units @ \$1164/U and \$14328/AC credit for previous use of the 3.64 AC).
- C. Sewer connection fee of **\$559,675** (based on 451 units @ \$1406/U, and \$20448/AC credit for previous use of the 3.64 AC).
- D. Water Service Agreement(s) for water meter(s) and detector check(s).
- E. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

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

31. Transit Area Impact Fee. Prior to building permit issuance the Owner or Designee shall pay a Transit Area Development Impact fee. The subject fee will be estimated at the time of subdivision Improvement Agreement and will be collected prior to building permit issuance. **(E)**

32. Development Fees. 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)**

33. Montague Expressway Pedestrian Bridge. Prior to Final Map approval, the Owner or Designee shall submit to the city a full and complete Feasibility Investigation for a pedestrian/bike bridge over Montague Expressway in proximity to SCVWD's Pentinica Creek. The Feasibility Investigation will include topographic survey, compiled existing and proposed utility information, site evaluation, geotechnical investigation, bridge type selection, preliminary alignment, preliminary engineer's cost estimate and related efforts for a feasibility study appropriate to complete the preliminary design of a bridge structure across a county expressway. The Owner or Designee shall submit a full and complete draft Feasibility Investigation for review by city and county staff prior to Final Map approval. Owner or Designee shall address all review comments and obtain acceptance of the Feasibility Investigation by the city and Santa Clara County prior to the first certificate of occupancy. **No fee credits or reimbursements are implied. (E)**

34. Undergrounding Utilities. 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 and along the street frontages, 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 line voltage. **(E)**
35. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the Owner or Designee 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. **(E)**
36. Encroachment Permits. It is the responsibility of the Owner or Designee to obtain all 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, Santa Clara County road and Airport Department, and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. **(E)**
37. Prior to final map approval, the Owner or Designee shall submit plans to Santa Clara County Road and Airport Services for review and approval of the proposed improvements along Montague Expressway frontages. Provide their written comments, final approval, and copies of any permits to the City. **(E)**
38. Sanitary Sewer Easement. Prior to Certificate of Occupancy, the Owner or Designee shall secure an easement, for the City of Milpitas benefit, from the Santa Clara County for the installation and future maintenance of the Sanitary Sewer line 11C within the Montague Expressway right of way. **(E)**
39. Construction Schedule. 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 establish 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)**
40. All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be

disconnected. The water service shall be locked off in the meter box and disconnected or capped at main line in the street if the water meter is not to be used. The sanitary sewer shall be capped 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)**

41. Prior to demolition permit issuance, the Owner or 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.

Applicant/Contractor shall make every effort to salvage materials for reuse and recycling. **(E)**

42. Prior to building permit issuance, Owner or Designee 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)**

43. 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 Owner or Designee, all to the satisfaction of the City Engineer or designee. The Owner or Designee shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Owner or Designee 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 Owner or Designee shall perform all recycling and/or disposal by removal from the job site. **(E)**

44. 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 &

signs as determined by sight distance shall not exceed two (2) feet when measured from street elevation. **(E)**

45. 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)**
46. 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)**
47. 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)**
48. 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 to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. **(E)**

49. 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 eating areas, walkways, pavements, and any other uncontrolled access areas. **(E)**
- 50. 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 Public Works Department at (408) 586-2600, to obtain the requirements and forms. **(E)**
- 51. The Owner or Designee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. **(E)**
- 52. The Owner or Designee shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. **(E)**
- 53. Owner or Designee shall make changes as noted on Engineering Services Exhibit "PT"(dated 11-08-2012) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. **(E)**
- 54. 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 with the Santa Clara Valley Water District (SCVWD) for the proposed trail improvements, and maintenance within the district's right-of-way. Owner or designee is responsible to pay for all costs associated with agreement and any further CEQA requirement needed to implement this plan. **(E/P)**
- 55. At 75% and 100% occupancy for the residential complex, the Owner or Designee shall complete a traffic operations study (a total of two studies) with the scope approved by the City Traffic Engineer to determine the adequacy of the vehicular ingress and egress access at Montague Expressway. The study reports shall be submitted to the City Traffic Engineer for evaluation. If the study demonstrates deficiencies, then those deficiencies shall be rectified accordingly by the owner or designee to the satisfaction of the city traffic engineer, which may include the relocation of the southerly adjacent parcel's access point eastward on the proposed private drive away from Montague Expressway for example. **(E)**
- 56. Prior to or concurrent with the final map approval the Owner or Designee shall record a reciprocal ingress/egress easement on the proposed access drive connecting with Montague Expressway for the benefit of Public and the adjacent property owner on the south. **(E)**

**Resolution No. 12-041**

57. The Owner or Designee shall accommodate the connection of the proposed private drive to the future extension of Milpitas Boulevard. (E)

58. The Owner or Designee shall work with staff to refine the design of the terraces for the project. (E)

**Key:**

P = Planning

E = Engineering

CA = City Attorney