

ATTACHMENT A

RESOLUTION NO. 14-001

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THE CITY COUNCIL APPROVE GENERAL PLAN
AMENDMENT NO. GP13-0001, ZONING AMENDMENT NO. ZA13-0001, SITE
DEVELOPMENT PERMIT NO. SD13-0001, CONDITIONAL USE PERMIT NO. UP13-
0001, TENTATIVE MAP NO. MT13-0001, VARIANCE NO. VA13-0001 AND CERTIFY
THE FINAL ENVIRONMENTAL IMPACT REPORT TO CREATE A FREEWAY
CORRIDOR OVERLAY FOR INCREASING THE FLOOR AREA RATIO
ALLOWANCE TO ALLOW THE DEMOLITION OF A PORTION OF THE
MCCARTHY RANCH MARKETPLACE, AND TO CONSTRUCT 287,584 SQUARE
FEET OF RETAIL INCLUDING A 240 ROOM HOTEL LOCATED AT
11-111 RANCH DRIVE**

WHEREAS, on January 30, 2013, an application was submitted by TMS McCarthy, Inc. to create a Freeway Corridor Overlay increasing the maximum permitted Floor Area Ratio (“FAR”) from 0.50 to 0.52 to allow the demolition of a portion of the McCarthy Ranch Marketplace, and to construct 284,587 square feet of retail including a 240 room hotel (the “Project”). The project is located at 11-111 Ranch Drive (APN: 22-053-002, -003, -006, and -007.). The application is submitted pursuant to Milpitas Municipal Code Section XI-10-57; and

WHEREAS, the application in part is to amend the General Plan and Zoning Ordinance to allow for a new Overlay District to increase the allowable Floor Area Ratio for the site from 0.50 to 0.52. The proposed overlay would allow for up to a maximum 20% increase from the base FAR.

WHEREAS, the application also includes a sign program that includes details for window, canopy, wall, entry and electronic displays that standardizes the approval for future on-site sign requests. In addition, the application requests to allow for a Variance from the City’s Sign Ordinance to allow additional sign square footage than allowed by the City’s Sign Ordinance (6,920 square feet versus 5,690 square feet); and

WHEREAS, the application includes a request to allow shared parking because the project includes a combination of guest serving and retail. Shared parking in this scenario is appropriate because the proposed land uses have different parking demand patterns and are able to use the same parking spaces throughout the day. The project would provide 2,285 parking spaces, which is sufficient (1,496 spaces required with shared parking versus 1,847 without the shared parking concept and hotel) for the existing uses and the new project; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and determined that an Environmental Impact Report (EIR) would be required for the project and circulated a Notice of Preparation dated February 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR; and

WHEREAS, based on the responses to the Notice of Preparation, the City prepared a Draft Environmental Impact Report (“Draft EIR”) dated May 2013 (SCH No. 20130220006) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft EIR was circulated for a 45 day public review and comment period commencing on May 8, 2013; and

WHEREAS, on January 8, 2014 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 Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project’s environmental impacts are addressed in the project’s Final EIR. All applicable mitigation measures identified in the Final EIR will apply to the project and have been integrated to the extent possible in the project’s conditions of approval in Exhibit 1. Where impacts cannot be reduced to a level of less than significant, statements of overriding considerations are proposed. See Exhibit 2. The Planning Commission recommends that the City Council adopt the findings in Exhibit 2.

Section 3: General Plan Amendment Findings. In accordance with the Municipal Code Section XI-10-57.02(G), General Plan (General Plan Amendment Findings), the Planning Commission further finds that:

1. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.

The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The proposed overlay to allow for the increase in Floor Area Ratio does not conflict with other sections of the General Plan. The overlay is only applicable to properties within the vicinity of a freeway and would need to be applied for on a case by case basis with those impacts being analyzed with the project proposing the overlay. Applying the overlay does not preclude the applicability of other policies in the General Plan.

2. The proposed amendment will not adversely affect the public health, safety, and welfare.

The proposed overlay to increase the Floor Area Ratio does not supersede any other applicable public health, safety and welfare codes and regulations related to the

review of the project. The proposed overlay does not hinder the ability of the City to monitor, regulate or enforce public health, safety for a project. Any project would need to receive specific discretionary site development review.

Section 4: In accordance with the Municipal Code Section XI-10-57.02(G), Zoning Amendment (Zoning Amendment Findings), the Planning Commission further finds that:

1. The proposed amendment is consistent with the General Plan.

The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.

2. The proposed amendment will not adversely affect the public health, safety, and welfare.

The proposed overlay does not supersede any other applicable public health, safety and welfare codes and regulations related to the review of the project. The proposed overlay does not hinder the ability of the city to monitor, regulate or enforce public health, safety for a project. Any project would need to receive specific discretionary site development review.

Section 5: In accordance with the Municipal Code Section XI-10-57.03(F), Site Development Permit (General Findings), the Planning Commission further finds that:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

The architecture features contemporary glass fenestration and curtain walls (glass), sloping roof designed to resemble the nearby mountains. Exterior walls will have a combination of smooth plaster and fiber reinforced concrete panel finish. The color scheme includes soft blue and gray tones. Conditions of approval for the project include ensuring certain elements such as lighting and details on the building and on-site complement the style of architecture. The project's site design, architecture and massing include materials, variation in height, façade plane changes, and landscaping that is appropriate for the surroundings. The use of glass, stucco, and sloping roof combined with landscaping is designed to complement the surrounding.

2. The project is consistent with the Milpitas Zoning Ordinance.

The project's Floor Area Ratio exceeds the thresholds of the underlying zoning district. The project includes a shared parking analysis to comply with the City's

parking regulations. The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces. The project would provide sufficient amount of parking for the existing and proposed uses (1,496 required spaces with shared parking and 1,847 required spaces without shared parking and hotel). The only development standard requirement from the General Commercial Zoning district is the FAR. With the proposed overlay to increase the Floor Area Ratio for the site and conditions of the approval, the project is consistent with the Zoning Ordinance.

3. The project is consistent with the Milpitas General Plan.

The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.

The project is consistent with Policies:

- a. (2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that includes an underperforming commercial format.*
- b. (2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes small retail spaces that would cater to local businesses rather than national chain brands.*
- c. (2.a-I-17) Foster community pride and growth through beautification of existing and future development. The project includes the demolition of an older shopping center and the construction of a contemporary designed commercial facility.*

Section 6: In accordance with the Municipal Code Section XI-10-57.03(F), Site Development Permit (Signs Findings), the Planning Commission further finds that:

1. All elements of the sign, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan.

The project's proposed signs are in conformance with the design guidelines of the Sign Ordinance. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.

2. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves.

The proposed signs provide compatibility of materials, architecture, design and continuity with other signs and buildings on-site. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.

3. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed.

The proposed signs provide visibility and legibility and provide the appropriate relationship of scale and height to the building. The vinyl lettering on the glass curtain is appropriate for the size of the building.

4. The design and materials of the sign provide a contrast between the background and letters.

The proposed design and materials of the signs provide contrast between the background and letters. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.

Section 7: In accordance with the Municipal Code Section XI-10-57.03(F), Site Development Permit (Sign Program Findings), the Planning Commission further finds that:

1. The provisions of the Sign Program ensure consistency in design and style of all new signs.

The proposed sign program provides the dimensions, size and location for future sign requests for the project.

2. The provisions of the Sign Program address compatibility of the design and style of any existing signs on the building or site.

The proposed signs provide compatibility of materials, architecture, design and continuity with other signs and buildings on-site. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.

3. All new signs within the Sign Program are in compliance with the design guidelines of this Chapter.

- a. *The proposed signs provide appropriate relationship of size to space on the building. The vinyl lettering on the glass curtain is appropriate for the size of the building.*
- b. *The proposed signs have the appropriate relationship of height of the building. The vinyl lettering on the glass curtain is appropriate for the size of the building. The proposed signs depicted on the project plans on the wall of the hotel are appropriate given the height of the hotel.*

Section 8: In accordance with the Municipal Code Section XI-1-4.03, Tentative Map (Tentative Map Findings), the Planning Commission further finds that:

1. The tentative map conforms to the Milpitas Subdivision Ordinance.

The proposed project was submitted with the appropriate information (acreage, lot dimensions, etc. required in Section XI-1-4.02, form of Tentative Map, of the Municipal Code.

2. The tentative map conforms to the Milpitas General Plan.

The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.

The project is consistent with Policies:

a. *(2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that includes an underperforming commercial format.*

b. *(2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes small retail spaces that would cater to local businesses rather than national chain brands.*

c. *(2.a-I-17) Foster community pride and growth through beautification of existing and future development. The project includes the demolition of an older shopping center and the construction of a contemporary designed commercial facility.*

Section 9: In accordance with the Municipal Code Section XI-10-57.04(F), Conditional Use Permit (Conditional Use Permit Findings), the Planning Commission further finds that:

1. *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.*

The project “shared parking”, a “hotel”, an “arcade” and “live entertainment”, which requires the approval of a Conditional Use Permit.

- a. *With respect to the shared parking: the restaurant uses will be limited to the second floor of the mall and the hotel, with the exception of food services that do not use mechanical ventilation and grease traps. This is intended to curb potential parking demand concerns;*
- b. *With respect to the hotel, as conditioned, the hotel will not operate as a “timeshare”;*
- c. *With respect to the arcade, the arcade would be open during the hours that the mall is open;*
- d. *With respect to live entertainment, live entertainment will occur at the two designated areas within the mall, unless a specific permit is issued by the Milpitas Fire Department.*

2. *The proposed use is consistent with the Milpitas General Plan.*

The proposed project is consistent with the underlying General Commercial designation in that the proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project. retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.

The project is consistent with Policies:

- a. *(2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that includes an underperforming commercial format.*
- b. *(2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes small retail spaces that would cater to local businesses rather than national chain brands.*

- c. *(2.a-I-17) Foster community pride and growth through beautification of existing and future development. The project includes the demolition of an older shopping center and the construction of a contemporary designed commercial facility.*

3. The proposed use is consistent with the Milpitas Zoning Ordinance.

The project's Floor Area Ratio exceeds the thresholds of the underlying zoning district. The project includes a shared parking analysis to comply with the City's parking regulations. The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces. The project would provide sufficient amount of parking for the existing and proposed uses (1,496 required spaces with shared parking and 1,847 required spaces without shared parking and hotel). The only development standard requirement from the General Commercial Zoning district is the FAR. With the proposed overlay to increase the Floor Area Ratio for the site and conditions of the approval, the project is consistent with the Zoning Ordinance.

Section 10: In accordance with the Municipal Code Section XI-10-57.06(F), Variance, the Planning Commission further finds that:

1. Special conditions and extraordinary circumstances applicable to the property involved or its intended uses, which were not created by the owner or tenant, and which do not apply generally to other properties with the same land use exist that do not allow the site or business to achieve the goals and objectives of this Chapter for adequate business identification.

The site is a part of a larger "McCarthy Ranch Marketplace" shopping center. The new ownership only owns the portion of the retail facility on the west side of Ranch Drive. The Mall is now separated from view of the freeway by the retail facility on the east side of Ranch Drive. In addition, the State Route 237 interchange blocks the view of the site from northbound I-880. Construction of the highway 880/237 elevated ramps that occurred after completion of the retail center, has significantly reduced the views of the shopping center from the freeway and will similarly limit the visibility of the proposed mall and hotel unless additional graphics are permitted.

2. Literal enforcement of the provisions of the City of Milpitas the Sign Ordinance will result in unnecessary hardship inconsistent with the spirit and intent of the Sign Ordinance.

The project proposes subtle window signs identifying the mall "Pacific Mall". Otherwise, the project will need to rely on a larger off-site project identification

sign. Unlike a traditional retail center that benefits from having quickly and easily recognizable national brands, this unique business relies on the visibility of its own brand being seen from neighboring roads and freeways. Due to the presence of the 237/880 ramp system, literal interpretation of the sign code will not allow this business to adequately identify itself to the surrounding area.

3. The granting of the variance is not contrary to the intent of the General Plan, Zoning or Sign Ordinance, or any applicable Specific Plan and will not be contrary to, nor materially detrimental to public interest and welfare, or injurious to conforming signs in the City.

The proposed window signs are subtle and relate well to the proposed mall and surrounding existing shopping center. The intent of the Sign Code is to permit businesses to adequately identify and promote themselves. Allowing this project adequate signage to be successful will benefit the City, its citizens and community at large.

4. The variance to be granted is one that will require the least modification of the prescribed regulation, and the minimum variance that will accomplish that purpose.

In order to meet the objective of the project, the sign ordinance would need to be amended allowing additional sign area for a regional shopping center and allowing additional percentage of sign area for window signs. That would mean that all future proposals for signs are subject to the new regulations. That may not be appropriate in all applications. Therefore, the variance is the most appropriate approach.

5. The granting of a variance is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties.

Other retail properties are immediately adjacent to either State Route 237 or I-880 and do not have the same visibility limitations.

Section 11: It is recommended that the City Council adopts an ordinance to amend Title XI, Chapter 10, Section 12 (Overlay Districts and Standards) of the Milpitas Municipal Code to add an additional overlay for “Freeway Corridor Overlay (-FC)” to read as follows:

Section 12 – Overlay Districts and Standards

XI-10-12.08 –Freeway Corridor (-FC) Overlay District

A. Purpose and Intent

The purpose of the Freeway Corridor Overlay (-FC) is to allow for increased intensity where roadway capacity can accommodate the development.

B. Applicability

The (-FC) overlay can be combined with any non-residential zoned property within 300 feet of a freeway.

C. Permitted, Accessory, and Conditionally Permitted Uses.

Permitted and conditionally permitted uses within the (-FC) overlay are the same as those allowed within the underlying base zone.

D. Development Standards

The development standards for the underlying base zoning district shall apply, except any deviations noted below:

1. The maximum permitted Floor Area Ratio (FAR) may be up to twenty percent (20%) above the underlying base zoning district requirement.
2. This overlay may not be combined with any other overlay allowing additional FAR.

Section 12: The Planning Commission of the City of Milpitas hereby recommends the City Council approve General Plan Amendment No. GP13-0001, Zoning Amendment No. ZA13-0001, Site Development Permit No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, Variance No. VA13-0001 and certification of the project's Final EIR, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1 , the FEIR resolution attached hereto as Exhibit 2, and the General Plan Amendment attached hereto as Exhibit 3 and the Zoning Map Amendment attached hereto as Exhibit 4.

Section 13: The effective date of these entitlements shall be the date of effectiveness for the Zoning Amendment, which is 30 days after the second reading of the adopted ordinance by the City Council.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 8, 2014.

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 January 8, 2014, 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				
Garry Barbadillo				
Demetress Morris				

EXHIBIT 1

CONDITIONS OF APPROVAL

General Plan Amendment No. GP13-0001, Zoning Amendment No. ZA13-0001, Site Development Permit No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, Variance No. VA13-0001

Pacific Mall & Hotel, 11-111 Ranch Drive, (APN: 22-053-002, -003, -006, and -007)

GENERAL CONDITIONS

1. The owner or designee shall develop the approved project in conformance with the plans approved by the City Council, 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 City Council, in accordance with the Zoning Ordinance. Notwithstanding the foregoing, it is specifically anticipated that owner or designee may develop the retail mall and hotel in phases, with the retail mall in the first phase and the hotel in the second phase. The first phase shall be constructed in strict conformance to the conceptual drawings dated November 26, 2013 for Interim Phase 1A – Flat Roof Line and Interim Phase 1B – Curved Roof Line. Interim Phase 1B shall be fully constructed and completed within five (5) years after the issuance of the certificate of occupancy of Interim Phase 1A. It should be noted that the owner or designee is not required to develop the hotel in order to develop the retail mall. (P)

2. Commencement. SD13-0001, UP13-0001, MT13-0001, and VA13-0001 shall become null and void if the Project is not commenced within two (2) years from the date of approval or within the time limits of the tentative map, whichever is greater. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas entitled, “Commencement of a Permitted Activity”, an activity permitted by an approved application shall be deemed to have commenced when the Project:
 - 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. Time Extensions. Pursuant to Section 64.07 of the Milpitas Zoning code, the owner or designee shall have the right to request an extension of the approved entitlement(s). (P)

4. Conditions of Approval. Prior to the issuance any 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. Indemnification. To the fullest extent permitted by law, owner or designee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**
6. Private Job Account. If at the time of application for any 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. **(P)**
7. Review and Cost. Owner or designee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, owner or designee shall be solely responsible and liable for the cost to satisfy each and every condition.

CONDITIONAL USE PERMIT

8. Live Entertainment. Live entertainment shall only be conducted within the "performance space areas" identified on the approved floor plan during normal business hours. Intermittent live entertainment may be conducted in areas outside the "performance space areas" to celebrate cultural events such as the Chinese New Year and similar events during normal business hours. No seating shall be allowed in the "streets" and "avenues" shown within the mall on the Project floor plans. Any other live entertainment in the open areas of the mall shall be approved with an appropriate permit from the City. Nothing in the foregoing is intended to limit the potential for live entertainment in hotel, restaurant or bar spaces with the appropriate permit obtained pursuant to the Zoning Ordinance. **(P)**
9. Recreation and Entertainment Uses. The recreation and entertainment use shall be limited to the "arcade" area identified on the approved floor plan. Other small, temporary or seasonal uses, including but not limited to, coin operated children's ride-on toys, shall be acceptable

provided they do not impact public safety as approved in writing by the Milpitas Fire Department. Notwithstanding the foregoing, subject to appropriate review and approval by City, additional recreation and entertainment uses may be approved. **(P/F)**

10. Restaurant Uses. Restaurant uses as defined in the City's Zoning Code shall be limited to the hotel and the second floor of the mall. The first floor may include restaurant uses provided that such restaurants do not utilize heated cooking apparatus requiring mechanically ventilated hoods or grease traps and do not require any exterior modifications associated with such improvements. Examples of permitted first floor restaurants include, but are not limited to, shops selling tea, coffee, ice cream or candy. **(P)**
11. Security Plan. Prior to issuance of any Certificate of Occupancy, the owner or designee shall prepare a security plan indicating the details of the presence of security guards, cameras and lighting to the satisfaction of the Police Chief or designee. Any changes to the security plan shall be submitted to the Police Chief or designee for review. **(PD)**
12. Hotel Use. The hotel shall be operated as a "hotel" defined in the City's Zoning Code. No portion of the Project may be considered as a "timeshare" project (as referenced in Milpitas Municipal Code Title III-13-2.01). **(P)**

SITE DEVELOPMENT PERMIT

13. Landscape. All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. **(P)**
14. Landscape. No gasoline fueled leaf blowers, string trimmers or hedge trimmers are permitted to be used for maintenance of landscaping. Gasoline lawn mowers are discouraged for use for maintenance of natural turf areas. **(P)**
15. Landscape. All planter areas shall be serviced by a sprinkler head or drip system. **(P)**
16. Landscape. Prior to issuance of any building permit, a detailed landscape plan shall be submitted and approved by the Planning Director or designee that includes the following:
 - a. Locations and screening of all transformers and utility devices including backflow preventers.
 - b. Location and type of trees, shrubs and ground cover, including sizes and quantities. The legend shall also show tree canopy diameter at planting, five years and 10 years.
 - c. Plan details for all fence and wall structures. These shall be compatible in style and material with the proposed buildings.

- d. Details of all exterior project lighting with details of fixture types and design. The Photometric shall also be included. Illumination of the site shall not exceed IESNA standards for the type of use proposed. **(P)**
17. Pylon Sign. Prior to issuance of any building permit or planning permit for any modifications to the Pylon Sign (Sign P on the Plans), the owner or designee shall submit materials for review and approval by the Planning Commission Subcommittee. **(P)**
18. Parking. Under normal daily operating conditions, on-site parking lot circulation shall not result in traffic queuing on Ranch Drive beyond the left turn lanes. If under normal daily operating conditions, traffic queues onto Ranch Drive beyond the left turn lanes result as determined by City's Traffic Engineer, owner or designee shall modify on-site parking circulation as necessary to eliminate any traffic queues onto Ranch Drive beyond the left turn lanes. **(E)**
19. Parking Guidance System. Prior to issuance of any building permit, the owner or designee shall demonstrate that a parking guidance system identifying the available number of underground parking spaces will be provided at the surface entrances to the underground parking. An annual review of the adequacy of the parking guidance system shall occur during the first three years of operation of the mall to the satisfaction of the City's Traffic Engineer. If it is reasonably determined by the City's Traffic Engineer that the underground parking is underutilized based on normal standards and adversely impacting the traffic on Ranch Drive, then City may require owner or designee to implement additional corrective measures.**(E)**
20. Shuttle. Prior to issuance of any final Certificate of Occupancy, the owner or designee shall submit for approval by the City's Traffic Engineer or designee a detailed plan for a shuttle system to run between the project site and the Milpitas BART station. The owner or designee shall be responsible for coordinating and obtaining the appropriate agreements and permits with the Santa Clara Valley Transportation Authority (VTA) or any other governmental authority; provided City may issue the final Certificate of Occupancy if owner or designee is diligently pursuing approval from VTA and/or any other governmental authority to the reasonable satisfaction of the Public Works Director and was unable to secure all required approval(s). **(E/P)**
21. Low-Emissions Vehicle Parking. Prior to issuance of any building permit, the owner or designee shall demonstrate that the project provides a minimum of 10 electric vehicle charging station parking spaces. These ten spaces shall be demarcated and signed for electric vehicle charging parking spaces to the satisfaction of the Planning Director or designee. **(P)**
22. Rideshare Program. Prior to issuance of any final Certificate of Occupancy, the owner or designee shall submit for approval by the City's Traffic Engineer or designee a Rideshare Program for employees of the Mall/Hotel. **(E/P)**

23. Photovoltaic System. Prior to issuance of any final Certificate of Occupancy, owner or designee shall install conduit to the hotel roof to accommodate solar photovoltaic systems on the roof. **(P)**
24. External High Definition Screen. The external HD screen referenced on the Project plans shall include illumination controls to automatically dim according to lighting conditions. **(P)**
25. External High Definition Screen. The HD screen shown on the approved plan may be used to display video and animation. The screen's use shall be limited to the hotel and the mall stores and activities. **(P)**
26. External High Definition Screen. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design of how the external HD screen will be integrated into the building and complement the building's architecture to the reasonable satisfaction of the Planning Division. **(P)**
27. Roof Top Equipment. Prior to issuance of any building permit, the owner or designee shall incorporate roof top equipment screening, if necessary, along the South Elevation Building D1. **(P)**
28. Retaining Wall. Prior to approval of Final Map or issuance of any building permit (whichever is sooner), the retaining wall material along McCarthy Boulevard facing the building (Sheet TM-2, Exhibit A) shall identified as "split-face". **(P)**
29. Garage Entry. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design to the satisfaction of the Planning Division for the entry, ramp, walls and railings to the underground parking for the Project. **(P)**
30. Internal Vehicle Intersection at Garage Entry. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design to alter the "five-point" intersection at the entrance to the underground parking adjacent to the current McDonalds and Taco Bell to an acceptable design to the satisfaction of the City's Traffic Engineer or designee. **(E)**
31. McCarthy Boulevard Service Access. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design to create a concrete driveway apron at the entrance to the service access ways to the satisfaction of the City Engineer or designee. **(E)**
32. Plaza and Outdoor Furniture. All outdoor furniture shall be reasonably maintained and replaced if necessary to the satisfaction of the Planning Division. **(P)**
33. Exterior Railings or Hand Rails. Any exterior railings associated with the Project shall be decorative in detail and complement the architecture of the Project. **(P)**

34. Silhouette Elements. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design for the silhouette elements to the satisfaction of the Planning Division. At a minimum the silhouette will be a glossy paint on a flat background.
35. Ground Equipment and Device Screening. Prior to issuance of any building permit, the owner or designee shall demonstrate that all backflow preventers, meter boxes, pedestals, and similar equipment and improvements are screened appropriately to the satisfaction of the Planning Division. **(P)**
36. Water Supply and Force Majeure. The City currently has adequate water supply and sewerage treatment plant capacity allocation for this 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 Resolution. The foregoing provisions are a material (demand/supply) condition to this approval. Prior to issuance of any building permit, 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)**
37. Fees. The owner or designee shall submit the following items with the building permit application and pay the related fees prior to issuance of any building permit. To the extent that the project is developed in phases, the applicant or designee shall be required only to pay those fees associated with the particular phase of the project. Fees shall be adjusted, where applicable, by Engineering News Record (ENR) as required by code, ordinance or resolution at the time of building permit issuance. The Sewer Treatment Plant fee is an estimate and shall be finalized at the time of building permit issuance. See Exhibit A "Impact Fee Schedule" of these conditions of approval for details. Where applicable, the fees estimated in Exhibit A are adjusted to ENR index for June 2013. **(E)**
38. Development Fees. Prior to issuance of any building permit, owner or designee must pay a plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. The agreement for Public Right of Way improvements 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)**
39. NPDES Compliance. 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 Notice of Intent (NOI) for the project for pre-construction storm water treatment requirements. **(E)**

40. 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)**
41. Lighting and Landscape Maintenance District. The Project is within the existing Lighting and landscaping Maintenance District (LLMD) 95-1. Proposed new and/or rehabilitated landscaping and lighting within the LLMD area shall be in compliance with the existing LLMD requirements. **(E)**
42. Construction Phasing Plan. Prior to start of any construction, the owner or designee shall submit a construction schedule and monitoring plan for City Engineer or designee 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. **(E)**
43. Demolition Compliance. All utilities shall be properly disconnected before any applicable 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)**
44. Demolition Compliance. Prior to issuance of any demolition permit, the owner or designee shall submit Part I of a Recycling Report on business letterhead to the City's Building Division. 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 reasonable efforts to salvage materials for reuse and recycling. **(E)**
45. Demolition Compliance. Upon completion of demolition, owner or designee shall submit Part II of the Recycling Report to the Building Division for review and approval of the City's Utility Engineering/Solid Waste Section. The Part II report shall confirm 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 review and approval by the Utility Engineering/Solid Waste Section. **(E)**
46. Demolition Compliance. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, and any other debris or materials, 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)**

MITIGATION MEASURES

Transportation

47. McCarthy Boulevard and SR 237 WB Ramps (No. 9): Prior to the issuance of any certificate of occupancy, owner or designee shall complete the restriping of the westbound through lane to a right turn lane to provide two right-turn lanes, Complete the signal modification to create a right-turn overlap phase. No right-of-way acquisition is required. Implementation of this mitigation would result in an improvement in intersection operations in the mid-day Peak Hour. Completion of the mitigation is not a condition precedent to occupancy of the project provided that the applicant is diligently pursuing permitting approval from other government authority to the reasonable satisfaction of the Public Works Director. **(E)**
48. McCarthy Boulevard and Bellew Drive (No. 16): Prior to the issuance of any certificate of occupancy, owner or designee shall complete the restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane. No right-of-way acquisition would be required. Implementation of this mitigation would result in the

intersection operations improving from LOS F to D- in the PM Peak Hour. This improvement is under the jurisdiction of the City of Milpitas. (E)

49. McCarthy Boulevard and Alder Drive (No. 17): Prior to issuance of any certificate of occupancy, owner or designee shall complete the construction of a second southbound left-turn lane from McCarthy Boulevard to Alder Drive. The lane will be added within the existing right-of-way, thereby reducing the width of the travel lanes by approximately one foot. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour. This improvement is under the jurisdiction of the City of Milpitas. (E)
50. Alder Drive (No. 19): Prior to issuance of any certificate of occupancy, owner or designee shall complete the conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project. This improvement is under the jurisdiction of the City of Milpitas. (E)
51. McCarthy Boulevard/O’Toole Avenue and Montague Expressway (No. 28): Prior to issuance of any certificate of occupancy, owner or designee shall complete the restriping of northbound O’Toole Avenue approach from Rincon to Montague Expressway to provide a dedicated right-turn lane from O’Toole Avenue onto Montague Expressway. Associated traffic signal modifications would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour. The improvement would, however, reduce the delay below background conditions, thereby improving the functionality of the intersection and reducing the project’s impact to less than significant. Completion of the mitigation is not a condition precedent to occupancy of the project provided that the applicant is diligently pursuing permitting approval from other government authority to the reasonable satisfaction of the Public Works Director. (E)

Biological Resources

52. Nesting Birds.
 - a. Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.
 - b. If it is not possible to schedule commencement of demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the

ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFW, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction. **(P)**

53. Trees. In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter) at 48 inches above the ground surface will be replaced at a 3:1 ratio within the project site. The species and size of the replacement trees will be determined by City staff. **(P)**
54. Due to the proposed underground parking structure, it may not be possible to plant all replacement trees on-site. Trees that are removed but cannot be mitigated for on-site will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas. **(P)**

Hazards and Hazardous Materials

55. Demolition.

- a. After demolition but prior to the issuance of any grading permit, shallow soil samples shall be taken to determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Milpitas Fire Chief prior to initiation of any work.
- b. Once the soil sampling analysis is complete, a report of the findings will be provided to the Milpitas Fire Chief, Director of Planning and Neighborhood Services, and other applicable City staff for review.
- c. If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.

A SMP will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse

policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCEHD, the City's Director of Planning and Neighborhood Services, and the Milpitas Fire Chief. **(F/P)**

Noise

- 56. Noise. A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by City policies and state noise regulations. Project specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits for the hotel. This condition applies to the Hotel portion of the Project only, in accordance with the California Building Code. **(B/P)**

- 57. Noise. All hotel guest rooms will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the guests. **(B/P)**

- 58. Noise. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project to the extent required by Code. **(B/P)**

TENTATIVE MAP

- 59. On-site Studies. Prior to approval of the final map, the owner or designee shall submit for the City's acceptance on-site water, sewer, and storm drain studies for this development. **(E)**

- 60. Title Report. Prior to issuance of any building permit, the final map shall be recorded provide a current title report has been submitted of the City not more than 90 days old. **(E)**

- 61. Common Lots. Prior to any approval of the final map, the owner or designee shall demonstrate that the final map shall designate all common lots and easements as lettered lots or lettered easements. **(E)**

- 62. Conditions, Covenants, and Restrictions. Prior to any approval of the final map, the owner or designee shall establish a owner association to control, operate, and maintain the common areas. Membership of the owner association shall include all owners of the commercial and Hotel. The owners association shall be responsible for the maintenance of the landscaping, walls, buildings, parking area, common area and private facilities and shall have assessment power. The owners association 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 or designee. (E)

63. 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)
64. Public Improvements. Prior to any approval of the final map, the owner or designee shall obtain design approval and bond for all necessary public improvements including but not limited to the following:
 - a. Removal and reconstruction of broken and damaged curb, gutter and sidewalk along the project frontages on McCarthy Boulevard and Ranch Drive to the satisfaction of the Public Works Director or designee. (E)
 - b. Reconstruction of any affected sidewalk, street lights, landscaping, signage and striping, fire hydrants and bus stop along project frontages and LMD area by the project to the satisfaction of the Public Works Director or designee.
 - c. Reconstruction of all the ramps along Ranch Drive frontage from McCarthy Boulevard to the extent of the sidewalk improvements depicted in (e) below to comply with ADA requirements.
 - d. Pavement Repair. McCarthy Boulevard (north and south bound lanes) between the intersection of SR 237 and McCarthy Boulevard (northside) and the intersection of McCarthy Boulevard and South Ranch Drive: Saw cut and repair damaged pavement and slurry seal entire width. McCarthy Boulevard (northbound lanes) along frontage: Saw cut and repair damaged pavement and slurry seal entire width.
 - e. Construction of a 6-foot monolithic sidewalk on the north side of Ranch Drive to connect from McCarthy Boulevard to the south side of the driveway between Buildings 12 and 13. As an alternative route, owner or designee may at their discretion be permitted to meander and slope a portion of the sidewalk towards Building 12 prior to intersecting at the south side of the driveway between Buildings 12 and 13 to the satisfaction of the Planning Director or designee.
 - f. Construction of Mitigation Measures pursuant to Project EIR and Mitigation Conditions herein these conditions of approval:
 1. McCarthy Boulevard and SR 237 WB Ramps (No. 9)
 2. McCarthy Boulevard and Bellew Drive (No. 16)
 3. McCarthy Boulevard and Alder Drive (No. 17)
 4. Alder Drive (No. 19)
 5. McCarthy Boulevard/O'Toole Avenue and Montague Expressway (No. 28)

- g. Construction of civil improvements, traffic signal modifications, and striping modifications to provide two inbound lanes and two outbound lanes from project site at Ranch Drive between the currently existing McDonalds and Taco Bell intersection.

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 is preferred) 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 standard drawing and specification, and shall be constructed to the City Engineer or designee satisfaction and accepted by the City prior to issuance of any final inspection or occupancy permit issuance. (E)

65. Storm Water Control Plan. Prior to any approval of the final map or building permit submittal (whichever occurs first), owner or designee shall submit the Final Storm Water Control plan that incorporates best management practices (BMPs) for treatments of storm water run-off from all parcels as shown on plans. The Storm Water Control plan shall incorporate source control, site design and storm water 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 Storm water 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 or designee.

- a. Prior to any Final Map approval, owner or designee shall incorporate the third party reviewer (ENGEO) comments and recommendation, and submit a final certified copy for the City approval.
- 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 any 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 and liable to pay all associated costs.

- e. Prior to issuance of any Certificate of Occupancy, the owner or designee shall execute and record an Operation & Maintenance 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 Storm water Quality” as shown in the Storm water 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 issuance of any building, site improvement or landscape permits, 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 (Site Development Permit) Amendment application review. **(E)**

66. Caltrans Review. Prior to any Final Map approval, the owner or designee shall submit plans to Caltrans for review and approval of the required off-site improvements within Caltrans right-of-way. **(E)**

67. Exhibit “T”. Owner or designee shall make changes as noted on Engineering Services Exhibit "T"(dated 12-2-2013) and submit a Mylar of the revised tentative map to the Engineering 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)**

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney
- (PD) = Police Department
- (MM) = Mitigation Measure

EXHIBIT A

IMPACT FEE SCHEDULE

Fee Type or Credit	Fee Metric	Mall (ph. 1)	Hotel (ph. 2)	Total
Water Connection Fee	54,050 GPD * \$5.97GPD	\$222,383.00	\$100,296.00	\$322,679.00
Water Connection Fee Credit	\$14,328/ac (12.01)	-\$172,079.00	\$0.00	-\$172,079.00
Water Impact Fee	Mall (>8,426 GPD over Master Plan * \$2.38) Hotel (>16,800 GPD over Master Plan * \$2.38)	\$20,095.00	\$40,066.00	\$60,161.00
Sanitary Sewer Connection Fee	54,050 GPD * \$8.52GPD	\$317,370.00	\$143,136.00	\$460,506.00
Sanitary Sewer Connection Fee Credit	\$20,448/ac (12.01)	-\$245,580.00		-\$245,580.00
Sewer Treatment Plant Fee	Per MMC VIII-2-7-7.04 TP Fees and standard flow factors and strengths are used in these calculations. Restaurant (Fast food - 12,519 s.f.); Restaurant (full service - 6,907 s.f.); Retail, Entertainment & Office 265,161/s.f. from Draft EIR page 40 dated May 2013 for restaurants and retail from Proposed Site Plan A1.11 dated September 11, 2013	\$135,696.00	\$97,893.00	\$233,589.00
Sewer Treatment Plant Fee Credit	Credit for previously paid TPF	-\$16,536.00	\$0.00	-\$16,536.00
Sewer Capacity Impact Fee	Mall (>15,632 GPD over Master Plan * \$1.19 + 15,632 * \$8.37); Hotel (>16,800 GPD over Master Plan * \$1.19 + 16,800 * \$8.37)	\$149,519.00	\$160,692.00	\$310,211.00
Sewage Pump Station Impact Fee	Mall (>15,632 GPD over Master Plan * \$2.90); Hotel (>16,800 GPD over Master Plan * \$2.90)	\$45,454.00	\$48,850.00	\$94,304.00
Storm Drain Connection Fee	\$21,562/ac (12.01)	\$258,960.00		\$258,960.00
Calaveras Widening Fee	\$708/Ks.f. + \$235/rm	\$100,445.00	\$60,267.00	\$160,712.00
Milpitas Business Park Traffic Impact Fee	\$3.78/s.f. + \$1,109/rm	\$502,040.00	\$266,331.00	\$768,371.00
Total		\$1,317,767.00	\$917,531.00	\$2,235,298.00

**EXHIBIT 2
FEIR RESOLUTION**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING CERTAIN FINDINGS REGARDING ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES, APPROVING CERTAIN MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING CERTAIN FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FOR THE PLANNED FOR THE PACIFIC MALL & HOTEL PROJECT

WHEREAS, on January 30, 2013, an application was submitted by TMS McCarthy, Inc. to create a Freeway Corridor Overlay for increasing the Floor Area Ratio, to allow the demolition of a portion of the McCarthy Ranch Marketplace, and to construct 292,186 square feet of retail including a 250 room hotel. The project is located at 11-111 Ranch Drive (APN: 22-053-002, -003, -006, and -007.). The application is submitted pursuant to Milpitas Municipal Code XI-10-57 (Applications); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and determined that an Environmental Impact Report (EIR) would be required for the project and circulated Notice of Preparation dated February 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR; and

WHEREAS, the Planning Division circulated the Draft EIR between May 8, 2013 and June 24, 2013; and

WHEREAS, the Project was the subject of public meetings and the Project and Final EIR were the subject of a public meeting held on January 8, 2014; and

WHEREAS, City staff reviewed all comments received on the Draft EIR during the public review period and prepared written responses providing the City's good faith, reasoned analysis on the environmental issues raised by the comments. Revisions to the Draft EIR were identified as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft EIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft EIR pursuant to CEQA Guidelines § 15088.5. The comment letters, written responses to comments and revisions to the Draft EIR are contained in a separately bound Final EIR dated October 2013. The May 2013 Draft EIR and the October 2013 Final EIR both of which are included in the Council packet and available for public review at the Office of the City Clerk, together constitute the final Environmental Impact Report for the Project pursuant to CEQA Guidelines §§ 15089 and 15132, and reflect the City's independent judgment and analysis on the potential environmental impacts of the Project; and

WHEREAS, on January 8, 2014 the Planning Commission held a noticed public hearing on the Project at which time the Commission considered a written staff report, the Draft EIR, written and oral comments on the Draft EIR, the Final EIR, and all other oral and written comments presented to them. Based on this evidence, the Planning Commission recommended that the City Council certify the EIR, approve the project's entitlements (Resolution No. 14-001, incorporated herein by reference); and

WHEREAS, the EIR identifies the potential for significant effects on the environment from development of the Project, not all of which can be substantially reduced through implementation of mitigation measures; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Exhibit A; and

WHEREAS, some of the significant effects identified in the EIR cannot be lessened to a level of less than significant; therefore, approval of the Project must include a Statement of Overriding Considerations as set forth in Exhibit B; and

WHEREAS, the City has prepared a Mitigation, Monitoring and Reporting Program to ensure monitoring and implementation of the mitigation measures set forth by Exhibit C; and

WHEREAS, on _____ 2013, the City Council held a noticed public hearing to consider certification of the EIR, and approval of the Project.

NOW, THEREFORE, BE IT RESOLVED that the foregoing recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED that the Milpitas City Council determines, finds and certifies as follows:

- A. That the final EIR for the Project has been completed in compliance with CEQA and the CEQA Guidelines.
- B. That the EIR was presented to the City Council who reviewed and considered the information contained therein prior to approving the Project.
- C. That the Final EIR reflects the City's independent judgment and analysis on the potential for environmental effects of the Project.
- D. That the custodian of the documents and other materials which constitute the record of proceedings for the Project is the City of Milpitas Planning Division located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.

BE IT FURTHER RESOLVED that the Milpitas City Council adopts the Findings set forth in Exhibit A, a Statement of Overriding Considerations set forth in Exhibit B and a Mitigation, Monitoring and Reporting Program set forth in Exhibit C.

PASSED, APPROVED AND ADOPTED this ____ day of _____.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A

MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE PACIFIC MALL & HOTEL PROJECT LOCATED AT 11-111 RANCH DRIVE**SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES
SECTION 15091**

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15163(e), the City Council hereby makes the following findings with respect to the potential for significant environmental impacts from the project located at 11-111 Ranch Drive (“Project”) and means for mitigating those impacts. The impacts and mitigations included in the following findings are summarized rather than set forth in full. The Draft and Final EIR documents are incorporated herein by reference and should be consulted for a complete description of the impacts and mitigations.

Less than Significant Impact with Mitigation

Traffic Impact 1: Implementation of the proposed project would cause the LOS of the McCarthy Boulevard/SR 237 WB Ramps intersection to degrade from C to E+ in the mid-day peak hour under existing plus project conditions.

Mitigation Measure TR 1: McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in an improvement in intersection operations in the mid-day Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City’s City Engineer would reduce the impact of the project to a less than significant level.

Traffic Impact 2: Implementation of the proposed project would cause the LOS of the McCarthy Boulevard/SR 237 WB Ramps intersection to degrade from D to E in the PM peak hour under background plus project conditions.

Mitigation Measure TR 2: McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS E to LOS C in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City’s City Engineer would reduce the impact of the project to a less than significant level.

Traffic Impact 3: Implementation of the proposed project would result in an increase in critical delay of 4.7 seconds and an increase in the volume to capacity ratio (V/C) of 0.013 in the PM Peak Hour at the McCarthy Boulevard/Bellew Drive intersection under background plus project conditions.

Mitigation Measure TR 3: McCarthy Boulevard and Bellew Drive (No. 16): Restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane will be completed prior to issuance of occupancy permits for the proposed project. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to D- in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the project to a less than significant level.

Traffic Impact 4: Implementation of the proposed project would result in an increase in critical delay of 15.2 seconds and an increase in the volume to capacity ratio (V/C) of 0.039 in the PM Peak Hour at the McCarthy Boulevard/Alder Drive intersection under background plus project conditions.

Mitigation Measure TR 4: McCarthy Boulevard and Alder Drive (No. 17): A second southbound left turn land from McCarthy Boulevard to Alder Drive will be constructed prior to issuance of occupancy permits for the proposed project. Right-of-way acquisition from the property on the west side of McCarthy Drive will be required by the applicant. This improvement will result in a lengthening of the crosswalk and/or modification of signal phasing that could increase the crossing distance/time for pedestrians. The traffic engineer determined that this would have no significant impact on pedestrian facilities. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the project to a less than significant level.

Traffic Impact 5: Implementation of the proposed project would result in an increase in critical delay of 5.4 seconds and an increase in the volume to capacity ratio (V/C) of 0.015 in the PM Peak Hour at the Tasman Drive/Alder Drive intersection under background plus project conditions.

Mitigation Measure TR 5: Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the project to a less than significant level.

Traffic Impact 6: Implementation of the proposed project would result in an increase in critical delay of 6.7 seconds and an increase in the volume to capacity ratio (V/C) of 0.015 in the PM Peak Hour at the McCarthy Boulevard-O'Toole Avenue/Montague Expressway intersection under background plus project conditions.

Mitigation Measure TR 6: McCarthy Boulevard/O'Toole Avenue and Montague Expressway (No. 28): Restripe northbound O'Toole Avenue approach from Rincon to Montague Expressway to provide a dedicated right-turn lane from O'Toole Avenue onto Montague Expressway. Associated traffic signal modification would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour.

Finding: Implementation of these measures to the satisfaction of the City's City Engineer would reduce the impact of the project to a less than significant level.

Biological Resources Impact 1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

Mitigation Measure BR 1: 1. Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.

2. If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFW, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director would reduce the impact of the project to a less than significant level.

Biological Resources Impact 2: The loss of 226 trees on-site, including 50 ordinance sized trees, would be a significant impact.

Mitigation Measure BR2: 1. In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter)

at 48 inches above the ground surface will be replaced at a 3:1 ratio within the project site. The species and size of the replacement trees will be determined by City staff.

2. Due to the proposed underground parking structure, it may not be possible to plant all replacement trees on-site. Trees that are removed but cannot be mitigated for on-site will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director would reduce the impact of the project to a less than significant level.

Hazards and Hazardous Materials Impact 1: Implementation of the proposed project could expose construction workers and future on-site maintenance workers to contaminated soil from historic agricultural operations on-site.

Mitigation Measure HHM1: 1. After demolition but prior to the issuance of grading permits, shallow soil samples shall be taken to determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Milpitas Fire Chief prior to initiation of work.

2. Once the soil sampling analysis is complete, a report of the findings will be provided to the Milpitas Fire Chief, Director of Planning and Neighborhood Services, and other applicable City staff for review.

3. If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site. A SMP will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCEHD, the City's Director of Planning and Neighborhood Services, and the Milpitas Fire Chief.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director and Fire Chief would reduce the impact of the project to a less than significant level.

Noise Impact 1: Implementation of the proposed project could expose future hotel guests to interior noise levels in excess of acceptable City and State standards.

Mitigation Measure N1: 1. A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by City policies and state noise regulations. Project specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits.

2. All guest rooms will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the guests.

3. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project.

Finding: Implementation of these measures to the satisfaction of the City's Planning & Neighborhood Services Director and Chief Building Official would reduce the impact of the project to a less than significant level.

SECTION 2: FINDINGS CONCERNING ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as proposed. CEQA Guidelines §15126.6(a) specifies that the EIR identify alternatives which “would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen many of the significant environmental effects of the project”. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. In addition, consistent with CEQA § 21002, a project should not be approved if feasible alternatives would substantially lessen the Project's significant effects. CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines [Section 15126.6(a)] specify that an EIR identify alternatives which “would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project”. **Section 6 Alternatives** of this EIR analyzes several alternatives to the proposed project. A brief summary of these alternatives and their impacts is provided below.

Alternative 1: No Project Alternative

Implementation of the “No Project” alternative would avoid the significant unavoidable freeway impacts as well as the significant intersection impacts and temporary air quality impacts identified in this EIR. The No Project alternative would not, however, allow for the expansion of

retail and a new hotel on the project site. This alternative does not meet any of the objectives of the proposed project.

Alternative 2: Reduced Density Alternative

In an effort to avoid the significant traffic and construction impacts that would result from the proposed project but still provide new retail and hotel development on-site, this alternative proposes a reduced density development.

Under the reduced density alternative, the project would still propose construction of a new retail building and hotel with underground and surface garage parking. The basic building design and orientation would be the same as the proposed project and the project would still include all identified sustainable building design measures in an effort to achieve LEED Silver certification. This alternative would, however, reduce the size of the new retail space and hotel as necessary to avoid the significant freeway and LOS impacts that would be caused by the project. In order to reduce the significant, un-mitigatable impact to the SR 237 EB segment from McCarthy Boulevard to I-880, the proposed retail space and the hotel would have to be reduced in size by 25 percent. Specifically, the new retail space would be reduced from 292,186 square feet to 219,139 square feet and the hotel would be reduced from 250 room to 187 rooms. Alternatively, the impact freeway impact could also be avoided by keeping the retail space at 292,186 square feet, but not constructing the hotel. The reduction in the overall size of the project would reduce the identified LOS impacts as well.

The reduction in square footage would result in a proportionate reduction in water use, wastewater generation, solid waste generation, and electricity use, and would likely have a reduced construction schedule which could reduce the identified air quality impact to less than significant. All other identified impacts would be the same or less than those of the proposed project.

The reduced density alternative would meet eight of the 13 objectives of the proposed project in that it would allow for redevelopment of the existing shopping center in the same business model as is proposed by the project, but on a smaller scale.

The Reduced Density Alternative is the environmentally superior alternative.

EXHIBIT B

STATEMENT OF OVERRIDING CONSIDERATIONS

General

Prior to approving a project for which an Environmental Impact Report (EIR) is certified and for which findings are made that one or more significant impacts would result because mitigation measures or alternatives identified in the EIR are infeasible, the California Environmental Quality Act (CEQA) mandates that the lead agency state in writing the specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment. This must be a written finding stating the agency's specific reasons supporting its action based on the Final EIR and/or other information in the record. The requirements for a Statement of Overriding Considerations are established in Section 15093 of the CEQA Guidelines and in the CEQA provisions set forth in Public Resource Code Section 21081 et seq.

Accordingly, the City Council of the City of Milpitas makes this Statement of Overriding Considerations for those impacts identified in the Project as significant and unavoidable.

The City Council has carefully considered each impact in reaching its decision to approve the "Project" whose primary focus is providing a revitalized retail center near a major freeway. Although the City Council believes that the unavoidable environmental effects identified in the EIR will be substantially lessened by mitigation measures and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects.

The City Council specifically finds that to the extent that the identified adverse or potentially adverse impacts of the Project have not been mitigated to acceptable levels, there are specific economic, legal, social, technological, environmental, land use, and other considerations that support approval of the Project.

Unavoidable Significant Adverse Impacts

The following unavoidable significant environmental impacts are associated with the proposed Project as identified in the EIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

Air Quality Impact 1: Construction of the proposed project will result in NO_x emissions in excess of the 54 pounds per day threshold, even with inclusion of Bay Area Air Quality Management District (BAAQMD) dust and exhaust control measures.

There is no additional mitigation measures, other than the aforementioned BAAQMD dust and exhaust control measures. This impact would be temporary but would remain significant.

Traffic Impact 7: Implementation of the proposed project would result in an increase in traffic volumes of more than one percent on eastbound SR 237 between McCarthy Boulevard and I-880 in the PM Peak Hour under existing plus project conditions. There is no feasible mitigation to reduce the project's freeway impacts to a less than significant level.

Traffic Impact 8: Implementation of the proposed project would cause the LOS of the McCarthy Boulevard/S. Ranch Drive intersection to degrade from D to E in the PM Peak Hour. There are no feasible mitigation measures to reduce the impact to the McCarthy Boulevard and S. Ranch Drive intersection.

The City Council has balanced the benefits of the Project to the City of Milpitas against the significant and potentially significant adverse impacts identified in the EIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in unavoidable significant impacts described in the EIR, the City Council hereby determines that such unavoidable impacts are outweighed by the benefits of the Project as further set forth below. The City Council, acting pursuant to CEQA Guidelines Section 15093, hereby determines that unavoidable impacts of the Project are outweighed by the need to provide a diverse commercial and hotel project to promote the economic interests of the City and its citizens. The City Council has considered the public record of proceedings on the proposed Project and has determined that approval of the Project would result in the increase revenue to the City benefiting the City.

Upon consideration of the public record of proceedings on the Project, the City Council hereby determines that substantial evidence is included in the record demonstrating the economic, awareness and other benefits that the City will derive from implementation of the Project. The City Council further determines that approval and implementation of the Project will result in the following substantial public benefits.

EXHIBIT C

MITIGATION, REPORTING AND MONITORING PROGRAM

SCH No. 20130220006

MITIGATION MONITORING OR REPORTING PROGRAM

**PACIFIC MALL
PROJECT**

CITY OF MILPITAS

AUGUST 2013

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring or Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring or reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring or Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Environmental Impact Report concluded that the impacts from implementation of the project would be less than significant.

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
TRANSPORTATION – Environmental Impact Report				
<i>City of Milpitas Intersection Impacts – Existing Plus Project and Background Plus Project</i>				
<p>McCarthy Boulevard and SR 237 WB Ramps (No. 9)</p>	<p>McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required.</p> <p style="text-align: center;">Less Than Significant Impact With Mitigation</p>	<p>Prior to issuance of occupancy permits.</p>	<p>Project Applicant</p>	<p>Planning & Neighborhood Services Director Director of Public Works</p>
<i>City of Milpitas Intersection Impacts – Background Plus Project</i>				
<p>McCarthy Boulevard and SR 237 WB Ramps (No. 9)</p>	<p>McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS E to LOS C in the PM Peak Hour.</p>	<p>Prior to issuance of occupancy permits.</p>	<p>Project Applicant</p>	<p>Planning & Neighborhood Services Director Director of Public Works</p>
<p>McCarthy Boulevard and Bellew Drive (No. 16)</p>	<p>McCarthy Boulevard and Bellew Drive (No. 16): Restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane will be completed prior to issuance of occupancy permits for the proposed project. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to D- in the PM Peak Hour.</p>			

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
TRANSPORTATION – Environmental Impact Report Continued				
<i>City of Milpitas Intersection Impacts – Background Plus Project Continued</i>				
<p>McCarthy Boulevard and Alder Drive (No. 17)</p>	<p><u>McCarthy Boulevard and Alder Drive (No. 17)</u>: A second southbound left-turn lane from McCarthy Boulevard to Alder Drive will be constructed prior to issuance of occupancy permits for the proposed project. The lane will be added within the existing right-of-way, thereby reducing the width of the travel lanes by approximately one foot. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour.</p>	See previous page	See previous page	See previous page
<p>Tasman Drive and Alder Drive (No. 19)</p>	<p><u>Tasman Drive and Alder Drive (No. 19)</u>: Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.</p>	See previous page	See previous page	
	<p><u>Tasman Drive and Alder Drive (No. 19)</u>: Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.</p> <p>Less Than Significant Impact with Mitigation</p>			

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
TRANSPORTATION – Environmental Impact Report Continued				
City of Milpitas Intersection Impacts – Background Plus Project Continued				
Tasman Drive and Alder Drive (No. 19)	<p>Tasman Drive and Alder Drive (No. 19): Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project.</p> <p align="center">Less Than Significant Impact with Mitigation</p>	See previous page	See previous page	See previous page
Congestion Management Program (CMP) Intersection Impacts – Background Plus Project (and Existing Plus Project)				
McCarthy Boulevard/O’Toole Avenue and Montague Expressway (No. 28)	<p><u>McCarthy Boulevard/O’Toole Avenue and Montague Expressway (No. 28)</u>: Restripe northbound O’Toole Avenue approach from Rincon to Montague Expressway to provide a dedicated right-turn lane from O’Toole Avenue onto Montague Expressway. Associated traffic signal modification would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour. The improvement would, however, reduce the delay below background conditions, thereby improving the functionality of the intersection and reducing the projects impact to less than significant.</p> <p align="center">Less Than Significant Impact with Mitigation</p>	See previous page	See previous page	Planning & Neighborhood Services Director Director of Public Works Santa Clara Valley Transportation Authority

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>BIOLOGICAL RESOURCES – Initial Study</p> <p>Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.</p>	<p>MM BIO-1.1: Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.</p> <p>MM BIO-1.2: If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department of Fish and Wildlife, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p align="center">Less Than Significant Impact with Mitigation</p>	<p>During all phases of construction.</p>	<p>Project Applicant</p>	<p>Planning & Neighborhood Services Director California Department of Fish and Wildlife</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>HAZARDS AND HAZARDOUS MATERIALS – Initial Study</p> <p>Impact HAZ-1: Implementation of the proposed project could expose construction workers and future on-site maintenance workers to contaminated soil.</p>	<p>MM HAZ-1.1: After demolition but prior to the issuance of grading permits, shallow soil samples shall be taken to determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Milpitas Fire Chief prior to initiation of work.</p> <p>MM HAZ-1.2: Once the soil sampling analysis is complete, a report of the findings will be provided to the Milpitas Fire Chief, Director of Planning and Neighborhood Services, and other applicable City staff for review.</p> <p>MM HAZ-1.3: If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.</p> <p>A SMP will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is</p>	<p>Prior to issuance of grading permits.</p>	<p>Project Applicant</p>	<p>Planning & Neighborhood Services Director</p> <p>State Department of Toxic Substances Control</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>See previous page</p>	<p>HAZARDS AND HAZARDOUS MATERIALS – Initial Study <i>Continued</i></p> <p>encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region’s reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCEHD, the City’s Director of Planning and Neighborhood Services, and the Milpitas Fire Chief.</p> <p>Less Than Significant Impact with Mitigation</p>	<p>See previous page</p>	<p>See previous page</p>	<p>See previous page</p>
<p>NOISE – Initial Study</p>				
<p>Impact NOI-1: Implementation of the proposed project could expose future hotel guests to interior noise levels in excess of acceptable City and State standards.</p>	<p>MM NOI-1.1: A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by City policies and state noise regulations. Project-specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits.</p>	<p>Prior to issuance of building permits.</p>	<p>Project Applicant</p>	<p>Planning & Neighborhood Services Director</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
PACIFIC MALL**

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
NOISE – Initial Study <i>Continued</i>	<p>MM NOI-1.2: All guest rooms will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the guests.</p> <p>MM NOI-1.3: All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project.</p> <p>Less Than Significant Impact with Mitigation</p>	See previous page	See previous page	See previous page

SOURCE: City of Milpitas, Pacific Mall Final Environmental Impact Report, August 2013.

EXHIBIT 3

GENERAL PLAN TEXT AMENDMENT

Page 2-16

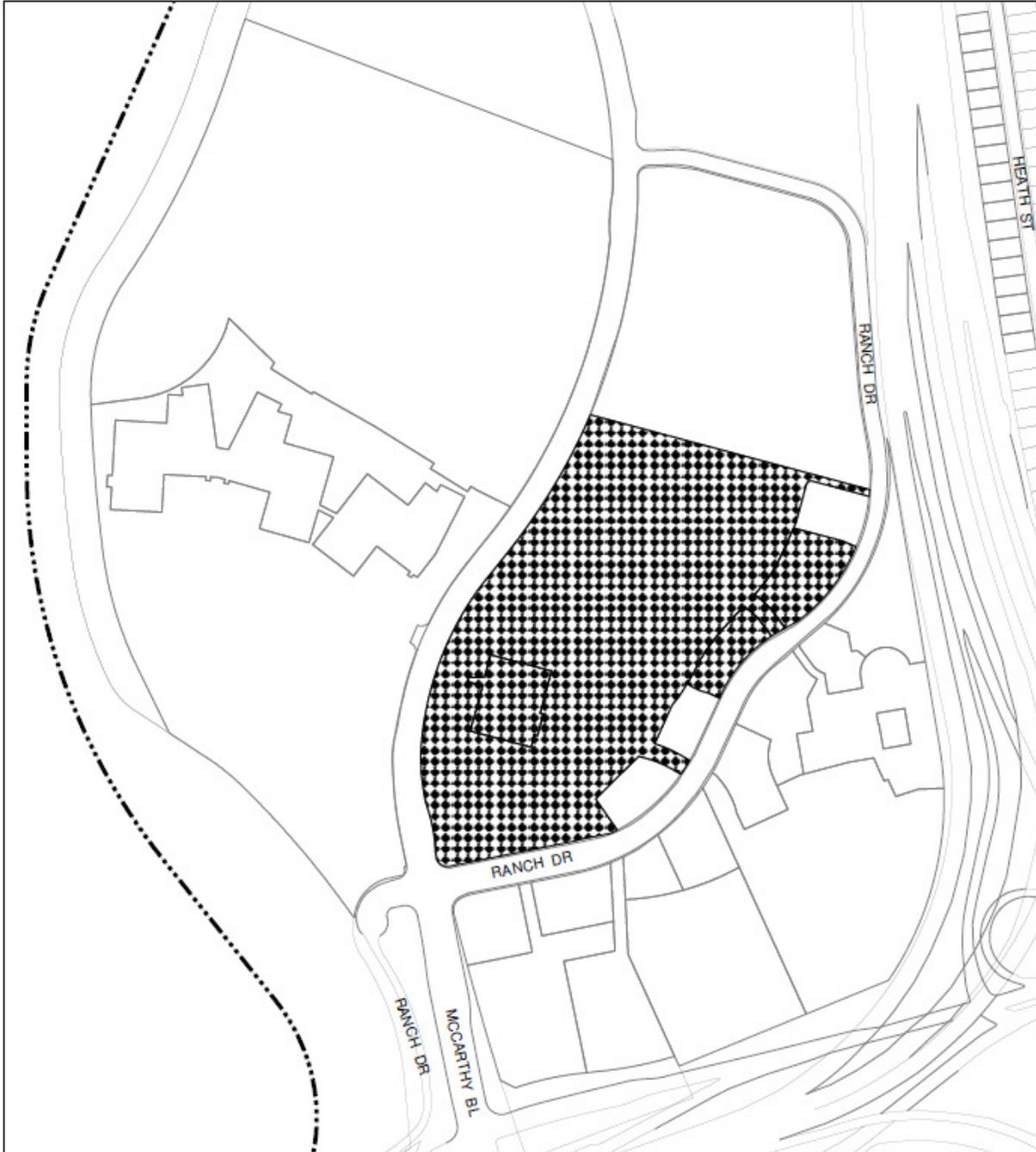
Freeway Corridor Overlay

The purpose of the Freeway Corridor Overlay (-FC) is to allow for increased intensity where roadway capacity can accommodate the development. The Floor Area Ratio maximum would be allowed to be increased above the underlying base land use district requirement.

EXHIBIT 4

ZONING MAP AMENDMENT

Sectional District Map No. 582



Legend



City Boundary



Freeway Corridor (FC) Overlay



Parcel Boundary