

REGULAR

NUMBER: 38.787

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE MCCARTHY RANCH DEVELOPMENT AGREEMENT FOR THE CAMPUS AT MCCARTHY RANCH PROJECT LOCATED AT 205 NORTH MCCARTHY BOULEVARD

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of March 3, 2009, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of _____, upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on October 29, 2007, an application was submitted by Matt Edwards of Equity Office (“developer”), to allow the intensification of a 65-acre industrial park parcel (hereinafter referred to as the "Campus at McCarthy Ranch Property" or the “Blackstone Property”) and the vesting of certain land uses and to secure development entitlements through the amendment of an existing development agreement ("Project"). The Campus at McCarthy Ranch Property is located within the Industrial Park with Site and Architectural Overlay (MP-S) Zoning District (APN: 022-56-005 through 009); and

WHEREAS, Muriel M. Harris and Joseph A. McCarthy, as trustees of the MGM Revocable Trust and the RIM Revocable Trust (collectively referred to herein as “McCarthy”), were the owner of approximately 139± acres of property located in the City of Milpitas, within Santa Clara County ("McCarthy Property"). McCarthy and the City entered into a Development Agreement, dated March 21, 2000 (“Agreement”), that secured the existing zoning district for the McCarthy Property ("Industrial Park" or "MP"), as well as the existing development standards for the MP zoning district, until the expiration of the Agreement in 2015. Among the development standards applicable to the McCarthy Property was a floor area ratio (FAR) of 0.35; and

WHEREAS, on July 6, 2000, City, McCarthy, and Veritas Operating Corporation ("Veritas") entered into a Partial Assignment and Assumption Agreement, and Certificate of Partial Satisfaction, recorded July 31, 2000, as Document #15337875 ("Veritas Assignment"), relating to 65 acres of the McCarthy Property that was sold by McCarthy to Veritas, and then later sold by Veritas to Blackstone ("Blackstone Parcel"); and

WHEREAS, on September 19, 2006, City, Veritas, and Blackstone entered into an Assignment and Assumption Agreement and Certificate of Satisfaction, recorded October 6, 2006, as Document #19133727 ("Blackstone Assignment"), relating to Blackstone's purchase of the Blackstone Parcel; and

WHEREAS, the Blackstone Parcel is currently only partially developed, with a total of approximately 469,464 square feet of industrial/office buildings, as well as a parking lot; and

WHEREAS, Blackstone now desires to secure City approvals and to amend the Agreement solely with regard to the Blackstone Parcel in order to allow Blackstone to develop an additional .15 FAR on the property and to extend the term of the Agreement, in exchange for the payment or provision of additional fees, contributions, and other obligations to be expressly identified herein. As part of its review of Blackstone's pending applications, City caused to be prepared an Environmental Impact Report ("Campus at McCarthy Ranch EIR") analyzing Blackstone's pending applications (including the proposed First Amendment to the Development Agreement); and

WHEREAS, on February 11, 2009, the Planning Commission held a duly noticed public hearing and considered the developer’s proposed First Amendment to the Development Agreement (attached hereto as Exhibit 1) and accompanying application and unanimously recommended to the City Council execution of the First Amendment and certification of the Environmental Impact Report to the City Council; and

WHEREAS, on March 3, 2009, the City Council held a duly noticed public hearing and considered the proposed First Amendment to the Development Agreement for compliance with City of Milpitas Resolution No. 6642 and Government Code Section 65864 et seq.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. FINDINGS

1. The City Council finds that this First Amendment is consistent with the City's General Plan and other applicable plans, policies and regulations of the City currently in effect, and is not otherwise detrimental to the health, safety and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with applicable state law and City Resolution No. 6642, as amended.
2. The City Council finds that the proposed First Amendment to that Development Agreement Between the City of Milpitas and Muriel Harris and Joseph A. McCarthy, for the Campus at McCarthy Ranch, complies with all the applicable procedural and eligibility requirements for the amendment of development agreements set forth in City of Milpitas Resolution No. 6642 and Government Code Section 65864 et seq. A valid application was submitted to the Planning & Neighborhood Services Director by an applicant with proper legal standing. The proposed First Amendment would eliminate uncertainty in land use planning and help ensure the orderly development of the McCarthy Ranch area. The proposed First Amendment would also result in a project which would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement or its amendment. The proposed First Amendment would also be beneficial to the health, safety, and general welfare of the community.

SECTION 3. APPROVAL AND AUTHORIZATION

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the First Amendment to the Development Agreement between the City of Milpitas and Muriel M. Harris and Joseph McCarthy, attached hereto as Exhibit 1. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the First Amendment to the Development Agreement recorded with the Santa Clara County Recorder.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

EXHIBIT 1

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

CITY OF MILPITAS
455 E. CALAVERAS BLVD.
MILPITAS, CA. 95035

ATTN: CITY CLERK

(SPACE ABOVE LINE FOR RECORDER'S USE)

FIRST AMENDMENT

THIS FIRST AMENDMENT ("First Amendment") is to that DEVELOPMENT AGREEMENT ("Agreement") dated March 21, 2000, by and between the CITY OF MILPITAS, a municipal corporation in the State of California ("City"), and MURIEL M. HARRIS and JOSEPH A. McCARTHY, each as trustees of the MGM Revocable Trust dated December 14, 1982, as amended, and of the RIM Revocable Trust dated February 12, 1982, as amended ("McCarthy"). This First Amendment is entered into as of this ____ day of _____, 2009, by and between City and BRE/MILPITAS, L.L.C., a Delaware limited liability company ("Blackstone"), as successor in interest, pursuant to Sections 65864 *et seq.* of the California Government Code and the City's police powers. City and Blackstone are from time to time referred to in this First Amendment individually as a "party" and collectively as the "parties."

RECITALS

A. McCarthy was the owner of approximately 139± acres of property located in the City of Milpitas, within Santa Clara County ("McCarthy Property"). The Agreement secured the existing zoning district for the McCarthy Property ("Industrial Park" or "MP"), as well as the existing development standards for the MP zoning district, until the expiration of the Agreement in 2015. Among the development standards applicable to the McCarthy Property was a floor area ratio (FAR) of 0.35.

B. On July 6, 2000, City, McCarthy, and Veritas Operating Corporation ("Veritas"), entered into a Partial Assignment and Assumption Agreement, and Certificate of Partial Satisfaction, recorded July 31, 2000, as Document #15337875 ("Veritas Assignment"), relating to 65 acres of the McCarthy Property that was sold by McCarthy to Veritas, and then later sold by Veritas to Blackstone ("Blackstone Parcel"). This First Amendment affects the Blackstone Parcel only, which Parcel is depicted and legally described in Exhibit A-1, attached to this First Amendment, and incorporated herein by this reference as if set forth herein in full.

C. On September 19, 2006, City, Veritas, and Blackstone entered into an Assignment and Assumption Agreement and Certificate of Satisfaction, recorded October 6, 2006, as Document #19133727 ("Blackstone Assignment"), relating to Blackstone's purchase of the Blackstone Parcel.

D. The Blackstone Parcel is partially developed, with a total of approximately 469,464 square feet of industrial/office buildings, as well as a parking lot, constructed as of the date of this First Amendment.

E. Blackstone now desires to secure City approvals and to amend the Agreement with regard to the Blackstone Parcel in order to allow Blackstone to develop an additional .15 FAR on the property and to extend the term of the Agreement, in exchange for the payment or provision of additional fees, contributions, and other obligations to be expressly identified herein. As part of its review of Blackstone's pending applications, City caused to be prepared an Environmental Impact Report ("Campus at McCarthy Ranch EIR") analyzing Blackstone's pending applications (including this First Amendment).

F. The City Council finds that this First Amendment is consistent with the City's General Plan and other applicable plans, policies and regulations of the City currently in effect, and is not otherwise detrimental to the health, safety and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with applicable state law and City Resolution No. 6642, as amended.

G. On February 11, 2009, following duly noticed and conducted public hearings, the Planning Commission, the hearing body for purposes of the Development Agreement Statute, took appropriate action under CEQA, the Planning and Zoning Law, and the Milpitas Municipal Code, and made recommendations regarding this First Amendment to the City Council. On March 3, 2009, following duly noticed and conducted public hearings, the City Council certified the Campus at McCarthy Ranch EIR, took appropriate action under the Planning and Zoning Law when acting on and approving Blackstone's other pending applications, and introduced and conducted the first reading of Ordinance No. 38.787, an ordinance approving this First Amendment, and directing this First Amendment's execution by City. On March 17, 2009, the City Council conducted the second reading and adopted Ordinance No. 38.787.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants in this First Amendment, the parties agree as follows:

TERMS AND CONDITIONS OF FIRST AMENDMENT

I. This First Amendment amends the Agreement specifically as set forth below. Unless otherwise defined herein, all capitalized terms used in this First Amendment shall have the same meanings set forth in the Agreement. This First Amendment neither amends nor deletes the existing Agreement by implication; all amendments are made expressly by the following method: when new text is added to the Agreement, that new text is shown as underscored (new text), whereas when existing text in the Agreement is deleted, that deleted text is shown as struck through (~~deleted text~~). Other than those specific amendments identified below, the existing text of the Agreement remains as before and applies in full to all and/or any portion of the Blackstone Parcel (once this First Amendment is recorded against such Parcel or portion thereof). The rights and obligations conferred to the party identified as "McCarthy" in the original Agreement shall apply to the assignee identified in this First Amendment or subsequent amendments to the Agreement, insofar as part or all of the Blackstone Parcel is at issue. The entity names "McCarthy" and "Blackstone" shall therefore be used interchangeably in this First Amendment, insofar as the rights and obligations there under implicate the Blackstone Parcel. Likewise, the term "Project" under the Agreement shall hereby refer to the proposed full development of the Blackstone Parcel, including the proposed development of an additional .15 FAR. Likewise, the term "Project Approvals" shall refer to the land use approvals and accompanying conditions imposed on the Blackstone Parcel (referred to as the "Blackstone Approvals" in the amendments below). Furthermore, notwithstanding the addition of clarifying statements and language below, the parties agree that the absence of any clarifying statements or language to sections not modified herein shall not eliminate any party's obligation to perform under the Agreement or otherwise affect the interpretation of the Agreement.

II. The following amendments are hereby made to the following sections of the Agreement:

A. Section 1.1 is hereby amended as follows:

Commencement Date. The term of this Agreement shall commence on April 20, 2000, the date the ordinance approving this Agreement became effective ("Effective Date") and shall extend for a period of ~~fifteen~~ twenty five years until 11:59 p.m. on April 21, 2025, subject to Section 8, below. However, the term of this Agreement shall be extended by the period, if any, during which development on the ~~Property~~ Blackstone Parcel is prevented due to the unavailability of water or sewer service or connections but not as a result of the fault of McCarthy, and the parties shall enter into an amendment reflecting such extension.

Pursuant to Government Code section 66452.6(a) (or its successor section in substantially the same form) and this First Amendment, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map or final map, or any re-subdivision or any amendment to any such map (collectively referred to as "Subdivision Document") relating to the Blackstone Parcel shall automatically be extended to and until the later of the following: (1) the end of the term of the Agreement; or (2) the end of the term or life of any such Subdivision Document otherwise given pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act. Any improvement agreement entered into pursuant to the Subdivision Map Act or other State or local regulation shall have a term no shorter than 365 days from execution of the improvement agreement and no longer than that term decided by City.

If the Agreement, as amended, terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Blackstone Parcel (or any portion of the Blackstone Parcel) (collectively, "Vesting Map"), such termination of the Agreement shall not affect Blackstone's right to proceed with development under such Vesting Map in accordance with the ordinances, policies and standards so vested under the Vesting Map.

B. Section 2.1 is hereby amended as follows:

2.1 Extent of Vesting. The permitted uses, the density and intensity of use, and the maximum height and size of buildings, the location of certain public improvements, requirements for the payment of Project impact-related fees, taxes and exactions and the rate at which development is permitted to occur on the ~~Property~~ Blackstone Parcel shall be as set forth in this Agreement, the "Project Approvals" and in pertinent portions of the following documents:

The General Plan of the City of Milpitas as amended prior to City approval of this Agreement;

The Milpitas Municipal Code, as amended prior to City approval of this Agreement; ~~and~~

The McCarthy Ranch Design Guidelines and Development Standards, dated March 7, 2000;

The S Zone application approved by the City on _____;

The Conditional Use Permit approved by the City on _____;

The Vesting Tentative Map approved by the City on _____;

All other applicable City ordinances and resolutions in effect as of the Effective Date and which are not inconsistent with the terms of the following portions of this Agreement: paragraphs 2.2 and 3.1, ~~Articles 4, 5 and 6;~~ and

Any subsequent approvals granted by City with respect to the Blackstone Parcel. Any such subsequent approvals and the approvals described above in subdivisions (d), (e), and (f) of this Section 2.1 shall hereinafter be referred to as the "Blackstone Approvals." Any such subsequent Blackstone Approval that is within the existing size and intensity profile of the proposed development (i.e., up to .50 FAR) and is approved by City shall be vested into by Blackstone and City automatically, and shall become a part of the Agreement and this First Amendment as if set forth herein in full; no amendment of the Agreement, this First Amendment, or any subsequent amendments shall be necessary. Blackstone recognizes that for any proposed subsequent Blackstone Approval that is greater than the existing size or intensity profile of the proposed development (i.e., beyond .50 FAR and/or significantly more intense than the uses proposed at the time of the execution of this First Amendment), the City may impose conditions to address the increased size or intensity of use, and that such City approval with said conditions shall become a part of the Agreement and this First Amendment as if set forth herein in full; no amendment of the Agreement, this First Amendment, or any subsequent amendments shall be necessary. City shall not process or approve any subsequent Blackstone Approvals unless Blackstone requests such process and approval and consents to its final adopted version.

Except as set forth in this Agreement, City shall maintain the full range of its police powers with respect to development and use of the ~~Property~~ Blackstone Parcel.

C. Section 2.2 is hereby amended to add an organizational indicator, "(a)," to the text immediately following the Section heading ("2.2 Right to Develop.").

D. Section 2.2 is hereby further amended to add new subdivision (b) as follows:

(b) Subject to the exceptions listed in paragraph 2.2(a), during the term of this Agreement, City shall not impose any fees, dedications, mitigation requirements, exactions, and/or conditions of approval (collectively referred to as "Conditions" or "Conditions of Approval") beyond that set forth in Exhibit A-2 attached hereto. Except for any new conditions imposed pursuant to Section 2.1(h) for increases in the size or intensity of the development, Blackstone shall have no obligation to pay, contribute, or otherwise comply with any Condition beyond that set forth in Exhibit A-2 and as imposed or required by Section 2.1. Blackstone's satisfaction of those obligations set forth in Exhibit A-2 shall constitute satisfaction of all CEQA mitigation applicable for the proposed development of the Blackstone Parcel, notwithstanding any recharacterization or relabeling of said obligations by City.

E. Sections 4.1 through 4.12, 6.1 through 6.7, and 7 are hereby deleted. These sections have either already been satisfied or will be satisfied by Blackstone's adherence to this First Amendment, including its Exhibit A-2.

F. Section 8.1 is hereby amended as follows:

8.1 County, Regional, State and Federal Laws and Regulations. In the event that ~~county, regional,~~ state and/or federal laws and regulations currently in existence or enacted after the Effective Date of this Agreement and the First Amendment prevent or preclude compliance with one or more provisions of this Agreement and the First Amendment, those state and/or federal laws and regulations shall govern rather than the Agreement. The Project shall be subject to changes in county and/or regional laws and regulations only to the extent expressly allowed by Exhibit A-2 to the First Amendment.

G. Section 23 is hereby amended as follows:

23. Notice.

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following addresses:

City City of Milpitas
 455 E. Calaveras Blvd.
 Milpitas, CA 95035
 Attention: City Manager

~~McCarthy~~ ~~The McCarthy Ranch~~
 ~~P.O. Box 351256~~
 ~~Milpitas, CA 95036-1256~~
 ~~Attention: Joseph A. McCarthy~~

Blackstone John Moe
Market Managing Director
Equity Office
2655 Campus Drive, Suite 100
San Mateo, CA 94403

With a copy to Matt Koritz
VP-Legal General Counsel
Two North Riverside Plaza, Suite 2100
Chicago, IL 60606

and to the then-record owners of those portions of the Property which may be affected as their addresses are shown in the most-recently available assessor's records and/or such other addressee(s) and at such other places as the parties may from time-to-time designate by written notice to each other. Notices, demands and requests which are served by mail in this manner are deemed served or given for all purposes 5 calendar days after the date the notice, demand or request is mailed.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties to be effective the day and year first written above.

Date: _____

CITY OF MILPITAS, a municipal corporation of
the State of California

Approved as to Form:

City Attorney

By _____

BRE/MILPITAS, L.L.C., a Delaware limited
liability company

Date: _____

By _____

Approved as to Form:

Date: _____

EXHIBIT A-1

Legal Description

All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, being more particularly described as follows:

All of Parcel A and Parcels 1, 2, 3 and 4, as said parcels are shown upon that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on June 6, 2002 in Book 749 of Maps at Pages 13, 14, 15 and 16.

APN: 022-56-005,006, 007, 008, 009

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME INTEREST IN THE PROPERTY DESCRIBED IN THE MAP...

- 1. EASEMENT "A" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EAV)
2. EASEMENT "B", "C", AND "D" FOR WATER LINE PURPOSES (WLE)
3. WE ALSO HEREBY RESERVE OVER PARCELS "A", "C" AND RETAIN OUR...

AS OWNER

WELLS FARGO BANK NORTHWEST, A NATIONAL BANKING ASSOCIATION, CHICAGO, ILLINOIS...

BY: VAL T. OSTIN DATE: 6/14/2002

AS OPTIONEE

VERITAS SOFTWARE GLOBAL CORPORATION, A DELAWARE CORPORATION, CHICAGO, ILLINOIS...

BY: LINDI SEPANAKAKI DATE: 6/14/2002

AS TRUSTEE

CHICAGO TITLE COMPANY, A CALIFORNIA CORPORATION, 1100 LEXINGTON AVENUE, SUITE 2000, NEW YORK, NY...

BY: ANTHONY MARQUEZ DATE: 6/14/2002

COUNTY RECORDER'S STATEMENT

FILED THIS 6th DAY OF JUNE 2002 AT 10:58 AM AT THE COUNTY CLERK'S OFFICE...

REC: H. CO BY: Jennifer White, County Clerk

OWNER'S ACKNOWLEDGMENT

COUNTY OF SANTA CLARA, 2002, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED...

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE INSTRUMENT...

WITNESS MY HAND AND OFFICIAL SEAL, NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA...

PRINTED NOTARY'S NAME: ELIZABETH A. LUMPE
NOTARY'S PRINCIPLE PLACE OF BUSINESS: 1500 SAN JOSE AVENUE, SUITE 100, SAN JOSE, CA 95128

OPTIONEE'S ACKNOWLEDGMENT

STATE OF CALIFORNIA, 2002, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED...

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE INSTRUMENT...

WITNESS MY HAND AND OFFICIAL SEAL, NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA...

PRINTED NOTARY'S NAME: SANDRA DAVILA GONZALEZ
NOTARY'S PRINCIPLE PLACE OF BUSINESS: 1319 1/2 STREET, SUITE 100, SAN JOSE, CA 95128

TRUSTEE'S ACKNOWLEDGMENT

STATE OF CALIFORNIA, 2002, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED...

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE INSTRUMENT...

WITNESS MY HAND, NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA...

NOTARY'S SIGNATURE: William G. Wang, Esq.
PRINTED NOTARY'S NAME: William G. Wang, Esq.
COMMISSION NUMBER: 1319181
EXPIRATION OF NOTARY'S COMMISSION: 8-19-05

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION AND IS BASED UPON A SURVEY MADE IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES...

DATE: 6/14/2002
BY: David M. Marzullo, City Clerk

CITY ENGINEER'S STATEMENT

I HEREBY CERTIFY THAT I HAVE EXAMINED THE WITHIN PARCEL MAP, THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE SUBDIVISION MAP, APPROVED ON MARCH 13, 2002...

DATE: 6/14/2002
BY: David M. Marzullo, City Clerk

CITY CLERK'S STATEMENT

I, THE CITY CLERK OF THE CITY OF MOUNTAIN VIEW, CALIFORNIA, HEREBY CERTIFY THAT THE PLANNING COMMISSION OF THE CITY OF MOUNTAIN VIEW, CALIFORNIA, HAS APPROVED THIS MAP...

- 1. APPROVED THIS PARCEL MAP.
2. FOR ASSESSMENT DISTRICTS CREATED BY THIS GOVERNING BODY.
3. ACCEPTED SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THESE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMANCE WITH THE TERMS OF OFFER OF DEDICATION TO ME.

DATE: 6/14/2002
BY: David M. Marzullo, City Clerk

PARCEL MAP

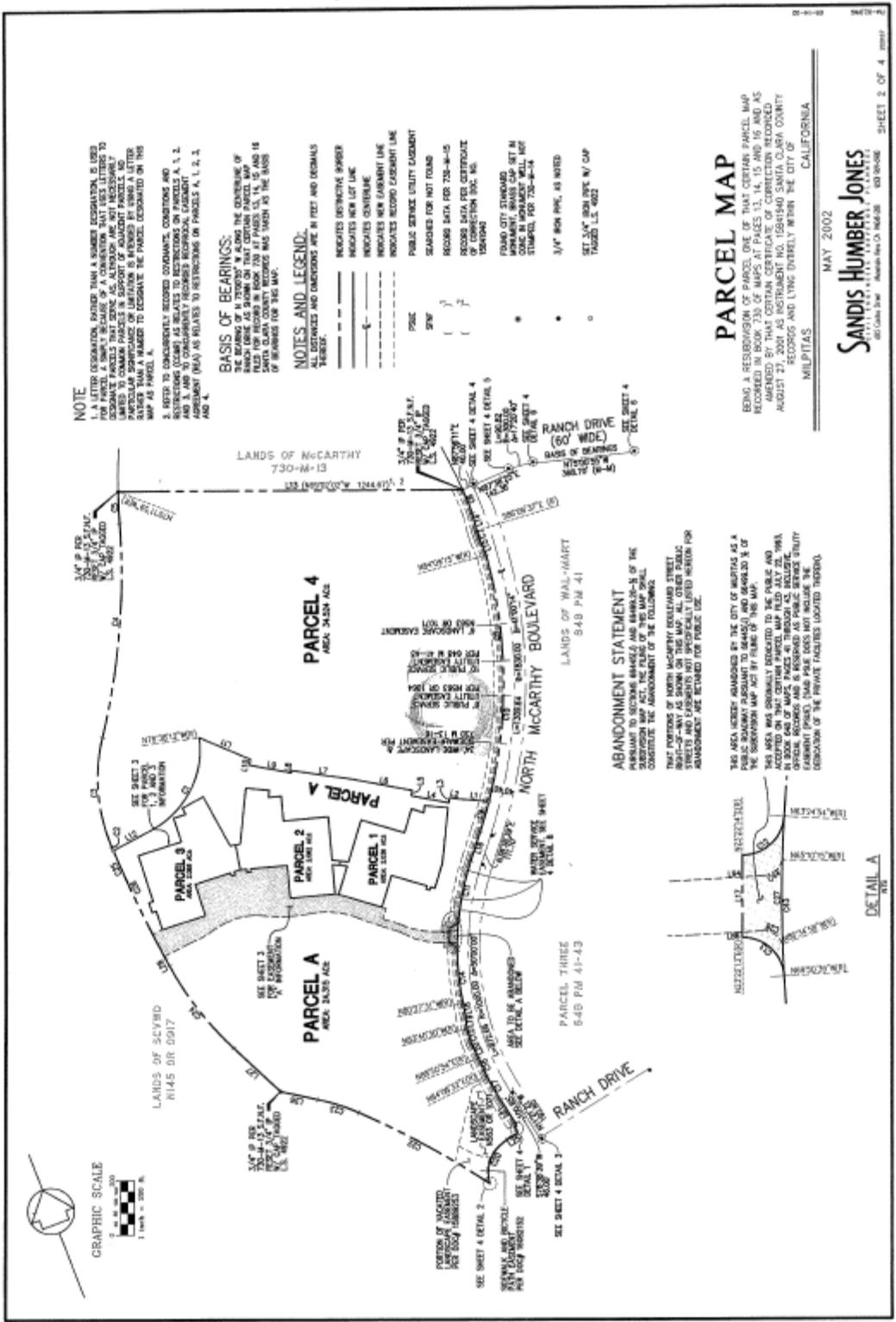
BEING A REVISION OF PARCEL ONE OF THAT CERTAIN PARCEL MAP RECORDED IN BOOK 730 OF MAPS AT PAGES 13, 14, 15 AND 16 AND AS AMENDED BY THAT CERTAIN INSTRUMENT NO. 15841840 SANTA CLARA COUNTY RECORDS...

MILPITAS, CALIFORNIA

MAY 23 2002

SANDIS HUMBER JONES, County Clerk

16302138



7/19/14

14

26302138

PARCEL MAP

THIS IS A REVISION OF THE PARCEL MAP FOR THE PARCEL MAP FILED FOR RECORD IN BOOK 730 AT PAGES 13, 14, 15 AND 16 AND AS AMENDED BY THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED AUGUST 27, 2001 AS INSTRUMENT NO. 15841540 SANTA CLARA COUNTY RECORDS AND LYING ENTIRELY WITHIN THE CITY OF MARIETTA, CALIFORNIA

MAY 2002
SANDIS HUMBER JONES
 SET 3/4" BOUNDARY BY CAP TAGGED L.L. 0022

EXHIBIT A-2

I. Overarching Principles

A. This Exhibit A-2 is an exhibit to that "First Amendment" (to the Development Agreement ("Agreement") dated March 21, 2000 regarding the McCarthy Ranch development) by and between the City and Blackstone dated __ __, 2009. This Exhibit A-2 is specifically referenced in and required by section II.D. of the First Amendment. To the extent that any capitalized terms or terms of art contained in this Exhibit A-2 are not defined below, then such terms shall have the meaning otherwise ascribed to them in the Agreement or the First Amendment.

B. The purpose of this Exhibit A-2 is to identify overarching principles and to identify and list the Conditions of Approval. The Conditions of Approval were derived from obligations owing under the Agreement and the First Amendment, conditions attached to particular project approvals (see for example the 2009 project approvals contained in Resolution No. 08-066 (MT08-0001, SZ07-0004, UP08-0045), and remaining mitigation measures identified in the Campus at McCarthy Ranch EIR (that must be implemented as part of the Blackstone Parcel development).

C. When interpreting the requirements of this Exhibit A-2 in the future, it is not the intent of the City to impose duplicative conditions relating to the same obligation – none of the requirements seek to create an excess of mitigation for the impact presented by the Blackstone development.

1. Additionally, certain Conditions of Approval (*e.g.* Condition #12) impose on Blackstone potential future obligations that may not be known and/or quantified as of the approval date of the First Amendment. Once adopted and of legal force and effect, these future obligations shall be applied in a prospective manner only (*i.e.*, they shall not be applied to any then-existing development on the Blackstone Parcel that has by then secured City approval prior to the adoption and legal force and effect of such future obligations), and shall therefore only apply to new development by the developer on the Blackstone Parcel approved after such future obligations are adopted and take legal force and effect. Additionally, such potential future obligations shall be proportional (*i.e.*, have a nexus) to the impacts caused by only such new Blackstone Parcel development.

2. Lastly, unless expressly provided otherwise in the condition, whenever possible, the City shall break down into proportional pieces any overall obligation owing under these Conditions of Approval (for example, an overall fee owing) on a per square foot basis.

i. So for example if an overall fee of \$200,000 is owed at build out, and the developer Blackstone is seeking building permits for development comprising fifty percent (50%) of build out, then the developer would owe only 50% of the \$200,000 total at such 50% build out building permit issuance (*i.e.*, Blackstone the developer would owe at such building permit issuance only \$100,000).

ii. Consistent with this rule, if, on the other hand, a fee is expressly made a one-time payment at a set date by the condition, then the foregoing rule applying proportionality would not apply and the entirety of the fee would be owed at the time and in the amount designated by the condition.

D. This Exhibit A-2 is intended to cover all major and minor conditions to development. When possible, this Exhibit A-2 provides the specific details of fee amounts, the timing of payment, when a fee is to be escalated by a referenced index, what the construction obligations are, the scope of the public improvement required, what the standards of performance are, and the like. When that specific information is not given in a condition (for example Conditions 12 and 30), then such information shall

be only that information on that topic that existed and was in force and effect on February 1, 2009. In other words, the fee amount, timing, date of performance, scope of work included, applicable standards and the like shall only be those in force and effect on February 1, 2009, unless specifically stated otherwise in this Exhibit A-2 (and the conditions of approval for the Project).

II. Conditions

General Conditions

1. The developer (any reference in these conditions to developer shall also mean and include the current owner, Equity Office, and its designees, assigns and/or successors) shall develop the approved Project in conformance with the approved plans, sample color and materials board approved by the Planning Commission on February 11, 2009, in accordance with this Exhibit A-2.
2. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the developer 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 developer shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.
3. This Exhibit A-2 to the First Amendment to the Development Agreement referenced in Section 8 of Resolution No. 08-066 contains the entire scope of the developer's obligations with regard to development of the Campus at McCarthy Ranch Property (also known as the "Blackstone Parcel"), which conditions are set forth herein. In the event of any conflicts or inconsistencies between the conditions set forth on Project approvals related to the Blackstone Parcel and those identified in this Exhibit A-2 to the First Amendment to the Development Agreement, this Exhibit A-2 shall control.
4. When interpreting the requirements of this Exhibit A-2 (and the Conditions of Approval it contains) in the future, it is not the intent of the City to impose duplicative conditions relating to the same obligation – none of the requirements seek to create an excess of mitigation for the impact presented by the Blackstone Parcel development.
 - A. Additionally, in certain places in this Exhibit A-2 (and in certain Conditions of Approval (*e.g.* Condition #12)), potential future obligations are imposed on the developer that may not be known and/or quantified as of the approval date of the First Amendment. Once adopted and of legal force and effect, these future obligations shall be applied in a prospective manner only (*i.e.*, they shall not be applied to any existing development on the Blackstone Parcel that has by then secured City approval prior to the adoption and legal force and effect of such future obligations), and shall therefore only apply to new development by the developer on the Blackstone Parcel approved after such future obligations are adopted and take legal force and effect. Additionally, such potential future obligations shall be proportional (*i.e.*, have a nexus) to the impacts caused by only such new Blackstone Parcel development.
 - B. Lastly, unless expressly provided otherwise in the condition, whenever possible, the City shall break down into proportional pieces any overall obligation owing under this Exhibit A-2 (and in the Conditions of Approval it contains) (for example, an overall fee owing) on a per square foot basis.

- i. So for example if an overall fee of \$200,000 is owed at build out, and the developer is seeking building permits for development comprising fifty percent (50%) of build out, then the developer would owe only 50% of the \$200,000 total at such 50% build out building permit issuance (i.e., the developer would owe at such building permit issuance only \$100,000).
 - ii. Consistent with this rule, if, on the other hand, a fee is expressly made a one-time payment at a set date by the condition, then the foregoing rule applying proportionality would not apply and the entirety of the fee would be owed at the time and in the amount designated by the condition.
5. The developer shall have the obligation to contribute to the cost of the shuttle program on a pro rata basis in an amount not to exceed \$200,000.(P)
6. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)

Conditional Use Permit

7. The main Project identification monument sign shall conform to the McCarthy Ranch Design Guidelines regarding materials, color and installation. (P)

Tentative Map

8. The tentative map shall have that life determined by the First Amendment to the Development Agreement for the Property. The Project is authorized to employ multiple (phased) final maps. Prior to the issuance of a building permit for any new building(s) (excluding remodeling or retrofitting of existing buildings) a final map for all or a portion of the undeveloped site shall be recorded. In a situation where only certain tentative map Conditions of Approval, or a calculable proportionate share of those conditions, affect the Property covered by a particular final map, the satisfaction of only those conditions, or the proportionate share, shall be required as a condition to the recording of that final map. (E)
9. Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
10. Prior to final map approval, the developer shall establish a Property-owner Association or Common Facility District. The property-owner association/the district shall be responsible for the maintenance of the landscaping, walls, private lightings, parking lots, parking structure, common utilities and all other common facilities, and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted by the developer for review and approval of the City Engineer. (E)
11. 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 sewer treatment capacity is acquired by the

approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)

12. Prior to issuance of any building permits, developer shall submit to the City Engineer studies of the water, sewer and storm drain systems for this Project. These studies shall identify the Project's effect on the City's Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that there is insufficient capacity of the local trunk lines which serve the Project, the developer may be required to provide mitigation in the form of design and construction of new lines or to provide a mitigation fee. In either case, the mitigation costs shall be limited to the fees and design criteria/standards in force and effect on the date set forth in First Amendment Exhibit A-2. (E)

Site Development Permit

13. *Architecture:* Per the McCarthy Ranch Design Guidelines for pedestrian plazas and entry courts, add a “pop out columns and brow” feature around main entryways to the buildings to accentuate entryway. (P)
14. *Landscape:* All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P).
15. *Landscape:* Prior to certificate of occupancy permit issuance for a particular building, all required landscaping for such building shall be planted. (P)
16. At the time of building permit plan check submittal, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior building permit issuance. (E)
17. Prior to building permit issuance, the developer shall obtain design approval and bond for construction of public improvements along N. McCarthy Boulevard, including but not limited to removal and replacement of damaged curb, gutter and sidewalk, roadway structural section and slurry seal of the street frontage, median modification, driveway modifications, median landscaping, landscape improvements on 34 foot strip of land, jogging path, storm drain, sewer and water services. (E)

Plans for all public improvements shall be prepared on Mylar (24”x36” sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer 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. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the City Engineer’s satisfaction.(E)

18. At occupancy of 800,000 square feet of additional new building(s) on the Property, the developer shall submit a one-time payment of **\$350,000** (2009 value and to be escalated to present value of year the threshold is met by the Engineering News Record (ENR) construction index) for the purposes of design and construction of one new traffic signal and related improvements and

works at one of the two project driveways between Ranch Dr. (N) and Ranch Dr. (S) on N. McCarthy Blvd. The payment of the fee shall be the only obligation by the developer for traffic operational improvements. Such money shall only be used by City for Project entrance traffic operational improvements. (E)

19. The following requirement is for new development only. Prior to issuance of the Certificate of Occupancy for the fourth new building on the Property, the developer shall construct traffic safety/operational improvements (installation of new pedestrian crosswalk and pedestrian flashing warning signals, installing vehicle speed feedback sign) pursuant to the Development Agreement and its First Amendment, and as identified in the traffic report in the project Environmental Impact Report. (E)
20. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires on the utility poles with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. (E)
21. Prior to building permit issuance, the developer shall record a reciprocal easement and maintenance agreement. The reciprocal agreement shall provide for the use of lands and maintenance of all private utility facilities including but not limited to, drainage, sewer, water, landscaping, walls and other common area facilities. The agreement shall be submitted to the City prior to recordation for review and approval. (E)
22. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the landscape grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
23. Prior to occupancy permit issuance for each new building, the developer shall construct trash enclosures to accommodate the required number of bins needed to serve each new building being occupied. The proposed enclosures shall be designed per the Development Guidelines for Solid Waste Services and enclosures drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure. (E)
24. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, the developer 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*, the developer shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. If a cafeteria is being proposed as part of the project, a tallow account must be maintained and the tallow bins kept clean at all time. After the developer has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234.
25. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is

intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)

26. The developer shall submit the following items with the building permit application and pay the related fees at such time as indicated below and in such manner as is provided in this Exhibit A-2, Section I.C.
 - A. Storm water connection fee of \$1,401,530 based on 65 acres @ \$21,562 per acre. The City shall break down this overall \$1,401,530 obligation into a per square foot charge, and then shall only charge that portion of this overall obligation commensurate with the square footage then being sought by developer ("commensurate share amount"). Additionally, upon developer election, that commensurate share amount owing shall be divided into two payments: (i) Up to 50% of the commensurate share amount shall be paid at building permit issuance (for the building in question); and (ii) The balance shall be paid at Certificate of Occupancy issuance (for the building in question). As an example, for a new building that comprises 10% of the Project build out square footage, the commensurate share amount would be approximately \$140,153. Upon developer election, that commensurate share amount would be made in two payments: (i) Up to approximately \$70,076.50 would be paid at building permit issuance for that building; and (ii) The balance would be paid at Certificate of Occupancy issuance for that building.
 - B. Water Service Agreement(s) for water meter(s) and detector check(s).
 - C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire. (E)
 - D. Those processing fees charged by City that are adopted and in legal force and effect at the time of building permit issuance for a specific building on the Blackstone Parcel, such as the following processing fees: Building permit fees, building permit automations fees, fire fees, and plan check and inspection fees

The developer shall contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the necessary form(s).

27. Prior to the issuance of a building permit for any new building(s) (excluding remodeling and retrofitting of existing building), the developer shall pay a one-time Sidewalk Reimbursement Fee of **\$125,000** as specified in the "TRAFFIC SIGNAL AND SIDEWALK IMPROVEMENTS REIMBURSEMENT AGREEMENT," approved on February 5, 2002 between the City of Milpitas, and Veritas Software Global Corporation. (E)
28. As of January 2009, the total obligation for the Calaveras Widening Impact Fee is **\$160,000** for the Project. The City shall break down this overall \$160,000 obligation into a per square foot charge, and then shall only charge that portion of this overall obligation commensurate with the square footage then being sought by developer ("commensurate share amount"). Additionally, upon developer election, that commensurate share amount owing shall be divided into two payments: (i) Up to 50% of the commensurate share amount shall be paid at building permit issuance (for the building in question); and (ii) The balance shall be paid at Certificate of Occupancy issuance (for the building in question). As an example, for a new building that comprises 10% of the Project build out square footage, the commensurate share amount would be approximately \$16,000. Upon developer election, that commensurate share amount would be

made in two payments: (i) Up to approximately \$8,000 would be paid at building permit issuance for that building; and (ii) The balance would be paid at Certificate of Occupancy issuance for that building. The commensurate amount share fee shall be adjusted by the Engineering News Record (ENR) construction index from the date of this Project's approval. If any portion of the Calaveras Widening Impact Fee is collected at a time other than building permit issuance (e.g., via the fee deferral option set forth herein), that portion of the commensurate amount share fee shall continue to be adjusted until the date of actual payment.

29. As of November 2008, the total obligation for the Milpitas Business Park Traffic Impact Fee and the McCarthy Ranch Traffic Impact Fee is \$1,086,800 for the Project. The City shall break down this overall \$1,086,800 obligation into a per square foot charge, and then shall only charge that portion of this overall obligation commensurate with the square footage then being sought by developer ("commensurate share amount"). Additionally, upon developer election, that commensurate share amount owing shall be divided into two payments: (i) Up to 50% of the commensurate share amount shall be paid at building permit issuance (for the building in question); and (ii) The balance shall be paid at Certificate of Occupancy issuance (for the building in question). As an example, for a new building that comprises 10% of the Project build out square footage, the commensurate share amount would be approximately \$108,680. Upon developer election, that commensurate share amount would be made in two payments: (i) Up to approximately \$54,340 would be paid at building permit issuance for that building; and (ii) The balance would be paid at Certificate of Occupancy issuance for that building. The fee shall be adjusted by the Engineering News Record (ENR) construction index from when the fee was originally established in August of 1997 by ordinance and development agreement. If any portion of the Milpitas Business Park Traffic Impact Fee is collected at a time other than building permit issuance (e.g., via the fee deferral option set forth herein), that portion of the commensurate amount share fee shall continue to be adjusted until the date of actual payment. (E)
30. Unless the requirement and timing of performance of the requirement is otherwise indicated in this Exhibit A-2 (and in Conditions of Approval it contains), prior to building permit issuance for a new building on the Property, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, and the like, that were in force and effect on the date set forth in First Amendment Exhibit A-2, section I.D. 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. (E)
31. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - A. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.

- B. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.
 - C. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)
32. Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater 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 stormwater control operation and maintenance plan shall include the developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)
33. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for any site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, or other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (E)
34. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate certain amounts and types of pollutants from entering our receiving waters. Construction activities which disturb one acres or greater can be viewed as a source of pollution. If required by the RWQCB, the developer shall file a Notice of Intent (NOI), and if required file an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. The developer shall contact the RWQCB for questions regarding specific requirements at (800) 794-2482. For general information, the developer shall contact the City of Milpitas at (408) 586-3329. (E)
35. Pursuant to NPDES requirements, the developer shall make an evaluation of its specific site activities and determine its permit requirements. If a permit is required, the developer shall prepare those documents required by RWQCB and applicable federal and state law, which may include the following:
- A. File a Notice of Intent (NOI) prior to building permit issuance.
 - B. Prepare and submit a Storm Water Pollution Prevention Plan with the NOI.
 - C. Prepare a Monitoring Plan prior to operation. (E)

If you have questions about your specific requirements contact the RWQCB at (1-800) 794-2482. For general information contact the City of Milpitas at (408) 586-3329.

36. The City makes every effort to deliver a continuous and sufficient supply of water. However, temporary interruptions may be necessary for the purpose of making repairs or improvements. If it is important to maintain uninterrupted water supply to this development (except in case of emergency), the developer is encouraged to design and install a redundant water service system. (E)
37. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the developer are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
38. If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 942-3233. (E)
39. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new landscaping 2500 square feet or larger the developer shall:
 - A. Provide separate water meters for domestic water service & irrigation service.
 - B. Developer is also encouraged to provide separate domestic meters for each tenant.
 - C. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. (E)

The developer shall contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.

40. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. To meet the recycle water guideline the developer shall:
 - A. Design the landscape irrigation for recycled water use.
 - 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 Department of Health Services (DOHS) for approval; this approval requires additional processing time. The developer is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services 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)
41. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
42. All existing on-site 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)
43. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
44. It is the responsibility of the developer to obtain any necessary encroachment permits and approvals from affected agencies, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, San Francisco Water Dept., and City of Milpitas Engineering Division. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
45. The Property is located in Local Improvement District #18, and Lighting & Landscape Maintenance District No. 95-1. Developer must file amended assessment diagrams and assessment allocations concurrent with the parcel map recordation. (E)
46. Upon completion and City acceptance of public landscaping improvements (34' strip), the Lighting and Landscaping Maintenance District (LMD) No. 95-1 will fund and maintain the public landscaping improvements. The developer shall pay for all operation and maintenance costs until such time as the City receives revenues from LMD-95-1 and officially accepts the improvements. The developer shall be responsible for the maintenance of the landscaping through the plant establishment period. The plant establishment period is 9 to 12 months. Any work or modification to the existing public landscaping will require Engineering Division review and approval. (E)
47. In accordance with Milpitas Municipal Code VIII-6-3, the developer is required to incorporate a re-circulated water system in the design of the proposed decorative fountain. (E)

48. Developer shall make changes as noted on Engineering Services Exhibit "T"(dated 12/2/2008) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. (E)

Mitigation Measures from the Campus at McCarthy Ranch EIR

49. All of the Mitigation Measures required by the Campus at McCarthy Ranch EIR have been implemented through the conditions above, but for the following, which are identified here by those short-form references used in the Mitigation Monitoring and Reporting Plan. These remaining Mitigation Measures hereby become Conditions of Approval for the Project.

MMRP-1 (cultural resources – archaeological monitoring during construction)

MMRP-2 (air quality – construction generated dust)

MMRP-3(a) (vegetation and wildlife – bird nesting season)

MMRP-3(b) (vegetation and wildlife – burrowing owls)

MMRP-3(c) (vegetation and wildlife – ordinance sized trees)

MMRP-4 (hazardous materials – contaminated soils)

MMRP-5 (hydrology – construction related soils erosion)

(E): Engineering Division

(P): Planning Division

Blackstone Parcel