

RESOLUTION NO. 16-035

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL APPROVE SPECIFIC PLAN AMENDMENT PERMIT NO. ST16-0001, SITE DEVELOPMENT PERMIT NO. SD16-0001, MINOR VESTING TENTATIVE MAP PERMIT NO. TP16-0001, AND ENVIRONMENTAL ASSESSMENT NO. EA16-0006 FOR THE DEVELOPMENT OF 25 FOR-SALE TOWNHOME-STYLE CONDOMINIUM UNITS AND AN APPROXIMATELY 2,000 SQUARE FOOT COMMERCIAL SPACE LOCATED ON A 1.19 ACRE SITE WITHIN THE MIDTOWN SPECIFIC PLAN AREA AT 260 SOUTH MAIN STREET. (APN: 086-27-014, 086-27-051, 086-27-009)

WHEREAS, on January 15, 2016, an application was submitted by Andrew Warner, of City Ventures (“Applicant”), 444 Spear Street, Suite 200, San Francisco, CA 94105 for a development proposal to allow the development of 25 for-sale residential units and an approximately 2,000 square foot commercial space located on a 1.19 acre site within the Midtown Specific Plan area at 260 South Main Street. (APN: 086-27-014, 086-27-051, 086-27-009); and

WHEREAS, on August 17, 2016, the Applicant conducted a community outreach meeting to discuss the proposed project; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the proposed project is exempt from CEQA review pursuant to Section 15168 (Program EIR) of the CEQA Guidelines; and

WHEREAS, on November 9, 2016, 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: Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2: Record. The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission.

SECTION 3: CEQA. As set forth in the *California Environmental Quality Act (CEQA) Analysis for 260 South Main Street, Milpitas, California*, prepared by Lamphier-Gregory and dated November 3, 2016 (which is hereby adopted and incorporated herein as if restated in full), the project is exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15168 (Program EIR) of the CEQA Guidelines. The

environmental impacts for this project were previously analyzed in an Environmental Impact Report (SCH #2000092027) certified by the City Council of the City of Milpitas in March of 2002. Given that the project is consistent with an approved Specific Plan for which an EIR was previously prepared, the project is exempt from further CEQA review pursuant to Public Resources Section 21083.3. Furthermore, no further CEQA review would otherwise have been required, pursuant to State CEQA Guidelines Section 15168(c), insofar as the Program EIR covers the scope of the project's impacts and none of the criteria for subsequent environmental review under State CEQA Guidelines Section 15162 have been fulfilled. There is no new information or changed circumstances sufficient to justify an amendment to this EIR.

SECTION 4: Specific Plan Amendment (Section XI-10-57.02(G)) - The Planning Commission makes the following findings based on the evidence in the public record in support of consistency with Midtown Specific Plan No. ST16-0001:

- 1. The proposed specific plan or specific plan amendment is consistent with the goals, objectives, policies, and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan.*

The project proposes a specific plan amendment that would alter the language of Policy no. 7.4. The intent of this policy is to coordinate development over several parcels (Precise Plan), so that each individual development contributes to a coherent overall site plan for a larger area and requires a developer who intends to develop a site in this area to prepare an overall site plan. The proposed amendment would allow the applicant to create a Precise Plan for their project site instead of an overall Precise Plan, which does not impact the goals, objectives, policies, and programs of the General Plan.

- 2. The uses proposed in the specific plan or specific plan amendment are compatible with adjacent uses and properties.*

The proposed specific plan amendment does not alter the current use of the project site and is compatible with adjacent uses and properties.

- 3. The proposed specific plan or specific plan amendment will not adversely affect the public health, safety and welfare.*

The proposed specific plan amendment will not impact the use, development standards or goals and policies of the Midtown Specific Plan. The mixed-use development would not be detrimental to the public health, safety, and general welfare, given that it is an allowed use, will be built per the design guidelines of the Midtown Specific Plan, and the environmental assessment shows that the project will not cause new effects or require new mitigation measures not presented in the original Milpitas Midtown Specific Plan EIR.

- 4. The proposed specific plan amendment will not create internal inconsistencies within the specific plan.*

The proposed specific plan amendment is a text amendment which does not alter the goals or policies of the Midtown Specific Plan. The intent of policy 7.4 is maintained as the applicant is still required to submit a Precise Plan for the project site showing that they are meeting the intent of the policy by coordination of circulation and access; placement and configuration of parking; building orientation; and coordination parcels and minimizing curb-cuts. Hence, the specific plan amendment will not create internal inconsistencies within the specific plan.

SECTION 5: Site Development Permit (Section XI-10-57-03(F)) - The Planning Commission makes the following findings based on the evidence in the public record in approving Site Development Permit No. SD16-0001:

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 project is consistent with this finding as it complies with the development standards contained within the Midtown Specific Plan for the Mixed Use District and the municipal code. The project is designed with a circulation network that connects with existing street and to future developments. The proposed buildings contain a variety of finish materials and articulations and will be of high quality design on all sides. The perimeter landscaping and street improvements will provide a benefit to the neighborhood and pedestrian environment.

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

As described above, the development is compatible and consistent with the surrounding uses and has been found to conform to the zoning district. The project is consistent with MXD, Multi-Family Residential zoning requirements and other code requirements, as illustrated below.

Table 1: Summary of Development Standards

Development Standards	Standard	Proposed	Complies?
Front Setback	Along commercial – 15 feet from edge of curb	15 feet	Yes
Side Yard Setback	Commercial- 0 feet	Commercial – 3.78'	Yes
	Residential- 10 feet	Residential – 10'	Yes
Street Side Setback	8 feet	8 feet 2 inches	Yes
Rear Yard Setback	10'	10 feet 7 inches	Yes
Floor Area Ratio	0.75 for the commercial space	0.04	Yes
Density	21-30 DU/acre	21 DU/acre	Yes
Building Height	45 feet	41 feet 6 inches	Yes

Parking for the project complies with the Milpitas Municipal Code. The following table summarizes the parking required and provided for the project:

Table 2: Parking Standards

Parking	Square footage/ #	Required Parking Ratio	# of Spaces Required	# of Spaces Provided
3 or less bedrooms	25 units	2 per unit	50	50
Guest Parking		15% of required	8	8

		stalls		
Retail	2,014 square feet	4 spaces per 1,000 gross square feet	8	6 on street ¹ , 2 on-site
Total Parking			66	66
Bicycle Parking		5% of total stalls	3	3 on-site, 4 off-site
¹ Though on-street parking is not generally permitted to be counted toward meeting an applicant's parking requirement, Midtown Specific Plan Policy 4.18 expressly provides that credit can be given for on-street public parking directly adjacent to a retail development.				

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

The project is consistent with this finding as discussed previously in the staff report, and the proposed project is approved use in the Mixed Used land use designation. The project furthers the goals and policies of the land use element.

Table 3: General Plan Consistency

Guiding Principles and Implementing Policies	Consistency Finding
<i>2.a-G-2: Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.</i>	Consistent. <i>The project is a mixed-use development which will provide commercial spaces along with residential development and increase job opportunities within the compact development of Main Street.</i>
<i>2.a-G-6: Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community 'gathering place' while maintaining needed industrial, service and commercial uses.</i>	Consistent. <i>The project implements most of the Midtown Specific Plan goals, policies, and development standards, with one exception, for which a Specific Plan Amendment is sought. If approved, the project will offer a mixed-use, high-density community with multiple gathering places.</i>
<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 into outlying areas.</i>	Consistent. <i>The project is located on Main Street within the urban fabric of the City of Milpitas.</i>
<i>2.a-I-29: Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational</i>	Consistent. <i>The proposed project provides commercial spaces at the street level with a mixture of housing. The commercial spaces will provide employment and</i>

Guiding Principles and Implementing Policies	Consistency Finding
<i>activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages.</i>	<i>improve the streetscape creating an attractive Main Street.</i>
<i>2.a-I-30: Require development in the Midtown area to conform to the adopted design guidelines/requirements contained in the Midtown Specific Plan.</i>	Consistent. <i>The proposed project conforms to the design guidelines of the Midtown Specific Plan for setbacks, building height, density, parking requirements, etc.</i>

4. *The project is consistent with the Milpitas Midtown Specific Plan.*

The proposed project addresses the purpose and intent of the Midtown Specific Plan. The table below outlines the project’s consistency with applicable Midtown Specific Plan Mixed Use Policies:

Table 4: Midtown Specific Plan Consistency

Mixed Use Policies	Consistency Finding
<i>Policy 3.10: Designate parcels along the Main Street and Abel Street corridor (as shown in Map 3 of the staff report) mixed-use and allow a mixture of retail, office, housing, service, and public/quasi-public uses in this area.</i>	Consistent. <i>The proposed project is a mixed-use development and provides ground floor commercial as shown in Map 3 of the staff report.</i>
<i>Policy 3.11: Encourage vertical as well as horizontal mixing of uses along Main Street. Require ground-level commercial space along Main Street between Carlo Street and Sinnott Lane, as shown in Map 3 of the staff report.</i>	Consistent. <i>The proposed project is a mixed-use development and provides ground floor commercial as shown in Map 3 of the staff report.</i>
<i>Policy 3.12: Encourage housing as the principal upper-level use along Main Street.</i>	Consistent. <i>The proposed project provides two bedroom condominium units on the upper level along Main Street.</i>
<i>Policy 3.13: Adopt development standards and design guidelines for the Mixed-Use District that will create a lively pedestrian environment.</i>	Consistent. <i>The proposed project follows the development standards of the Mixed-Use District and creates a pedestrian scale streetscape on Main Street.</i>
<i>Policy 3.14: Limit the establishment of new quasi-public uses within the mixed-use designation in order to create a more active street environment.</i>	Consistent. <i>The proposed project consists of commercial and residential uses only.</i>
<i>Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres</i>	Consistent. <i>The developer of the project will pay a park-in-lieu fee</i>

Mixed Use Policies	Consistency Finding
<i>per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.</i>	<i>as conditioned in the Conditions of Approval. Please see Attachment A.</i>
<i>Policy 4.16: Provide secure and weather protected bicycle parking facilities at the transit stations and within new residential, retail and employment destinations.</i>	Consistent. <i>The project provides bicycle parking facilities within the residential and retail development.</i>
<i>Policy 4.17: Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.</i>	Consistent. <i>The project is consistent with the requirements for off-street parking as required by the City of Milpitas Zoning Ordinance.</i>
<i>Policy 4.18: Consider credit for on-street public parking directly adjacent to a retail development to meet overall development parking requirements.</i>	Consistent. <i>The project proposes to use six on-street spaces to meet the overall parking requirement for the commercial development.</i>
<i>Policy 5.4: Implement a program of streetscape improvements (Sidewalks, landscaping, bike lanes, benches, lighting) along Main and Abel Streets and Great Mall Parkway.</i>	Consistent. <i>The proposed project provides street trees and minor improvements to the streetscape along Main Street.</i>
<i>Policy 6.11: Incorporate energy saving devices into new development in order to promote energy conservation.</i>	Consistent. <i>The proposed development will build energy efficient homes to promote energy conservation.</i>
<i>Policy 7.4: The Precise Plan Area requires the preparation of a coordinated development plan (Precise Plan) for several parcels when development is proposed on the sites, as designated in Map 3 of the staff report.</i>	Consistent. <i>The applicant is requesting for a Specific Plan Amendment which upon approval makes the project consistent with this policy.</i>

SECTION 6: Minor Vesting Tentative Map (Section XI-1-20.01) - The Planning Commission makes the following findings based on the evidence in the public record in support of the Minor Vesting Tentative Map No. TP16-0001:

1. *The tentative subdivision map is consistent with the Milpitas General Plan*
 As set forth above, the subdivision map complies with the Mixed Use Zoning District and the policies of the General Plan. The proposed project type, density and size are all consistent with the Mixed Use General Plan Land Use Designation.

2. *None of the findings set forth in Government Code Section 66474 apply to the proposed project.*

- *The proposed map is consistent with applicable general and specific plans as specified in Government Code Section 65451.*

The proposed map is consistent with the Milpitas General Plan and the Midtown Specific Plan as described in finding 1 above.

- *The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*

The design and improvement of the proposed subdivision is consistent with Milpitas General Plan and the Transit Area Specific Plan as described in finding 1 above.

- *The site is physically suitable for the type of development.*

The site is physically suitable for the proposed residential and commercial development because the project site is a 1.19 acre site which is a relatively flat and has direct access from Main Street. The Midtown Specific Plan analyzed this site, which is zoned for mixed use development and determined that it is suitable for both residential and commercial uses.

- *The site is physically suitable for the proposed density of development.*

The site is physically suitable for the proposed density of development because the project site is a 1.19 acre flat site, has adequate access, and the development standards of the Midtown Specific Plan authorizes 21-30 dwelling units per acre and the proposed project is consistent.

- *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The proposed subdivision and improvements have been evaluated for environmental impacts as discussed in the *California Environmental Quality Act (CEQA) Analysis for 260 South Main Street, Milpitas, California*, prepared by Lamphier-Gregory and dated November 3, 2016. This memorandum includes a determination, which the Planning Commission has adopted as its own finding that no environmental impacts not already identified for the project, which is part of the City's Midtown Specific Plan and the Midtown Specific Plan Final Environmental Impact Report (FEIR), would result.

- *The design of the subdivision or type of improvements is not likely to cause serious public health problems.*

As described in the CEQA Analysis above, the design of the subdivision or type of improvements is not likely to cause serious public health problems.

- *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

Nothing in the proposed design of the subdivision or the type of improvements planned will conflict with any easements, publicly or privately held, for access through or use of the property within the subdivision.

SECTION 7: The Planning Commission of the City of Milpitas hereby adopts Adopt Resolution No. 16-035 recommending the City Council approve Specific Plan Amendment Permit No. ST16-0001, Site Development Permit No. SD16-0001, Minor Vesting Tentative Map No. TP16-0001, and Environmental Assessment No. EA16-0006, based on the above findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2016, and carried by the following roll call vote:

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

EXHIBIT 1**CONDITIONS OF APPROVAL
260 SOUTH MAIN STREET****Specific Plan Amendment Permit No. ST16-0001, Site Development Permit No. SD16-0001,
Minor Vesting Tentative Map No. TP16-0001, and Environmental Assessment No. EA16-0006****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. Specific Plan Amendment Permit No. ST16-0001, Site Development Permit No. SD16-0001, Minor Vesting Tentative Map No. TP16-0001, and Environmental Assessment No. EA16-0006 (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.
2. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the 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, in accordance with the Zoning Ordinance. (P)
3. Mitigation Monitoring. The project shall comply with the applicable mitigation measures from the certified Midtown Specific Plan EIR. The mitigation measures are compiled in the Mitigation Monitoring and Reporting Program as adopted with the Final EIR
4. 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.
5. 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.
6. 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.
7. 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)**
8. 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.
9. 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 applicant may file a protest has begun under California Government Code Section 66020(d)(1).
10. 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.
11. 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.
12. 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)**
13. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
14. 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.
17. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on November 9, 2016, 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, Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

18. Response to Conditions of Approval. Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
19. The project/development shall comply with the requirements of the Fire Department and the California Fire Code, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department.

Planning Department

1. Landscape. Prior to issuance of a Building Permit, the landscape plans shall be revised to incorporate jacaranda trees at the entry to the project site. The final number and location of jacaranda trees shall be established in consultation with City staff. All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive, and effective appearance.
2. Parking. Prior to issuance of a building permit, the applicant shall modify the parking plan to incorporate electric vehicle charging station in the parking garage. The final number and location of charging stations shall be established in consultation with City

staff. Required parking, including bicycle parking and electric vehicle charging stations shall be installed prior to occupancy of residences.

3. Lighting Plan. Prior to issuance of any building permit, Permittee shall submit a lighting and iso-illumination plan that shall demonstrate 1) safe and adequate lighting of the project site and 2) lighting is contained and does not spill over onto adjacent properties or create unwanted glare. Permittee shall provide detail, elevations and manufacturer's specifications on proposed light fixture for, light standards, and wall sconces subject to Planning Director for approval. Proposed light fixtures shall be high quality and complement the architectural style of each townhome. Light fixtures over garage doors shall be of high-quality, residential scale, architectural design, subject to final approval by the Planning Director. (P)
4. CC&Rs. Permittee shall submit proposed covenants, conditions, and restrictions (CC&Rs) to the City for approval prior to submission to the Department of Real Estate. The CC&Rs shall include disclosure statements informing future residents of noise due to trash enclosure collection; potential noise, traffic, as well as the use and/or storage of any hazardous material associated with normal operations of the railroad and commercial business activity and development; noise from the Union Pacific Railroads; and potential graffiti problems towards the tracks. Furthermore, the CC&Rs shall restrict the use of gasoline powered landscape equipment (blowers and string trimmers).
5. Site Improvement. All proposed streets and utilities within the project site shall be private and owned, operated, and maintained by Permittee or any Homeowners Association that may subsequently be established, as the case may be. All streets and utilities shall be designed per the City's applicable public streets and utilities standards. Rolled curbs may be permitted along the drive aisles for access to garage driveways. All other curbs shall be vertical.
6. Public Easements. Permittee shall dedicate on the final map necessary public service utility easements, street easements, public access easement (over private streets and walkways) and easements for water and sanitary sewer purposes.
7. Site Improvement. Prior to issuance of any building permit, Permittee must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the 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.
8. Park in Lieu Fee. Permittee shall be subject to Park-in-lieu fee per the requirements of the Milpitas Midtown Specific Plan. Prior to issuance of Certificate of Occupancy, Permittee shall pay park-in-lieu fee of \$607,401.
9. CEQA Analysis: The Project shall be subject to all applicable mitigation measures required in the attached CEQA Analysis document. At the time of building permit submittal, Permittee shall submit a written report demonstrating how the Project complies with these mitigation measures to the satisfaction of the Planning Director.

Engineering Department

10. 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 storm water 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 Milpitas Municipal Code (MMC), and the City's Clean Water Program. (E)
11. 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 complete Storm Water Pollution Prevention Plan (SWPPP) with the project Waste Discharge Identification Number (WDID) displayed on the cover,
 - a copy of the approved Notice of Intent (NOI) from the State Board, and
 - 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 MMC, 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) 586-3325. (E)

12. The Permittee shall comply with Municipal Regional Permit (MRP) Order R2-2009-0074 and successor orders 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 Permittee submits the NOI for the project for pre-construction storm water treatment requirements. (E)

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved

by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. (E)

13. Modifications: The Site Development Plan dated August 31, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
12. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.
13. Stormwater Control Plan: Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.
14. Submittal Requirements: Permittee shall ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.
15. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The deposit amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer.

PRIOR TO FINAL MAP APPROVAL/RECORDATION

The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recordation (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (E)

16. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, and other public easements deemed necessary for the project.
17. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.
18. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map.
19. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
20. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements, if needed.

21. Demolition of Existing Building: Permittee shall demolish existing buildings/facilities that are in conflict with the new property lines.
22. Subdivision Improvement Agreement and Securities: Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).
23. Annexation to the Community Facilities District: Permittee shall submit an executed petition to annex the subject property to the Community Facilities District (CFD) 2005-1, and agree to pay the special taxes levied by the CFD 2005-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with any building permit issuance. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalids the Permit. **(E)**
24. Property Management Association/Homeowners Association. Prior to final map approval, the Permittee shall establish the necessary Property Management Association (PMA) and/or Homeowners Association (HOA). The PMA/HOA shall be responsible for the maintenance of any and all landscaping, walls, buildings, private street lights, common area and the local and private streets within the project. The PMA/HOA shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the CC&Rs and recorded documents. The CC&Rs document shall be submitted for review and approval by the City Engineer. **(E)**
25. Permittee shall submit a Storm Water Control plan that incorporates best management practices (BMPs) for treatments of storm water run-off from all parcels. 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.
 - a. Permittee shall submit a final Storm Water Control Plan package for review and approval with the building permit submittal.
 - b. The Plan shall be prepared by a licensed Civil Engineer qualified and trained professional with storm water treatment process and certifies that measures specified in the report meet the MRP requirements.
 - c. Prior to issuance of Certificate of Occupancy, the Permittee 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. Permittee shall include in the approved covenants, conditions, and restrictions (CC&Rs) the requirement to provide 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.
- e. Prior to final occupancy, the Permittee shall execute and record an Operations and Maintenance Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
- f. Permittee shall comply with all “Model Conditions Of Approval For Storm water Quality” and are hereby incorporated as conditions of project approval. (E)

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. (E)

26. **Public Improvement Design Standards:** All public improvements shall be designed and constructed in accordance with Midtown Specific Plan, current Milpitas design guidelines, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>), standard drawings and specifications, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/>) and Americans with Disabilities Act (ADA) requirements where applicable.
27. **Sanitary Sewer Calculations:** Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design and impact to the downstream main line. Upsizing the existing 12” sanitary sewer main may be needed.
28. **Domestic Water and Fire Service Calculations:** Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 1.
29. **Specific Improvements:** In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.
 - a. Installation of separate water meter for each of the following services: residential, non-residential, irrigation, and fire.
 - b. Full-width installation of Type II slurry seal along South Main Street covering any utility trench/connection to existing main lines.
 - c. Removal and replacement of existing curb and gutter, sidewalk and driveway on South Main Street and Sinnott Lane along the frontage of the project site.
 - d. Installation of full-width 13’ wide (including the street curb) sidewalk with 4’x4’ tree wells.
 - e. Installation of a sanitary sewer manhole at Sinnott Lane to connect to City’s main line, and installation of another manhole right behind the street right-of-way.
 - f. Installation of a gate at the Sinnott Lane driveway for solid waste collection and emergency vehicle access only.

30. Abandonment of Existing City Utilities: Permittee shall cap, abandon or remove any unused existing public utilities based upon City's Abandonment Notes and to the City's satisfaction.
31. Maintenance Agreement: Permittee shall record a Maintenance Agreement for perpetual maintenance of the new curb drain as approved by the City.
32. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.
33. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.

PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

34. Final Map Recordation: Permittee shall record the final map.
35. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.
36. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.
37. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
38. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc.
39. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. 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 shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.

40. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. 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 Department for approval by the Engineering Department prior to inspection by the Building Department.
41. Development Fees. Permittee shall pay the following development fees. The information listed in items “a” through “g” are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.
- a. Storm water connection fee at \$16,771/acre for residential and \$21,562/acre for commercial.
 - b. Water connection fee at \$1,164/unit for residential and \$5.97/gpd for commercial, based upon increased water usage.
 - c. Sewer connection fee at \$1,406/unit for residential and \$8.52/gpd for commercial, based upon increased average wastewater flow.
 - d. Treatment Plant Fee at \$690/unit for residential and \$0.25/square feet for commercial.
 - e. Calaveras Blvd Widening Traffic Impact Fee at \$275/unit for residential and \$828/1,000 square feet for commercial, subject to annual adjustment based upon Construction Cost Index published by ENR.
 - f. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
 - g. FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each.

DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

42. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.
43. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

44. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to South Main Street and Sinnott Lane frontage improvements, as shown on City approved plans.
45. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.

47. Landscape Certificate of Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.
48. Record Drawings: Permittee shall submit record drawings in pdf format for City records.
49. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.
50. Water Supply and Force Majeure The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land development project. The City reserves the right to suspend the issuance of building permits to implement this land use development, 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 in the event the City's ability to deliver water and sewer treatment is affected by force majeure pursuant to the criteria set forth above. This condition of approval applies in case of an emergency declaration of water supply assurance in the case of a major catastrophic event that restricts City's assurance to provide water supply, or allocated treatment plant capacity.

Key:

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

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

Signature of Permittee