

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
 APPROVING GENERAL PLAN AMENDMENT NO. GP13-0001, ZONING AMENDMENT NO. ZA13-0001,
 SITE DEVELOPMENT PERMIT NO. SD13-0001, CONDITIONAL USE PERMIT NO. UP13-0001, TENTATIVE
 MAP NO. MT13-0001, AND VARIANCE NO. VA13-0001, TO CREATE A PACIFIC MALL FREEWAY
 CORRIDOR OVERLAY INCREASING THE MAXIMUM PERMITTED FLOOR AREA RATIO FOR THE
 DEMOLITION OF A PORTION OF THE MCCARTHY RANCH MARKETPLACE AND TO CONSTRUCT
 284,587 SQUARE FEET OF RETAIL SPACE AND A 240 ROOM HOTEL LOCATED AT
 11-111 RANCH DRIVE**

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

WHEREAS, the application in part is to amend the General Plan and Zoning Ordinance to allow for a new Pacific Mall Freeway Corridor Overlay District to increase the allowable FAR for the Project site from 0.50 to 0.52; and

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

WHEREAS, the application further includes a request to allow shared parking between the hotel and retail uses which have different peak demands for parking. The Project would provide 2,285 parking spaces, which meets the minimum parking spaces required under the City’s Zoning Code (2,205 spaces required with shared parking) for the existing uses and the new Project; and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act of 1970, as amended (CEQA) and State and local guidelines implementing CEQA, and determined that an Environmental Impact Report (EIR) would be required for the project and circulated a Notice of Preparation dated February 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR; and

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

WHEREAS, on January 8, 2014, the Planning Commission held a duly-noticed public hearing on the subject application and considered evidence presented by City staff, the applicant, and other interested parties and recommended approval of General Plan Amendment No. GP13-0001, Zoning Amendment No. ZA13-0001, Site Development No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, Variance No. VA13-0001 and certification of the Final EIR to the City Council; and

WHEREAS, on February 4, 2014, the City Council held a duly-noticed public hearing to consider the Planning Commission’s recommendation and evidence regarding the Project.

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

Section 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.

Section 2. The City Council has reviewed, considered and exercised its independent judgment on the Project's Final EIR and adopted Resolution No. ___ certifying the Final EIR for the Project as completed in compliance with CEQA and State and local guidelines implementing CEQA. All applicable mitigation measures identified in the Final EIR will apply to the Project and where impacts cannot be reduced to a level of less than significant, statements of overriding considerations are set forth in Resolution No. _____. Resolution No. _____ is hereby adopted by reference as though fully set forth herein.

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

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

The proposed retail, professional services, and hotel uses are consistent with the underlying General Commercial designation in the General Plan. The General Commercial land use designation allows a maximum permitted 0.50 FAR. The Project proposes a FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment would create a new Pacific Mall Freeway Corridor Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52 and does not conflict with other provisions of the General Plan. The General Plan Amendment also provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance.

Additionally, the proposed Project supports the following Land Use Principles and Policies in the General Plan:

2.a-1-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.

2.a.1-7: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed Project will help promote economic development in the City of Milpitas. A majority of the current buildings at the Project site are vacant and the proposed Project will revitalize the area and increase sales tax and other revenues to the City.

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

The proposed overlay to increase the FAR does not supersede any other applicable public health, safety and welfare codes and regulations related to the review of the Project. The proposed overlay does not hinder the ability of the City to monitor, regulate or enforce public health and safety requirements for the Project. As described in detail in the staff report to the Milpitas Planning Commission that was provided to the City Council for consideration of the Project, the proposed Project meets the development standards in the Zoning Code including parking requirements, and all mitigations set forth in the Final EIR will be required to be implemented.

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

a. *The proposed amendment is consistent with the General Plan.*

The proposed retail, professional services, and hotel uses are consistent with the underlying General Commercial designation in the General Plan. The General Commercial land use designation allows a

maximum permitted 0.50 FAR. The Project proposes an FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment would create a new Pacific Mall Freeway Corridor Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52 and does not conflict with other provisions of the General Plan. The General Plan Amendment also provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance.

Additionally, the proposed Project supports the following Land Use Principles and Policies in the General Plan:

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

The proposed Project will help promote economic development in the City of Milpitas. A majority of the current buildings at the Project site are vacant and the proposed Project will revitalize the area and increase sales tax and other revenues to the City.

- b. The proposed amendment will not adversely affect the public health, safety, and welfare.*

The proposed overlay to increase the FAR does not supersede any other applicable public health, safety and welfare codes and regulations related to the review of the Project. The proposed overlay does not hinder the ability of the City to monitor, regulate or enforce public health and safety requirements for the Project. As described in detail in the staff report to the Milpitas Planning Commission that was provided to the City Council for consideration of the Project, the proposed Project meets the development standards in the Zoning Code including parking requirements, and all mitigation in the Final EIR will be required to be implemented.

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

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

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

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

The General Commercial land use designation allows a maximum permitted 0.50 FAR under the Zoning Ordinance. The Project proposes an FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment will create a new Pacific Mall Freeway Corridor Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52. The General Plan Amendment also

provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance. The proposed Zoning Amendment will create a new Freeway Corridor Overlay authorizing any property within 300 feet of a freeway located in the City of Milpitas to request an increase in the FAR up to twenty percent (20%) above the maximum permitted under the General Plan and Zoning Ordinance.

As described in detail in staff's report to the Milpitas Planning Commission that was provided to the City Council for consideration of the Project, the Project meets the development standards in the Zoning Code including the shared parking requirements. The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed Project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed Project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces. The Project would provide sufficient amount of parking as the minimum number of required parking for the Project is 2205 spaces.

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

The proposed retail, professional services, and hotel uses are consistent with the underlying General Commercial designation in the General Plan. The General Commercial land use designation allows a maximum permitted 0.50 FAR. The Project proposes a FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment would create a new Pacific Mall Freeway Corridor Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52 and does not conflict with other provisions of the General Plan. The General Plan Amendment also provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance.

Additionally, the proposed Project supports the following Land Use Principles and Policies in the General Plan:

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

The proposed Project will help promote economic development in the City of Milpitas. A majority of the current buildings at the Project site are vacant and the proposed Project will revitalize the area and increase sales tax and other revenues to the City.

Section 6. Site Development Permit (Sign Findings). In accordance with Municipal Code Section XI-10-57.03(F), the City Council further finds that:

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

With the approval of a Variance, the proposed signs are in conformance with the design guidelines of the Sign Ordinance. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect. Additionally, the proposed signs are consistent with the intent of the General Plan as described above.

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

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

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

The proposed signs as shown on the Project plans provide visibility and legibility and provide the appropriate relationship of scale and height to the building. The vinyl lettering on the glass curtain walls is appropriate for the size of the building as it provides visibility from the adjacent highway and streets.

- d. *The design and materials of the sign provide a contrast between the background and letters.*

The proposed design and materials of the signs as depicted in the project plans provide contrast between the background and letters. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtain walls of the building resemble a frosted or sandblasted effect.

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

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

The proposed sign program provides the dimensions, size and location for future sign requests for the Project. This sign program will streamline the review and permitting process in the future and ensure consistency.

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

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

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

- i. The proposed signs provide appropriate relationship of size to space on the building. The vinyl lettering on the glass curtain walls as shown on the project plans is appropriate for the size of the building.
- ii. The proposed signs have the appropriate relationship of height of the building. The vinyl lettering on the glass curtain walls is appropriate for the size of the building as shown on the Project plans. The proposed signs depicted on the Project plans on the wall of the hotel are appropriate given the height of the hotel.
- iii. With approval of the Variance, all new signs in the Sign Program are in compliance with the Sign Ordinance.

Section 8. Sign Variance Findings. In accordance with Municipal Code Section XI-10-57.06(F), the City Council further finds that:

- a. *Special conditions and extraordinary circumstances applicable to the property involved or its intended uses, which were not created by the owner or tenant, and which do not apply generally to other*

properties with the same land use exist that do not allow the site or business to achieve the goals and objectives of this Chapter for adequate business identification.

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

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

The Project proposes subtle window signs identifying the mall as “Pacific Mall.” Otherwise, the Project will need to rely on a larger off-site project identification sign. Unlike a traditional retail center that benefits from having quickly and easily recognizable national brands, this unique business relies on the visibility of its own brand being seen from neighboring roads and freeways. Due to the presence of the 237/880 interchange and ramp system, literal interpretation of the Sign Ordinance will not allow this business to adequately identify itself to the surrounding area.

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

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

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

In order to meet the objective of the Project, the Sign Ordinance would need to be amended allowing additional sign area for a regional shopping center and allowing additional percentage of sign area for window signs. Approving the variance would not require an amendment to the Sign Ordinance and would benefit this Project that has visibility issue because of the freeway interchange constructed after the previous development of the site.

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

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

Section 9. Tentative Map Findings. In accordance with Municipal Code Section XI-1-4.03, the City Council further finds that:

- a. *The tentative map conforms to the Milpitas Subdivision Ordinance.*

The proposed tentative map was prepared by a registered engineer and met all of the requirements in the Milpitas Subdivision Ordinance. The tentative map included all the necessary information set forth in Section XI-1-4.02, such as, tract number, boundaries clearly marked, lot dimensioned and number, drainage features, easements, streets, existing trees, and all required general notes.

b. *The tentative map conforms to the Milpitas General Plan.*

The proposed retail, professional services, and hotel uses are consistent with the underlying General Commercial designation in the General Plan. The General Commercial land use designation allows a maximum permitted 0.50 FAR. The Project proposes an FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment would create a new Pacific Mall Freeway Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52 and does not conflict with other provisions of the General Plan. The General Plan Amendment also provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance.

Additionally, the proposed Project supports the following Land Use Principles and Policies in the General Plan:

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

The proposed Project will help promote economic development in the City of Milpitas. A majority of the current buildings at the Project site are vacant and the proposed Project will revitalize the area and increase sales tax and other revenues to the City.

Section 10. Conditional Use Permit Findings. In accordance with Municipal Code Section XI-10-57.04(F), the City Council further finds that:

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

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

- i. With respect to the shared parking: the restaurant uses will be limited to the second floor of the mall and the hotel, with the exception of food services that do not use mechanical ventilation and grease traps. This is intended to curb potential parking demand concerns;
- ii. With respect to the hotel, as conditioned, the hotel will not operate as a “timeshare,” maintaining the transient occupancy tax revenue for the City;
- iii. With respect to the arcade, the arcade would be open during the hours that the mall is open, thus ensuring adequate security and public welfare; and
- iv. With respect to live entertainment, live entertainment will occur at the two designated areas within the mall, unless a specific permit is issued by the Milpitas Fire Department.

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

The proposed retail, professional services, and hotel uses are consistent with the underlying General Commercial designation in the General Plan. The General Commercial land use designation allows a maximum permitted 0.50 FAR. The Project proposes a FAR of 0.52 (24,255 square feet over the maximum

threshold). The proposed General Plan Amendment would create a new Pacific Mall Freeway Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52 and does not conflict with other provisions of the General Plan. The General Plan Amendment also provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance.

Additionally, the proposed Project supports the following Land Use Principles and Policies in the General Plan:

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

The proposed Project will help promote economic development in the City of Milpitas. A majority of the current buildings at the Project site are vacant and the proposed Project will revitalize the area and increase sales tax and other revenues to the City.

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

The General Commercial land use designation allows a maximum permitted 0.50 FAR under the Zoning Ordinance. The Project proposes a FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment will create a new Pacific Mall Freeway Corridor Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52. The General Plan Amendment also provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance. The proposed Zoning Amendment will create a new Freeway Corridor Overlay authorizing any property within 300 feet of a freeway to request an increase in the FAR up to twenty percent (20%) above the maximum permitted under the General Plan and Zoning Ordinance.

As described in detail in staff's report to the Milpitas Planning Commission that was provided to the City Council for consideration of this Project, the Project meets the development standards in the Zoning Code including the shared parking requirements. The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed Project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed Project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces. The Project would provide sufficient amount of parking as the minimum number of required parking for the Project is 2205 spaces.

Section 11. Based on the foregoing, the City Council of the City of Milpitas hereby approves General Plan Amendment No. GP13-0001, Site Development Permit No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, Variance No. VA13-0001 subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1, and the General Plan Text Amendment attached hereto as Exhibit 2.

Section 12. This Resolution shall become effective on the same date as the Zoning Ordinance Amendment for this Project becomes effective (thirty (30) days after the adoption of the Zoning Ordinance by the City Council).

Section 13. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development Project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Project applicant that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).

PASSED AND ADOPTED this ____ day of _____, 2014, 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

EXHIBIT 1

CONDITIONS OF APPROVAL

General Plan Amendment No. GP13-0001, Zoning Amendment No. ZA13-0001, Site Development Permit No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, Variance No. VA13-0001
Pacific Mall & Hotel, 11-111 Ranch Drive, (APN: 22-053-002, -003, -006, and -007)

GENERAL CONDITIONS

1. The owner or designee shall develop the approved project in conformance with the plans approved by the City Council, in accordance with these Conditions of Approval. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. Notwithstanding the foregoing, it is specifically anticipated that owner or designee may develop the retail mall and hotel in phases, with the retail mall in the first phase and the hotel in the second phase. The first phase shall be constructed in strict conformance to the conceptual drawings dated November 26, 2013 for Interim Phase 1A – Flat Roof Line and Interim Phase 1B – Curved Roof Line. Interim Phase 1B shall be fully constructed and completed within five (5) years after the issuance of the certificate of occupancy of Interim Phase 1A. It should be noted that the owner or designee is not required to develop the hotel in order to develop the retail mall. **(P)**
 - a. Owner or designee shall construct the Project in strict conformance to the requirements set forth above in Condition #1. After the Project has been constructed and approved by City, any alterations, improvements, construction or otherwise on the Project site requiring a building permit or other City approval(s) may require additional or subsequent traffic, parking, or other studies and analysis as a condition precedent of any such permit or approval as determined by City.
2. Commencement. SD13-0001, UP13-0001, MT13-0001, and VA13-0001 shall become null and void if the Project is not commenced within two (2) years from the date of approval or within the time limits of the tentative map, whichever is greater. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas entitled, “Commencement of a Permitted Activity”, an activity permitted by an approved application shall be deemed to have commenced when the Project:
 - a. Completes a foundation associated with the Project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
3. Time Extensions. Pursuant to Section 64.07 of the Milpitas Zoning code, the owner or designee shall have the right to request an extension of the approved entitlement(s). **(P)**
4. Conditions of Approval. Prior to the issuance any building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the Project. **(P)**
5. Indemnification. To the fullest extent permitted by law, owner or designee shall indemnify, defend with counsel of the City’s choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the Project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City’s related determinations or actions under the California

Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by owner or designee, City, and/or the parties initiating or bringing such proceeding. The owner or designee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The owner or designee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**

6. Private Job Account. If at the time of application for any building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(P)**
7. Review and Cost. Owner or designee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, owner or designee shall be solely responsible and liable for the cost to satisfy each and every condition.
8. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the owner or designee or any subsequent owner or designee is operating the Project under the permits and approvals in this Resolution.

CONDITIONAL USE PERMIT

9. Live Entertainment. Live entertainment shall only be conducted within the “performance space areas” identified on the approved floor plan during normal business hours. Intermittent live entertainment may be conducted in areas outside the “performance space areas” to celebrate cultural events such as the Chinese New Year and similar events during normal business hours. No seating shall be allowed in the “streets” and “avenues” shown within the mall on the Project floor plans. Any other live entertainment in the open areas of the mall shall be approved with an appropriate permit from the City. Nothing in the foregoing is intended to limit the potential for live entertainment in the hotel, restaurant or bar spaces with the appropriate permit obtained pursuant to the Milpitas Municipal Code. **(P)**
10. Recreation and Entertainment Uses. The recreation and entertainment use shall be limited to the “arcade” area identified on the approved floor plan. Other small, temporary or seasonal uses, including but not limited to, coin operated children’s ride-on toys, shall be acceptable provided they do not impact public safety as approved in writing by the Milpitas Fire Department. Notwithstanding the foregoing, subject to appropriate review and approval by City, additional recreation and entertainment uses may be approved by City. **(P/F)**
11. Restaurant Uses. Restaurant uses as defined in the City’s Zoning Code shall be limited to the hotel and the second floor of the mall. The first floor may include restaurant uses provided that such restaurants do not utilize heated cooking apparatus requiring mechanically ventilated hoods or grease traps and do not require any exterior modifications associated with such improvements. Examples of permitted first floor restaurants include, but are not limited to, shops selling tea, coffee, ice cream or candy. **(P)**
12. Security Plan. Prior to issuance of any Certificate of Occupancy, the owner or designee shall prepare a security plan indicating the details of the presence of security guards, cameras and lighting to the satisfaction of the Police Chief or designee. Any changes to the security plan shall be submitted to the Police Chief or designee for review and approval. **(PD)**
13. Hotel Use. The hotel shall be operated as a “hotel” defined in the City’s Zoning Code. No portion of the Project may be considered as a “timeshare” project (as referenced in Milpitas Municipal Code Title III-13-2.01, as may be amended). **(P)**

SITE DEVELOPMENT PERMIT

14. Landscape. All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. **(P)**

15. Landscape. No gasoline fueled leaf blowers, string trimmers or hedge trimmers are permitted to be used for maintenance of landscaping. Gasoline lawn mowers are discouraged for use for maintenance of natural turf areas. **(P)**
16. Landscape. All planter areas shall be serviced by a sprinkler head or drip system. **(P)**
17. Landscape. Prior to issuance of any building permit, a detailed landscape plan shall be submitted and approved by the Planning Director or designee that includes the following:
 - a. Locations and screening of all transformers and utility devices including backflow preventers.
 - b. Location and type of trees, shrubs and ground cover, including sizes and quantities. The legend shall also show tree canopy diameter at planting, five years and 10 years.
 - c. Plan details for all fence and wall structures. These shall be compatible in style and material with the proposed buildings.
 - d. Details of all exterior project lighting with details of fixture types and design. The Photometric shall also be included. Illumination of the site shall not exceed IESNA standards for the type of use proposed. **(P)**
18. Pylon Sign. Prior to issuance of any building permit or planning permit for any modifications to the Pylon Sign (Sign P on the Plans), the owner or designee shall submit materials for review and approval by the Planning Commission Subcommittee. **(P)**
19. Parking. Under normal daily operating conditions, on-site parking lot circulation shall not result in traffic queuing on Ranch Drive beyond the designated left turn lanes to McCarthy Blvd. If under normal daily operating conditions, traffic queues onto Ranch Drive beyond the designated left turn lanes result as determined by City's Traffic Engineer, owner or designee shall modify on-site parking circulation as necessary to eliminate any traffic queues onto Ranch Drive beyond the designated left turn lanes. **(E)**
20. Parking Guidance System. Prior to issuance of any building permit, the owner or designee shall demonstrate that a parking guidance system identifying the available number of underground parking spaces will be provided at the surface entrances to the underground parking. An annual review of the adequacy of the parking guidance system shall occur during the first three years of operation of the mall to the satisfaction of the City's Traffic Engineer. If it is reasonably determined by the City's Traffic Engineer that the underground parking is underutilized based on normal standards and adversely impacting the traffic on Ranch Drive, then City may require owner or designee to implement additional corrective measures.**(E)**
21. Shuttle. Prior to issuance of any final Certificate of Occupancy, the owner or designee shall submit for approval by the City's Traffic Engineer or designee a detailed plan for a shuttle system to run between the project site and the Milpitas BART station. The owner or designee shall be responsible for coordinating and obtaining the appropriate agreements and permits with the Santa Clara Valley Transportation Authority (VTA) or any other governmental authority; provided City may issue the final Certificate of Occupancy if owner or designee is diligently pursuing approval from VTA and/or any other governmental authority to the reasonable satisfaction of the Public Works Director and was unable to secure all required approval(s). **(E/P)**
22. Low-Emissions Vehicle Parking. Prior to issuance of any building permit, the owner or designee shall demonstrate that the Project provides a minimum of ten (10) electric vehicle charging station parking spaces. These ten (10) spaces shall be demarcated and with signs for electric vehicle charging parking spaces to the satisfaction of the Planning Director or designee. **(P)**
23. Rideshare Program. Prior to issuance of any final Certificate of Occupancy, the owner or designee shall submit for approval by the City's Traffic Engineer or designee a Rideshare Program for employees of the Mall/Hotel. **(E/P)**
24. Photovoltaic System. Prior to issuance of any final Certificate of Occupancy, owner or designee shall install conduit to the hotel roof to accommodate solar photovoltaic systems on the roof. **(P)**

25. External High Definition Screen. The external HD screen referenced on the Project plans shall include illumination controls to automatically dim according to lighting conditions. **(P)**
26. External High Definition Screen. The HD screen shown on the approved plan may be used to display video and animation and shall be limited to the hotel and the mall stores and activities. **(P)**
27. External High Definition Screen. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design of how the external HD screen will be integrated into the building and complement the building's architecture to the reasonable satisfaction of the Planning Division. **(P)**
28. Roof Top Equipment. Prior to issuance of any building permit, the owner or designee shall incorporate roof top equipment screening, if necessary, along the South Elevation Building D1. **(P)**
29. Retaining Wall. Prior to approval of Final Map or issuance of any building permit (whichever is sooner), the retaining wall material along McCarthy Boulevard facing the building (Sheet TM-2, Exhibit A) shall identified as "split-face." **(P)**
30. Garage Entry. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design to the satisfaction of the Planning Division for the entry, ramp, walls and railings to the underground parking for the Project. **(P)**
31. Internal Vehicle Intersection at Garage Entry. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design to alter the "five-point" intersection at the entrance to the underground parking adjacent to the current McDonalds and Taco Bell to an acceptable design to the satisfaction of the City's Traffic Engineer or designee. **(E)**
32. McCarthy Boulevard Service Access. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design to create a concrete driveway apron at the entrance to the service access ways to the satisfaction of the City Engineer or designee. **(E)**
33. Plaza and Outdoor Furniture. All outdoor furniture shall be reasonably maintained and replaced if necessary to the satisfaction of the Planning Division. **(P)**
34. Exterior Railings or Hand Rails. Any exterior railings associated with the Project shall be decorative in detail and complement the architecture of the Project. **(P)**
35. Silhouette Elements. Prior to issuance of any building permit, the owner or designee shall provide a revised and detailed design for the silhouette elements to the satisfaction of the Planning Division. At a minimum the silhouette will be a glossy paint on a flat background.
36. Ground Equipment and Device Screening. Prior to issuance of any building permit, the owner or designee shall demonstrate that all backflow preventers, meter boxes, pedestals, and similar equipment and improvements are screened appropriately to the satisfaction of the Planning Division. **(P)**
37. Water Supply and Force Majeure. The City currently has adequate water supply and sewerage treatment plant capacity allocation for this Project. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a building permit is acquired by the approval of this Resolution. The foregoing provisions are a material (demand/supply) condition to this approval. Prior to issuance of any building permit, Council's approval of the Water Supply Assessment is required. However, this condition of approval applies in case of emergency declaration of supply assurance in the case of a major catastrophic event that restricts City's assurance to provide water supply, or allocated treatment plant capacity. **(E)**
38. Fees. The owner or designee shall pay all required fees prior to issuance of any building permit. To the extent that the Project is developed in phases, the owner or designee shall be required only to pay those fees associated with the

particular phase of the Project. Fees shall be adjusted, where applicable, by Engineering News Record (ENR) as required by code, ordinance or resolution at the time of building permit issuance. All fees set forth in Exhibit I-A are estimate and owner or designee shall pay the fees at the rate applicable at the time of building permit issuance. See Exhibit I-A “Impact Fee Schedule” for an estimate of the applicable impact fees. (E)

39. Development Fees. Prior to issuance of any building permit, owner or designee shall pay a plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. The agreement for Public Right of Way improvements shall be secured for an amount of 100% of the engineer’s estimate of the construction cost for faithful performance and 100% of the engineer’s estimate of the construction cost for labor & materials. (E)
40. NPDES Compliance. The owner or designee shall comply with Municipal Regional Permit (MRP) Order R2-2009-0074 for post construction C3 provisions for new development and redevelopment regulated projects storm water treatment requirements, and National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009—0009 NPDES No. CAS000002 or as required by the Regional Board at the time owner or designee submits the Notice of Intent (NOI) for the project for pre-construction storm water treatment requirements. (E)
41. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the owner or designee, and accepted by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
42. Lighting and Landscape Maintenance District. The Project is within the existing Lighting and landscaping Maintenance District (LLMD) 95-1. Proposed new and/or rehabilitated landscaping and lighting within the LLMD area shall be in compliance with the existing LLMD requirements. (E)
43. Construction Phasing Plan. Prior to start of any construction, the owner or designee shall submit a construction schedule and monitoring plan for City Engineer or designee review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The owner or designee shall coordinate their construction activities with other construction activities in the vicinity of this Project. (E)
44. Demolition Compliance. All utilities shall be properly disconnected before any applicable building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped at main line in the street if the water meter is not to be used. The sanitary sewer shall be capped at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)
45. Demolition Compliance. Prior to issuance of any demolition permit, the owner or designee shall submit Part I of a Recycling Report on business letterhead to the City’s Building Division. This initial report shall be approved by the City’s Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
 - a. What materials will be salvaged.
 - b. How materials will be processed during demolition.
 - c. Intended locations or businesses for reuse or recycling.

- d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
 - e. Applicant/Contractor shall make reasonable efforts to salvage materials for reuse and recycling. (E)
46. Demolition Compliance. Upon completion of demolition, owner or designee shall submit Part II of the Recycling Report to the Building Division for review and approval of the City's Utility Engineering/Solid Waste Section. The Part II report shall confirm items 1–4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps". Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Division for review and approval by the Utility Engineering/Solid Waste Section. (E)
47. Demolition Compliance. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, and any other debris or materials, shall be removed from the job site for recycling and/or disposal by the owner or designee, all to the satisfaction of the City Engineer or designee. The owner or designee shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The owner or designee shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The owner or designee shall perform all recycling and/or disposal by removal from the job site. (E)

MITIGATION MEASURES

Transportation

48. McCarthy Boulevard and SR 237 WB Ramps (No. 9): Prior to the issuance of any certificate of occupancy, owner or designee shall complete the restriping of the westbound through lane to a right turn lane to provide two right-turn lanes, complete the signal modification to create a right-turn overlap phase. No right-of-way acquisition is required. Implementation of this mitigation would result in an improvement in intersection operations in the mid-day Peak Hour. Completion of the mitigation is not a condition precedent to occupancy of the project provided that the applicant is diligently pursuing permitting approval from other government authority to the reasonable satisfaction of the Public Works Director. (E)
49. McCarthy Boulevard and Bellew Drive (No. 16): Prior to the issuance of any certificate of occupancy, owner or designee shall complete the restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to D- in the PM Peak Hour. This improvement is under the jurisdiction of the City of Milpitas. (E)
50. McCarthy Boulevard and Alder Drive (No. 17): Prior to issuance of any certificate of occupancy, owner or designee shall complete the construction of a second southbound left-turn lane from McCarthy Boulevard to Alder Drive. The lane will be added within the existing right-of-way, thereby reducing the width of the travel lanes by approximately one foot. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour. This improvement is under the jurisdiction of the City of Milpitas. (E)
51. Alder Drive (No. 19): Prior to issuance of any certificate of occupancy, owner or designee shall complete the conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project. This improvement is under the jurisdiction of the City of Milpitas. (E)
52. McCarthy Boulevard/O'Toole Avenue and Montague Expressway (No. 28): Prior to issuance of any certificate of occupancy, owner or designee shall complete the restriping of northbound O'Toole Avenue approach from Rincon to

Montague Expressway to provide a dedicated right-turn lane from O'Toole Avenue onto Montague Expressway. Associated traffic signal modifications would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour. The improvement would, however, reduce the delay below background conditions, thereby improving the functionality of the intersection and reducing the project's impact to less than significant. Completion of the mitigation is not a condition precedent to occupancy of the project provided that the applicant is diligently pursuing permitting approval from other government authority to the reasonable satisfaction of the Public Works Director. (E)

Biological Resources

53. Nesting Birds.

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

54. Trees. In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter) at 48 inches above the ground surface will be replaced at a 3:1 ratio within the project site. The species and size of the replacement trees will be determined by City staff. (P)

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

Hazards and Hazardous Materials

56. Demolition.

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

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

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

Noise

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

TENTATIVE MAP

60. On-site Studies. Prior to approval of the final map, the owner or designee shall submit for the City's acceptance on-site water, sewer, and storm drain studies for this development. **(E)**
61. Title Report. Prior to issuance of any building permit, the final map shall be recorded provided a current title report has been submitted to the City not more than 90 days old. **(E)**
62. Common Lots. Prior to any approval of the final map, the owner or designee shall demonstrate that the final map shall designate all common lots and easements as lettered lots or lettered easements. **(E)**
63. Conditions, Covenants, and Restrictions. Prior to any approval of the final map, the owner or designee shall establish an owner association to control, operate, and maintain the common areas. Membership of the owner association shall include all owners of the commercial and Hotel. The owners association shall be responsible for the maintenance of the landscaping, walls, buildings, parking area, common area and private facilities and shall have assessment power. The owners association shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer or designee. **(E)**
64. Prior to recordation of any Final Map, the owner or designee shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. **(E)**
65. Public Improvements. Prior to any approval of the final map, the owner or designee shall obtain design approval and bond for all necessary public improvements including but not limited to the following:
- a. Removal and reconstruction of broken and damaged curb, gutter and sidewalk along the project frontages on McCarthy Boulevard and Ranch Drive to the satisfaction of the Public Works Director or designee. **(E)**
 - b. Reconstruction of any affected sidewalk, street lights, landscaping, signage and striping, fire hydrants and bus stop along project frontages and LMD area by the project to the satisfaction of the Public Works Director or designee.

- c. Reconstruction of all the ramps along Ranch Drive frontage from McCarthy Boulevard to the extent of the sidewalk improvements depicted in (e) below to comply with ADA requirements.
- d. Pavement Repair. McCarthy Boulevard (north and south bound lanes) between the intersection of SR 237 and McCarthy Boulevard (northside) and the intersection of McCarthy Boulevard and South Ranch Drive: Saw cut and repair damaged pavement and slurry seal entire width. McCarthy Boulevard (northbound lanes) along frontage: Saw cut and repair damaged pavement and slurry seal entire width.
- e. Construction of a 6-foot monolithic sidewalk within the City's right-of-way on the north side of Ranch Drive to connect from McCarthy Boulevard to the south side of the driveway between Buildings 12 and 13. As an alternative route, owner or designee may at their discretion be permitted to meander and slope a portion of the sidewalk towards Building 12 prior to intersecting at the south side of the driveway between Buildings 12 and 13 to the satisfaction of the Planning Director or designee.
- f. Construction of Mitigation Measures pursuant to Project EIR and Mitigation Conditions herein these conditions of approval:
 - 1. McCarthy Boulevard and SR 237 WB Ramps (No. 9)
 - 2. McCarthy Boulevard and Bellew Drive (No. 16)
 - 3. McCarthy Boulevard and Alder Drive (No. 17)
 - 4. Alder Drive (No. 19)
 - 5. McCarthy Boulevard/O'Toole Avenue and Montague Expressway (No. 28)
- g. Construction of civil improvements, traffic signal modifications, and striping modifications to provide two inbound lanes and two outbound lanes from project site at Ranch Drive between the currently existing McDonalds and Taco Bell intersection.

Plans for all public improvements shall be prepared on Mylar (24" x 36" sheets) with City Standard Title Block and owner or designee shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The owner or designee shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard drawing and specification, and shall be constructed to the City Engineer or designee satisfaction and accepted by the City prior to issuance of any final inspection or occupancy permit issuance. **(E)**

66. Storm Water Control Plan. Prior to any approval of the final map or building permit submittal (whichever occurs first), owner or designee shall submit the Final Storm Water Control plan that incorporates best management practices (BMPs) for treatments of storm water run-off from all parcels as shown on plans. The Storm Water Control plan shall incorporate source control, site design and storm water treatment requirements consistent with MRP requirements with BMPs such as the use of bio-treatment areas into the landscape design elements and the use of permeable pavement BMPs compliant with the current California Storm water Quality Association (CASQA) BMP handbooks. The site plan shall be consistent with the final Storm Water Control plan to the satisfaction of the City Engineer or designee.

- a. Prior to any Final Map approval, owner or designee shall incorporate the third party reviewer (ENGEO) comments and recommendation, and submit a final certified copy for the City approval.
- b. The Plan shall be prepared by a licensed Civil Engineer qualified and trained professional with storm water treatment process and certifies that measures specified in the report meet the MRP requirements.
- c. Prior to issuance of any Certificate of Occupancy, the owner or designee shall submit a Storm water Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment Best Management Practices (BMPs) and other storm water control

measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the Project. The storm water control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.

- d. Owner or designee shall include in the approved CC&R, language in regard to providing the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the National Pollutant Discharge Elimination System (NPDES) requirements. If the City does receive the report, City will conduct the field inspection and report, and the owner or designee and its successor shall be responsible and liable to pay all associated costs.
- e. Prior to issuance of any Certificate of Occupancy, the owner or designee shall execute and record an Operation & Maintenance Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
- f. Owner or designee shall comply with all "Model Conditions Of Approval For Storm water Quality" as shown in the Storm water Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 and are hereby incorporated as conditions of project approval.
- g. Prior to issuance of any building, site improvement or landscape permits, the building permit application shall be consistent with the owner or designee's final Storm Water Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. Any changes to the final Storm Water Control Plan shall require Site & Architectural (Site Development Permit) Amendment application review. **(E)**

- 67. Caltrans Review. Prior to any Final Map approval, the owner or designee shall submit plans to Caltrans for review and approval of the required off-site improvements within Caltrans right-of-way. **(E)**
- 68. Exhibit "T". Owner or designee shall make changes as noted on Engineering Services Exhibit "T"(dated 12-2-2013) and submit a Mylar of the revised tentative map to the Engineering Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. **(E)**
- 69. Construction Noise. Construction and demolition activities shall be limited to the period as prescribed in the Milpitas Municipal Code, provided the City may authorized in writing additional construction hours. **(P)**
- 70. Construction Noise. Construction crews will be required to use available noise suppression devices and properly maintain and muffle combustion engine-driven construction equipment. **(P)**
- 71. Construction Noise. The owner or designee shall designate a disturbance coordinator and post the name and phone number of this person at easy reference points for the surrounding land uses. The disturbance coordinator shall respond to and address all complaints about noise. **(P)**

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

EXHIBIT I-A

IMPACT FEE SCHEDULE

Fee Type or Credit	Fee Metric	Mall (ph. 1)	Hotel (ph. 2)	Total
Water Connection Fee	54,050 GPD * \$5.97/GPD	\$222,383.00	\$100,296.00	\$322,679.00
Water Connection Fee Credit	\$14,328/ac (12.01)	\$172,079.00	\$0.00	-\$172,079.00
Water Impact Fee	Mall (>8,426 GPD over Master Plan * \$2.38) Hotel (>16,800 GPD over Master Plan * \$2.38)	\$20,095.00	\$40,066.00	\$60,161.00
Sanitary Sewer Connection Fee	54,050 GPD * \$8.52/GPD	\$317,370.00	\$143,136.00	\$460,506.00
Sanitary Sewer Connection Fee Credit	\$20,448/ac (12.01)	\$245,580.00	-	-\$245,580.00
Sewer Treatment Plant Fee	Per MMC VIII-2-7-7.04 TP Fees and standard flow factors and strengths are used in these calculations. Restaurant (Fast food - 12,519 s.f.); Restaurant (full service - 6,907 s.f.); Retail, Entertainment & Office 265,161/s.f. from Draft EIR page 40 dated May 2013 for restaurants and retail from Proposed Site Plan A1.11 dated September 11, 2013	\$135,696.00	\$97,893.00	\$233,589.00
Sewer Treatment Plant Fee Credit	Credit for previously paid TPF	-\$16,536.00	\$0.00	-\$16,536.00
Sewer Capacity Impact Fee	Mall (>15,632 GPD over Master Plan * \$1.19 + 15,632 * \$8.37); Hotel (>16,800 GPD over Master Plan * \$1.19 + 16,800 * \$8.37)	\$149,519.00	\$160,692.00	\$310,211.00
Sewage Pump Station Impact Fee	Mall (>15,632 GPD over Master Plan * \$2.90); Hotel (>16,800 GPD over Master Plan * \$2.90)	\$45,454.00	\$48,850.00	\$94,304.00
Storm Drain Connection Fee	\$21,562/ac (12.01)	\$258,960.00		\$258,960.00
Calaveras Widening Fee	\$708/Ks.f. + \$235/rm	\$100,445.00	\$60,267.00	\$160,712.00
Total		\$815,727.00	\$651,200.00	\$1,466,927.00

EXHIBIT 2

GENERAL PLAN TEXT AMENDMENT

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- a. Pacific Mall Freeway Corridor Overlay. The purpose of the Pacific Mall Freeway Corridor Overlay is to permit an increase in the maximum permitted Floor Area Ratio from 0.50 to 0.52 for the Pacific mall Freeway Corridor Overlay as shown on Sectional District Map No. 582 of the Zoning Map.