

RESOLUTION NO. 15-003

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL APPROVAL OF SITE DEVELOPMENT PERMIT NO. SD14-0017, CONDITIONAL USE PERMIT UP14-0024, AND TENTATIVE MAP NO. MT14-0004 FOR THE LENNAR RESIDENTIAL PROJECT LOCATED AT 450 MONTAGUE EXPRESSWAY

WHEREAS, on October 23, 2014, an application was submitted by Lennar Communities to allow the development of 489 dwelling units on 10.47 acres (46.70 dwellings/acre) in a multi-story building and staked flat units building with three and four stories located at 450 Montague Expressway (APNs: 86-037-004, -019, and -020) zoned Mixed Use Very High Density/Urban Residential with Transit Oriented Development & Site and Architectural Overlays (MXD3/R5-TOD-S) within the Transit Area Specific Plan; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and the Planning Commission recommended that the City Council determine this project exempt and that it is consistent with the TASP EIR approved on June 3, 2008; and

WHEREAS, on March 25, 2015, 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 and unanimously recommended approval to the City Council of the project; and

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

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.
2. The project is exempt pursuant to Section 15168(c) (2) of the CEQA Guidelines because staff determined that the project is consistent with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council; and
3. The project is consistent with the Milpitas Zoning Ordinance in that the project site meets the density and land use requirements.
4. The project is consistent with the Milpitas General Plan in that the project meets the density and land use requirements.
5. The project conforms to the intent and the specific requirements of the Transit Area Specific Plan, including the Development Standards and Design Guidelines in that the project creates a high density residential project, and a component of public open space with trail.

6. Site Development Permit (Section XI-10-57-03(F))

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

As detailed in the staff report and herein, the proposed Project is consistent with this finding because the proposed development is of a higher quality architecture located adjacent to the new BART station and existing VTA station. The proposed project will implement the TASP streetscape along all frontages and install parks and trails as identified in the TASP. Although there will not be any other residential building immediately adjacent to the site, it will be the first on the block and will act as an important anchor for the intersection.

- b. The project is consistent with the Milpitas Zoning Ordinance.

The proposed Project is consistent with this finding because the site located in TASP and consistent with required density and requested a Conditional Use permit for minor deviations from the TASP as allowed in the TASP. The remaining portions of the development are consistent with setbacks open spaces and other development standards. The table below indicates the project setbacks, height, parking and density.

Table 1:
Summary of Development Standards

	Zoning Ordinance/TASP	Proposed
<u>Density</u> (Min/Max)	41/75 units/acre	46.7 units/acre
<u>Setbacks</u> (Minimum)		
Capitol Avenue	49'	49'
Montague Expressway	45'	45'
East	20'	41'
South	20'	25'
<u>Building Height</u> (Maximum)	12 stories	5 stories
<u>Parking</u> (Minimum)	668 residential + 121 guest = 780	834 spaces (272 Tandem)*
<u>Maximum encroachment into setbacks by patios, stoops, etc.</u>	± 6'	<i>Varies, but > 6' *</i>
<u>Open Space</u>	Min 40 sq. ft. for balconies and Min of 50 sq. ft. for	<i>Short 16% for some studios and 1 bedroom units on</i>

	Zoning Ordinance/TASP	Proposed
	patios	<i>Capitol Ave. *</i>
* Indicates a Conditional Use Permit is required to allow the proposed deviations.		

Parking for the project complies with the Milpitas Municipal Code, which is a minimum of 780 parking spaces for the entire project based on the bedroom count and parking type (individual garage versus parking structure). The following table summarizes the parking required and provided for the project:

Table 2
Parking Summary

5-Story Rental Building			
Unit Type	Number of Units	Spaces Provided	Parking Ratio
Studios	45	384	1.09
1BR	202		
2BR	104		
Total	351		
Tandem Parking Allowed (75% of total required parking)		128	25%
Guest Parking (15% of residential parking)		67	15%
Total		579	1.45
Total Required by Code		510	
Stacked Flat Units			
Unit Type	Number of Units	Spaces Provided	Parking Ratio
2BR	42	126	1.95
3BR	92		
4BR	4		
Total	138		
Tandem Parking Allowed (50% of total required parking)		144 (63)	53%* (50%)
Guest Parking (20% of residential parking)		52	23%
Total		270	1.95
Total Required by Code		268	
* See discussion below about parking			

Parking is provided in the parking structure under Building 1 and private garages in the Staked Flat units and open on-site spaces. The project includes tandem spaces which has different requirements for structured parking vs. private garage. The amount proposed in Building 1 is below the maximum allowed of 75% of the total required parking. However, the Stacked Flats exceed the maximum allowed of 50%, with a total of 53%. The project meets the requirements for the remaining parking for the residential units and guest parking. The total parking provided on site meets the minimum required. A Conditional Use Permit is required to allow the use of tandem parking spaces, which has been discussed in the Conditional Use Permit Section.

- c. The project is consistent with the Milpitas General Plan and TASP.

The proposed Project is consistent with this finding as discussed previously in the staff report, and because the approved use is allowed in the TASP and it is consistent with the minimum density. The project furthers the goals and policies of the land use element by further implementing the project residential units within the TASP.

- d. Specifically, the project supports the following General Plan principles and policies:

Guiding Principles and Implementing Policies	Consistency Finding
<i>2.a-G-2: Maintain a relatively compact urban form.</i>	Consistent
<i>2.a-G3: Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	Consistent
<i>2.a-G-5 A park-like setting will be created by a series of local parks, school sites, trails, and a greenway system laced throughout all living areas.</i>	Consistent
<i>2.a-G-7 When considering development proposals, seek “community benefit”, such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.</i>	Consistent
<i>2.a-I-1 New developments should not exceed the building intensity limits established in the General Plan.</i>	Consistent
<i>2.a I-2 Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services</i>	Consistent

Guiding Principles and Implementing Policies	Consistency Finding
<i>into outlying areas.</i>	
2.a-I-8 <i>Establish redevelopment projects to secure funds that can be used to attract commercial, industrial, and residential development in order to eliminate blight and improve an area.</i>	Consistent
2.a 1-31 <i>Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.</i>	Consistent
2.a 1-32 <i>Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.</i>	Consistent
2.b-I-3 <i>Provide housing opportunities in Milpitas by meeting the City's regional fair-share housing obligations.</i>	Consistent

7. Conditional Use Permit Amendment (Section XI-10-57-04-(F)(1&2))

- a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The proposed project is located with the Transit Area Specific Plan and is consistent with the Goals, Policies and Development Standards of the TASP. The project will improve the property frontages by installing new sidewalks, street trees, street lights and landscaping to enhance the area and to provide safe pedestrian access around the site. The requested deviations from the TASP development standards and Zoning Code standards have been found to be acceptable by staff as noted in the staff report. Overall, the development will improve the site and enhance the intersection of Montague Expressway and E Capitol Avenue.

- b. The proposed use is consistent with the Milpitas General Plan; and

See discussion above.

- c. The proposed use is consistent with the Milpitas Zoning Ordinance.

In addition to the TASP Conditional Use Permit allowances, the Zoning Code also requires approval of a Conditional Use Permit for deviations from code provisions for the following:

- Tandem parking: The Zoning Code allows the uses of tandem parking spaces with the approval of a Conditional Use Permit. The Zoning Code allows a maximum of 75% for structured garage spaces and 50% for private garages. The proposed development includes 128 tandems spaces in the garage (25%) and 144 spaces in private garages (53%). The amount proposed for the Stacked Flats is slightly above the maximum allowed. Staff is in support of the slightly higher number since the proposed product type (one level unit) is one that is not commonly built in the area. This type of unit provides housing opportunities for a larger age group range of residents. Each building will have a main lobby and elevator to each floor. Each garage space has a private entrance into the building leading to the main lobby and elevator. In addition, the site is in close proximity to the Light Rail and the future BART station; therefore staff is in support of the proposal. In addition, staff has added a Condition of Approval requiring the applicant to enter into an agreement with VTA for the Residential Eco Pass program. This will allow residents to receive the Eco Passes (or Clipper Cards) at a discounted rate due to the developments proximity to VTA Light Rail and BART.
- Private Open Space: The Zoning code requires a minimum of 40 square feet for balconies and 50 square feet for patios for all development. The applicant is proposing that the 55 units do not have balconies in Building 1. They are a mix of studios and junior one bedrooms. Their justification is that site will be providing ample outdoor spaces for residents in this will also allow for more livable space in each unit, which is needed in smaller units. The project will have podium open space and the two parks and trail on the site.

Based on the analysis above, staff recommends support of the requested deviations through the Conditional Use Permit process.

- d. The proposed use is consistent with the Specific Plan.

The TASP is a conceptual land use document designed in 2008 and it is being implemented at a faster rate as we near the opening of the future BART station. The document also acknowledged that there may be some deviations from the plan as they relate to development standards and it established a process for consideration through a Conditional Use Permit. The proposed project includes the following deviations from the adopted plan:

- *Driveway access on Montague Expressway and Capitol Expressway.*
The proposed project is only able to be accessed from Montague and Capitol Expressway since the Milpitas Extension has not been constructed and it is located on land not controlled by the applicant. The access for both driveway will be right in and right out with the driveway on Capitol being reduced to right in only once the Milpitas Extension has been constructed.
- *Underground garage extending more than 5 feet above grade.*
The TASP limits the amount of an unground garage that may extend above the grade to 5 feet. The proposed garage does extend more than 5 feet in some places on the site, which is a result of the site topography. The project uses raised planters planter beds and site landscaping to shield these elements from view which reduces the visual impacts of these sections.
- *Park Location*
The TASP also called out for a larger park location closer to Penitencia Creek for the 450 Montague site. The applicant proposed the park at a more internal location to better benefit the site. The parks will still be open to the public and they will be required to provide way finding signage. Furthermore, staff has presented the proposed park locations to the Park, Recreation and Cultural Resources Commission for their input and possible names for the park. The following provides an overview of the PRCRC comments:

Park Recreation and Cultural Resources Commission (PRCRC)

Staff presented the proposed park layout and design to the Parks, Recreation and Cultural resources Commission (PRCRC) on Monday, February 1, 2015. Staff reviewed the proposed layout, park elements and requested that the PRCRC provide names for the City Council to consider for the parks. The applicants Landscape Architect presented additional information about the proposed project and answered questions. The PRCRC was receptive to the park and recommended the City Council approve the design and recommended that the Council decide on one of the four names including; J.W. Johnson, Captain Calvin Valpey, O.H.P. Vennum and Charles Beverson for Park A (being West) and Park B (being East). The staff report and minutes have been included in Attachment E.

Staff brought the proposed park layout back to the PRCRC on March 2, 2015 due to change in the location of the Emergency Vehicle Access, relocation of the trash enclosure and removal of a connecting paseo. The PRCRC was also receptive of the change and comfortable with the additional conditions that staff included. The staff report and minutes are included in Attachment F.

The requested TASP deviations can be supported as they can and will be mitigated with the development or future roadway improvements. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity or to the public health, safety, and general welfare in that project will improve the area.

The deviation from the Transit Area Specific Plan Standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development in that the streetscape treatment to the access off of Montague Expressway and E Capitol will be consistent with the TASP standards as conditioned.

The deviation from the Transit Area Specific Plan Standard allows for a public benefit not otherwise obtainable through the strict application of the Zoning Standard in that the project will provide the following:

- Fund a Feasibility Study for the Milpitas Avenue Extension Vehicular and Pedestrian Bridge that will span Penitencia Creek and eventually connect to Sango Court.
- Prepare Construction Drawings for the proposed bridge once the Feasibility Study has been vetted through the City and the Santa Clara Valley Water District and other require agencies.
- Fund the design and construction drawings for the Milpitas Avenue Extension from E Capitol Avenue to the new bridge.
- Provide cost estimates for the construction of the Milpitas Avenue Extension.
- Contribute 53% of the total costs for the construction of the Milpitas Avenue Extension.
- Fund a Feasibility Study for the new Pedestrian Bridge over Montague Expressway near Penitencia Creek.
- Prepare Construction drawings and cost estimates for the construction of the new Pedestrian Bridge.

8. Major Tentative Map Findings (Section XI-1-20.01)

- a. The tentative subdivision map is consistent with the Milpitas General Plan

As discussed in detail in the staff report and herein, the subdivision map complies with the TC Zoning District and to the development standards of the General Plan. The proposed Project type, density and size are all consistent with the Town Center General Plan Land Use Designation.

8. The Planning Commission recommends the City Council to approve Site Development Permit No. SD14-0017, Conditional Use Permit No. UP14-0024, and Tentative Map No. MT14-0004 for the Lennar Residential Project at 450 Montague Expressway, subject to the above findings, and the Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on March 25, 2015:

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 March 25, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

CONDITIONS OF APPROVAL SITE DEVELOPMENT PERMIT NO. SD14-0017, CONDITIONAL USE PERMIT UP14-0024, TENTATIVE MAP NO. MT14-0004 AND EXCEPTION TO URGENCY ORDINANCE 204.2 FOR THE LENNAR RESIDENTIAL PROJECT INCLUDING A 5-STORY PODIUM BUILDING WITH 351 DWELLING UNITS AND 138 CONDOMINIUM STAKED FLAT UNITS LOCATED AT 450 MONTAGUE EXPRESSWAY.

GENERAL CONDITIONS

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This DEVELOPMENT PERMIT NO. SD14-0017, CONDITIONAL USE PERMIT UP14-0024, TENTATIVE MAP NO. MT14-0004 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. (P)
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee 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 Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, in accordance with the Zoning Ordinance. (P)
5. Previous Planning Application: Previously approved Planning Applications for a Site Development Permit No. SD12-0009, Conditional Use Permit UP12-0024, and Tentative Map No. MT12-0005 to allow the development of 474 dwelling units on 7.98 acres (59 dwellings/acre) in a multi-story building located at 450 Montague Expressway (APN: 86-037-004, -020, and -021) shall be rescinded and replaced completely with the adoption of this Resolution. (P)
6. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)

7. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
8. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit 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. **(P)**
9. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
10. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**
11. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
12. Cost and Approval. Permittee 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, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
13. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
14. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**

Indemnification. To the fullest extent permitted by law, Permittee 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 (i) 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, and (ii) Permittee's construction, operation, use, or related activity under this Permit. 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. Permittee 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. Permittee 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.

15. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
16. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable. **(P)**
17. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on March 25, 2015, in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee 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 or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
18. Compliance with Fire Department and CA Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the CA Fire Code. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
19. TASP DEIR & FIER: The project shall be subject to all applicable mitigation measures identified with the adopter 2008 TASP DEIR and FEIR (SCH# 2006032091). The Permittee shall include a written response to the Mitigation and Monitoring Plan with the building permit submittal indicating how each mitigation has been addressed. **(P)**

20. Climate Action Plan Compliance. Prior to issuance of any building permit, the Permittee shall provide a final version of the Appendix C of the Climate Action Plan (CAP). The applicant shall clearly demonstrate compliance with the CAP. **(P)**
21. Project Phasing Plan: The Permittee shall submit a separate project phasing plan to the Building Department for review. The phasing plan shall be consistent with all construction timing conditions contained within the approval and address access, public safety, fire safety and solid waste access during construction. The Permittee shall contact the Building Department for complete building permit submittal requirements. **(ALL)**
22. Garage Parking for the Stacked Flats: The garages spaces for the stacked flats shall be maintained and available for parking for two cars at all times. In addition, the upper panel of the garage doors shall be maintained with clear glass to allow for visual inspection by the property management or Home Owners Association (HOA), this shall be noted in the CC&Rs. The property manager or HOA shall be responsible for enforcement of parking in private garages. **(P)**
23. On-Site Security: The Permittee shall provide 24 hour security of the site to ensure that no additional vandalism occurs on the site until the existing buildings have been demolished and the entire site is secured. The applicant shall keep the site clean and free of debris. **(P)**

PROJECT SPECIFIC CONDITIONS

24. Construction Timing: Building Permit for no more than 69 of the stacked flat units may be issued before issuance of the podium structure building permit (building 1). No more than 103 of the stacked flats may receive occupancy before completion of the podium for the apartment building and occupancy has been received for the first phase. The actual numbers of the stacked flats may vary slightly to accommodate the building type and phasing plan subject to review and approval by the Director of Planning and Neighborhood Services. **(ALL)**
25. Architectural Details. Prior to issuance of any building permit, the following shall be demonstrated in the construction plans for the project:
 - a. The stucco texture for the walls of the building shall be of sand 20/30 finish.
 - b. The stucco for all trim features around windows and doors shall be a trowel smooth finish.
 - c. The plans shall clearly demonstrate a 1.5”-2” inch recess for all windows located in stucco wall faces. The applicant may propose alternatives to achieve the recess subject to review by the Planning Director.
 - d. The Cementitious Panels shall be mounted in a manner that is clean and consistent with the architectural style. The applicant shall provide a mock-up for staff review and approval prior building permit issuance.
 - e. The raised planter beds located around the podium building shall be consistent with the masonry veneer (color and texture) located at the leasing lobby and second entrance.
 - f. The white bay elements on building 1-foot shall be reduced in height by 1 foot.

- g. The exterior material for the white bay elements shall be further refined to enhance the elements by using a smooth three coat hand troweled stucco surface.
 - h. Final details for the balcony railings for both product types shall be provided to Planning Division for review and approval. The railings shall be a high quality material and provide architectural interest.
 - i. The entry elements for Stacked Flats Buildings B and E (6-Plex) shall be further enhanced with the use of specimen trees adjacent to the entry and enhance entry awning. All architectural conditions shall be reviewed and approved by the Director of Planning and Neighborhood Services prior to issuance of building permits for any construction. **(P)**
26. Landscape/Hardscape. Prior to issuance of any building permit, the following shall be demonstrated in the construction plans for the project:
- a. All benches and low walls shall be constructed with a patterned inset to discourage skateboarding.
 - b. The plant material palette shall be enhanced to include additional seasonally fragrant plants. The landscape plan legend shall clearly identify fragrant plant species.
 - c. Plantings around the trash enclosure shall be enhanced to include climbing vines on the enclosure and taller evergreen screening such as Fern Pine (Podocarpus).
 - d. An alternate plant for Sequoia Sempervrens will need to be included in the building permit set. This species will not grow with reclaimed water.
 - e. Raised planter beds around the staked flats shall be covered in a material that is complimentary to the development.
 - f. Exposed CMU or split faced CMU is not allowed. All CMU will need to be treated appropriately to compliment the buildings and site. **(P)**
27. Public Parks: Both public parks and associated amenities shall be fully constructed and accepted by City before the 75% occupancy of the development. **(P)**
28. Creek Trail Connection: The trail shall provide a connection (along the private property) to the adjacent site to the east (730 E Capitol). The pedestrian path will need to extend along the side of the trash enclosure to the EVA and consistent with TASP Figure 3-6. In addition, the Permittee shall install a new decomposed granite trail along the creek on the maintenance road. That Permittee shall be responsible for all permitting required from the SCVWD and other agencies. **(P)**
29. Mechanical Venting: All horizontal mechanical venting shall be located on the balconies of each unit or a return wall. If neither option is available, then venting shall be directed through chase to the roof. All vent covers on the exterior shall be the minimum size needed, painted to match the building and be clearly indicated on the architectural elevations. Venting for the on-demand water heaters shall be a high quality material (see Taylor Morrison on McCandless) and may be located above the garage doors for the staked flats and on the balconies in Building 1 if used. The Permittee may propose some alternatives to achieve the goal of screening all mechanical venting, the applicant shall submit a proposal for review by the Planning Director. **(P)**
30. Signs: The Permittee shall submit project identification signs for the review by the Planning Division prior to any Building Permit issuance. **(P)**

31. Density Averaging Agreement: Prior to Final Map approval, the Permittee shall be required to enter into a Density Averaging Agreement. The Density Averaging Agreement shall be signed by the Permittee and recorded prior to approval of the Final map. **(P)**
32. County Transportation Approval: The Permittee shall obtain final approval from the County Transportation Department prior to issuance of building permits for any site improvement adjacent to County right of way. **(P)**
33. Santa Clara Valley Water District (SCVWD): The Permittee shall obtain final approval from the SCVWD for trail improvements on along the creek maintenance road. Final approval and construction shall be completed prior to final occupancy for the last phase in the development (the Phasing Plan shall clearly denote this requirement). **(P)**
34. Public Improvements. Prior to final map approval, the Permittee shall obtain design approval and bond for all necessary public improvements along Capitol Avenue and Montague Expressway including but not limited to the following:
 - a. Right of Way. The Permittee shall dedicate all necessary rights-of-way and public easements to the City for the proposed public sidewalk improvements and utilities to the satisfaction of the City Engineer.
 - b. Frontage Improvements. Prior to final map approval, Permittee shall submit improvement plans for the frontage improvements along Montague Expressway and Capitol Avenue including curbs, gutters, sidewalks, pavement, striping, hardscape, streetlights, landscaping, trees, irrigation, and utilities in conformance with the Transit Area Specific Plan, City Standard Drawings and guidelines to the satisfaction of the Planning Director and the City Engineer.
 - c. Pedestrian Creek Trail. Prior to final approval or building permit issuance, the Permittee shall submit improvement plans for the Pedestrian Creek Trail. The trail shall be designed to drain away from the Penitencia Creek. All run-off from impervious surface shall be treated prior to discharge to the creek or the public storm drain system. Permittee shall submit written approval from the Santa Clara Valley Water District for the trail plans.
 - d. Utility Relocation. Underground utilities (such as joint trench conduit, utility boxes, etc.) shall be relocated and adjusted as necessary to accommodate the approved frontage sections to the satisfaction of the Planning Director and the City Engineer.
 - e. Occupancy. All public improvements shall be installed and accepted prior to the issuance of the first Certificate of Occupancy. **(E)**
35. Onsite Improvements.
 - a. Plan Set Coordination. Permittee shall coordinate all plans showing landscape, utility, and hardscape improvements in order to resolve conflicts. **(ALL)**
 - b. Modifications to the Site Plan. Any modifications to the site plan shall require an amendment to the tentative map unless otherwise directed by the Planning Director and the City Engineer.
 - c. Storm Water Control Plan (SWCP). Prior to building permit issuance, the Permittee shall revise the SWCP to increase the amount of LID treatment within the project boundary.

Credit for Special Project status will not be applied until all LID treatment opportunities are exhausted on the site to the satisfaction of the City Engineer. All changes shall be reflected on the SWCP report and plan sheet. The treatment summary sheet shall be updated.

- d. Interim Bioretention Treatment. Permittee shall maintain the interim 100% LID treatment facility located on the future Building 18 site until issuance of the building permit for the superstructure of Building 1.
- e. Utility Meter Layout. The Permittee shall include a detail in the Site Improvement plan set showing the size, dimensions, and layout of all utility meters and associated appurtenances. The layout design shall comply with all separation and access requirement.
- f. Building Permit Issuance. The Permittee shall follow the floodplain removal protocol outlined in the project's floodplain analysis. Construction permits will not be issued until each milestone in the analysis is achieved.
- g. Floodproofing. The Permittee shall provide a separate floodproofing report describing the floodproofing for all structures that are not removed from the Special Flood Hazard Area. The report shall demonstrate compliance with NFIP Regulations and technical bulletins. The report shall include the floodproofing of mechanical equipment, elevator shaft and equipment, and utilities. Floodproofing details shall also be included in the site improvement plan set and on the floodplain management sheet.
- h. Site Improvement Plan Set. Prior to any building permit issuance, the Permittee shall submit a complete site improvement plan set, including but not limited to a separate plan sheet for floodplain management, storm water control, emergency vehicle access, and solid waste handling.
- i. Retaining Wall at Street B. The Permittee shall revise the design of the retaining wall to allow for the capture/conveyance of runoff received at the property line. **(E)**

36. Transportation & Traffic Engineering.

- a. Emergency Vehicle Access (EVA). The Permittee shall provide a 26' Emergency Vehicle Access easement along Street B on the subject site. **(P/E)**
- b. Temporary Right-Out Access to Capital Avenue. Right-out vehicular access on to Capital Avenue is authorized on a temporary basis until the West Leg of S. Milpitas Boulevard Extension (WLSMBE) and the private street along Penitencia Creek are constructed and open to the public. Upon the acceptance of WLSMBE, right-out access to Capital Avenue shall be revoked and the Permittee, and all successors in ownership, shall design and construct all on-site and off-site improvements necessary to restrict the vehicular access on to Capital Avenue to the satisfaction of the City Traffic Engineer. Prior to building permit issuance, the Permittee shall include the design of the ultimate vehicular access to Capital Avenue in the construction documents submitted for onsite and offsite approvals. The Permittee shall provide full disclosure of the temporary right-out access on Capital Avenue to all future residents, tenants, and home owners/property management associations of this development. This condition and all associated exhibits shall be

included in the Conditions, Covenants, and Restrictions (CC&R) for both associations. **(E)**

- c. Right-Out Access to Montague Expressway. Prior to final map approval, the Permittee shall obtain Santa Clara County Roads and Airports' (County) approval of the final access design for right-in and right-out vehicular access to Montague Expressway. If County approval is not obtained, the Permittee shall revise the site plan and amend the tentative map to the satisfaction of the Planning Director and the City Engineer. **(E)**

- d. Montague Expressway Pedestrian Bridge Overcrossing & Land Dedication: The Permittee shall be responsible for the design, construction drawings and land dedication to accommodate the Montague Expressway Pedestrian Bridge Overcrossing as identified in the TASP. The following items shall be required:
 - i) Conceptual Design Study: The Permittee shall submit conceptual designs for the pedestrian overcrossing over Montague Expressway adjacent to Penitencia Creek prior to Final Map Approval. The Conceptual Design shall include studies, survey information and three bridge design alternatives for architectural design. The applicant shall also coordinate with the County during the development of the design document.
 - ii) Construction Drawings: The Permittee shall submit 30% construction drawings prior to First Occupancy and Final Construction drawings by 75% occupancy of the project. The final construction documents shall include all studies, reports, estimates, easements, and dedications required to complete the design and shall be submitted to the City for review and approval. Final construction drawings shall not commence until the conceptual design is approved by the City and the Santa Clara County Roads and Airports. The City Engineer and Planning Director may grant additional time to satisfy this condition due to coordination with outside agencies. The Permittee shall request changes in the timeline in writing and included a revised project schedule for review and approval. The Permittee shall dedicate all land and easements required to construct, access, and maintain the overcrossing structure and landing.
 - iii) TASP Credit: The pedestrian overcrossing over Montague Expressway is an identified Transit Area Specific Plan (TASP) item and costs for the design and construction drawings will be credited through the TASP Fee Structure. Fee credit will not be provided until all items above have been completed and all supporting documentation verifying all associated costs. All costs shall be tracked separately from the Penitencia Creek Bridge costs. Final credit will be subject to City review of all materials provided. Prior to Final Map Approva, a separate Fee Credit shall be entered into between the parties. **(P/E)**

- e. West Leg of S. Milpitas Boulevard Extension (WLSMBE). The construction of WLSMBE is a required improvement for the ultimate circulation of the 450 Montague Expy, 730 E Capital, and 750 E Capital developments. The design of WLSMBE shall include the design of the East Penitencia Creek Vehicular/Pedestrian Crossing and all related utility relocations. The roadway dedication, design, permitting, and construction of WLSMBE and all associated designs, studies, reports, permits and improvements are a shared cost between the three developments and the costs are distributed in proportion to each development's land area. The Permittee shall comply with the following:

i) East Penitencia Creek Vehicular/Pedestrian Crossing Feasibility Study. Prior to Final Map Approval, the Permittee shall submit a study analyzing:

- (1) the feasibility of a vehicular/pedestrian bridge across East Penitencia Creek,
- (2) the feasibility of alternative crossings, and
- (3) a final recommendation based on cost, design, constructability, schedule, permitting (including CEQA), and maintenance.
- (4) the feasibility of incorporating potable water and recycled water pipelines in the bridge deck.

The study shall include outside agency coordination, utility relocation, and engineering estimates for design, construction and permitting of each alternative. The feasibility study shall also indentify the required permitting for each alternative.

ii) East Penitencia Creek Vehicular/Pedestrian Crossing. Prior to first occupancy, the Permittee shall submit construction documents, including plans, studies, reports, and estimates for the alternative identified in the feasibility study or as directed by the City Engineer for review and approval.

iii) East Penitencia Creek Vehicular/Pedestrian Crossing. The East Penitencia Creek Vehicular/Pedestrian Crossing is an identified Transit Area Specific Plan (TASP) item and costs for the feasibility study and construction drawings will be credited through the TASP Fee Structure in a separate Fee Credit Agreement to be approved by the City Council prior to final map approval. Final reimbursement would occur after all documents have been provided to the City for review and approval and all supporting documentation for all costs associated with the study and design. These documents shall be tracked separately from the WLSMBE and Pedestrian Overcrossing documents. The Permittee will receive the reimbursement once all materials have been received and processed. **(E)**

iv) WLSMBE Design. Prior to Final Map, the Permittee shall prepare design documents for the WLSMBE Extension. WLSMBE shall extend from Capitol Avenue to East Penitencia Creek and shall align with the proposed S. Milpitas Boulevard Extension from Montague Expressway to Capital Avenue. The WLSMBE typical cross-section shall conform to the TASP approved sections and shall include, but not be limited to, one 11' southbound lane, one 11' northbound lane, one 11' northbound right turn lane, a Class II bike lane in each direction of travel, a 4' minimum raised median island, an 8' parking lane on one side of the street, a 7' planting strip, and 5' sidewalk on each side of the street or as directed by the Planning Director and the City Engineer. WLSMBE design shall include buried utilities such as potable water pipe, pressure reducing valve and vault, recycled water pipe, storm drain pipe, and sanitary sewer pipe. The pressure reducing valve shall be connected into the Zone 2 piping on the east side of Capitol Avenue and the Zone 1 piping on the west side of Capitol Avenue. The WLSMBE street elevation shall be designed and constructed to

accommodate the future crossing over East Penitencia Creek pursuant to the TASP-designated street network and the East Penitencia Creek Crossing feasibility study.

- v) WLSMBE Improvements. Prior to first occupancy, the Permittee shall submit construction documents, including plans, studies, reports, and estimates for the WLSMBE Improvements to the City for review and approval. The construction documents shall include all related improvements such as the relocation of existing utilities and the installation of traffic signals. Prior to the issuance of any Certificate of Occupancy, the Permittee shall pay for WLSMBE improvements pursuant to the condition below to the satisfaction of the City Engineer.

- vi) WLSMBE Cost Share. Prior to first occupancy, the Permittee shall submit an engineer's estimate for all associated costs for the WLSMBE design, construction, management, and land cost assumption of 12% of the total cost of the project and an ENR Construction Cost Index projected out 5 years to the satisfaction of the City Engineer. The Permittee shall pay to the City a fair share contribution of 53% (based on site area of 10.47 acres) of the estimated costs. The Permittee fair share contribution shall be credited for all design costs. The Permittee shall pay the fair share contribution at Final Occupancy or final approval of construction plans or whichever occurs first. (E)

- f. Future Traffic Signal at Capitol and WLSMBE. Prior to building permit issuance, the Permittee shall pay a fair share contribution for the construction of a new traffic signal at the E. Capitol Avenue and WLSMBE intersection. (E)

37. Utilities. The Permittee shall comply with the following conditions:

- a. Water System. Project shall be served by SCVWD Zone 1. A Water Supply Assessment is not required. Contractual water capacity is available. (E)
- b. Water Service. Building 1 shall be served by separate water meters for domestic and fire services. All landscape located inside the Building 1 footprint shall be served by a separate irrigation meter. Buildings 2-18 may be served by a combined domestic and fire service. Each parcel shall have independent service or shall provide recorded documents allowing reciprocal shared rights. Permittee is alerted that on-site pumping to upper floors may be required. Permittee shall provide backflow protection on all water connections, including fire services, in accordance with City guidelines and USC Manual of Cross Connection Control. (E)
- c. Hydraulic modeling is required to verify capacity of the adjacent water system piping and determine points of connection to the water and sanitary sewer systems. Permittee shall authorize the City to proceed with hydraulic modeling. All charges shall be applied to Permittee's PJ Account. (E)

Waterline Relocation. Permittee is proposing to relocate the public water line in Montague Expressway. The water pipeline shall be located in Montague Expressway, subject to the City and County discretion on the location. Permittee shall connect the southern point of the relocated water line to the water line at Centre Pointe Drive in order to insure reliability looping. (E)

- d. Montague Expressway Waterline Easement. Prior to final map approval, the Permittee shall secure an easement, for the City of Milpitas benefit, from Santa Clara County for the installation and future maintenance of the relocated water line within the Montague Expressway right-of-way. The water line shall be placed into service prior to issuance of the first occupancy. If the easement is not needed the Permittee may provide a letter from the County indicating that is not needed and it will be subject to review by the City Engineer. **(E)**
- e. Public Landscaping. Street frontage landscaping shall be served by recycled water. The public portion of the proposed recycled water pipelines shall be a minimum of 8 inches in diameter. The Permittee shall install a gate valve and blind flange on the southerly leg of tee to accommodate future extension of the recycled water system. **(E)**
- f. Water Supply Emergency. The City Council has declared a water supply emergency and enacted a Water Shortage Contingency Plan. The project is required to use recycled water for construction purposes such as dust control and compaction. Landscape planting shall be deferred for any areas designated to use potable water, such as internal podium areas. **(E)**
- g. Existing Utilities. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. **(E)**
- h. Multistory Buildings. The apartment building shall require water supply pressures above that which the city can normally supply. Additional evaluations by the Permittee are required to assure proper water supply (potable or fire services). The Permittee shall submit an engineering report detailing how adequate water supply pressures will be maintained to the satisfaction of the City Engineer and the Fire Marshall. **(E)**
- i. Utilities near Buildings. Building foundations adjacent to public utilities shall be designed to be self-supporting such that the building weight is not required to be supported during shoring and excavation of adjacent utilities.
- j. Solid Waste Service. This site is recommended to use roll-off style solid waste service. The Permittee shall provide sufficient facilities for on-site storage and collection of solid waste and recyclables. Permittee shall provide a Solid Waste Handling Plan showing how materials will be transferred from Buildings 1-18 to the trash enclosure/external collection point. The Solid Waste Handling Plan shall also address other requirements, such as compaction, chute shut-off, sufficient number of bins, and property management responsibility for bin management and positioning. The Permittee shall demonstrate that sufficient space is provided at Building 1 basement trash areas to house extra containers and the vehicle that will transport the containers to the compactor. Applicant to demonstrate that the site plan provides sufficient space for the solid waste vehicle to perform collection and turn around on-site or provide proof of easement from adjacent property. Permittee shall procure sufficient service frequency and shall provide a

minimum of 15 feet vertical (overhead) clearance at the trellis. Permittee shall provide a plan showing solid waste setout locations for Buildings 2-18 that do not block parking spaces. All solid waste collection facilities shall comply with City guidelines. The compactors shall be installed and functional prior to issuance of occupancy of the 80th dwelling unit. **(E)**

- k. Solid Waste. Prior to issuance of any certificate of occupancy, Permittee shall construct a new trash enclosure to serve the project. The enclosure shall accommodate the required two self-contained compactors at minimum to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. The enclosure will be subject to the City's review/approval prior to construction of the enclosure. **(E)**
- l. Off-Site Recycled Water. Prior to final map approval, the Permittee shall submit construction documents, including plans, studies, reports, and estimates to extend the City's recycled water pipeline. The work consists of installing approximately 1,800 linear feet of new 8 inch diameter recycled water pipeline in Great Mall Parkway starting at Centre Pointe, crossing Montague Expressway, running along Capitol Avenue, and tying into the Valley Transportation Authority's planned recycled water pipeline extension at South Milpitas Boulevard. Applicant shall secure an easement for the City of Milpitas benefit, from Santa Clara County for the installation and future maintenance of the relocated water line within Montague Expressway. Prior to the first certificate of occupancy, the Permittee shall construct the off-site recycled water pipeline. The Permittee may be reimbursed through the TASP Fee program for the portions of the recycled waterline not in front of their property. The Permittee shall keep accurate records of all construction costs for the installation and shall confer with Utility Staff regarding the segments that need to be tracked separately.

FEES

38. Development Fees: Permittee shall submit the following items with the building permit application and pay the related estimated fees prior to building permit issuance:
 - a. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire
 - b. Water Service Agreement(s) for water meter(s), detector check(s), and double check detector assembly.
 - c. Storm water connection fee of \$21,562 per acre.
 - d. Water, sewer and treatment plant fees will be calculated at the time of building plan check submittal.
 - e. Calaveras Blvd Widening Traffic Impact Fee of \$235 per residential unit and (in 2009 dollars) prior to building permit issuance. Fee shall be adjusted per ENR index rate at the time of building permit issuance.

Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s). *The above fees are preliminary estimates and subject to change.* There is no vesting of the fees with the adoption of this Resolution. **(E)**

36. Transit Area Specific Plan (TASP) Fees - Prior to any building permit issuance, Permittee shall pay a Transit Area Development Impact fee. The amount of fee to be paid shall be the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance.
37. Fee Adjustments: All applicable fees for the Project may be adjusted prior to building permit issuance. The amount of fee to be paid shall be the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance. **(E)**
38. Building Permit Automation Fee: Prior to any building permit issuance, Permittee shall pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. **(E)**

FINAL MAP (STANDARD)

39. Community Facilities District (CFD) Annexation: Prior to final map approval, Permittee shall submit an executed consent to annex the subject property into CFD 2008-1 and shall agree to pay the special taxes levied by CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. Permittee shall comply with all rules, regulations, policies, and practices established by State Law and by the City with respect to the CFD including, without limitation, the requirements for notice and disclosure to future owners and residents. **(E)**
40. Final Map: Prior to issuance of any building permit, the final map shall be recorded. The final map submittal shall meet the following requirements:
 - a. Provide a current title report with your final map submittal, not more than 90 days old.
 - b. All final maps shall designate all common lots and easements as lettered lots or lettered easements.
 - c. The final map shall clearly delineate the project property line and the County right of way line. County right of way and Project boundary should be contiguous.
 - d. All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3.
 - e. Permittee shall dedicate all necessary easements for public utilities, emergency vehicle access, solid waste collection, pedestrian corridors, sidewalks, trails, paths, parks and public access on the final map for acceptance by the City in compliance with the City's Engineering Guidelines and the approved Tentative Map.
 - f. Prior to recordation of any final map, Permittee shall submit to the City a digital copy of the approved final map in AutoCAD and GIS format. **(E)**
41. Homeowners/Property Management Association: Prior to final map approval, Permittee shall establish a Homeowners/Property Management Association ("Association"). The

Association shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets and shall have assessment power. The Association shall manage the onsite water, recycled water, storm, and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)

CONSTRUCTION (STANDARD)

42. Improvement Plans: Prior to final map approval, Permittee shall obtain design approval and bond for all necessary public improvements, including but not limited to the following:
- a. Removal and installation of new curb, gutter, and sidewalk, median modification or installation, signage and striping, street lights, street trees, fire hydrants, bus stop, and storm, water, and sewer service installation.
 - b. All improvements plans shall be prepared using Vertical Datum of 1988 (NAVD 88). The specific city benchmark used for the project shall be indicated on the cover sheet of each improvement plan set.
 - c. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital copy of the Record Drawings AutoCAD and GIS format upon completion of improvements to the satisfaction of the City Engineer.
 - d. Permittee 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. (E)
43. Initial Acceptance: All improvements must be installed in accordance with the City of Milpitas standard drawing and specification, and shall be constructed to the City Engineer's satisfaction and accepted by the City prior to issuance of any final certificate of occupancy of any unit. (E)
44. Utility Undergrounding: Prior to issuance of the first Certificate of Occupancy, Permittee shall underground all existing wires and overhang utilities (except the distribution lines located at the upper end of the metal towers, lower lines shall be undergrounded) and remove all related poles within the proposed development and along all street frontages. All proposed utilities within the subdivision shall also be undergrounded. The improvement plans shall show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state wire voltage. All utility vaults, boxes, cabinets, and pedestals shall be identified and labeled on the improvement plans. Above ground utility facilities shall be underground, relocated, or screened to the satisfaction of the City Engineer and the Planning Director. (E)

45. Joint Trench Relocation: The joint trench shall be relocated in the field, if necessary, to accommodate the approved street layout (sidewalks, trees, streetlights, etc.) to the satisfaction of the City Engineer and the Planning Director. All joint trench structures (vaults, boxes, cabinets, etc.) shall be adjusted to the final grade. **(E)**
46. Encroachment Permit: Prior to any work within the public right of way or City easement, Permittee shall obtain an encroachment permit from City of Milpitas Engineering Division. Prior to installing offsite improvements, Permittee shall obtain an encroachment permit from the City of Milpitas and all necessary encroachment permits from other affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District, Santa Clara County road and Airport Department, and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits shall be submitted to the City of Milpitas Engineering Division as a part of the encroachment permit review. **(E)**
47. Agency Approval: It is the responsibility of the Owner or Designee to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District and Caltrans. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. **(E)**
48. Construction Schedule: Prior to start of any construction, Permittee shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, and construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. Permittee shall coordinate their construction activities with other construction activities in the vicinity of this project. Permittee's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. **(E)**
49. Demolition: All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped at main line in the street if the water meter is not to be used. The sanitary sewer shall be capped at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. **(E)**
50. Maximum Slopes: All slopes adjacent to public sidewalks and streets shall be designed to a maximum grade of 4:1 slope. The grading design shall also provide a 1' flat bench at the top and bottom of the slope adjacent to the public sidewalks, streets, or pathways. **(E)**

51. Tree Removal Permit: In accordance with COMC Chapter 2, Title X (Ord. 201), Permittee may be required to obtain a permit for removal of any existing tree(s). Contact the Public Works Department at (408) 586-2600 to obtain the requirements and forms. **(E)**
52. Underground Service Alert (USA): Permittee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. **(E)**
53. Mailboxes: Prior to installation of mailboxes, Permittee shall obtain approval from the US Postal Services and submit documentation to the City for review. Structures to protect mailboxes may be required as a result of the Building, Engineering and Planning Divisions review. **(E)**

FLOODPLAIN MANAGEMENT (STANDARD)

54. Special Flood Hazard Area: The proposed development is located within the Special Flood Hazard Area (SFHA), and, therefore, shall comply with the National Flood Insurance Program (NFIP) Title 44 of the Code of Federal Regulations and the City of Milpitas (City) Flood Plain Management Regulations, City of Milpitas Code (COMC) Title XI Chapter 15. Prior to final map approval or any building permit issuance, Permittee shall obtain a Conditional Letter of Map Revision (CLOMR) or a Conditional Letter of Map Revision based on Fill (CLOMR-F) from the Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain or the removal of the development from the SFHA. Permittee shall also obtain a Letter of Map Revision (LOMR) or a Letter of Map Revision based on Fill (LOMR-F) and shall provide all elevation certificates prior to final building inspection or issuance of certificate of occupancy for any portion of the development. The proposed grading plan shall comply with the established BFE as determined in the final flood study report, the approved CLOMR or CLOMR-F, or the official FEMA Federal Insurance Rate Map (FIRM). **(E)**
55. Floodplain Management Ordinance: Per Chapter 15, Title XI of Milpitas Municipal Code (Ord. No. 209.4) the lowest floor elevation (finished floor) of each structure shall be at least one foot above the Base Flood Elevation (BFE). The structure pad(s) shall be properly designed by a registered civil engineer and compacted to meet FEMA's criterion. In addition, the pad(s) shall extend beyond the building walls before dropping below the base flood elevation, and shall have appropriate protection from erosion and scour. All electrical equipment, mechanical equipment, and utility type equipment servicing the structure shall be located above the BFE, or shall be flood proofed, and shall be constructed to prevent damage from flooding events. Any trailers, modular buildings, or pre-manufactured dwelling units located on this site for periods of time greater than one year, shall be adequately anchored to resist flotation, collapse and lateral movements per Floodplain Management Ordinance. The Owner or Designee's civil engineer shall complete and submit several FEMA Elevation Certificates to the City at different stages of the construction. Flood insurance is required for any construction that is financed with government backed loans. **(E)**

56. Flood Study: Prior to final map approval or any building permit issuance, Permittee shall submit a Flood Study for the project demonstrating, to the satisfaction of the City Engineer, that the proposed development has NO adverse impact to the surrounding flood plain within the SFHA and to flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. (E)
57. Drainage Study: Prior to final map approval or any building permit issuance, Permittee shall submit a final grading plan and hydrologic/hydraulic study prepared by a registered Civil Engineer, consistent with the approved CLOMR. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and Permittee shall satisfy the conclusions and recommendations of the approved drainage study. (E)
58. Elevation Certificates: Permittee shall submit an elevation certificate for each lot or structure that is to be removed from the SFHA:
- a. Prior to any grading permit issuance, based on an approved grading plan. This elevation certificate shall contain all proposed grades applicable and shall be required in order to receive community acknowledgement for the CLOMR or CLOMR-F application.
 - b. Prior to building foundation pour, based on finished formwork while the building is under construction. If Permittee intends to apply for a LOMR or LOMR-F prior to finished construction, this elevation certificate shall be submitted after the foundation pour and shall be based on existing finished floor and adjacent grades. It shall be required in order to receive community acknowledgement for the LOMR or LOMR-F application.
 - c. Prior to occupancy of each building or structure, based on finished construction. This elevation certificate shall contain all required finished grades and shall be based on existing information.
 - d. Prior to final occupancy, Permittee shall submit a binder containing all the elevation certificates produced for the each phase of the project. (E)

CLEAN WATER (STANDARD)

59. Construction Storm Water Quality: Permittee shall comply with the requirements of the National Pollution Elimination Discharge System (NPDES) permit as administered by the California State Water Resources Control Board (State Board) and the San Francisco Bay Regional Water Quality Control Board (Regional Board). Prior to the issuance of any building, demolition, or grading permit, Permittee shall submit an Erosion and Sediment Control Plan (Erosion Control Plan) as a part of the improvement plan submittal. The erosion control plan shall show all construction best management practices (BMPs) and shall comply with the requirements of the NPDES, the Municipal Regional Permit Order R2-2009-0074 (MRP), and the City's stormwater and urban runoff pollution control standards and

guidelines (City's Clean Water Program). Permittee shall ensure that all contractors and sub-contractors install and regularly maintain all construction BMPs as required by the approved erosion control plan, the COMC, and the City's Clean Water Program. **(E)**

60. Construction General Permit Compliance: Permittee shall comply with the requirements of the Construction General Permit as administered by the State and Regional Boards. Permittee shall obtain a Construction Activities Storm Water General Permit (State Permit) from the State Board. Prior to any construction activities and prior to the issuance of any building, demolition, or grading permit, Permittee shall submit:

- a. a complete Storm Water Pollution Prevention Plan (SWPPP) with the project Waste Discharge Identification Number (WDID) displayed on the cover,
- b. a copy of the approved Notice of Intent (NOI) from the State Board, and
- c. an erosion control plan and a site monitoring plan meeting the satisfaction of the City Engineer.

Permittee shall ensure that all contractors and sub-contractors install and regularly maintain all storm water quality control measures as required by the approved SWPPP, the approved erosion control plan, the COMC, and the City's Clean Water Program.

Prior to final occupancy, Permittee shall submit an approved Notice of Termination (NOT). For phased occupancy, Permittee shall submit a Change of Information (COI) or an NOT approved by the State Board that removes each phase of occupancy from the boundaries of the State Permit prior to the issuance of occupancy for that phase. Contact the State and Regional Boards for questions regarding your specific project. For general information, contact the City of Milpitas Engineering Division at (408) 586-3329. **(E)**

61. Post-Construction Storm Water Quality: Permittee shall comply with the requirements of the MRP for post-construction storm water treatment (provision C.3 regarding new development and redevelopment requirements for regulated projects) and the City's Clean Water Program. Permittee shall submit a final, certified storm water quality control plan (SWCP), a SWCP sheet, and a post-construction BMP operations and maintenance plan (O&M) in accordance with the City's Clean Water Program and meeting the satisfaction of the City Engineer. **(E)**

62. Storm Water Quality Control Plan (SWCP): Prior to final map approval or any building permit issuance, Permittee shall submit a separate final or amended existing SWCP that incorporates post-construction BMPs for the treatment of storm water run off from all areas of the parcels. The SWCP shall incorporate source control, site design, and storm water treatment consistent with the MRP requirements and the City's Clean Water Program.

- a. The SWCP shall comply with all "Model Conditions of Approval for Stormwater Quality" as shown in the Stormwater Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 and are hereby incorporated as conditions of project approval.

- b. The final SWCP shall be certified by a third party reviewer from the MRP approved list of certifiers. The third party reviewer shall certify that the SWCP complies with the MRP requirements. A list of qualified reviewers can be found at the Santa Clara Valley Urban Runoff Pollution Prevention Plan (SCVRPPP) website (<http://www.scvrppp-w2k.com/>)
- c. O&M Plan: The final SWCP shall include an Operation and Maintenance (O&M) Plan, acceptable to the City Engineer, describing the operation and maintenance procedures needed to insure that storm water treatment measures continue to work as intended and do not create a nuisance (including vector control). The plan shall include all BMP details, a location map, a maintenance schedule, and inspection and reporting templates. The treatment measures shall be maintained for the life of the project. The storm water control operation and maintenance plan shall include the Permittee's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
- d. O&M Agreement: Prior to final occupancy, Permittee shall execute and record an O&M Agreement with the City for the operation, maintenance, and annual inspection of the C.3 treatment facilities. Permittee shall submit documentation of inspection and maintenance to the City's Utility Section annually for reporting to the Regional Board.
- e. Permittee shall include language in the approved CC&R providing the City with an annual inspection report in conformance with the approved O&M plan and agreement. If the City does not receive the report, the City will conduct the field inspection and report for the site and the applicant and its successor shall be responsible to pay all associated costs.
- f. Format: The SWCP shall comply with the City's Standard SWCP formatting policy.
- g. All permit applications shall be consistent with the applicant'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. Onsite improvement plans shall show the details and methods of construction for site design features, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. Site design shall limit directly connected impervious areas. Any changes to the final Storm Water Control Plan shall require Site & Architectural ("S" Zone) Amendment application review.
- h. Storm Water Control Plan Sheet: A plan sheet shall be included in the offsite and onsite improvement plans for Storm Water Control. The sheet will show and label all drainage areas, treatment measures, drainage flow lines, high points, and low points. Each treatment measure shall have an independent drainage area which shall be designated. The sheet will provide sections and details for grading, drainage, and treatment measures. The sheet will include a table correlating the drainage areas to the treatment measures and summarizing the treatment provided.

- i. Storm Water Control Inspection: Prior to initial acceptance of public improvements or initial occupancy for private improvements, the Third Party Certifier of the SWCP shall submit post-construction certification verifying that the post-construction BMPs have been installed correctly and are functioning properly. **(E)**

UTILITIES (STANDARD)

63. Utility Protection. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. **(E)**
64. Utility Capacity. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. **(E)**
65. Utility Studies. Prior to final map recordation, Permittee shall submit and obtain approval from the City Engineer of the water, sewer, and storm drainage studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable, to the satisfaction of the City Engineer. **(E)**
66. Utility Modeling. Hydraulic modeling is required to verify the capacity of the adjacent water and sewer system piping and determine points of connection. Permittee shall authorize the City to proceed with hydraulic modeling and the costs of the modeling shall be charged to Applicant's PJ Account. **(E)**
67. Sanitary Sewer Discharge. Prior to any discharge into the sanitary sewer system, Permittee shall obtain all required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755. **(E)**
68. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240); the landscape irrigation systems for street landscape, Park A, Park B, and the project site must be designed to meet the City's recycled water guidelines and connect to recycled water system. To meet the recycle water guideline the developer shall:

- a. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape.
- b. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the California Department of Public Health (CDPH) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and CDPH approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
- c. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas. **(E)**
- d. The on-site recycled water irrigation system shall be split into several parallel systems to the satisfaction of the City Engineer. The purpose is to match construction phasing in order to allow recycled water use at the final occupancy for each phase. For example: Parks A and B would be on one meter, the podium building would be on one meter, the street landscape would be on a separate meter, and the landscaping around the condominiums would be served by two separate meters.

69. Landscaping Ordinance 238. In accordance with the provisions of Chapter 5, Title VIII (Ordinance 238) of the COMC for new or rehabilitated landscaping areas equaling 2500 square feet or greater, the applicant shall:

- a. Provide separate water meters for domestic water service & irrigation service.
- b. Provide separate domestic meters for each proposed use (Residential, Food Services, Commercial/Office).
- c. Comply with all the requirements of Ordinance 238.
- d. Submit two sets of landscape and irrigation improvement plans to the Building Division with the building permit plan check package. Prior to any building permit issuance, Approval from the Land Development Section of the Engineering Division is required prior to any building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. **(E)**

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

SOLID WASTE MANAGEMENT & RECYCLING (STANDARD)

70. Solid Waste Handling Plan (Report). Prior to Final Map approval or any building permit issuance, Permittee shall submit a final Solid Waste Handling Plan that incorporates the following solid waste handling requirements and meeting the satisfaction of the City Engineer:

- a. A description of the Solid Waste Services required for the development per the Development Guidelines for Solid Waste Services (Development Guidelines). The

description shall include sizing calculations, type of service (front load bins, roll-off compactors, etc.), size of bins, and level of service (e.g. number of pick ups per week).

- b. A description of the Solid Waste Operation at ultimate build out and for each phase of the development.
- c. A detail of the solid waste enclosure designed per the Development Guidelines for Solid Waste Services to house all service described above and all necessary equipment. The enclosure design shall provide adequate access for the solid waste truck, and allocate enough space for the solid waste truck operation without impacting the proposed private street. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to any building permit issuance.
- d. A solid waste handling plan sheet shall be incorporated in the site improvement plan set containing the enclosure detail, a sizing table, a service table, a description of the solid waste operations, and truck turning templates for collection vehicles.
- e. The enclosure drains shall discharge to the sanitary sewer line. Storm drain inlets shall be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
- f. The Homeowners Association shall be responsible for solid waste handling. The Solid Waste Handling Plan shall include detailed, step-by-step instructions describing the management of solid waste from generation to disposal. The plan shall demonstrate how recycling and waste will be separately handled and maintained.
- g. Permittee shall complete the construction of the new trash enclosure to serve the Project prior to issuance of the First Certificate of Occupancy. **(E)**

71. Solid Waste Management. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to issuance of any certificate of occupancy, Permittee shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Republic Services (formally BFI). After Permittee has full occupancy, Permittee shall contact the Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, Permittee shall increase the service to the level determined by the evaluation. **(E)**

72. Recycling Report, Part I. Prior to demolition permit issuance, Permittee's contractor shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering and Solid Waste Section (Utility Section) prior to demolition permit issuance. The report shall describe the following 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.

Permittee's contractor shall make every effort to salvage materials for reuse and recycling. **(E)**

- 73. Recycling Report, Part II. Prior to final approval of the demolition permit or any building permit issuance, Permittee shall submit Part II of the Recycling Report to the Building Division for forwarding to the Utility Section in order to confirm the information described on Part I 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 receipts of "end dumps." Actual reuse, recycling, and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Division for approval by the Utility Section prior to inspection by the Building Division. **(E)**

- 74. Demolished Material Removal. All demolished materials including, but not limited to, broken concrete, asphalt paving, pipe, vegetation, excess earth, building debris, and other unsuitable materials, etc., shall be removed from the job site for recycling or disposal by Permittee's contractor, to the satisfaction of the City Engineer. Permittee's contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction of the site. Permittee's contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. Permittee's contractor shall perform all recycling and/or disposal by removal from the job site. **(E)**

Key:

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney