Attachment E

RESOLUTION NO. 14-019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING TO THE CITY COUNCIL APPROVAL OF MAJOR VESTING TENTATIVE MAP NO. MT13-0006, CONDITIONAL USE PERMIT NO. UP13-0011, AND SITE DEVELOPMENT PERMIT NO. SD13-0012 FOR THE CONSTRUCTION OF 381 APARTMENT UNITS, 8,100 SQUARE FEET OF COMMERCIAL AND OFFICE SPACE AND ASSOCIATED SITE IMPROVEMENTS ON 5.6 ACRES LOCATED AT 765 MONTAGUE EXPRESSWAY (CITATION II MIXED USE PROJECT)

WHEREAS, on July 1, 2013, an application was submitted by Jim Sullivan of SCS Development Company, a California corporation, 404 Saratoga Avenue, Suite 100, Santa Clara, CA 95050, to construct 381 residential units, 8,100 square feet of commercial and office space, and associated site improvements on 5.6 acres located at 765 Montague Expressway (the "Project"). The property is located within (MXD3 (TOD)) Zoning District (APN: 086-32-029-026).

WHEREAS, on June 3, 2008, the City Council of the City of Milpitas approved the Transit Area Specific Plan to guide development in the Transit Area of the City near the future Milpitas BART Station.

WHEREAS, Milpitas City Staff conducted a full analysis of the project to ensure compliance with the City's General Plan, Transit Area Specific Plan, Zoning Ordinance, Engineering Design Requirements and all other applicable laws, regulations and standards, as all further explained in detail in City staff's report to the Planning Commission.

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 covered under the program of activities identified in the Transit Area Specific Plan EIR, SCH#2006032091, certified by the City Council on June 3, 2008 based on the CEQA finding included in this Resolution.

WHEREAS, on May 14, 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.

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

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Division conducted an environmental assessment of the Project in accordance with the California Environmental Quality Act of 1970, as amended (CEQA), and state and local guidelines implementing CEQA. This Project is included within the area evaluated as part of the Transit Area Specific Plan Environmental Impact Report (EIR), SCH#2006032091, which was certified by the City Council June 3, 2008. The Project is covered under the scope of activities approved with that EIR. A finding is made below that this Project is within the program of the Transit Area Specific Plan EIR and no further environmental review is required.

CEQA Finding

The proposed Project is covered under the scope of activities approved under the Transit Area Specific Plan (TASP) EIR, SCH#2006032091, which was certified by the Milpitas City Council on June 3, 2008. The TASP EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The proposed 381 residential units fall within this scope of development activity since the TASP area has not reached its full build out. The TASP area has been approved with approximately one-quarter of the amount of development assumed in the EIR development threshold. Further, the Project applicant has submitted an air quality assessment, greenhouse gas emissions analysis, a Phase I and II Environmental Site Assessment, a noise and vibration assessment and a traffic operations analysis to further show consistency with the TASP. Copies of these documents are on file with the Planning Division and fully incorporated herein by reference. These aforementioned studies do not indicate any Project impacts other than those already assumed in the TASP EIR. Mitigation measures required of projects covered under the TASP EIR are included as Conditions of Approval 28-36 as shown on Exhibit 1 to this Resolution. Based on the foregoing, the Planning Commission recommends the City Council finds that the proposed Project will not have additional environmental impacts beyond those identities in the TASP EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

Section 3: Major Tentative Map (Section XI-1-20.01) - ***The Planning Commission makes the following findings based on the evidence in the administrative record in support of Major Vesting Tentative Map No. MT13-0006:***

1. *The tentative subdivision map is consistent with the Milpitas General Plan.*

The project site has a General Plan land use designation of Boulevard Very High Density Mixed Use. The intent of this designation is to provide high-density housing, retail and employment along Montague Expressway at a minimum density range of 41 units per acre, and a maximum density of 90 units per acre.

The Project is consistent with this finding because the proposed Project meets the intent of the Boulevard, High Very High Density Mixed Use designation by providing a mixed-use residential project along Montague Expressway with 68 dwelling units per acre and 8,100 square feet of commercial area. Further, the project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- *2.a-G-2 Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.*

The proposed Project is consistent with this Principle because it includes a compact, mixed-use development that will serve the transit area, and provide commercial services to nearby residents.

- *2.a 1-31 Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

The proposed Project is consistent with this policy because it include an attractive mixed-use building with 381 residential units in close proximity to the future Milpitas BART Station. The Project also includes significant streetscape improvements and is attractively designed including a public plaza at the corner of Piper Drive and Montague.

- *2.a 1-32 Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

The proposed Project is consistent with this policy because it has been designed per the adopted design guidelines/requirements contained in the Transit Area Plan. Other than the two exceptions to the Plan, as previously mentioned in the staff report and discussed below, the project meets all guidelines and requirements of the Transit Area including building setbacks and height, Floor Area Ratio and density, parking, open space and landscaping. It also includes public street improvements consistent with the Transit Area cross-sections for Piper Drive and Montague, and meets the requirements for access and circulation.

Section 4: Site Development Permit (Section XI-10-57-03(F)(1)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD13-0002:*

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

The Project is consistent with this finding because the site is designed as a single-mixed use building in an urban contemporary format consistent with the Transit Area Specific Plan. The design of the building, including the mass, scale and height of the structure, is typical of transit oriented development and includes a retail storefront along the street and intersection with residential units above. The building complements other approved and pending projects in the areas which all contribute to a vibrant urban transit district consistent with the vision of the Transit Area Specific Plan. Further, the building materials and large glass storefronts provide

variation in texture and finish and lend themselves to a retail environment to encourage shopping and strolling while providing services to future residents and transit riders.

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

The Project site is zoned MXD3, Mixed Use, Very High Density with a Transit Oriented Development (TOD) Overlay. The proposed residential and commercial uses are permitted in the zoning district. The purpose of the MXD3 zoning district is to provide areas for very high density housing and retail uses in a mixed-use format. The Project conforms to the zoning district because the proposed high density mixed-use project meets the intent for this type of project envisioned in this area.

The Project also conforms to the TOD Overlay by providing density of 68 units per acre, which is within the 41-75 units/acre range allowed by the TOD Overlay when combined with the MXD3 zoning district. The height of the building is also within the standards of the TOD Overlay, since five stories is proposed where up to 12-stories is allowed.

The project conforms to the development standards required in the MXD3 and TOD Overlay Districts. The table below demonstrates how the Project is consistent with these development standards.

Table 1:
Summary of Development Standards

MXD3-TOD	Standard	Proposed	Complies?
Setbacks (Minimum)			
Front	12-20 feet	18 feet	Yes
Street Side	12-20 feet	12 feet	Yes
Interior	10 feet	18 feet	Yes
Rear	15 feet	40 feet (includes private street)	Yes
Floor Area Ratio (Maximum)	Up to 2.5	1.7	Yes
Density (Units/Acre)	41-75 Unit/Acre	68 Units/Acre	Yes
Building Height (Maximum)	Up to 12 stories	5 Stories	Yes

The Project requires a total of 634 parking spaces based on the table below:

Table 2:
Summary of Parking Standards

Use	Parking Ratio	Amount Required
One Bedroom Units	198 units x 1.2 spaces/unit	237 spaces
Two Bedroom Units	183 units x 1.6 spaces/unit	293 spaces
Guest Parking	15% of Total	80 spaces
Retail Parking	0.8 spaces/250 square feet @ 5,400 total square feet	17 spaces

Office Parking	0.8 spaces/303 square feet @ 2,700 total square feet	7 spaces
Total Required		**634 Spaces**
Total Provided		**634 Spaces**

The Project provides a total of 634 spaces to meet this requirement. A total of 622 spaces are located in the garage, 610 of which are provided to residents and guests. Two spaces are located on site, and a total of ten spaces are located along Piper Drive. Ten (10) parking spaces are proposed along Piper Drive to meet the requirement for the retail storefront space along the Piper Drive frontage. This is allowed through Section IX-10-53.13(A)(1) of the Zoning Code which allow non-residential parking to be located within 300 feet of the use that it serves, subject to a Conditional Use Permit. This parking will help to serve and contribute to the success of these retail spaces. This area will be signed for retail or limited term parking and will not be available to BART patrons.

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

As discussed in detail above, the Project is consistent with the Milpitas General Plan.

4. *The project is consistent with the Transit Area Specific Plan.*

The Project is located with the Montague Corridor Sub-District of the Transit Area Specific Plan (TASP) area and is designated as Boulevard Very High Density Mixed Use and TOD Overlay which qualifies the site for increased density. The project is directly across the street from the BART Station. This designation is intended for commercial and residential mixed-use projects between 41-75 units per acre with allowances up to 90 units per acre. The TASP designation also includes a neighborhood retail designation on the corner of Montague and Piper Drive which requires a minimum of 5,000 square feet of retail. The Project conforms to the TASP designation because the proposed project, at 68 units per acre, falls within the required density range at this location; and, includes 8,100 square feet of commercial space along the ground floor at the corner of Piper Drive and Montague Expressway.

The applicant is requesting two exceptions to the Transit Area Specific Plan. The first exception is in regards to floor to ceiling height for retail or office commercial space. The applicant is proposing 14-feet where 18-feet is required for retail, and 15-feet is required for office. The second exception is in regards to block dimension. The applicant is proposing an approximate 650 block length along Montague Expressway where a maximum of 500 feet is required. These two exceptions require the approval of a Conditional Use Permit by the City Council and is discussed in detail below.

Further the Project is consistent with the following TASP Policies:

- *Policy 3.10: Maintain Montague Expressway and Great Mall Parkway/Capitol Avenue as regional arterials. Impediments to through traffic flow along arterial roadways will be minimized. Signalized intersections and at-grade crossings will be kept to a minimum, and retail and parking access will be off of the main travel lanes.*

The Project is consistent with this policy because it maintains Montague Expressway as a regional arterial and does not propose any impediments to traffic flow on Montague. It also takes all access to the parking and retail areas from the side streets and reduces turning movements from Montague.

- *Policy 4.1 (MON): High rise buildings are encouraged along Montague Expressway.*

The Project is consistent with this policy because it includes a five-story building along Montague.

- *Policy 4.2 (MON): New curb cuts and auto access onto Montague Expressway are strongly discouraged, unless specifically indicated on the Plan map.*

The Project is consistent with this policy because it does not propose any curb cuts or auto access from Montague into the Project site.

- *Policy 4.3 (MON): Parcels fronting Montague Expressway are permitted to contain residential, employment, or hotel uses.*

The Project is consistent with this Policy because it includes the permitted residential and commercial uses.

- *Policy 4.5 (MON): New development along Montague Expressway must dedicate land, such that a total of 79 feet from the roadway centerline is provided, to accommodate the future Montague Expressway widening project.*

The Project is consistent with this policy because it includes the dedication of land along the Montague frontage to account for the future Montague widening. The Project has been designed with this assumption.

Section 5: Conditional Use Permit (Section XI-10-57.04(F)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP13-0011:*

1. *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 is consistent with this finding because the requested exceptions to the Transit Area Specific Plan require a Conditional Use Permit approval and the requested exceptions do not adversely affect the public health or safety. The exceptions are related to the overall design and functionality of the building, commercial spaces and pedestrian environments. The first exception is in regards to floor to ceiling height for retail or office commercial space. The applicant is proposing 14-feet where 18-feet is required for retail, and 15-feet is required for office. The second exception is in regards to block dimension. The applicant is proposing an

approximate 650 block length along Montague where a maximum of 500 feet is required. These exceptions are minor design deviations that do not affect the public health or safety. All construction will be completed in accordance to the California Building Code and the exceptions will not have any impact on public health and safety.

The applicant is proposing ten off-street parking spaces along Piper Drive to serve the commercial uses along this frontage. The project is consistent with Section IX-10-53.13(A)(1) of the Zoning Code which allows non-residential parking to be located within 300 feet of the use that it serves because the proposed parking along Piper Drive is located directly in front of the retail and office uses, within 50 feet of the use that is serves and will contribute to the success of these commercial locations. The parking will be designated for limited term parking only to encourage high turnover and rotating customer base for these businesses.

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

As discussed in detail above, the project is consistent with the Milpitas General Plan.

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

As discussed in detail above, the project is consistent with the Milpitas Zoning Ordinance.

4. *The project is consistent with the Transit Area Specific Plan.*

As discussed in detail above, the project is consistent with the Milpitas Transit Area Specific Plan.

5. *The deviation from the Transit Area Specific Plan Standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development.*

The project is consistent with this finding because the deviations from the code will not deter the project from meeting the design intent of the Plan. The deviation for interior commercial ceiling height is a minor adjustment due to building code regulations and building design that does not affect the operation or function of those commercial spaces. The exterior architectural design will not be affected and the overall integrity of the building is maintained. The deviation from block size is necessary due to restricted access along Montague Expressway as building access is from the rear of the building. The overall massing of the building has been designed into components and will give visual appearance of building sections. Overall, these minor deviations do not compromise the integrity of the development.

6. *The deviation from the Transit Area Specific Plan Standard allows for a public benefit not otherwise obtainable through the strict application of the Zoning Standard.*

The project is consistent with this finding because the proposed utilization of ten on-street parking spaces for the commercial uses provide a benefit to both the operators of those spaces and the public for the use of parking in close proximity to commercial tenant entrances.

Section 6: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 14-019 recommending to the City Council approval of Major Vesting Tentative Map No. MT13-0006, SD13-0012 and UP13-0011, based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 14, 2014.

Sudhir Mandal
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 May 14, 2014 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella	✓			
John Luk	✓			
Rajeev Madnawat	✓			
Sudhir Mandal	✓			
Demetress Morris	✓			
Gurdev Sandhu			✓	
Garry Barbadillo		✓		
Hon Lien (alternate)	✓			

EXHIBIT 1

CONDITIONS OF APPROVAL
Major Vesting Tentative Tract Map No. MT13-0006, Site Development Permit No. SD13-0012, Conditional Use Permit No. UP13-0011
Citation II Mixed Use Project, 765 Montague Expressway (APN: 86-32-029)

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Major Vesting Tentative Map No. MT13-0006, Conditional Use Permit No. UP13-0011, and Site Development Permit No. SD13-0013 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed. The Permittee shall develop the site in accordance with the approved Attachments B and C, and as modified by these conditions of approval.

2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.

3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:

   a. Acceptance of this Permit by Permittee; and
   b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.

4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the Project:

   a. Completes a foundation associated with the Project; or
   b. Dedicates any land or easement as required from the zoning action; or
   c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time

extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the Project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

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

8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.

9. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Permittee is operating the Project under the permits and approvals in this Resolution.

10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**

11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.

12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with

such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.

14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.

15. Permittee shall develop the approved Project in conformance with the approved plans approved by the City Council on (June 17, 2014), in accordance with these Conditions of Approval.

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

Site Development Permit Conditions

16. Commercial Loading/Unloading. Loading and unloading goods for the commercial tenant spaces shall be limited between 7 a.m. and 7 p.m. daily. **(P)**

17. 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)**

18. 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 any natural turf areas. **(P)**

19. Landscape. Prior to issuance of any building permit, Permittee shall demonstrate complete consistency with Figure 5-4 of the Transit Area Specific Plan with respect to landscaping features and streetscape furniture elements, including lighting, benches, trash receptacles and bike racks. **(P)**

20. 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, fire service connections 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.

        i. Permittee shall install a vertical barrier between the Project site and UPRR property and shall be open tubular steel, or similar, fencing.

    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)**

21. Sign Program. Prior to issuance of any building permit for the apartment building, Permittee shall submit for approval a Site Development Permit for a Sign Program for the building for review and approval by the Planning Commission. **(P)**

22. Electric Vehicle Charging Stations. Prior to issuance of any building permit, Permittee shall include in the approved construction drawings a minimum of four (4) electric vehicle charging station parking spaces. These spaces shall be demarcated and signed for electric vehicle charging parking spaces to the satisfaction of the Planning Director or designee. **(P)**

23. Photovoltaic System. Applicant shall design the building to accommodate future rooftop solar panels. As part of the building permit review and prior to issuance of any final Certificate of Occupancy, Permittee shall design and install conduit to accommodate solar photovoltaic systems on the roof. **(P)**

24. Plaza and Outdoor Furniture. All outdoor furniture in view from the public Right-of-Way shall be reasonably maintained and replaced if necessary to the satisfaction of the City. **(P)**

25. Plaza. Prior to issuance of any building permit, Permittee shall submit for review and approval by the Planning Division the design, materials and decorative pattern for hardscape treatment within the Plaza area and at the intersection of Piper Drive and Montague Expressway. **(P)**

26. Bicycle Racks. A minimum of eight exterior bike spaces consistent with the TASP Streetscape Elements shall be installed in the Plaza area. **(P)**

27. Ground Equipment and Device Screening. Prior to issuance of any building permit, Permittee shall demonstrate that all backflow preventers, meter boxes, pedestals, and similar equipment

and improvements are screened appropriately to the satisfaction of the Planning Division. Backflow preventers are to be painted black. **(P)**

28. Private Street A. Prior to issuance of any building permit, Permittee shall design "Street A" consistent with Figure 5-9 within the Transit Area Specific Plan to the extent feasible subject to review and approval of the City Engineer, or designee, and the Planning Division. The street shall contain on-street parking. Permittee shall provide an Emergency Vehicle Access Easement (EVAE) and Public Access Easement (PAE) along Private Street A for access to the easterly adjacent property owner, and to the northerly property in the event the railroad track operations cease in the future. **(P/E)**

29. Architecture. Prior to issuance of any building permit, Permittee shall demonstrate that the design of the residential and retail lobby entries are distinct and include a change of material and color. **(P)**

30. Trees. In conformance with the 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)**

31. Falcon Drive Improvement. Prior to issuance of any building permit, Permittee shall finalize construction plans to implement Figure 5-18 in the Transit Area Specific Plan, along the northern side only, and receive approval from the City for construction. The 6-foot sidewalk design may be non-contiguous and deviate from Figure 5-18 to the satisfaction of the Planning Director and City Engineer in order to avoid existing obstructions, such as utilities and trees. Prior to issuance of any certificate of occupancy, Permittee shall complete construction of Falcon Drive Improvements to the satisfaction of the City Engineer. As a condition of approval of the Final Map, Permittee shall enter into a separate agreement setting forth the terms and conditions of the reimbursement Permittee may receive for the cost of construction of the Falcon Drive Improvements based upon City approved cost estimate, provided Permittee is not entitled to any reimbursement until the improvements are completed, accepted by the City, and upon issuance of the first Certificate of Occupancy for the Project. **(E)**

32. Piper Drive Sidewalk. Prior to issuance of any building permit, Permittee shall submit plans demonstrating a minimum of three pass-thru walkway connections through the stormwater treatment area between the outer Piper Drive sidewalk and the sidewalk fronting the commercial spaces to the satisfaction of the City Engineer or designee and the Planning Division. **(E/P)**

33. Street Lights. Street lighting shall be provided along all street frontages consistent with current Transit Area Specific Plan standards subject to the review and approval of the Planning Division. Pedestrian scale lights shall be installed along both private street frontages. The Permittee shall submit a photometric plan to determine appropriate light levels with submittal of on-site improvement plans.

MITIGATION MEASURES (TASP EIR)

Biological Resources (Policy 5.26)

34. Nesting Birds. To mitigate impacts on non-listed special-status nesting raptors and other nesting birds, a qualified biologist will survey the site for nesting raptors and other nesting birds within 14 days prior to any ground disturbing activity or vegetation removal. Results of the surveys will be forwarded to the U.S. Fish and Wildlife Services (USFWS) and CDFG (as appropriate) and, on a case-by-case basis, avoidance procedures adopted. These can include construction buffer areas (several hundred feet in the case of raptors) or seasonal avoidance. However, if construction activities occur only during the non-breeding season between August 31 and February 1 no surveys will be required. **(P)**

Hazards and Hazardous Materials (Policies 5.20 and 5.22)

35. Demolition. During grading of the subject site, if encountered, abandoned railroad ties, which may require special handling, or other railroad base materials should be properly handled and disposed using best management practices. **(F)**

36. Demolition

i. After demolition but prior to the issuance of any grading permit, shallow soil samples shall be taken to determine if contaminated soil from previous truck repair facility 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.

ii. 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.

iii. 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 (Policy 5.10)

37. Noise. Prior to issuance of any building permit, Permittee shall ensure that the Project will meet the required 45 dBA interior noise standard. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed Project to the extent required by California Building Code. **(B/P)**

38. Noise. Prior to issuance of any building permit, Permittee shall demonstrate that all residential units will require mechanical ventilation to allow the windows to remain closed at the residents' option as the interior noise standards would not be met with open windows. Typically, such a system must meet the following airflow provisions:

    i. If interior noise levels are met by requiring that windows remain unable to open or closed, the design for the structure must also specify a ventilation system to provide a habitable interior environment. The ventilation system must not compromise the dwelling unit noise reduction.

Air Quality (Policy 5.16)

39. Dust Control Emissions. During the construction of the Project, Permittee shall comply with all of the following:

    i. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved roads) shall be watered two times per day.

    ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

    iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

    iv. All vehicle speeds on unpaved roads shall be limited to 15 MPH.

    v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

    vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California

airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

viii. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. **(P)**

40. ROG Emissions. Prior to issuance of any building permit, Permittee shall develop, submit and obtain approval from the City of a plan to reduce ROG emissions by 17 percent or greater during the architectural coating phase of the construction. Acceptable measures to achieve this goal include, but are not limited to, using paint that contains 125 grams per liter of VOC or less, the use of pre-fabricated building materials, or a combination of both. The plan shall be implemented as approved by the City. **(P)**

Cultural Resources (Policies 5.34 and 5.35)

41. Any future ground disturbing activities, including grading, in the Transit Area shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines § 15064.5 regarding discovery of archeological sites and burial sites, and Guidelines § 15126.4(b) identifying mitigation measures for impacts on historic and cultural resources. (Reference CEQA §§ 21083.2, 21084.1.) In the event that buried cultural remains are encountered, construction will be temporarily halted until a mitigation plan can be developed. In the event that human remains are encountered, the developer shall halt work in the immediate area and contact the Santa Clara County coroner and the City of Milpitas. Th e coroner will then contact the Native American Heritage Commission (NAHC) which will in turn contact the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods. **(P)**

42. All grading plans for development projects involving ground displacement shall include a requirement for monitoring by a qualified paleontologist to review underground materials recovered. In the event fossils are encountered, construction shall be temporarily halted. The City's Planning Division shall be notified immediately, a qualified paleontologist shall evaluate the fossils, and steps needed to photo-document or to recover the fossils shall be taken. If fossils are found during construction activities, grading in the vicinity shall be temporarily suspended while the fossils are evaluated for scientific significance and fossil recovery, if warranted. **(P)**

Major Vesting Tentative Tract Map Conditions

43. Treatment for Montague Widening: Permittee's improvement plans shall show all storm water treatment measures proposed by the County of Santa Clara's (County) Montague Expressway Widening Project adjacent to the site. The plans shall clearly state the responsible party for maintenance of each measure. Permittee shall provide an easement, at the County's request, to the County for maintenance of its facilities or shall submit documentation, such as a maintenance agreement, to the City Engineer outlining the maintenance responsibilities of the treatment measures, provided City shall not be responsible for any Santa Clara County storm water treatment measures for Montague Expressway.

44. Special Flood Hazard Area: The proposed development is located within the Special Flood Hazard Area (SFHA), Zone AO (depth 1'), and, therefore, shall comply with the National Flood Insurance Program (NFIP) Title 44 of the Code of Federal Regulations and the City of Milpitas (City) Flood Plain Management Regulations, City of Milpitas Code (COMC) Title XI Chapter 15. Prior to final map approval or any building permit issuance, Permittee shall obtain a Conditional Letter of Map Revision (CLOMR) or a Conditional Letter of Map Revision based on Fill (CLOMR-F) from the Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain or the removal of the development from the SFHA. Permittee shall also obtain a Letter of Map Revision (LOMR) or a Letter of Map Revision based on Fill (LOMR-F) and shall provide all elevation certificates prior to final building inspection or issuance of certificate of occupancy for any portion of the development. The proposed grading plan shall comply with the established BFE as determined in the final flood study report, the approved CLOMR or CLOMR-F, or the official FEMA Federal Insurance Rate Map (FIRM).

45. Flood Study: Prior to final map approval or any building permit issuance, Permittee shall submit a Flood Study for the project demonstrating, to the satisfaction of the City Engineer, that the proposed development has NO adverse impact to the surrounding flood plain within the SFHA and to flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments (Integral, DR Horton @ McCandless, Montague/Piper TASP sub-district, and the BART Project) demonstrating the combined effects will not increase the water surface elevation of the Base Flood (BFE) more than one/tenth of a foot at any point. Additionally, for the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS.

46. Drainage Study: Prior to final map approval or any building permit issuance, Permittee shall submit a final grading plan and hydrologic/hydraulic study prepared by a registered Civil Engineer, consistent with the approved CLOMR. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and Permittee shall satisfy the conclusions and recommendations of the approved drainage study.

47. Elevation Certificates: Permittee shall submit an elevation certificate for each lot or structure that is to be removed from the SFHA:

    a. Prior to any grading permit issuance, based on an approved grading plan. This elevation certificate shall contain all proposed grades applicable and shall be required in order to receive community acknowledgement for the CLOMR or CLOMR-F application.
    b. Prior to building foundation pour, based on finished formwork while the building is under construction. If Permittee intends to apply for a LOMR or LOMR-F prior to finished construction, this elevation certificate shall be submitted after the foundation pour and shall be based on existing finished floor and adjacent grades. It shall be required in order to receive community acknowledgement for the LOMR or LOMR-F application.
    c. Prior to occupancy of each building or structure, based on finished construction. This elevation certificate shall contain all required finished grades and shall be based on existing information.

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

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

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

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

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

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

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

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

    b. The final SWCP shall include an Operation and Maintenance (O&M) Plan, acceptable to the City Engineer, describing the operation and maintenance procedures needed to insure that storm water treatment measures continue to work as intended and do not create a nuisance (including vector control). The plan shall include all BMP details, a location map, a maintenance schedule, and inspection and reporting templates. The treatment measures shall be maintained for the life of the project. The storm water control operation and maintenance plan shall include the Permittee's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.

    c. Prior to final occupancy, Permittee shall execute and record an O&M Agreement with the City for the operation, maintenance, and annual inspection of the C.3 treatment facilities. Permittee shall submit documentation of inspection and maintenance to the City's Utility Section annually for reporting to the Regional Board.

    d. Permittee shall include language in the approved CC&R providing the City with an annual inspection report in conformance with the approved O&M plan and agreement. If the City does not receive the report, the City will conduct the field inspection and report for the site and the applicant and its successor shall be responsible to pay all associated costs.

e. All permit applications shall be consistent with the applicant's final Storm Water Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. Onsite improvement plans shall show the details and methods of construction for site design features, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. Site design shall limit directly connected impervious areas. Any changes to the final Storm Water Control Plan shall require Site & Architectural ("S" Zone) Amendment application review.

52. Utility Capacity: The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

53. Utility Studies: Prior to final map recordation, Permittee shall obtain approval from the City Engineer of the water, sewer, and storm drainage studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable, to the satisfaction of the City Engineer.

54. Utility Modeling: Hydraulic modeling is required to verify the capacity of the adjacent water and sewer system piping and determine points of connection. Permittee shall authorize the City to proceed with hydraulic modeling and the costs of the modeling shall be charged to Applicant's PJ Account.

55. Water Study: The multi-story buildings proposed require water supply pressures above that which the City can normally supply. Additional evaluations by the Permittee are required to assure proper water supply (potable or fire services). Permittee shall submit an engineering report detailing how adequate water supply pressures will be maintained.

56. Water Supply Turnout and Pressure Regulating Station: Permittee shall dedicate sufficient land along Piper Drive for the Santa Clara Valley Water District's (SCVWD) future water supply turnout, the City's future pressure regulating station, and appurtenances in accordance with the Transit Area Specific Plan. Piper Drive street parking in front of the turnout and pressure regulating station shall be marked "authorized vehicles only" to reserve space for utility vehicles. Vaults shall be located a sufficient distance from the active UPRR tracks such that utility crews can access water supply facilities without UPRR permit. The Project shall accommodate the following design parameters:

a. The future turnout vault is estimated to be 20 ft x 20 ft. A 20 inch diameter pipe will enter the turnout vault. Up to a 24 inch diameter pipe will exit the turnout vault and enter the PRV vault.
b. The PRV vault is estimated to be 12 ft x 18 ft. Up to a 24 inch diameter pipe or two smaller pipes will exit the PRV vault and tie into the existing 18 inch water pipeline in the street.
c. Each vault requires independent electrical power. No overhead obstructions are allowed over the vaults.
d. Other required appurtenances include, but are not limited to radio masts, control conduits, valve boxes, and vault sump pumps.
e. Vault access shall include at a minimum one vehicle parking space and space for a crane for equipment maintenance /removal.
f. Vault construction and on-site piping shall be constructed by others in the future.

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

A. The proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house two (2) self-contained roll-off compactors and all necessary equipment, provide adequate access for the solid waste truck, and allocate enough space for the solid waste truck operation without impacting the proposed private street. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to any building permit issuance.
B. The enclosure drains shall discharge to the sanitary sewer line. Storm drain inlets shall be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
C. The property management shall be responsible for solid waste handling, including the transfer of material to the compactors. The Solid Waste Handling Plan shall include detailed, step-by-step instructions describing the management of solid waste from generation to disposal. The plan shall state how residential waste will be conveyed to the collection area for disposal and show the path of travel for refuse. The plan shall demonstrate how recycling and waste will be separately handled and maintained.
D. Prior to final building inspection or issuance of occupancy for any units, Permittee shall construct the new trash enclosure to serve the Project. The enclosure shall accommodate the required two self-contained roll-off compactors at minimum to serve this development.

58. Solid Waste Management: Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant and its successors shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to issuance of occupancy, Permittee shall provide evidence to the City that a sufficient level of trash and recycling service has been

secured using a Service Agreement with Republic Services (formally BFI). After Permittee has full occupancy, Permittee shall contact the Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, Permittee shall increase the service to the level determined by the evaluation.

59. Community Facilities District (CFD) Annexation: Prior to final map approval, Permittee shall submit an executed consent to annex the subject property into CFD 2008-1 and shall agree to pay the special taxes levied by CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. Permittee shall comply with all rules, regulations, policies, and practices established by State Law and by the City with respect to the CFD including, without limitation, the requirements for notice and disclosure to future owners and residents.

60. Final Map: Prior to issuance of any building permit, the final map shall be recorded. The final map submittal shall meet the following requirements:

    A. Provide a current title report with your final map submittal, not more than 90 days old.
    B. All final maps shall designate all common lots and easements as lettered lots or lettered easements.
    C. The final map shall clearly delineate the project property line and the County right of way line. County right of way and Project boundary should be contiguous.
    D. All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3.
    E. Permittee shall dedicate all necessary easements for public utilities, emergency vehicle access, solid waste collection, and public access on the final map for acceptance by the City in compliance with the City's Engineering Guidelines and the approved Tentative Map.
    F. Prior to recordation of any final map, Permittee shall submit to the City a digital format of the approved final map (AutoCAD format).

61. Home Owners Association (HOA): Prior to final map approval, Permittee shall establish an HOA. Membership of the HOA shall include all owners of the residential, commercial and office spaces. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets and shall have assessment power. The HOA shall be responsible for maintenance of the Piper Drive and Montague Expressway frontage outside of the City and/or County right-of-way. The HOA 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. Prior to final map approval, the CC&R document shall be submitted for review and approval by the City Engineer.

62. Exhibit "T": Permittee shall make changes as noted on Engineering Services Exhibit "T"(dated 3/6/2014) and submit a Mylar of the revised tentative map to the Planning Division

within three (3) 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.

63. Improvement Plans: Prior to final map approval, Permittee shall obtain design approval and bond for all necessary public improvements along Montague Expressway and Piper Drive, including but not limited to the following:

    a. Removal and installation of new curb, gutter, and sidewalk, median modification or installation, signage and striping, street lights, street trees and tree wells, fire hydrants, bus stop, and storm, water, recycled water, and sewer service installation.
    b. This Project will not receive any Certificate of Occupancy until Projects 11A, B, and C as identified in the 2009 Sewer Master Plan have been completed. The City and Permittee will work cooperatively to develop a plan in how these improvements will be completed.
    c. Permittee shall install an 8 inch recycled water main extension along Montague Expressway from the BART overcrossing.
    d. Projects located in the TASP are required to use recycled water for landscape irrigation. All landscaping located within the building footprint shall be served by potable water. Street frontage landscaping shall be served by recycled water. Permittee shall clearly delineate the potable irrigation service area and recycled water service areas on the plans and maintain separation with a permanent physical barrier such as a sidewalk or fence.
    e. All improvements plans shall be prepared using Vertical Datum of 1988 (NAVD 88). The specific city benchmark used for the project shall be indicated on the cover sheet of each improvement plan set.

    Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. Permittee shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. *All improvements must be in accordance with the City of Milpitas Transit Area Specific Plan and Santa Clara County as applicable, and all public improvements shall be constructed to the City Engineer's satisfaction and accepted by the City prior to issuance of any first certificate of occupancy for the project.*

64. Utility Fees: The following are current estimates of certain required utility fees to be paid at the time of building permit issuance:

    A. Storm water connection fee of **$120,747.00**.
    B. Water connection fee of **$389,635.00**.
    C. Sewer connection fee of **$458,836.00**.
    D. Water Service Agreement(s) for water meter(s) and detector check(s).

E. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

The amount of fee to be paid shall be the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance. Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s).

65. Transit Area Specific Plan (TASP) Fees - Prior to any building permit issuance, Permittee shall pay a Transit Area Development Impact fee of approximately **$12,713,981.00**. The amount of fee to be paid shall be the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance.

66. Fee Adjustments: All applicable fees for the Project may be adjusted prior to building permit issuance. The amount of fee to be paid shall be the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance.

67. Building Permit Automation Fee: Prior to any building permit issuance, Permittee shall pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. An estimates of the fees are generally shown on the attached Exhibit "A" below. These fees will be a part of the secured subdivision 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.

68. Utility Undergrounding: Permittee shall underground all existing wires and remove all related poles within the proposed development and along all street frontages. Prior to issuance of the first Certificate of Occupancy, Permittee shall underground overhang utilities between poles PP#1 to PP#5 and remove poles PP#2, PP#3 and PP#4, as shown on the Engineering Exhibit "T", dated 3/6/2014. All proposed utilities within the subdivision shall also be undergrounded. The improvement plans shall show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state line voltage.

69. Revised Site Grading: Prior to final map approval, Permittee shall submit a site grading plan for the City's review and approval. The site grading shall be revised from the grades shown on the approved tentative map to reduce:

    A. The grade difference between the project entrance at Montague and proposed private drive
    B. The grade breaks within the proposed private roadway.

70. Encroachment Permit: Prior to any work within the public right of way or City easement, Permittee shall obtain an encroachment permit from City of Milpitas Engineering Division. Prior to installing offsite improvements, Permittee shall obtain an encroachment permit from the City of Milpitas and all necessary encroachment permits from other affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District, Santa Clara County road and Airport Department, and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits shall be submitted to the City of Milpitas Engineering Division as a part of the encroachment permit review.

71. County Approval: Prior to final map approval, Permittee shall submit plans to the Santa Clara County Road and Airport Services for review and approval of the proposed improvements along Montague Expressway frontages. Permittee shall provide the County's written comments, final approval, and copies of any permits for the City's records.

72. VTA/BART Approval: Permittee shall submit plans to VTA/BART for review and approval of the proposed improvements along Piper Drive and proposed pedestrian bridge. Prior to final map approval, Permittee shall provide VTA's written comments, final approval, and copies of any permits for the City's record.

73. SCVWD Approval: Permittee shall submit plans to SCVWD for review and approval of the water supply turnout location. Prior to final map approval, Permittee shall SCVWD's written comments, final approval, and copies of any permits for the City's record.

74. Construction Schedule: Prior to start of any construction, Permittee shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, and construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. Permittee shall coordinate their construction activities with other construction activities in the vicinity of this project. Permittee's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress.

75. Demolition: All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped at main line in the street if the water meter is not to be used. The sanitary sewer shall be capped at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used.

76. Recycling Report, Part I: Prior to demolition permit issuance, Permittee's contractor shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's

Utility Engineering and Solid Waste Section (Utility Section) prior to demolition permit issuance. The report shall describe the following resource recovery activities:

A. What materials will be salvaged?
B. How materials will be processed during demolition?
C. Intended locations or businesses for reuse or recycling.
D. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

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

77. Recycling Report, Part II: Prior to final approval of the demolition permit or any building permit issuance, Permittee shall submit Part II of the Recycling Report to the Building Division for forwarding to the Utility Section in order to confirm the information described on Part I of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and receipts of "end dumps." Actual reuse, recycling, and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Division for approval by the Utility Section prior to inspection by the Building Division.

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

79. Site Distance: Permittee shall comply with the requirements of City standard drawing #405 and shall not obstruct the noted sight distance. The cumulative height of all proposed grading, landscaping, and signage be subject to the limitations imposed by sight distance and shall not exceed 2 feet when measured from street elevation.

80. Utility Protection: All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.

81. Sanitary Sewer Discharge: Prior to any discharge into the sanitary sewer system, Permittee shall obtain all required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755.

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

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

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

83. Recycled Water for Irrigation: In accordance with COMC Chapter 6, Title VIII (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. In order to comply with the recycled water guidelines, the applicant shall:

    A. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing, rehabilitated, and new landscaping.
    B. Design the irrigation system in conformance to the South Bay Water Recycling (SBWR) Guidelines and COM Supplemental Guidelines. Prior to any building permit issuance, the City will submit the plans to the California Department of Public Health (CDPH) for approval; this approval requires additional processing time. Permittee is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and CDPH approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
    C. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.
    D. All landscaping located within the building footprint shall be served by potable water. Street frontage and building perimeter landscaping shall be served by recycled water.

84. Landscaping Maintenance: Permittee and the future HOA shall be responsible for maintenance of all landscaping along the site frontage adjacent to County right-of-way for Montague Expressway and City right-of-way for Piper Drive.

85. Tree Removal Permit: In accordance with COMC Chapter 2, Title X (Ord. 201), Permittee may be required to obtain a permit for removal of any existing tree(s). Contact the Public Works Department at (408) 586-2600, to obtain the requirements and forms.

86. Underground Service Alert (USA): Permittee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.

87. Mailboxes: Permittee shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may be required as a result of the Building, Engineering and Planning Divisions review.

Conditional Use Permit Conditions

88. Piper Drive Parking. Ten parking spaces shall be allocated along Piper Drive in front of the commercial tenant spaces. The parking shall be signed appropriately for limited term use.

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

EXHIBIT A:

CURRENT ESTIMATE OF FEE SCHEDULE[1]

Fee Type or Credit	Fee Metric	Project	Total
WATER CONNECTION FEE			$389,635.00
Water Connection Fee - Residential	381 Units * $1164/Unit	$443,484.00	
Water Connection Fee - Commercial	2500 GPD * $5.97GPD	$14,925.00	
Water Connection Fee Credit	$14,328/ac (4.8 Acre)	-$68,774.00	
Water Impact Fee	N/A	N/A	0.00
SEWER CONNECTION FEE			$458,836.00
Sanitary Sewer Connection Fee - Residential	381 Units * $1406/Units	$535,686.00	
Sanitary Sewer Connection Fee - Commercial	2500 GPD * $8.52GPD	$21,300.00	
Sanitary Sewer Connection Fee Credit	$20,448/ac (4.8 Acre)	-$98,150.00	
Sewer Treatment Plant Fee	N/A	N/A	0.00
Sewer Treatment Plant Fee Credit	N/A	N/A	0.00
Sewer Capacity Impact Fee	N/A	N/A	0.00
Sewage Pump Station Impact Fee	N/A	0.00	0.00
Storm Drain Connection Fee	$21,562/ac (5.6 Acre)	$120,747.00	$120,747.00
TASP FEE			$12,713,981.00
TASP Impact Fee – Residential	381 Units * $32781/Units	$12,489,561.00	
TASP Impact Fee – Commercial	5459SF * $22.80/SF	$124,465.00	
TASP Impact Fee – Office	2731SF * $36.60/SF	$99,955.00	
Sub-Total		**$13,683,199.00**	**$13,683,199.00**
Automation Fee	$13,683,199 * 2.5%	**$342,080.00**	**$342,080.00**
TOTAL			***$14,025,279.00***

[1] The amount of fee to be paid shall be the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance.