

**LIST OF ATTACHMENTS FOR PUBLIC HEARING  
ITEM NO. 1 – HOLD A PUBLIC HEARING AND ADOPT  
A RESOLUTION APPROVING SITE DEVELOPMENT  
PERMIT NO. SD11-0003 FOR AN ELECTRONIC  
MESSAGE BOARD SIGN, AND A GROUND LEASE OR  
PROPERTY AT 1700 BARBER LANE WITH THE  
MILPITAS AUTOMOTIVE GROUP, LLC**

- A. City Council Resolution**
- B. Sign Lease Agreement**
- C. 06/22/2011 Planning Commission Meeting Staff  
Report**
- D. 06/22/2011 Planning Commission's Approved  
Meeting Minutes**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD11-0003, OFF-SITE ADVERTISING DISPLAY, AND LEASE AGREEMENT TO ALLOW THE ERECTION OF A FREESTANDING OFF-SITE ADVERTISING DISPLAY LOCATED ON A CITY-OWNED PARCEL BETWEEN BARBER LANE DRIVE AND THE INTERSTATE 880 FREEWAY IN MILPITAS**

**WHEREAS**, on May 5, 2011, an application was submitted by Milpitas Auto Properties, LLC, for a real property lease agreement between the City of Milpitas and Milpitas Auto Properties, LLC, and site development approval for the erection and operation of a freestanding off-site advertising display. The property proposed for lease is located on a parcel of land bordered on its eastern and western boundaries by the Interstate 880 Freeway and Barber Lane, respectively, which is sometimes described as Assessor’s Parcel No. 086-03-096 (“Property”); and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the City Council determine that this project does not require further environmental documentation beyond the previously prepared and considered environmental documents; and

**WHEREAS**, on June 22, 2011, 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, as to the proposed application and its conformity with the requirements of Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes), and recommended approval subject to a set of proposed conditions of approval; and

**WHEREAS**, on August 16, 2011, the City Council reviewed the subject application and considered evidence presented by staff.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. No further environmental review for this project is required pursuant to Section 15162 of the CEQA guidelines in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the locations of the freeway signs and their potential impacts on the environment. No new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the proposed lease of the Property and proposed off-site advertising display. All applicable mitigation measures identified in the Supplemental EIR that apply to future projects involving such signs have been integrated into the proposed project. These include the size, angle, light emissions, design, noise and other operating and development factors associated with freeway-oriented signs.
3. The proposed display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and surrounding in that the displays are angled away from neighboring properties and will include automatic dimming devices to ensure the appropriate glare level.

4. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.
5. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.
6. The development of the off-site advertising display will promote economic development within the City in that the signs provide for additional commercial corridor communication, thereby advertising the availability of goods and services within the redevelopment project area.
7. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions in that the sign is consistent with the height, size, and lighting and is compatible in design and appearance to the commercial, office and retail structures in the surrounding area.
8. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan in that the sign:
  - a. Provides a partnership with local business entities and provides an opportunity to promote economic activity within the City.
  - b. Allows the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
  - c. Promotes and balances economic development by creating a medium for local businesses within the redevelopment project area to advertise, and ensures quality identification.
9. The City Manager is authorized to execute that certain Sign Lease Agreement, dated August 16, 2011, between the City of Milpitas and Milpitas Auto Properties, LLC.
10. Based on the entirety of the record, which includes without limitation, the Planning Commission public hearing, including staff report, project plans and minutes prepared in connection thereto, the City Council does hereby approve Site Development Permit No. SD11-0003, subject to the above findings and the Conditions of Approval attached hereto as Exhibit 1.
11. This approval and development rights granted herein are contingent upon and shall not go into effect until the full settlement, release and dismissal with prejudice of the lawsuit commonly known as *Milpitas Mills Limited Partnership v. City of Milpitas*, California Court of Appeal Case No. H036108; Santa Clara County Superior Court No. CV119458, or the final resolution of such action to the satisfaction of the City Attorney of the City of Milpitas. Any settlement and release of said legal action must provide, amongst other things, for the disposition and demolition of the advertising display currently on the Property by a mutually agreeable date. By accepting Site Development Permit No. SD11-0003, the applicant

acknowledges that no vested right to develop is granted by the contingent approval granted by Site Development Permit No. 11-0003 and that the applicant knowingly and intentionally waives any rights it may have to bring suit against the City for all claims or possible claims arising out of or related to those matters referenced or impliedly covered in this approval.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**CONDITIONS OF APPROVAL**

**Site Development Permit No. SD11-0003**

A request for an off-site advertising display  
Parcel Between Interstate 880 and Barber Lane(APN: 086-03-096)

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval, and the development standards set forth in Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes).

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. **(P)**

SD11-0003 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

- 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.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD11-0003 if said request is made, filed and approved by the City Council prior to expiration dates set forth herein. **(P)**
  3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
  4. Prior to issuance of a building permit, the applicant shall confirm that the sign location complies with fire regulations regarding access and circulation. **(F)**

(P) = Planning  
(B) = Building  
(E) = Engineering  
(F) = Fire Prevention

## **SIGN LEASE AGREEMENT**

**THIS SIGN LEASE AGREEMENT** (“Lease”) dated August 16, 2011, is entered into by and between **THE CITY OF MILPITAS**, a municipal corporation of the State of California, (hereinafter referred to as “Landlord”), and **MILPITAS AUTO PROPERTIES, LLC**, a California Limited Liability Company (“Tenant”). Landlord and Tenant may be referred to collectively herein as the “Parties.”

### **RECITALS**

The Landlord is the owner of certain real property, Assessor’s Parcel Number 086-03-019 (the “Property”) in Milpitas, California, which is bordered on its western side by Barber Lane and on its eastern side by a freeway interchange connecting the Interstate 880 Freeway (“Nimitz Freeway”) and the Montague Expressway. The Property is shown in greater detail in the Exhibit “A” attached hereto and made a part hereof.

**Therefore**, in consideration of the mutual covenants and agreements herein contained, it is agreed by and between Landlord and Tenant as follows:

### **ARTICLE I**

#### **GRANT AND TERMS**

**SECTION 1.01 LEASED PREMISES.** In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, the Landlord demises and leases to the Tenant, and Tenant rents from Landlord, that certain portion of land in Milpitas, Santa Clara County, California, consisting of approximately 781 square feet, the approximate boundary and location of which is shown on the Exhibit “B” attached hereto and made a part hereof (“Premises”), for purposes of constructing, operating,

maintaining, repairing, relocating and removing a “Sign” (an outdoor advertising display more specifically defined in Section 3.01 of this Lease and City of Milpitas Site Development Permit No. SD11-0003, approved by the City Council on August 16, 2011). The Premises is being demised “as is” and has an existing advertising structure. The Premises is a portion of the City-owned parcel known as the Property.

**SECTION 1.02 LEASE TERM.**

The “Term” of this Lease and Tenant’s obligation to pay rent hereunder shall commence upon completion of construction of the Sign (“Commencement Date”) and shall end at midnight on the day prior to the date that shall be the 10<sup>th</sup> anniversary of the Commencement Date, unless terminated earlier pursuant to Section 1.04 herein. The construction of the Sign shall be deemed to be completed upon the issuance of all final approvals from regulating authorities and once the Sign is fully operational and illuminated. The term “lease year” as used herein shall mean each twelve (12) month period during the Term commencing on the Commencement Date and each anniversary thereto. Contingent upon compliance with the Lease Performance Standards, as defined below, and the continued operation of the Great Mall Project Area, the Term shall be automatically extended for three (3) additional option terms of ten (10) years each (each an “Option Term”), unless Tenant shall provide Landlord with sixty (60) days written notice prior to the end of the Term or any Option Term, indicating that Tenant does not desire for such Term, or Option Term as the case may be, to be extended.

Notwithstanding the foregoing, under no circumstances may the term of this Lease extend beyond the life of the Great Mall Redevelopment Project Area including any extensions thereof. At the time of the execution of this Lease, the Parties acknowledge that the Great Mall Project Area is set to end on November 2, 2033.

**SECTION 1.02.1 LEASE PERFORMANCE STANDARDS.**

An Option Term may be extended to the Tenant only upon the Tenant's compliance with the performance standards listed below, with such approval to not unreasonably be withheld by Landlord:

- A. Compliance with the sizing, safety, mass, height and other limitations set forth in the Site Development Permit for the Sign.
- B. Tenant compliance with rent payment obligations set forth in this Lease, with no more than two delinquent or inadequate Rent payments over the preceding Term or Option Term, as the case may be.

**SECTION 1.03 ACCESS.**

Prior to the Commencement Date, Tenant, its agents, employees and representatives shall, upon prior reasonable notice to Landlord, have access to the Premises at all times subsequent to the full execution and delivery of this Lease with full right to: (i) inspect the Premises; (ii) to conduct all tests thereon including, but not limited to, soil borings and hazardous waste studies, and to make such other examinations as Tenant, its counsel, licensed engineers, surveyors or other representatives may deem necessary or desirable with respect to Tenant's Permitted use (as hereinafter defined) and proposed construction of the Sign; and (iii) to perform all work necessary to enable Tenant to construct and install the Sign and related improvements and otherwise prepare for the construction and installation of the Sign including, but not limited to, connection to electrical utilities required to provide electrical utility service to the Sign, pursuant and subject to all the terms and provisions of this Lease. Any entry on or to the Premises by Tenant or its authorized representative pursuant to the provisions hereof shall be at the risk of Tenant. Except for damages caused by the willful or negligent acts of Landlord, its

agents, employees or contractors, Landlord shall have no liability whatsoever for loss or damage to Tenant's fixtures, equipment or other property of Tenant or Tenant's contractors.

Tenant does hereby indemnify and hold harmless Landlord from and against any and all costs, expenses and liabilities including, but not limited to, reasonable attorneys' fees and court costs as same are incurred at all trial and appellate levels and whether or not suit be instituted, which may arise as a proximate result of Tenant's construction, operation or removal of the Sign or of Tenant or Tenant's agents or employees acts or omissions. Notwithstanding the foregoing, Tenant does not assume any responsibility or liability nor indemnify Landlord for any damage or loss to property or death or injury to person or any claims, penalties, demands, actions, proceedings or liabilities arising from any act or omission of Landlord, its officers, directors, employees, agents, congregants and invitees and Landlord shall indemnify Tenant therefore and hold Tenant harmless therefrom.

#### **SECTION 1.04. SCOPE OF LEASEHOLD**

Notwithstanding any other provision in this Lease to the contrary, the leasehold estate granted by this Lease shall be as follows:

- A. Tenant acknowledges that the rights granted under this Lease shall be subordinate to and subject to the limitations set forth in that certain "Agreement Between the City of Milpitas and California Department of Transportation Regarding Conveyance of Milpitas Property related to Southbound Route 880 to Westbound Montague Express Off-Ramp," dated December 18, 2001 (hereinafter referred to as the "Caltrans Conveyance Agreement"). In the event of the exercise of rights granted therein by the California Department of Transportation ("Caltrans") affecting all or the portion of the Premises occupied by the display, this Lease shall terminate pursuant to the

provisions of Section 1.05.2 of this Lease and the Premises or the affected portions thereof shall be conveyed by the Landlord to Caltrans for the purposes of the construction of highway improvements.

- B. During the Term of this Lease, Landlord shall neither cause nor permit any offsite outdoor advertising sign other than those in existence at the time of the execution of this Lease (if any), or those constructed by Tenant pursuant to the terms hereof (or otherwise) to be placed on the Premises or any property owned or controlled by the Landlord or its beneficiaries, if any, within a radius of one thousand feet (1000') from Tenant's Sign without prior written consent from the Tenant, to the extent allowed by law.
- C. Tenant acknowledges that at the time of the execution of this Lease, there is an existing advertising display on the Premises. Removal of the existing advertising display shall be the responsibility of the Tenant. Under no circumstances shall the Landlord be responsible for removal of the existing advertising display or the costs for such removal.

## **ARTICLE II**

### **RENT**

#### **SECTION 2.01      BASE RENT.**

Tenant agrees to pay to Landlord a "Base Rent" equal to fifteen percent (15%) of the "Adjusted Gross Revenue." For purposes of this Lease, the term "Adjusted Gross Revenue" shall mean gross receipts from the sale of advertising time by the Tenant on the Sign, less advertising agency commissions, which shall not exceed 16.667% on any given advertising sale, and electricity costs related solely to Sign operations. Base Rent payments shall be made on a

quarterly basis based on the fiscal year by the Tenant commencing on the Commencement Date. Along with each quarterly payment, Tenant shall provide an accounting demonstrating the breakdown of Adjusted Gross Revenue and payments provided.

**SECTION 2.02      ADDITIONAL RENT.**

In the event Tenant does not perform any obligation under this Lease, after the expiration of any applicable notice and cure period, Landlord may, at its option, cure such breach after providing Tenant fourteen (14) days notice of such failure to perform, and, if Tenant shall not cure such failure within such 14-day period, Tenant shall pay on demand to Landlord as “Additional Rent” all sums expended by Landlord to cure such default. The terms “Base Rent” and “Additional Rent” may sometimes be referred to collectively herein as the “Rent.”

**SECTION 2.03      TAXES.**

Tenant shall be responsible for the payment of all of the “taxes” applicable to the Premises. The term “taxes” shall mean and include all real property taxes, possessory interest taxes and, personal property taxes on Tenant’s personal property. Notwithstanding any provision to the contrary contained herein, in the event Tenant shall fail to pay any taxes applicable to the Premises when due, then Landlord shall have the right after providing Tenant with 14 days notice of such failure to make such payment of any such taxes applicable to the Premises on behalf of Tenant, and add as Additional Rent the amount of such payment in addition to the next due installment of Base Rent. Tenant shall pay all taxes due prior to delinquency of said taxes.

**SECTION 2.04      PAYMENT, PAST DUE RENT.**

Base Rent and Additional Rent shall be payable at the office of Landlord or at such other place as Landlord may designate without any prior demand therefore and without any set-off or deduction whatsoever, except as specifically set forth in this Lease. If Tenant shall fail to pay

Base Rent or Additional Rent, within ten (10) days after the date the same is due and payable, such unpaid amount shall thereafter bear interest at the rate of ten percent (10%) per annum from the due date until paid; provided, however, in no event shall such rate exceed the maximum non-usurious interest rate permitted under applicable law. Payment of Base Rent and Additional rent shall be made to:

City of Milpitas  
Attn: Fiscal Services Division  
455 East Calaveras Boulevard  
Milpitas, California 95035

**SECTION 2.05 COMMUNITY AND CITY ADVERTISING.**

Tenant shall reserve five percent (5%) of electronic display time on the Sign for City of Milpitas-promoted community events, messages and performances. There shall be no accrual or carryover of unused time in a given monthly period

**SECTION 2.06 PARTIAL PREPAYMENT OF FIRST RENTAL PAYMENT.**

After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code, Tenant shall pay a one-time, Fifty Thousand Dollar (\$50,000.00) advance to the City. Such advance shall be deducted from future quarterly rental payments by Tenant to the City.

**ARTICLE III**

**CONSTRUCTION AND ACCESS**

**SECTION 3.01 ADVERTISING DISPLAY.**

Tenant shall be solely responsible for securing a Site Development Permit from the Landlord, approved by the City Council of the City of Milpitas on August 2, 2011, and all

applicable approvals, permits and licenses from non-City of Milpitas regulatory agencies (such as the California Department of Transportation (“Caltrans”). Landlord hereby agrees to grant any ministerial permits, approvals and licenses, in addition to the Site Development Permit, that Tenant is required to obtain from Landlord, in Landlord’s municipal capacity, in order to complete the construction of the Sign and operate the same, contingent upon Tenant’s compliance with all legal requirements. Furthermore, Landlord shall use its best efforts to help Tenant obtain any permits, licenses or approvals from other municipal or regulatory agencies such, included but not limited to Caltrans, required in order to complete the construction of the Sign and operate the same. Tenant may, upon receipt of applicable governmental approvals, at its sole expense and in compliance with all applicable law, erect, maintain, place, install, relocate and remove one (1) illuminated, 12 x 25 LED Display, double-sided advertising display with up to four (4) static advertising surfaces on each side of the supporting pylon on the Premises (the “Sign”) as shown conceptually in Exhibit C attached hereto and made a part hereof. Said Sign shall, at all times during the Term of this Lease, be maintained in accordance with the Site Development Permit granted by the City of Milpitas and the permit issued by Caltrans. Tenant understands and agrees that by signing this Lease, Landlord makes no representations as to the availability of non-City of Milpitas regulatory approvals for the construction, operation, and maintenance of the Sign. The Sign located at the Premises, and all sign(s), structure(s), improvements and appurtenances thereto placed on the Premises hereafter by or for Tenant, its agent or predecessor and any and all permits related thereto shall at all times during the Lease remain the property of Tenant. Upon the end of the Lease, by termination or expiration of the rental term, Tenant shall have the obligation to remove the Sign at its sole expense, unless directed otherwise by Landlord.

Tenant shall prohibit and not display any adult-oriented content or allow the advertisement of any adult-oriented businesses or products on the Sign.

**SECTION 3.02 ACCESS LICENSE/UTILITY EASEMENTS.**

During the Term of this Lease, Landlord hereby grants Tenant, its agents, employees, contractors and representatives, a nonexclusive license for ingress and egress through and across such portion of the Premises as described more particularly on Exhibit A for the purpose of vehicular and pedestrian access to the Premises. Additionally, Landlord shall grant electrical utility easements upon the Premises to any electrical utility service provider designated by Tenant, as reasonably required by Tenant for the installation, placement, maintenance and operation of electrical utility lines serving the Sign.

**SECTION 3.03 LOCAL TAX DESIGNATION TO THE CITY OF MILPITAS.**

In order to assist Landlord in its efforts to receive direct distribution of the local tax on materials associated with the development and operation of the Project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the Premises, within the City of Milpitas, to the maximum extent reasonably possible. The construction and maintenance of the Sign, as currently envisioned, has the potential to be a significant source of additional local use tax revenue to Landlord. Tenant and all of its contractors, subcontractors, and suppliers shall cooperate with Landlord to the extent reasonably possible to maximize the allocation of the California Sales and Use Tax to the Landlord. Such cooperation shall include but not be limited to the following:

- a. Purchases: To the extent commercially reasonable, Tenant and its contractor and sub-contractor shall require equipment and material vendors and suppliers from

which they make any individual purchases, which are subject to use tax and are to be used in the Project, to allocate the local use tax to the Landlord to the extent authorized by law. The incremental Local Tax generated from the construction of Project shall accrue to the Landlord in accordance with applicable law.

## **ARTICLE IV**

### **USE**

#### **SECTION 4.01 USE OF PREMISES.**

The Premises shall be used solely for the purpose of erecting, operating maintaining, relocating and removing the Sign in accordance with all City of Milpitas, county, state and federal laws, the City of Milpitas Site Development Permit and this Lease for the purpose of selling and displaying advertising copy/content on each side thereon (the "Permitted Use"). Tenant shall comply with all laws, regulations, ordinances and rules, including but not limited to any and all environmental laws, rules and regulations, applicable to the construction, erection, maintenance, operation, replacement and removal of the Sign, and equipment used or placed on the Premises.

## **ARTICLE V**

### **LIENS**

#### **SECTION 5.01 MECHANIC'S LIEN.**

Nothing contained in this Lease shall be construed as a consent on the part of Landlord to subject the estate of Landlord to liability under the applicable law of the State of California governing mechanics' liens, it being expressly understood that Landlord's estate shall not be

subject to such liability. Tenant shall strictly comply with the applicable law of the State of California governing mechanics' liens. In the event that a claim of lien is filed against the Premises or any portion thereof in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or shall transfer same to security within thirty (30) days from the date Tenant becomes aware of the existence of such claim. In the event that Tenant fails to satisfy or transfer such claim within said thirty (30) day period, Landlord may do so and thereafter charge Tenant as Additional Rent all reasonable costs incurred by Landlord in connection with the satisfaction or transfer of such claim, including reasonable attorneys' fees. Tenant shall require that any contractors, subcontractors or suppliers who provide services or materials for construction or maintenance of the Sign on the Premises provide lien waivers and releases pursuant to Civil Code Section 3262 to the extent that payments are made to them. Tenant shall also provide Landlord written notice of any contract for improvements to the Premises within three (3) days after execution of the contract.

## **ARTICLE VI**

### **MAINTENANCE AND CONDITIONS OF PREMISES**

#### **SECTION 6.01      ACCEPTANCE BY TENANT.**

Tenant certifies that it has inspected the Premises and accepts the same in its existing "as is" condition subject to the rights of termination set forth in Article XI hereof. Landlord has no obligation to perform any services or work in connection with this Lease, except as expressly set forth in this Lease. Landlord has not made and does not make any representations or warranties with respect to the condition of the Premise or its fitness or suitability for any particular use and Landlord shall not be liable for any latent or patent defect therein.

**SECTION 6.02      MAINTENANCE BY TENANT.**

Tenant shall keep the Premises and the Sign to be erected thereon by Tenant, in good safe, order, condition and repair, damage by unavoidable casualty, Landlord or unrelated third party excepted. Tenant shall comply with the requirements of all laws, orders, ordinances and regulations of all governmental authorities and will not permit any waste of property to be committed and will take good care of and keep in a neat, clean and sanitary condition the Premises at all times. Tenant shall not permit any shrubs, trees, vines, or other obstructions to be planted or erected on the Premises which would obstruct or materially impair the visibility of the Sign. It is the understanding of the Parties that visibility of the Sign to the traveling public is the essence of this Lease. Landlord grants Tenant the right to trim, cut, or remove brush, trees, shrubs, or any vegetation on the Property, which limit the visibility of the Sign.

**SECTION 6.03      LANDLORD PREMISES AND PROPERTY  
MAINTENANCE.**

If Tenant refuses or neglects to repair the Sign or related improvements as required hereunder and such failure continues for thirty (30) days after written demand or such longer period as shall be reasonably required due to the nature of the repairs provided that Tenant commences such repairs within such thirty (30) day period, Landlord may make such repairs and upon completion thereof Tenant shall promptly pay Landlord's reasonable costs for making such repairs within fourteen (14) business days after Landlord's presentation of bill therefore, as Additional Rent. As of the Commencement Date, Landlord delivers the Property to the City "as is." Landlord shall remove or trim all vegetation or other obstructions on the Property and the Premises at its own expense. To the extent that obscuring structures or vegetation lies on real

property owned or controlled by Caltrans or other third parties, Landlord shall use commercially reasonable efforts to request their removal by the pertinent property owners.

**SECTION 6.04 SURRENDER OF PREMISES.**

At the expiration of the tenancy hereby created, Tenant shall surrender the Premises in good order and condition. The Sign shall be removed at the sole expense of the Tenant prior to surrender, unless directed otherwise by the Landlord.

**ARTICLE VII**

**ASSIGNMENT AND SUBLETTING**

**SECTION 7.01 A. CONSENT REQUIRED.**

Tenant may sublease the Premises or portions thereof, or assign this Lease only with the express written permission of the Landlord, which permission shall not be unreasonably withheld, conditioned, or delayed. Any assignment, license or subletting shall be subject to the following conditions:

- (1) that the initial Tenant and any assignee(s) of Tenant shall remain liable for the full performance of all Tenant obligations hereunder during the entire Term of this Lease; and
- (2) that subject to the terms of any sublease shall be subject and subordinate to this Lease, and the subtenant shall comply with all the terms and conditions of this Lease; and
- (3) a copy of the document of the assignment or subletting is delivered to Landlord as soon as reasonably possible after the full execution thereof by both parties thereto; and

(4) any assignee shall assume in writing all of the Tenant's obligations under this Lease; and

(5) the assignee, subtenant or licensee shall not use the Premises for any purpose other than the Permitted Use.

**B. CONSENT TO SUBLEASE TO CBS OUTDOOR.**

(1) Consistent with and pursuant to the terms set forth in Section 7.01.A. above, Landlord hereby consents to the subleasing of the Premises to CBS Outdoor Inc.

**ARTICLE VIII**

**WASTE, GOVERNMENTAL REGULATIONS**

**SECTION 8.01 WASTE.**

Tenant shall not commit or suffer to be committed any waste upon the Premises.

**SECTION 8.02 GOVERNMENTAL REGULATIONS.**

Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Tenant or its use of the Premises. Tenant shall bear all costs of obtaining permits for the installation and operation of the Sign. Tenant shall indemnify, defend and save Landlord harmless from penalties, fines, costs, expenses or damages resulting from Tenant's failure to perform its obligation in this Section.

## **ARTICLE IX**

### **CASUALTY**

#### **SECTION 9.01 CASUALTY.**

In case of fire or other casualty to the Premises or the improvements thereon including but not limited to the Sign during the term hereof, Tenant may at all times and, in Tenant's sole discretion, repair, restore, rebuild or replace the destroyed sign, or, in lieu thereof, shall remove the damaged improvements together with all rubble and debris related thereto. In the event that such casualty is not the result of Tenant's negligent acts or willful misconduct, the rent payable hereunder shall abate for the period of time reasonably necessary for Tenant to repair the Sign provided Tenant performs such repairs with diligence and in good faith.

## **ARTICLE X**

### **EMINENT DOMAIN**

#### **SECTION 10.01 ACQUISITION OF PREMISES BY NON-CALTRANS GOVERNMENTAL ENTITIES.**

In the event that all or the portion of the Premises occupied or needed by the Sign is acquired or sought to be acquired by or for the benefit of any entity other than Caltrans having or delegated the power of eminent domain, Tenant shall, at its election and in its sole discretion, be entitled to: (i) contest the acquisition and defend against the taking of Tenant's interest in the Premises; (ii) reconstruct the Sign on any portion of the Premises not being acquired, as reasonably approved by Landlord and permitted by law; and (iii) recover damages to and

compensation for the fair market value of its leasehold and Sign taken or impacted by the acquisition, from the taking entity, but under no circumstances from the Landlord.

**SECTION 10.02 ACQUISITION OF PREMISES OR PROPERTY BY CALTRANS.**

As set forth in Section 1.05, Tenant's use and enjoyment of the Premises is subject to termination at any time upon the exercise by Caltrans of its rights under the Caltrans Conveyance Agreement. By signing this Lease, the Tenant hereby releases and waives, as against Caltrans and the Landlord, any right Tenant or its subtenants, assigns, agents, representatives, employees or subcontractors may have to seek or to receive compensation for the remaining term of this Lease or for any property loss or taking, including but not limited to, the fair market value of Tenant's leasehold interest, goodwill, lost profits and any other compensation of any kind whatsoever, in the event Caltrans exercises its right under the Caltrans Conveyance Agreement and demands a transfer of all or a part of the Premises or the Property. The sole recourse of the Tenant shall be from the City fund set forth in Section 10.02.1 below, if available pursuant to terms of that subsection.

**SECTION 10.02.1. LIMITED INSTALLATION COST REIMBURSEMENT RIGHT ONLY FROM THE CITY.**

Upon completion of the final inspection of the Sign by the City, the City agrees to make available to the Tenant a limited time construction cost reimbursement of Four Hundred Thousand Dollars (\$400,000.00), subject to the eligibility requirements set forth herein. This amount may be available only in the event of the acquisition of the Premises and the forced removal of the Sign pursuant to the Caltrans Conveyance Agreement. Such amount shall be shall be amortized over a seven (7) year period starting from the date of final inspection using

the straight-line method of amortization in accordance with generally accepted accounting principles. Under no circumstances shall this installation cost reimbursement right be available after then end of the seven (7) year amortization period. This reimbursement right shall be available only in the event of Tenant's compliance with all other material terms of this Lease. Tenant hereby understand and acknowledges that the reimbursement shall be available only against the City and only pursuant to the terms of this Lease.

## **ARTICLE XI**

### **PARTY DEFAULT AND TERMINATION RIGHTS**

#### **SECTION 11.01. LANDLORD DEFAULT AND TENANT RIGHT TO TERMINATE.**

Notwithstanding any provision to the contrary contained herein, if, at any time from and after the full execution of this Lease and throughout the Term of this Lease, any zoning or other law shall be in effect or shall be adopted by any regulatory agency other than the City of Milpitas which shall prevent Tenant from conducting its use of the Premises in accordance with the terms and conditions of this Lease, Tenant shall have the right to terminate this Lease, without penalty, upon six (6) months written notice thereof to Landlord. In the event that, in Tenant's sole opinion; (a) Tenant is unable to secure or maintain any required permit or license from any appropriate governmental authority; (b) federal, state or local statute, ordinance, regulation or other governmental action precludes or materially limits use of the Premises for outdoor advertising purposes; (c) Tenant's Sign on the Premises become entirely or partially obstructed or destroyed; (d) the view of Tenant's Sign is obstructed or impaired in any way by any object or growth on the Landlord's property, the Premises or on any neighboring property; (e) the advertising value of the Sign Structure(s) is impaired or diminished; (f) there occurs a diversion

of traffic from, or a change in the direction of, traffic past the Sign; (g) Tenant is prevented from maintaining electrical power to the Premises or illuminating its Sign; (h) Tenant finds that, in Tenant's sole opinion, the continued maintenance/operation of the Sign is impractical or uneconomical due to engineering, architectural, construction or maintenance circumstances which will require structural improvements to Landlord's property; (i) maintenance will be hampered or made unsafe due to conditions caused by nearby properties, land uses, or utilities, then Tenant shall, at its option, have the right to either reasonably abate the rent until the issues with "a" through "i" above are cured, and/or terminate this Lease upon thirty (30) days notice in writing to Landlord.

**SECTION 11.02      EVENTS OF TENANT DEFAULT AND LANDLORD CURE RIGHTS.**

In the event of any failure by Tenant to pay any Rent or other payment due hereunder within ten (10) days after Tenant's receipt of written notice from Landlord that the same shall be due, or any failure to perform any other of the material terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) days after Tenant's receipt of written notice from Landlord of such failure or such longer period as shall be reasonably required due to the nature of such default provided that Tenant commences to cure such default within such thirty (30) day period, or if Tenant or an agent of Tenant shall intentionally falsify any report required to be furnished to Landlord pursuant to the terms of this Lease or if Tenant shall become bankrupt or insolvent, or file any debtor proceedings or take or have taken against Tenant in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed

within sixty (60) days from the date of filing thereof, or if Tenant makes an assignment for the benefit of creditors, or suffer this Lease to be taken under any writ of execution or Tenant uses the Premises for purposes other than the purposes for which the same are hereby leased, or ceases to use the Premises for the purposes herein expressed, or in the event an execution or other legal process is levied upon the property of Tenant brought on the Premises and the same is not satisfied or dismissed with thirty (30) days from the date Tenant receives notice of the same then Landlord shall have any and all rights and remedies now or hereafter available at law or in equity in the State of California for such default, including, but not limited to, the right to terminate this Lease. Notwithstanding the foregoing, those conditions set forth in Section 11.03 (Special Condition Termination Rights of Landlord) below shall be subject to the separate notice and termination procedure set forth therein.

**SECTION 11.03. SPECIAL CONDITION TERMINATION RIGHTS OF LANDLORD.**

- A.** In the event of Caltrans' exercise of its rights under the Caltrans Conveyance Agreement, Landlord may terminate this Lease and convey all or that portion of the property occupied by the display sign part of the Premises to Caltrans upon three (3) months written notice to Tenant. Tenant shall remove the Sign at Tenant's sole expense prior to the end of the three (3) month notice period.
- B.** Tenant shall use best business efforts and exercise its fiduciary capacity as required in this Lease to maximize the revenue generated and thereby the rental payments to the city for display sign. In that endeavor, Tenant shall meet the following performance standards and fulfill the obligations set forth below.

Once a year, Tenant shall submit an estimate of the total rental payment amount for the upcoming year to the City ("Rent Projection") by February 1 of each rental year, based on the expected sign revenue and taking into consideration the current business climate and advertising space demand.

- i. For Year 1 through Year 3 of this Lease, the annual rental payment estimate to the City ("Rent Projection") shall be Forty Seven Thousand Three Hundred Dollars (\$47,300.00).
- ii. For Year 4 until the end of the end of the Lease, the Rent Projection for each upcoming annual year shall be the average of the preceding three years of actual annual rent payments.

In any year that the rental payment to the city is not at least 75% of that year's Rent Projection, the city manager/staff may upon 30 days notice, request a meeting with the Tenant to discuss the performance of the display sign and the current marketing activities being conducted to maximize the rental payment revenue. If the result of the meeting is the city reasonably believes that Tenant is not operating in good faith to maximize revenue in accordance with the Lease, the Parties shall agree on a written plan of action to improve the operation of the Sign. After the completion of the next two calendar quarters, and the rental payments associated therein, the City may upon 30 days notice, request a meeting with the Tenant to review Tenant's performance with the agreed upon plan of action. If after that period the City reasonably believes that Tenant is not acting in good faith to uphold the contractual obligation

contained in the agreement, the City may put the Tenant on notice of nonperformance. Said notice shall contain the specific area(s) of nonperformance and the grounds for the City's reasonable determination of the same. It shall also contain the specific area or measure of improvement reasonably expected by the City, within the confines of this Lease. The Tenant shall have a minimum of two complete calendar quarters to meet the agreed upon performance objectives contained in the notice of nonperformance.

In the event of Tenant's failure to meet these performance objectives by the end of this cure period, Tenant shall be declared to be in breach and the Lease terminated.

**SECTION 11.04      FORCE MAJEUR.**

Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

**ARTICLE XII**

**TENANT'S PROPERTY**

**SECTION 12.01      SIGN OWNERSHIP.**

The Sign located at the Premises, and all sign(s), structure(s), improvements and appurtenances thereto placed on the Premises hereafter by or for Tenant, its agent or predecessor and any and all permits related thereto shall at all times during the Lease remain the property of

Tenant. All such sign(s), structure(s), improvement(s) and appurtenances shall be considered fixtures and shall be considered the property of the Landlord upon Surrender.

**SECTION 12.02      LOSS AND DAMAGE.**

Landlord shall not be liable for any damage to property of Tenant or of others located on the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise, unless caused by the negligence or intentional act of Landlord, its agents invitees or employees. Landlord shall not be liable for any damage caused by occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work, unless caused by the negligence or intentional act of Landlord. Landlord shall not be liable for any latent defect in the Premises. Subject to the terms hereof, all property of Tenant kept on the Premises shall be so kept at the risk of Tenant only.

**ARTICLE XIII**

**MISCELLANEOUS**

**SECTION 13.01      NO WAIVER.**

The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing by Landlord. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. The receipt of Rent after breach or condition broken, or delay on the part of Landlord to enforce any

right hereunder, shall not be deemed a waiver of any preceding breach by Tenant of any term, condition or covenant of this Lease, or a waiver of the right of Landlord to annul this Lease or to reenter said Premises or to relet same. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

**SECTION 13.02 ACCORD AND SATISFACTION.**

No payment by Tenant or receipt by Landlord of a lesser amount than the quarterly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompany any check or payment prejudice Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

**SECTION 13.03 ENTIRE AGREEMENT.**

This Lease sets forth all the covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them. The Tenant acknowledges that it has not been induced to enter into this Lease by any representations of Landlord.

**SECTION 13.04 NO PARTNERSHIP.**

Landlord is not, in any way or for any purpose, a partner of Tenant in the conduct of its business, nor is Landlord a member of a joint enterprise with Tenant.

**SECTION 13.05 NOTICES.**

**SECTION 13.05.1** Any notice, demand, or request or other instrument which may be or are required to be given under this Lease shall be delivered in person or sent by United States certified mail postage prepaid and shall be addressed:

If to Landlord:

City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411  
City Attorney  
(408) 586-3040  
If to MAP:

Milpitas Auto Properties, LLC  
13600 Beach Boulevard  
Westminster, CA 92683  
Attn: Tom Chadwell, Vice President and Member  
Telephone: (714) 896-9777  
Facsimile: (714) 896-9779

If to CBS:

CBS Outdoor Inc.  
1695 Eastshore Highway  
Berkeley, CA 94710  
Attn: Robert Harbin  
Telephone: (510) 527-3350  
Facsimile: (510) 527-7041

With a copy to:  
CBS Outdoor Inc.  
405 Lexington Avenue  
New York, NY 10174  
Attn: General Counsel  
Telephone: (212) 297-6400  
Facsimile: (212) 297-6552

**SECTION 13.05.2** Any notice required to be given to Tenant by Landlord hereunder shall also be given to CBS Outdoor in the event that CBS Outdoor shall be a subtenant in accordance with the terms hereof.

**SECTION 13.06 BROKERS COMMISSION.**

Landlord and Tenant represent and warrant that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease and each agrees to indemnify the other against, and hold the other harmless from all liabilities arising from any such claim, including cost of counsel fees.

**SECTION 13.07 [RESERVED]**

**SECTION 13.08 TIME OF ESSENCE.**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**SECTION 13.09 GOVERNING LAW.**

This Lease shall be construed and interpreted according to the laws of the State of California and venue with respect to any litigation shall be Santa Clara County, California.

**SECTION 13.10 HAZARDOUS MATERIALS.**

Tenant shall not cause or permit any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal government ("Hazardous Material") to be brought, kept or used in, on or under the Premises by Tenants, its agents, employees, contractors, or invitees. Tenant indemnifies Landlord from and against any breach of the above-stated obligation, and agrees to defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without

limitation, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term of this Lease as a result of such breach. Without limiting the foregoing, if the presence of any Hazardous Material caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions, at Tenant's sole expense, as are necessary or advisable to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises by Tenant; provided that landlord's approval of such actions and the contractors to be used by Tenant shall first be obtained.

**SECTION 13.11 LANDLORD'S ACCESS.**

Landlord, its employees, representatives and agents shall have access to the Premises in order to conduct inspections or to cure and enforce its rights under this Lease at reasonable times and upon reasonable notice to Tenant. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility of liability whatsoever for the care, maintenance, or repair of any improvements or personal property located on the Premises. Notwithstanding the foregoing, Landlord shall indemnify and hold harmless Tenant against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise as the result of Landlord's access to the Premises. Landlord shall use best efforts not to interfere with the normal conduct of Tenant's business at the Premises, or the business of any subtenant of Tenant at the Premises.

**SECTION 13.13 WAIVER OF JURY TRIAL AND COUNTERCLAIMS.**

THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE

OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY  
CONNECTED WITH THIS LEASE.

**SECTION 13.14 [RESERVED]**

**SECTION 13.15 SUCCESSORS.**

All rights and liabilities, herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of said parties; and they shall all be bound by the terms, covenants and agreements herein. Nothing contained in this Lease shall in any manner restrict Landlord's right to assign or encumber this Lease and in the event Landlord sells its interest in the Premises and the purchaser assumes Landlord's obligations and covenants, Landlord shall thereupon be relieved of all further obligations hereunder.

**SECTION 13.16 QUIET ENJOYMENT.**

Upon payment by Tenant of the rents herein provided, and upon the observance and performance of all the obligations on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without interruption or disturbance by Landlord or any other person or persons lawfully or, equitably claiming by, through or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease. Notwithstanding the foregoing, Tenant acknowledges that Tenant's right to peaceful and quiet enjoyment shall be subject to termination and disturbance by the exercise of Caltrans rights under the Caltrans Conveyance Agreement and the lawsuit notice provisions of Section 13.18, below. By signing this Lease, Tenant waives and releases Landlord from any and all claims arising from or related to the conveyance of part or all of the Premises to Caltrans, including but

not limited to claims for breach of the covenant of quiet use and enjoyment and breach of contract.

**SECTION 13.17 CITY PROCESSING FEES.**

Notwithstanding any other provision in this Lease, the Landlord's duty to perform under this Lease and to issue associated approval and licenses, including but not limited to building permits, shall be contingent upon the Tenant's full payment of City of Milpitas private job accounts (PJ Account) fees. All invoiced PJ Account amounts accrued up to and including the date of execution of this Lease shall be paid by Tenant within thirty (30) days of the execution of this Lease.

**SECTION 13.18 LAWSUIT SETTLEMENT OR FAVORABLE FINAL RESOLUTION CONDITION PRECEDENT TO PERFORMANCE.**

Notwithstanding any other provision in this Lease, the Tenant acknowledges and covenants that the Landlord's duty to perform under this Lease and to issue associated approval and licenses, including but not limited to building permits, and the effective date of City of Milpitas Site Development Permit No. SD11-0003, shall be contingent upon the full settlement, release and dismissal with prejudice of the lawsuit commonly known as *Milpitas Mills Limited Partnership v. City of Milpitas, et al.*, California Court of Appeal Case No. H036108; Santa Clara County Superior Court No. CV119458, or the final resolution of such action to the satisfaction of the City Attorney of the City of Milpitas. Any settlement and release of said legal action must provide, amongst other things, for the disposition and demolition of the advertising display currently on the Property by a mutually agreeable date. By signing this Agreement, Tenant acknowledges that it enters into this Agreement subject to the aforementioned lawsuit and that Landlord's legal right to lease the land may be affected by said lawsuit. Tenant

knowingly and intentionally holds harmless and waives any rights it may have to bring suit against the City for all claims or possible claims for, or on account of, any debt, liability, loss, injury or expense contracted or incurred by Tenant, its successors, or its assigns resulting from or arising from the maintenance of said lawsuit or any judgment or settlement arising therefrom.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed, sealed and delivered on the date set forth below each party's execution.

LANDLORD:

**CITY OF MILPITAS, A CALIFORNIA  
A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
Thomas C. Williams, City Manager

Dated: \_\_\_\_\_

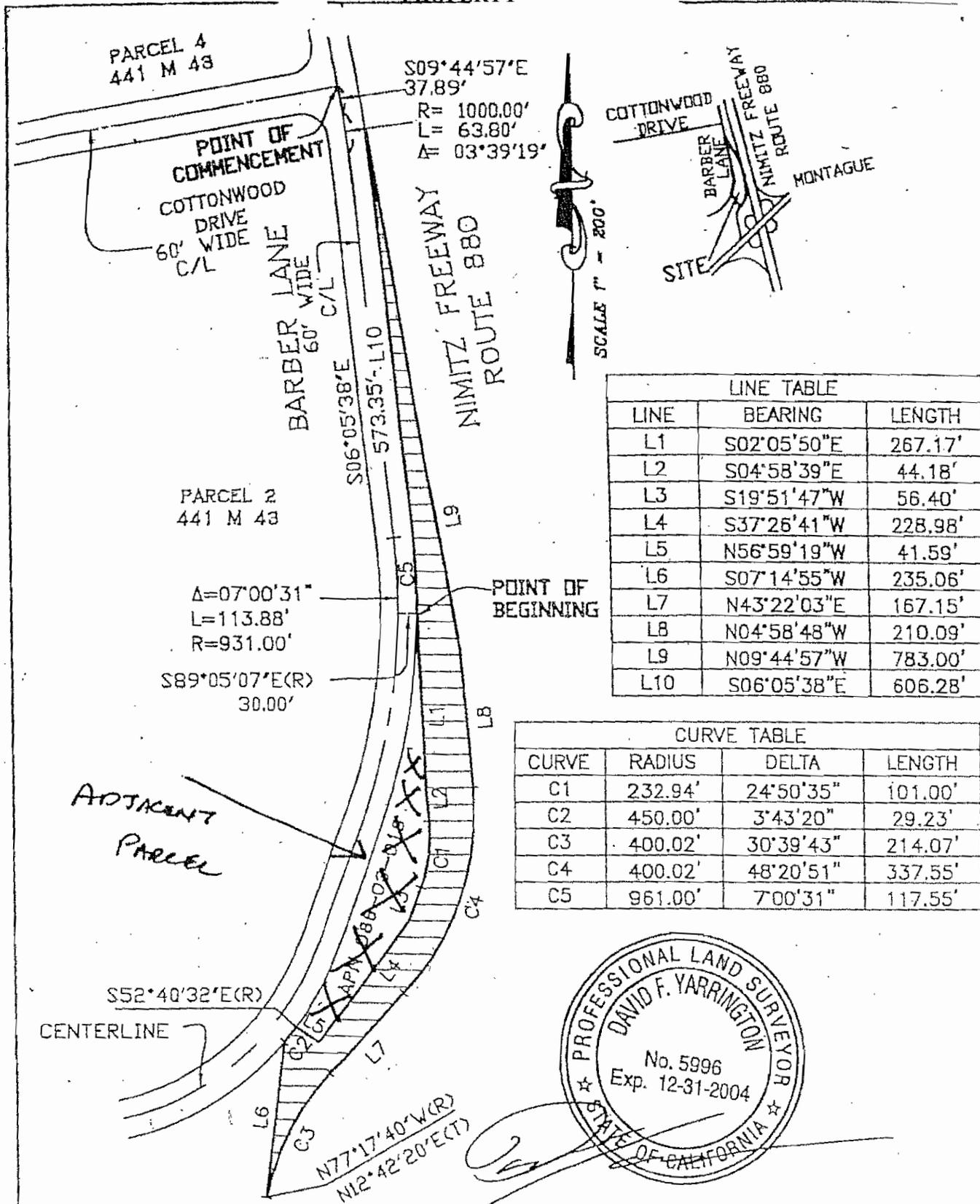
TENANT:

**MILPITAS AUTO PROPERTIES, LLC,  
A CALIFORNIA LIMITED LIABILITY  
COMPANY**

By: \_\_\_\_\_  
Tom Chadwell, Member

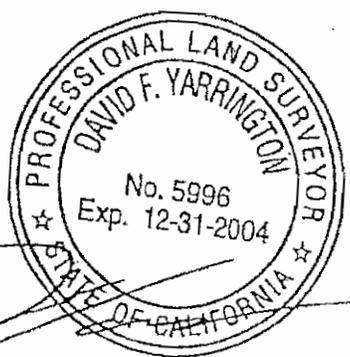
Dated: \_\_\_\_\_

EXHIBIT A  
PROPERTY



LINE TABLE		
LINE	BEARING	LENGTH
L1	S02°05'50"E	267.17'
L2	S04°58'39"E	44.18'
L3	S19°51'47"W	56.40'
L4	S37°26'41"W	228.98'
L5	N56°59'19"W	41.59'
L6	S07°14'55"W	235.06'
L7	N43°22'03"E	167.15'
L8	N04°58'48"W	210.09'
L9	N09°44'57"W	783.00'
L10	S06°05'38"E	606.28'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	232.94'	24°50'35"	101.00'
C2	450.00'	3°43'20"	29.23'
C3	400.02'	30°39'43"	214.07'
C4	400.02'	48°20'51"	337.55'
C5	961.00'	7°00'31"	117.55'



DAVID EVANS & ASSOCIATES, INC.  
ENGINEERS . PLANNERS . SURVEYORS  
5000 EXECUTIVE PARKWAY - SUITE 125  
SAN RAMON CALIFORNIA 94583  
(925) 857-3380 FAX (925) 857-3388

NO.	BY	DATE	REVISIONS

PLAT TO ACCOMPANY  
LEGAL DESCRIPTION

DRAWN BY: DWI	DATE: 11/
CHECKED BY:	SCALE: 1"
JOB NO. SWER0001	
REF.	
DWG. LOC. P:\SWER0001\SWER0001\DWG\SWER0001	
SHEET 2	OF
A.P.N. 085-03-019	

EXHIBIT B

PREMISES

PARCEL 4  
441 M 43

COTTONWOOD  
DRIVE  
60' WIDE  
C/L

POINT OF  
COMMENCEMENT



SCALE 1" = 200'

BARBER LANE  
60' WIDE  
C/L

S09°44'57"E  
37.89'

R= 1000.00'  
L= 63.80'  
Δ= 03°39'19"

NIMITZ FREEWAY  
ROUTE 880  
WIDTH VARIES

R=931.00'  
L=305.03'  
Δ=18°46'20"

POINT OF  
BEGINNING

PARCEL 2  
441 M 43

APN 086-03-019

SEE  
DETAIL A

R= 961.00'  
L= 26.36'  
Δ= 01°34'17"

POINT OF  
BEGINNING

S77°19'18"E  
30.00'

N85°01'06"E  
27.14'

SIGN EASEMENT  
35.48'

S85°01'06"W

S83°54'22"W(R)

BARBER LANE

DETAIL A  
NOT TO  
SCALE

COTTONWOOD  
DRIVE

BARBER LANE

NIMITZ FREEWAY  
ROUTE 880

MONTAGUE  
EXPRESSWAY

SITE



DAVID EVANS & ASSOCIATES, INC.

ENGINEERS • PLANNERS • SURVEYORS  
5000 EXECUTIVE PARKWAY - SUITE 125  
SAN RAMON CALIFORNIA 94583  
(925) 867-3380 FAX (925) 867-3388

NO.	BY	DATE	REVISIONS

RTE. 880  
SIGN EASEMENT

DRAWN BY: DMI DATE: 05/18/04

CHECKED BY: SCALE: 1"=200'

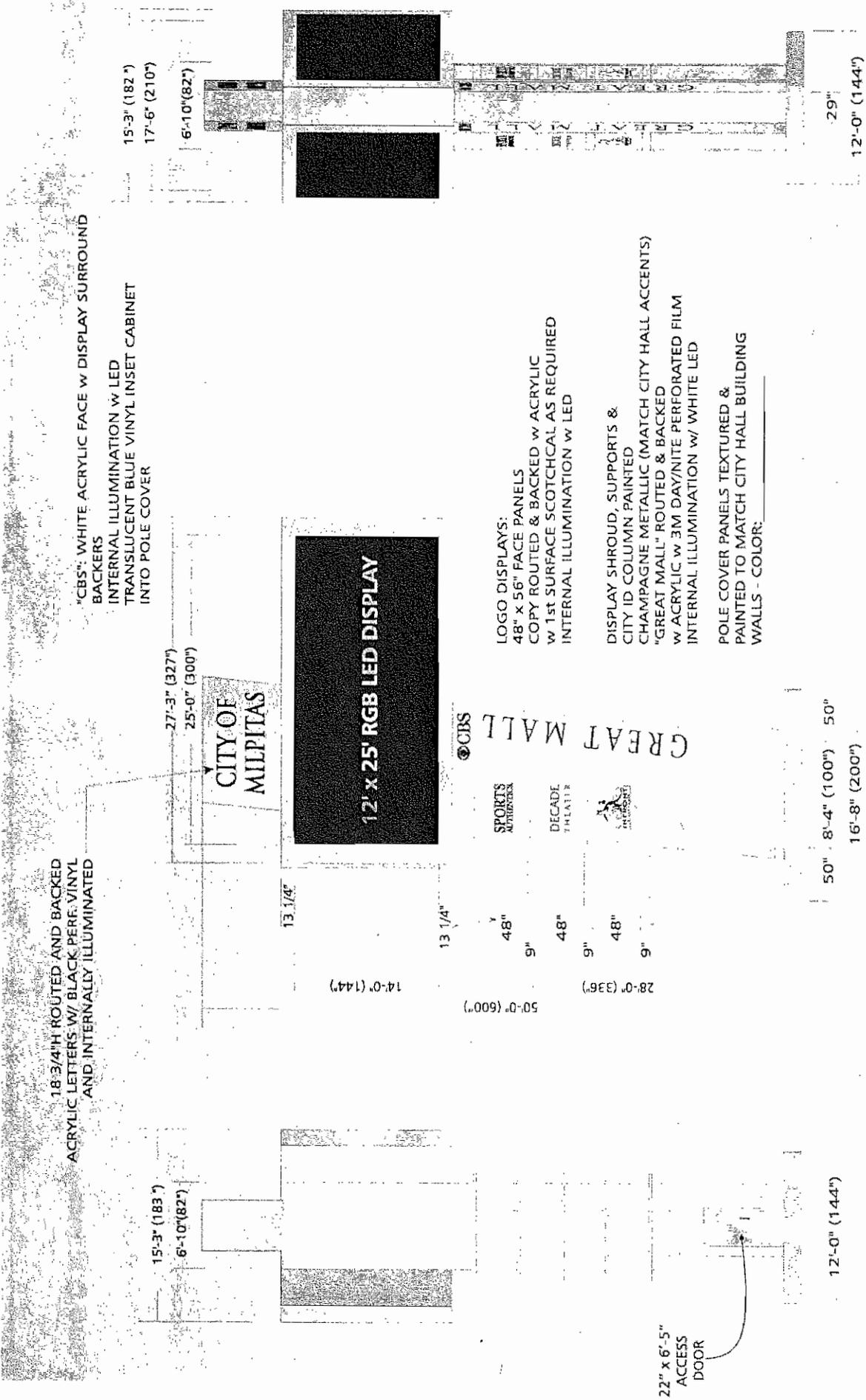
JOB NO. SWER0001

REF.

DWG. LOC. P:\SDSK\PROJ\SWER0001\5\1\SBE\SWER01-BLN-EASE-SBE.DWG

SHEET 1 OF 1

**EXHIBIT C  
CONCEPTUAL DRAWINGS**



\*CBS\*: WHITE ACRYLIC FACE W/ DISPLAY SURROUND  
BACKERS  
INTERNAL ILLUMINATION W LED  
TRANSLUCENT BLUE VINYL INSET CABINET  
INTO POLE COVER

18 3/4" H ROUTED AND BACKED  
ACRYLIC LETTERS W/ BLACK PER. VINYL  
AND INTERNALLY ILLUMINATED

LOGO DISPLAYS:  
48" x 56" FACE PANELS  
COPY ROUTED & BACKED W ACRYLIC  
W 1st SURFACE SCOTCHCAL AS REQUIRED  
INTERNAL ILLUMINATION W LED

DISPLAY SHROUD, SUPPORTS &  
CITY ID COLUMN, PAINTED  
CHAMPAGNE METALLIC (MATCH CITY HALL ACCENTS)  
"GREAT MALL" ROUTED & BACKED  
W ACRYLIC W 3M DAY/NITE PERFORMED FILM  
INTERNAL ILLUMINATION W/ WHITE LED

POLE COVER PANELS TEXTURED &  
PAINTED TO MATCH CITY HALL BUILDING  
WALLS - COLOR:

SCALE: 1/8" = 1' 0"

**880 @ Montague**



SIMULATED NIGHT VIEW

CITY OF  
MILPITAS



@CBS

GREAT MALL

SPORTS  
MUSEUM

DECADE  
THEATRE



880 @ Montague





## MILPITAS PLANNING COMMISSION AGENDA REPORT

### PUBLIC HEARING

Meeting Date: June 22, 2011

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**APPLICATION:** Site Development Permit No. SD11-0003: Electronic Freeway Orientated Sign

**APPLICATION SUMMARY:** A public hearing for a Site Development Permit to replace an existing freeway oriented sign for off-site advertising

**LOCATION:** 1700 Barber Lane (APN: 086-03-096)

**APPLICANT:** Milpitas Auto Properties, LLC

**OWNER:** City of Milpitas

**RECOMMENDATION:** Staff recommends that the Planning Commission adopt Resolution No. 11-024 recommending approval of project to the City Council.

**PROJECT DATA:**

General Plan/

Zoning Designation: N/A – Right of way property

CEQA Determination: The off-site advertising display adjacent to Interstate 880 is exempt pursuant to Section 15162 of CEQA guidelines in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087)

**PLANNER:** Sheldon S. Ah Sing, Senior Planner

**PJ:** 2523

**ATTACHMENTS:** A. Resolution No. 11-024  
B. Parcel Map  
C. Sign Design

# LOCATION MAP



## **BACKGROUND**

There has been an interest by the city and private entities to erect off site advertising displays or digital billboards, also known as “changeable copy or static copy freeway signs” along Interstates 880 and 680. These signs will promote economic development, expand the communication of community services and provide a source of revenue for the city.

In November 2006, the City certified an Environmental Impact Report that summarized and identified the impacts of locating three new signs along Interstate 680 and Interstate 880 for the purposes of offsite advertising. Of those signs, two of them would be capable of transmitting electronic changeable media.

The City’s Municipal Code includes a process for off-site advertising displays adjacent to interstate highways and state routes. The Code creates specific criteria to ensure that the erection of such off-site advertising displays in the city does not create visual clutter or create other operational impacts on surrounding uses, and to promote the public health, safety and general welfare. The provisions are consistent with state and federal laws that govern such signs and with the accepted standards of the Outdoor Advertising Association of America.

This application for the Site Development Permit and the Lease Agreement are submitted pursuant to the Municipal Code ordinance [Title XI, Chapter 10, Section 24.05(G)]. The Lease Agreement is included for reference and will be considered by the City Council. The Planning Commission will make a recommendation on the Site Development Permit to the City Council.

## **PROJECT DESCRIPTION**

### ***Discussion***

The project includes two components. First, a Site Development Permit is submitted to consider the design and compliance of the sign with the zoning ordinance regulations. Second, a Lease Agreement between the City and Milpitas Auto Properties, LLC proposes to identify the timeframe for responsibilities, obligations and shared benefits of erecting an off-site advertising display.

### ***Site Development Permit***

The applicant proposes an off-site advertising display on the City owned parcel adjacent to southbound Interstate 880 at the Montague Expressway. In summary, the provisions and development standards are as follows:

### **Review Process**

Two sign vendors were chosen by the city through a competitive selection process. Each sign vendor will enter into an agreement with the city regarding the location, construction, maintenance and define the public benefit of the signs. The design of the signs requires consideration of a Site Development Permit by the Planning Commission and the City Council. It is the intent that the signs by the two vendors are compatible in design, but not necessarily identical. The City approved an off-site advertising sign at the Piercey Toyota site in 2010 and construction is to begin soon.

Zoning Development Standards

*Maximum Height*

The overall height of the sign shall not exceed seventy (70) feet.

*Distance between other off-site advertising displays.*

No off-site advertising display shall be placed within one-thousand (1,000) feet from another advertising display on the same side of any portion of the interstate.

*Maximum sign area*

The maximum sign area shall not exceed one-thousand, two-hundred (1,200) square feet on each side. Ancillary fixed signs or logos may be permitted on the sign's supporting structure that would not count towards the maximum allowed sign area.

*Illumination*

The two-sided displays would use LED technology. Light intensity would be in compliance with state laws. An automatic dimming device or light sensors must be integrated into the sign and illumination must be designed to reduce glare or casting on adjacent properties.

I-880/Montague Sign Location and Design

This application considers only one sign location. The sign is proposed to be located within the City owned parcel shown on the attached site plan that is the location of the current Great Mall freeway sign. The exact location will be established when construction drawings are submitted to the City and to the California Department of Transportation (Caltrans). A condition of approval will maintain that the sign remain clear of any easements.

The main support column of the sign is 50 feet tall. The total display area is 356 square feet for each side (12 feet by 25 feet) and includes three logo signs on the support column. The structure is metallic silver in color. At the top of the support column "City of Milpitas" is displayed and "Great Mall" is positioned along side the three logo signs. Refer to the project plans for detailed information.

Illumination of the sign is by Light Emitting Diodes (LED) technology. As required by the Code, the sign will include automatic dimming circuitry or light sensors to reduce glare or casting on adjacent properties. The light intensity will be consistent with state and federal laws.

*Lease Agreement Deal Points*

The deal terms concerning the Lease Agreement will be made available under separate cover prior to the Planning Commission meeting.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

*General Plan*

The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 1**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	<b>Consistent.</b> The proposed development agreement and sign promote and balances economic development by creating a medium for local businesses to advertise and ensures quality identification.
<i>2.a-I-4 Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City’s location to both industrial and commercial use.</i>	<b>Consistent.</b> The proposed development agreement and sign allow the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
<i>2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	<b>Consistent.</b> The proposed development agreement and sign provide a partnership and provides an opportunity to promote businesses.

***Zoning Ordinance***

The proposed sign is consistent with the zoning ordinance regarding development and operational standards. The design, scale, size and materials of the sign as depicted in the project plans are consistent with the requirements of the sign ordinance. The sign complements the architectural design, materials and color of the Toyota automobile dealership sign approved by the Planning Commission and City Council in 2010. When reviewed during the plan checking stages, the lighting will be consistent with ordinance standards. At that time, the sign’s exact location will be considered for any potential impacts to vehicular or pedestrian traffic.

The development of the sign will result in a public benefit to the city outweighing any adverse impacts that may be caused by the displays. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is exempt pursuant to Section 15162 in that project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the approximate locations of the freeway signs and their potential impacts on the environment. No

new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the freeway signs. All applicable mitigation measures identified in the Supplemental EIR will apply to future projects involving such signs have been integrated to the extent possible in the proposed ordinance. These include the size, angle, light emissions, design, noise and other operating and development factors associated with the signs.

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

**CONCLUSION**

The City has expressed a desire to allow off-site advertising displays to promote economic development. Through prior certification of an EIR and through the concurrent processing of an amendment to the city’s sign ordinance, the city has considered the potential visual impacts of these displays. Specific provisions and development and operational standards ensure compatibility with surrounding uses and acknowledge that the public benefits outweigh adverse impacts. The proposed sign is consistent with the provisions of the sign ordinance.

**RECOMMENDATION**

**STAFF RECOMMENDS** that the Planning Commission close the public hearing and adopt Resolution No. 11-024, recommending approval of the project to the City Council.

*Attachments:*

- A. Resolution No. 11-024
- B. Parcel Map
- C. Sign Design

**RESOLUTION NO. 11-024**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A REAL PROPERTY LEASE AGREEMENT AND SITE DEVELOPMENT PERMIT NO. SD11-0003, OFF-SITE ADVERTISING DISPLAY, TO ALLOW THE ERECTION OF A FREESTANDING OFF-SITE ADVERTISING DISPLAY LOCATED ON A CITY-OWNED PARCEL BETWEEN BARBER LANE DRIVE AND THE INTERSTATE 880 FREEWAY IN MILPITAS, CALIFORNIA**

**WHEREAS**, on May 5, 2011, an application was submitted by Milpitas Auto Properties, LLC, for a real property lease agreement between the City of Milpitas and Milpitas Auto Properties, LLC, and site development approval for the erection and operation of a freestanding off-site advertising display. The property proposed for lease is located on a parcel of land bordered on its eastern and western boundaries by the Interstate 880 Freeway and Barber Lane, respectively, which is sometimes described as Assessor's Parcel No. 086-03-096. The subject parcel is located in the right of way; and

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

**WHEREAS**, on June 22, 2011, 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, as to the proposed application and its conformity with the requirements of Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes).

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

**Section 1:** The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2:** The project is exempt from further environmental review pursuant to Section 15162 of CEQA guidelines in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the locations of freeway signs and their potential impacts on the environment. No new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the freeway signs. All applicable mitigation measures identified in the Supplemental EIR will apply to future projects involving such signs have been integrated to the extent possible in the proposed ordinance. These include the size, angle, light emissions, design, noise and other operating and development factors associated with the signs.

**Section 3:** The proposed display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual

character of the site and surrounding in that the displays are angled away from neighboring properties and will include automatic dimming devices to ensure the appropriate glare level.

**Section 4:** All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.

**Section 5:** The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs..

**Section 6:** The development of the off-site advertising display will promote economic development within the City in that the signs provide for additional commercial corridor communication, thereby advertising the availability of goods and services within the redevelopment project area.

**Section 7:** The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions in that the sign is consistent with the height, size, and lighting and is compatible in design and appearance to the commercial, office and retail structures in the surrounding area.

**Section 8:** The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan in that the sign:

- a. provides a partnership with local business entities and provides an opportunity to promote economic activity within the City.
- b. allows the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
- c. promotes and balances economic development by creating a medium for local businesses within the redevelopment project area to advertise and ensures quality identification.

**Section 9:** The Planning Commission of the City of Milpitas hereby recommends approval of a Real Property Lease Agreement and Site Development Permit No. SD11-0003, Off-site advertising display, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on June 22, 2011.

---

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 June 22, 2011, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL**

**Site Development Permit No. SD11-0003**

A request for an off-site advertising display

Parcel Between Interstate 880 and Barber Lane(APN: 086-03-096)

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. **(P)**

SD11-0003 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

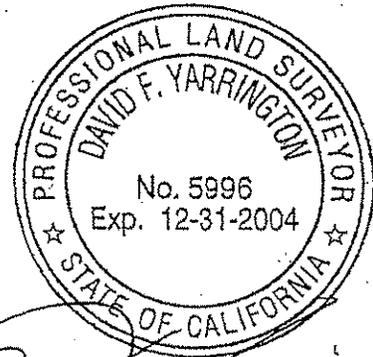
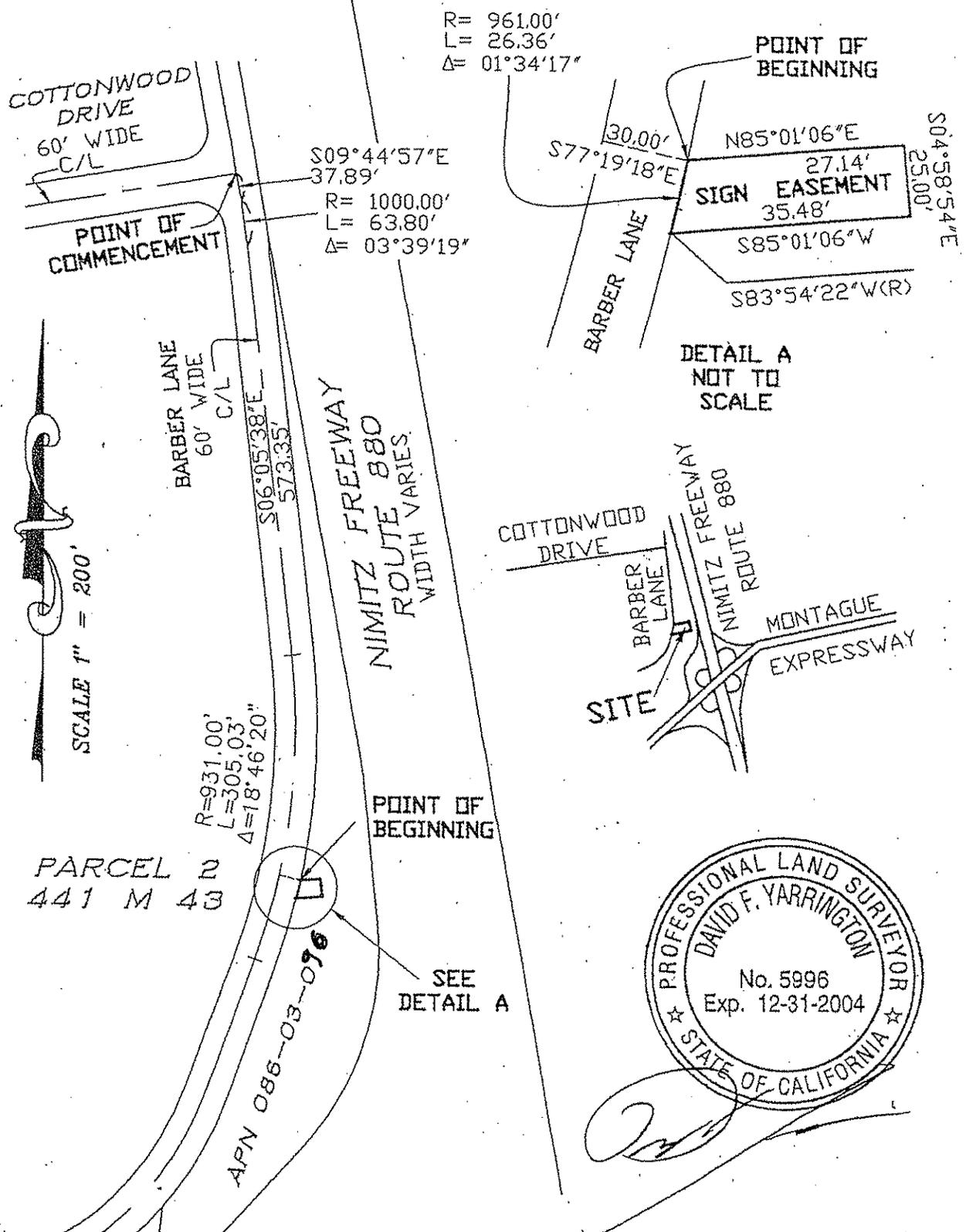
- a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD11-0003 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
  3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
  4. Prior to issuance of a building permit, the applicant shall confirm that the sign is located outside any easements. **(E)**
  5. Prior to issuance of a building permit, the applicant shall confirm that the sign location complies with fire regulations regarding access and circulation. **(F)**

**(P)** = Planning

**(B)** = Building

**(E)** = Engineering

**(F)** = Fire Prevention

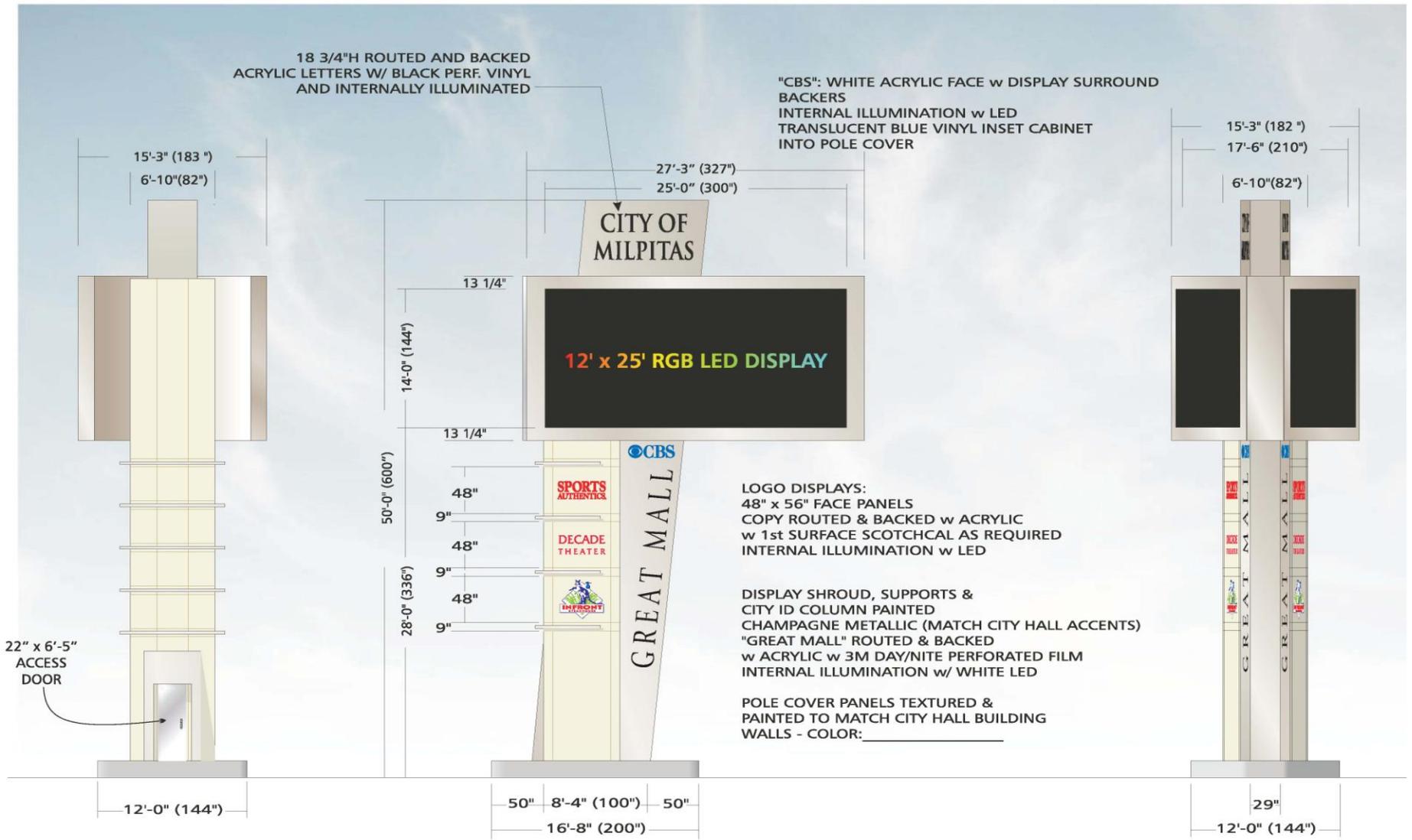


**VID EVANS & ASSOCIATES, INC.**  
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BY	DATE	REVISIONS

# RTE. 880 SIGN EASEMENT

DRAWN BY: DMI	DATE: 05/18/01
CHECKED BY:	SCALE: 1"=200'
JOB NO. SWER0001	
REF.	
DWG. LOC. P:\SDSK\PROJ\SWER0001\SV\SBE\SWER01-BLN-EASE-SBE.DWG	
SHEET 1	OF 1

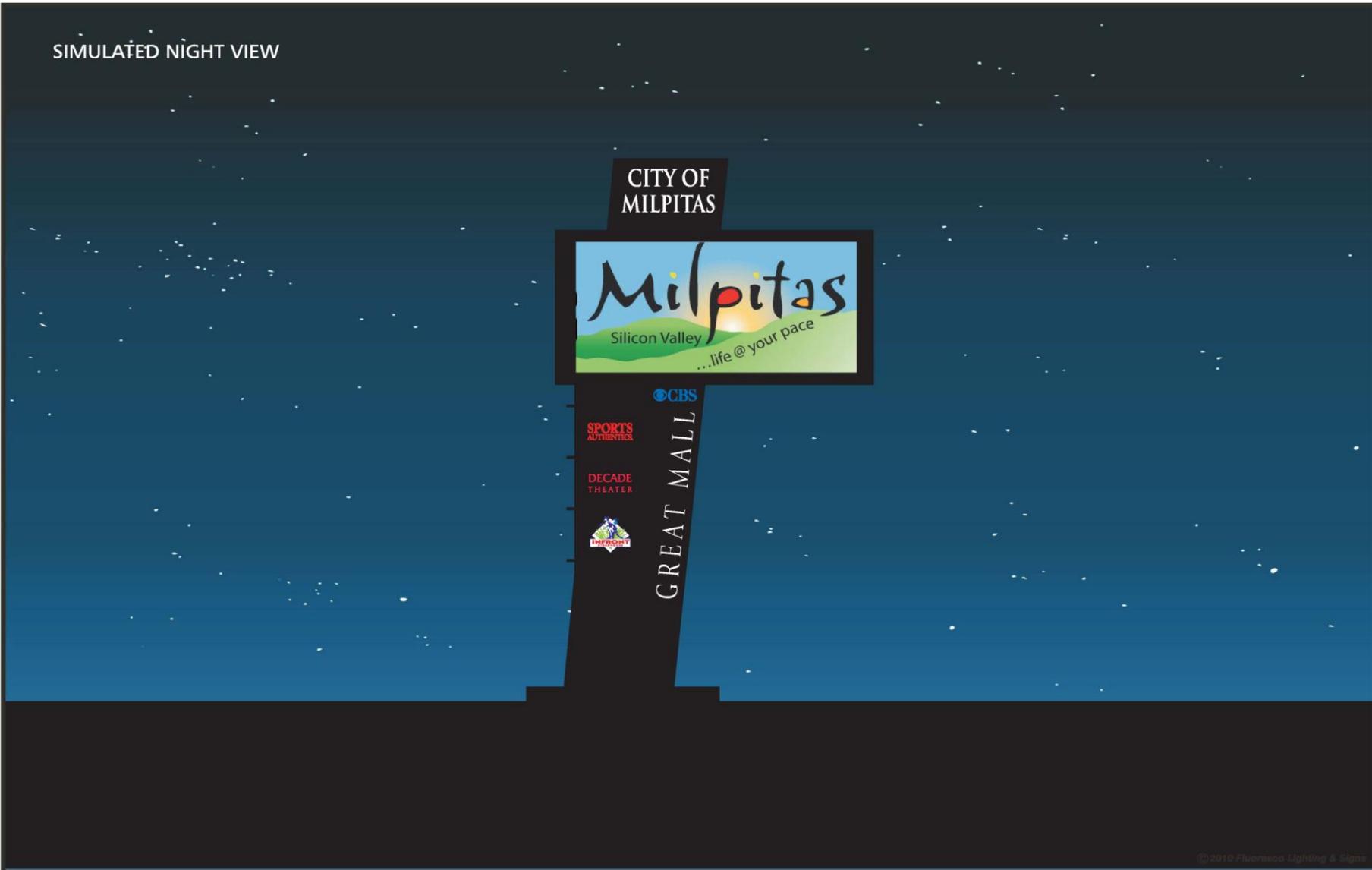


SCALE: 1/8" = 1' 0"

880 @ Montague



SIMULATED NIGHT VIEW



© 2010 Fluoresca Lighting & Signs

880 @ Montague



M/S: Ciardella, Tabladillo  
AYES: 6  
NOES: 0  
ABSENT: 2 (John Luk and Zeya Mohsin)  
ABSTAIN: 0

**VIII. CONSENT CALENDAR**

Chair Tiernan asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

There were no changes to the Consent Calendar.

**Motion** to approve the Consent Calendar as submitted.

M/S: Ciardella, Sandhu  
AYES: 5  
NOES: 0  
ABSENT: 2 (John Luk and Zeya Mohsin)  
ABSTAIN: 1 (Sudhir Mandal)

1. **TIME EXTENSION NO. TE11-0003:** A request for a Time Extension for previously approved Site Development Permit Amendment No. SA09-0002 located at 898 Calaveras Ridge Drive. There are no modifications or changes to the previously approved permit SA09-0002. (APN: 029-06-038) zoned Single Family Residential with Hillside Combining District (R1-H). Applicant: Haresh Panchal. Staff Contact: Tiffany Brown (408) 586-3283. PJ # 3187. *(Recommendation: Adopt Resolution No. 11-023 subject to the restated conditions of approval.)*
2. **PERMIT REVIEW NO. PR11-0003:** A twelve month review of Conditional Use Permit No. UP08-0015 which allows for the operations of an approximate 40,000 square foot religious facility located at 1221 California Circle (APN: 022-52-017) zoned Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Shirdi Sai Parivaar. Staff Contact: Cindy Hom (408) 586-3284. *(Recommendation: Note, Receipt, and File)*

**IX. PUBLIC HEARING**

**1. SITE DEVELOPMENT PERMIT NO. SD11-0003**

Sheldon Ah Sing, Senior Planner, gave a presentation on the electronic freeway orientated sign. A public hearing for a Site Development Permit to replace an existing freeway oriented sign for off-site advertising located at 1700 Barber Lane. Mr. Ah Sing recommended adopting Resolution No. 11-024 recommending approval to the City Council.

Commissioner Tabladillo asked who will maintain the site. Mr. Ah Sing stated the operator is responsible for maintenance.

Vice-Chair Mandal asked if other businesses able to promote their ads on the sign.

**Bob Harbin, CBS,** stated they will make it available for sale or rent to the community for announcements.

Vice-Chair Mandal asked about maintenance. Mr. Harbin stated CBS will do the maintenance on the sign and the surrounding landscape.

Commissioner Tao asked if the sign has graffiti how they would address that. Mr.

**APPROVED**  
**Planning Commission Minutes**

June 22, 2011

Harbin stated graffiti will be taken care of immediately. Commissioner Tao asked if these signs would be static displays or video. Mr. Harbin stated the signs will be static.

Commissioner Ciardella asked who is in charge of the sign from the City. Diana Barnhart, Economic Development Manager, stated it has not yet been decided. At this point it would go through the City Manager's office. Commissioner Ciardella asked if some of the advertisements be available to non-profit organizations. Ms. Barnhart stated it is for City sponsored events.

Chair Tiernan asked will the sign have emergency public announcements like Amber Alerts. Mr. Harbin stated yes.

Commissioner Tao asked if the lighting would impact the surrounding neighborhoods. Mr. Harbin stated no. Commissioner Tao asked if the sign malfunctions who would be responsible for the fixing. Mr. Harbin stated the sign has a sensor on the unit to detect malfunction and that would notify CBS.

Chair Tiernan opened the public hearing.

There were no speakers from the audience.

**Motion** to close the public hearing.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 2 (John Luk and Zeya Mohsin)

ABSTAIN: 0

**Motion** to adopt Resolution No. 11-024 recommending approval to the City Council.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 2 (John Luk and Zeya Mohsin)

ABSTAIN: 0

**X.  
ADJOURNMENT**

The meeting was adjourned at 7:35 p.m. to the next meeting of July 13, 2011.

Respectfully Submitted,

James Lindsay  
Planning & Neighborhood  
Services Director

Yvonne Andrade  
Recording Secretary

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