

RESOLUTION NO. 16-005**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING APPROVAL OF THE MILPITAS LANDMARK TOWERS
ADDENDUM TO CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT SCH #
2007062074 FOR THE MILPITAS LANDMARK TOWERS PROJECT;
RECOMMENDING THE ADOPTION OF ENVIRONMENTAL FINDINGS PURSUANT
TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; RECOMMENDING THE
ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS AND A
MITIGATION MONITORING AND REPORTING PROGRAM AND
RECOMMENDING APPROVAL OF THE PROJECT**

WHEREAS, on August 15, 2006, TP Pham, LLC, submitted an application to the City of Milpitas to request approval of a development at 600 Barber Lane, which project would include an 18-story, 277 foot tall mixed-use building with office, retail, and residential uses, and an attached 8-level parking garage (the "TP Pham Project"); and

WHEREAS, the TP Pham Project proposed the redevelopment of the project site with an 18-story mixed-use building and attached 8-level parking garage; and

WHEREAS, pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et seq.*) ("CEQA"), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000, *et seq.*), the City determined that a Environmental Impact Report (the "EIR") should be prepared pursuant to CEQA in order to analyze all potential adverse environmental impacts of the TP Pham Project; and

WHEREAS, the City prepared and certified the Final EIR (EIR) for the TP Pham Project, consisting of comments received during the 45-day public review and comment period on the Draft EIR, written responses to those comments, and revisions and errata to the Draft EIR. For the purposes of this Resolution, the "EIR" shall refer to the Draft EIR, as revised by the Final EIR's errata section, together with the other sections of the Final EIR; and

WHEREAS, the TP Pham Project was approved and adopted by the City of Milpitas (the "City") on November 18, 2008 pursuant to the certified EIR; and

WHEREAS, BDK Capital, LLC, as successor in interest, has proposed revisions to the TP Pham Project under which the project site would be redeveloped with a 22-story mixed use building that includes two 19-story residential towers over three stores of parking as well as supporting retail and office uses and one to two levels of below-grade parking (the "Landmark Towers Project" or "Revised Project"); and

WHEREAS, the Revised Project is consistent with the City's General Plan; and

WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public

Resources Code section 21166 and State CEQA Guidelines section 15162 require additional environmental review; and

WHEREAS, by way preparation of an addendum, staff evaluated the Revised Project in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166 and State CEQA Guidelines section 15162 by preparing an Initial Study and accompanying technical reports (the "Addendum"); and

WHEREAS, based on that evaluation, staff concluded that the EIR fully analyzed and mitigated, where feasible, all potentially significant environmental impacts, if any, that would result from the Revised Project, and therefore, no subsequent EIR or mitigated negative declaration is required; and

WHEREAS, pursuant to State CEQA Guidelines section 15164, subdivision (c), the Addendum is not required to be circulated for public review, but can be attached to the EIR; and

WHEREAS, on February 24, 2016, a duly noticed public hearing on the Addendum and the Revised Project was held by the Planning Commission (the "Commission") to consider the Addendum together with the EIR, and to accept oral and written testimony from interested persons; and

WHEREAS, the Commission carefully considered all information pertaining to the Revised Project, including the staff report, the Addendum together with the EIR, and all of the information, evidence, and testimony presented at its public hearing; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

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

SECTION 1. Recitals. The above recitals are incorporated herein by reference.

SECTION 2. Compliance with CEQA. State CEQA Guidelines section 15164 requires lead agencies to prepare an addendum to a previously certified EIR if some changes or additions to the project are necessary, but none of the conditions requiring preparation of a subsequent EIR are present. The Commission has reviewed and considered the EIR and Addendum and recommends that the City Council find that those documents taken together contain a complete and accurate reporting of all of the environmental impacts associated with the Revised Project.

The Commission further recommends that the City Council find that the Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and that the EIR and Addendum, taken together, reflect the City's independent judgment.

SECTION 3. Findings Regarding Environmental Impacts. Based on the substantial evidence set forth in the record, including but not limited to the EIR and the Addendum, the Commission recommends that the City Council find that, based on the whole record before it, none of the conditions under State CEQA Guidelines section 15162 requiring subsequent environmental review have occurred because the Revised Project:

a) will not result in substantial changes that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

b) will not result in substantial changes with respect to the circumstances under which the Revised Project is developed that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

c) does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR documents were certified or adopted, as applicable, showing any of the following: (i) that the modifications would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt.

Further, based on the substantial evidence set forth in the record, including but not limited to the EIR and the Addendum, the Commission recommends that the City Council find that the applicable mitigation measures identified in the EIR have been incorporated into a specific mitigation monitoring program for the Revised Project and would ensure that any potential environmental impacts would be reduced to less than significant levels. Those impacts which were identified in the EIR as significant and unavoidable remain significant and unavoidable. No new mitigation measures are required to mitigate environmental impacts associated with the Revised Project. Therefore, the Addendum supports the City's consideration of the Revised Project, as outlined in the State CEQA Guidelines Section 15162 and 15164.

The Commission further recommends that the City Council find that those impacts identified in the EIR as significant and unavoidable remain significant and unavoidable under the Revised Project but that the Revised Project does not increase those previously identified impacts in their severity.

SECTION 4. Statement of Overriding Considerations. The Commission further recommends that the City Council find that the CEQA Findings and Statements of Overriding Considerations adopted in support of the Revised Project attached as Exhibit 1 attached hereto,

and by this reference incorporated herein, remain valid and appropriate for purposes of the Revised Project.

SECTION 5. Mitigation Monitoring Program. The Commission recommends that the City Council re-adopt those mitigation measures identified in the EIR that are relevant to the Revised Project as detailed specifically in the Mitigation Monitoring and Reporting Program prepared for the Addendum attached as Exhibit 2, attached hereto and by this reference incorporated herein.

SECTION 6. Recommend Approval of the Addendum. The Commission recommends that the City Council adopt the Addendum to the EIR.

SECTION 7. Recommend Approval of the Revised Project. The Commission recommends that the City Council approve the Revised Project, subject to the Mitigation Monitoring and Reporting Program.

SECTION 8. Resolution Regarding Custodian of Record. The documents and materials that constitute the record of proceedings on which this Resolution has been based are located at the Milpitas Planning Division, located at 455 East Calaveras Boulevard, Milpitas, California 95035. The custodian for these records is the Director of Planning & Neighborhood Services. This information is provided in compliance with Public Resources Code section 21081.6.

SECTION 9. Resolution Regarding Staff Direction: A Notice of Determination shall be filed with the County of Santa Clara and the State Clearinghouse within 5 (five) working days of the City Council's adoption of the Commission's recommendations and approval of the Revised Project.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 24, 2016.


Chair

Resolution No. 16-005, Landmark Towers CEQA Page 5

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 February 24, 2016, and carried by the following roll call vote:

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

Attachments:

Exhibit 1 - CEQA Findings and Statement of Overriding Considerations

Exhibit 2 - Mitigation Monitoring and Reporting Program

RESOLUTION NO. 16-007

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING TO THE CITY COUNCIL APPROVAL OF SITE
DEVELOPMENT PERMIT SA15-0001, MAJOR TENTATIVE MAP MT15-0003,
CONDITION USE PERMIT UP15-0007, AND ENVIRONMENTAL ASSESSMENT
EA15-0002 FOR THE CONSTRUCTION OF A 22-STORY MIXED-USE PROJECT
LOCATED AT 600 BARBER LANE (MILPITAS LANDMARK TOWERS)**

WHEREAS, on August 15, 2006, TP Pham, LLC, submitted an application to the City of Milpitas to request approval of a development at 600 Barber Lane, which project would include an 18-story, 277 foot tall mixed-use building with office, retail, and residential uses, and an attached 8-level parking garage (the "TP Pham Project"); and

WHEREAS, in order to evaluate the TP Pham Project under the California Environmental Quality Act ("CEQA," codified at Public Resources Code § 21000, *et seq.*, as further governed by the CEQA Guidelines, found at 14 C.C.R. § 15000, *et seq.*), an environmental impact report was prepared (the Draft EIR, as revised by the Final EIR's errata section, together with the other sections of the Final EIR, are collectively referred to herein as the "EIR," State Clearinghouse No. 2007062074); and

WHEREAS, on November 18, 2008, the City Council of the City of Milpitas certified the EIR, adopting a Statement of Overriding Considerations and a Mitigation, Monitoring and Reporting Program, and approved the TP Pham Project; and

WHEREAS, subsequently, a successor applicant, BDK Capital LLC, submitted a new application to the City for redevelopment of the site at 600 Barber Lane with a 22-story, 279.5 foot tall mixed-use project consisting of two 19-story residential towers over one to two levels of subterranean parking and three levels of parking, retail, and office uses (the "Landmark Towers Project"); and

WHEREAS, staff evaluated the Landmark Towers Project in light of the standards for subsequent environmental review outlined in Public Resources Code § 21166 and the CEQA Guidelines § 15162 by preparing an Initial Study and accompanying technical reports (the "Addendum"); and

WHEREAS, based on that evaluation, staff concluded that the EIR fully analyzed and mitigated, where feasible, all potentially significant environmental impacts, if any, that would result from the Landmark Towers Project, and therefore, no subsequent EIR or mitigated negative declaration was required; and

WHEREAS, on February 24, 2016, the Planning Commission held a noticed public hearing on the Project, at which time the Commission considered a written staff report, the Addendum to the EIR, and all other oral and written comments presented to them; and

WHEREAS, at its February 24, 2016 meeting, the Planning Commission approved Resolution No. 16-005, thereby recommending that the City Council (1) find that the CEQA Findings and Statements of Overriding Considerations adopted in support of the TP Pham Project remain valid and appropriate for purposes of the Landmark Towers Project, (2) re-adopt those mitigation measures identified in the EIR that are relevant to the BDK Project as detailed specifically in the Mitigation Monitoring Program prepared for the Addendum, (3) adopt the Addendum to the EIR, and (4) approve the Landmark Towers Project; and

WHEREAS, in accordance with the provisions of Water Code § 10910, *et seq*, City staff has prepared a water supply assessment that demonstrated that water supplies will meet the projected water demand of the Landmark Towers Project and now seeks to have such assessment approved by the Milpitas City Council; and

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

SECTION 1. Record. The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, the Addendum and the EIR, 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. 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 Tentative Map No. MT15-0003:*

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

The Landmark Towers Project site has a General Plan land use designation of Boulevard Very-High Density Mixed-Use (BVMU). The intent of this designation is to provide high-density housing, retail and employment with a landscaped boulevard character. Projects may include a wholly residential or non-residential concept, or a project that integrates residential and non-residential uses vertically or horizontally.

The Project is consistent with this finding because the proposed Project meets the intent of the designation by providing a mixed-use project with 150 dwelling units per acre. Furthermore, the project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- **2.a-I-3** Encourage economic pursuits, which will strengthen and promote development through stability and balance.
- **2.a-I-7** Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
- **2.a-I-12** Use zoning for new residential developments to encourage a variety and mix in housing types and costs.
- **2.a-G-3** Provide for a variety of housing types and densities that meet the needs of

individuals and families.

The project is consistent because the project will strengthen and promote many businesses in the City of Milpitas; will provide opportunities to expand employment; will provide for-sale, high-density residential condominiums that the City needs to meet housing obligations; and will offer a unique housing need that, in recent studies, is in demand by working people and families that seek high-quality, high-density, for-sale residential units with amenities that are within walking distance.

SECTION 3. 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. SD15-0001:*

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

The Project is consistent with this finding because the site is designed to set the future expectations for the I-880 freeway corridor. The design of the buildings, including the mass, scale and height of the structures, is typical of transit-oriented development and includes additional landscaping along the street. The building contributes to the development of a future vibrant urban transit district within walking distance to light rail and other amenities.

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

The Project site is zoned MXD3 (Very-High Density Mixed-Use). The proposed residential, retail and office uses are permitted in the zoning district. The Project conforms to the zoning district and meets the intent for this type of project envisioned in this area.

The Project also conforms to the High-Rise (HR) Overlay by providing density of 150 units per acre, which is within the 60-150 units/acre range envisioned by the HR Overlay when combined with the MXD3 Zoning District.

With approval of the Conditional Use Permit, the project, including a reduction of minimum south side setback from 20 feet to 3 feet, a reduction of minimum rear setback from 30 feet to 0 feet, the use of tandem parking spaces (for 20% of the self-parking), and an increase in allowable height from 12 stories to 22 stories, conforms to the development standards required in the MXD3 and HR Districts. The table below demonstrates how the Project is consistent with these development standards.

Table 1:
Summary of Development Standards

R-3-TOD	Standard	Proposed	Complies?
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<u>Setbacks (Minimum)</u>			
Front (Barber Lane)	12'-20'	30' (due to public easements)	Yes
North Side	20'	27'	Yes
South Side	20'	3'	w/ UP
Rear (I-880)	30'	0'	w/ UP
<u>Density (Units/Acre)</u>	60-150 du/ac	150 du/ac	Yes
<u>Building Height (Maximum)</u>	18 Stories	22 Stories	w/ UP

With respect to parking, the project will provide a total of 1,383 parking spaces, though it requires only 1,234 parking spaces based on the table below:

**Table 2:
Summary of Parking Standards**

Land Use	Size	Rate	Stalls Required
Retail	42,000 sf	1 per 250 sf	168
Office	8,000 sf	1 per 240 sf	34
<i>Commercial Subtotal</i>			202
1 Bedroom Condominium	6 units	1.5 per unit	9
2+ Bedroom Condominium	444 units	2 per unit	888
Guest Parking	15% of Residential Total		135
<i>Residential Subtotal</i>			1,032
Total Required			1,234
Total Provided			1,383
Source: City of Milpitas Zoning Ordinance			

Twenty percent of the total self-parking will be provided through the use of tandem spaces, which require approval of a Conditional Use Permit. A limited number of tandem spaces allows for more efficient use of the building's floor area, and provides for assignment of multiple spaces to residential tenants.

SECTION 4. Conditional Use Permit (Section XI-10-57.04(F)(1)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP15-0007:

The project requires a conditional use permit in order to allow for:

- a reduction of Minimum South Side Setback from 20 feet to 3 feet;
- a reduction of Minimum Rear Setback from 30 feet to 0 feet;
- the use of Tandem Parking Spaces (20% of self-parking requirement); and
- an increase in Allowable Height from 12 Stories to 22 Stories;

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 proposed exceptions, 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 in that the applicable standards for development will be followed; the exceptions allow for the development of the project type in accordance with General Plan and Zoning density ranges; the exceptions meet the design intent identified within the Zoning District and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development; and the exceptions are for a public benefit not otherwise obtainable through the strict application of the specified standard, specifically the acquisition of a Tiller Fire Ladder Truck and staff training for such equipment.

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

See discussion in Section 4 above.

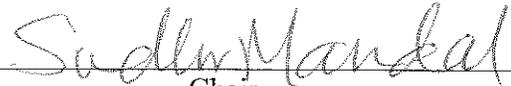
3. *The project is consistent with the Milpitas General Plan.*

See discussion in Section 3 above.

SECTION 5. Pursuant to Water Code Section 10910, *et seq.*, the Milpitas Planning Commission recommends approval of the water supply assessment submitted by City staff entitled "Landmark Tower Mixed-Use Project: Water Supply Assessment" (Exhibit 2) and the findings therein, incorporating them by reference into this resolution.

SECTION 6. The Planning Commission of the City of Milpitas hereby adopts Resolution No. 16-0007 recommending to the City Council approval of Site Development Permit No. 15-0001, Major Tentative Map No. MT15-0003, Conditional Use Permit No. UP15-0007, and Environmental Assessment No. EA15-0002, based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein. As to park in lieu fees, the Planning Commission specifically finds and determines that, based upon the unique factors of the project, including but not limited to its density, infill nature, proximity to transit, and pedestrian orientation, the project is eligible to receive a reduced, credited park in lieu fee amount, as set forth in the attached conditions of approval:

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 24, 2016.


Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 24, 2016, and carried by the following roll call vote:

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

EXHIBIT 1

CONDITIONS OF APPROVAL

Major Tentative Map No. MT15-0003, Site Development Permit
No. SD15-0001, Conditional Use Permit No. UP15-0007, and Environmental Assessment
No. EA15-0002

Landmark Towers, 600 Barber Lane (APN: 86-01-034)

General Conditions

1. General Compliance. The Permittee and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Site Development Permit No. SD15-0001, Major Tentative Map No. MT15-0003, Conditional Use Permit No. UP15-0007, and Environmental Assessment No. EA15-0002, 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 and as modified by these Conditions of Approval and by the Mitigation, Monitoring and Reporting Program attached to and incorporated into Resolution No. 16-005.
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 City Council 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. 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 project 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.
5. 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 Permittee may file a protest has begun under California Government Code Section 66020(d)(1).

6. 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.
7. 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.
8. 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)**
9. 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 Permittee, 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. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitation shall only apply to Tentative Map No. MT15-0003, and the balance of the Permit shall be unaffected by Government Code Section 66474.9.
10. Permittee shall provide certificate of insurance and name City in policy.
11. Revocation, Suspension, Modification. This Permit may be suspended, revoked or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
12. 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.

13. Permittee is notified that references to State regulations, City ordinances, and any other documents or requirements shall mean the rules in effect at the time of building permit issuance. (E)

SPECIAL CONDITIONS OF APPROVAL: PLANNING

14. The Permittee shall develop the approved project in conformance with the approved plans and color and materials board approved by the City Council on (_____), in accordance with these Conditions of Approval and the attached Mitigation Monitoring and Reporting Program. (P)
15. 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 Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
16. The project approval shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.06 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued. (P)
17. Pursuant to Section 64.07, the owner or designee shall have the right to request an extension of the project if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
18. ENVIRONMENTAL: The project is subject to the Mitigation, Monitoring and Reporting Program (attached as an exhibit to Resolution No.16-005) dated August 2008.
19. PARK IN-LIEU FEE: Prior to building permit issuance, the Permittee shall pay a park-in-lieu fee in accordance with the applicable sections of the Milpitas Municipal Code and State Subdivision Map Act. This fee will be calculated, and confirmed at the time of Final Map approval.
20. PJ ACCOUNT: If at the time of application for *building permit*, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
21. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)

22. ARCHITECTURE: Prior to submittal of any building permit additional building elevations with alternative rooftop design shall be submitted to the Planning Division for review and approval. (P)
23. PARKING: Prior to submittal of any building permit, plans showing the provision of at least 55 bicycle parking spaces shall be submitted to the Planning Division for review and approval. The project shall maintain at least 55 bicycle parking spaces at all times. (P)
24. PARKING: Tandem parking spaces shall be used by residential tenants only and each set of tandem spaces shall be assigned to a single residential unit. Tandem parking shall not be used for more than 20% of the self-parking spaces required for the project. (P)
25. PARKING: The project shall supply at least 1,383 parking spaces onsite. (P)
26. NOISE: Prior to building permit issuance, a detailed noise analysis will be required to determine the measures necessary to keep the interior noise levels below 45 dB Ldn. The analysis shall include, noise sources between residential units as well as between mechanical/utility rooms. (P)
27. LIGHTING: Prior to building permit issuance, the Permittee shall submit details and elevations of all site lighting fixtures to the Planning Division for review and approval. (P)
28. SIGNAGE: Prior to approval of any signage for the development, proper applications, depending on signage type will need to be submitted to the Planning Division. (P)
29. LANDSCAPE: All planter areas (including containerized planters) shall be serviced by a sprinkler or drip system. (P)
30. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
31. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required landscaping shall be planted in place. (P)
32. LANDSCAPE: All landscape planters adjacent to vehicle parking areas or travel lanes shall be contained by a full depth (6" above AC to bottom of structural section of adjacent paving) concrete curb. Where landscape planters abut a public street, a 24-inch deep water barrier shall be installed behind the curb. (P)
33. MECHANICAL EQUIPMENT: All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts. (P)
34. ROOFTOP EQUIPMENT: Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets. (P)

SPECIAL CONDITIONS OF APPROVAL: DEPARTMENT OF ENGINEERING

35. Prior to any first Engineering and/or Building plan check submittal. Permittee shall obtain approval from the City for the following items, including but not limited to:
 - a) An updated Stormwater Control Plan demonstrating how the project site would comply

with the latest Municipal Regional N.P.D.E.S. Permit This project does not qualify for Special Project under Category C as proposed.

- b) Utility feasibility studies to ensure that all proposed public utility relocations on the project site, as well as within the public rights-of-way, are feasible and acceptable by the City prior to detailed design. The feasibility study shall include but not be limited to, various design alternatives to ensure City's ability for perpetual operation/ repair/ replacement/maintenance of city utilities and to optimize utility right-of-way management
- c) Mitigation measures to ensure City's ability to repair/replace the existing water pipelines crossing the freeway due to space constraint, to provide adequate protection of existing public utilities during construction, and to ensure safe and convenient access rights for future repair and/or replacement of those existing public utilities.
- d) A Solid Waste Handling Plan that meets City guidelines.

The project entitlement submittal plans dated 10/23/15 may be subject to revision to meet above-mentioned items that comply with applicable statutory requirements and engineering design standards.

- 36. 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. The Water Supply Assessment was approved by City Council on November 18, 2008, Resolution 7799.
- 37. Prior to issuance of any building permits, the Permittee shall obtain approval from the City Engineer of the water, sewer, and storm drain 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 Permittee will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer.
- 38. Prior to final map recordation, the Permittee shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the Permittee shall satisfy the conclusions and recommendations of the approved drainage study.
- 39. Prior to any building permit issuance, the Permittee shall submit an executed petition to annex the subject property into the CFD 2005-1, and agree to pay the special taxes levied by Community Facility District (CFD 2005-1) 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. The Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition is nonseverable from the Permit and any invalidation or limitation of this condition invalidates this Permit.

40. The final map shall be recorded prior to issuance of any building permit. The final map submittal shall meet the following requirements:
 - a) Provide a current title report with the final map submittal, not more than 90 days old.
 - b) The final maps shall designate all common lots and easements as lettered lots or lettered easements.
41. Prior to final map approval, the Permittee shall establish necessary homeowner association (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 manage the onsite water, recycled water, sanitary sewer system, storm drain system, storm water control 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.
42. Drainage facilities outletting sump conditions shall be designed to convey the flows and protect all buildings.
43. Prior to recordation of any final map, the Permittee shall submit to the City a digital format of the final map (AutoCAD format). All final maps and improvement plans shall be tied to the California Coordinate of 1983, zone 3 and the vertical datum shall be NGVD 1988.
44. The Permittee shall dedicate on the final map necessary public service utility easements, street easements and easements for domestic water, recycled water, storm sewer, sanitary sewer, and dry utilities.
45. Prior to final map approval, the Permittee shall obtain design approval and bond for all necessary public improvements along Barber Lane, including but not limited to, all mitigation measures, curb, gutter, new sidewalk installation, new median installation, micro-surface the entire street width along project frontage, signage and striping, street lights, fire hydrants, bus stop, traffic signal installation at Barber Lane and northerly project entry, Barber Lane reconfiguration from Bellew to the projects southern boundary including restriping and median island configuration to manage traffic, install mid-block crosswalk warning beacons, water line relocation, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and Permittee shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The 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 (privately owned and maintained), sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All connections to the public water system shall be metered and protected with backflow devices in accordance with City standards. All improvements must be in accordance with the City of Milpitas standard details and specifications and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance of the first production unit.

46. Parking shall not be allowed along northbound Barber Lane frontage.
47. The Permittee shall submit the following items with building permit application and pay the related fees at the time of building permit issuance. The following fees are estimates only. Applicable fees will be calculated at time of building permit submittal.
 - a) Storm water connection fee of **\$64,686.00** based on 3.0 acres @ \$21,562 per acre.
 - b) Water Service Agreement(s) for water meter(s) and detector check(s).
 - c) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
 - d) Water connection fee of **\$502,606.00**
 - e) Sewer connection fee of **\$602,454.00**
 - f) Treatment plant fee of **\$323,765.00**

Contact the Land Development Section of the Engineering Department at (408) 586-3327 to obtain the form(s).

48. Prior to any building permit issuance, the Permittee shall pay the Montague Expressway Traffic Impact fee. The estimated fee is **\$475,805.00**. The fee will be calculated at the time of building permit issuance and will be adjusted per ENR construction cost index, at the time of payment.
49. Prior to issuance of the first building permit (BPXX-YYYY), the Permittee shall pay the Calaveras Boulevard Traffic Impact fee. The estimated fee is **\$164,166.00**. The fee will be calculated at the time of building permit issuance and will be adjusted per ENR construction cost index, at the time of payment.
50. Prior to issuance of the first building permit (BPXX-YYYY), Permittee shall pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the secured public improvement agreement.
51. The Permittee shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation.

52. Utilities near Buildings. Building foundations, and underground roofs, adjacent to public utilities shall be designed to be self-supporting such that the building weight is not required to be supported during shoring and excavation of adjacent utilities. If any project building is located next to a City easement, the City is not responsible for any foundation damage that would occur due to excavating in the event of servicing or repairs in that easement.
53. Prior to any work within public right of way or City easement, the Permittee shall obtain an encroachment permit from City of Milpitas Engineering Department.
54. If necessary, the Permittee shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755.
55. Multistory buildings as 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). The Permittee shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3350 for further information.
56. Solid Waste. Per MMC Chapter 200, Title V, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee 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 Trimmings Collection Services*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to any building permit issuance, Permittee shall obtain approval from the City the Solid Waste Handling Plan (Report). that incorporates the following requirements to the satisfaction of the City Engineer, including revisions to project plans:
 - a) This development is limited to the use of self-contained roll off compactors for trash and recycling services. All roll off compactors equipment shall be enclosed and accessed on grade by City franchise hauler, in accordance with City's solid waste guidelines.
 - b) Commercial and residential trash is allowed to share a roll off compactor service. Provide one 30 yard self-contained compactor to be serviced twice a week for trash.
 - c) Commercial and residential recycling is allowed to share a roll off compactor service. Provide one 30 yard self-contained compactor to be serviced once a week for recycling.
 - d) The proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house self-contained compactor equipment and tallow bin service. The project plans must demonstrate that the location of the enclosure will not interfere with any public or private services including, but not limited to, utilities, and vehicular and pedestrian access. In accordance with State law, the enclosure shall be adequately sized to allow storage and direct access to all trash, recycling, tallow, and any other solid waste containers needed for this development. The location shall also provide the waste hauler adequate access to the containers and shall take into consideration the needed space and layout for collection vehicles to enter the enclosure, turn around, and operate collection lift machinery. The enclosure drains must discharge

to the sanitary sewer line. Storm drain inlets must 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.

- e) Provide two sets of chutes (recycling and trash) to the residential area at opposite end of the residential floors. Provide sufficient space for the necessary conveyance equipment to move residential trash and recycling from the chutes to the compactors. Provide access to remove blockages throughout all building levels.
- f) Provide sufficient space for the necessary conveyance equipment to collect non-residential trash and recycling from the point of generation to the compactors.
- g) The Property Management shall be responsible for solid waste management, including transfer of material to the compactors. Prior to final map approval, Permittee shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. The Plan shall state how the residential waste will be conveyed to the collection areas in the garage level and how the waste will be transported to the compactor area for disposal. Show the path of travel for refuse from commercial spaces. Permittee shall demonstrate how recycling shall have a separately maintained process from garbage handling. State how the food establishments will handle tallow (food grease); access design for food establishments shall show adequate accommodation for tallow handling and collection. Include housekeeping requirements, such as managing trash chute blockages and odors, and cleaning up spilled waste and tallow anywhere on the property.
- h) Prior to issuance of certificate of occupancy permit, the Property Management 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. After the Permittee has started its business, the Permittee shall contact Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the Permittee shall increase the service to the level determined by the evaluation. For general information, contact Republic Services at (408) 432-1234. In addition, the Property Management shall provide evidence that a tallow account will be maintained and the tallow bins will be kept clean.

57. Permittee shall submit a Storm Water Control Plan in accordance with the following timeline:

- a) Prior to final map approval, the Permittee shall submit a "final" Stormwater Control Plan and Report, if applicable. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
- b) Prior to building permit issuance, the Permittee shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities, if applicable.
- c) Prior to Final occupancy, the 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, if applicable.

58. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the Permittee's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan, if applicable. 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 stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review.
59. Prior to issuance of a certificate of occupancy, Permittee shall submit an Operation and Maintenance Plan describing the operation and maintenance procedures needed to insure that treatment 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 Permittee's signed statement accepting responsibility for maintenance until such responsibility is legally transferred.
60. Permittee shall include in the approved CC&Rs the requirement to provide the City with an annual inspection report of the Storm Water Control Plan post-construction compliance with NPDES requirements.
61. Permittee shall comply with all "Model Conditions of Approval for Storm Water Quality" as shown in the Storm Water section of the Engineering Plans and Maps Procedures and Guidelines, dated July 15, 2010, which are hereby incorporated as conditions of project approval.
62. 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 MMC, and the City's Clean Water Program.

63. Prior to final occupancy, Permittee shall submit an approved Notice of Termination (NOT). For phased occupancy, Permittee shall submit a Change of Information (COI) or an NOT approved by the State Board that removes each phase of occupancy from the boundaries of the State Permit prior to the issuance of occupancy for that phase. Contact the State and Regional Boards for questions regarding your specific project. For general information, contact the City of Milpitas Engineering Division at (408) 586-3325. (E)Construction Storm Water Quality. Permittee shall comply with the requirements of the NPDES permit as administered by the California State Water Resources Control Board (State Board) and the San Francisco Bay RWQCB. 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, adopted 10/14/2009, and amended by Order No. R2-2011-0083 on 11/28/2011 (the "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 subcontractors install and regularly maintain all construction BMPs as required by the approved erosion control plan, the Milpitas Municipal Code (MMC), and the City's Clean Water Program. (E)
64. The Permittee shall comply with the MRP, for post construction C.3 provisions for new development and redevelopment regulated projects storm water treatment requirements, and NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009—0009 NPDES No. CAS000002, or as required by the Regional Board at the time Permittee submits the NOI for the project for pre-construction storm water treatment requirements.
65. Landscaping Ordinance 238: In accordance with the provisions of Chapter 5, Title VIII (Ordinance 238) of the MMC for new construction projects with an aggregate landscaping areas equaling 500 square feet or greater, the Permittee shall:
- a) Provide separate water meters for domestic water service & irrigation service.
 - b) Landscape shall comply with Ordinance 238 requirements in effect at the time of building permit issuance.
 - c) Submit two sets of landscape and irrigation improvement plans to the Building Division with the building permit plan check package.
 - d) Prior to any building permit issuance, approval from the Land Development Section of the Engineering Department is required prior to any building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.
 - e) Contact the Land Development Section of the Engineering Department at (408) 586-3329 for information on the submittal requirements and approval process. (E).
66. Recycled Water for Irrigation: In accordance with MMC Chapter 6, Title VIII (Ord. No. 240), the landscape irrigation system shall be designed to comply with the City's recycled water guidelines, and connect to recycled water system. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. To meet the recycle water guideline the Permittee shall:

- a) The Permittee shall hire an AWWA cross-connection specialist (subject to approved by City and paid by Permittee) during the entitlement process of the project to assist with the plans for and construction of the recycled water system. The specialist shall also complete the required construction inspection checklist, cross connection test result and any special inspection checklist and forward to the City. <http://www.sanjoseca.gov/index.aspx?NID=1595>
 - b) Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 500 square feet along the future alignment). All landscape plants that are required to use recycled water shall be compatible with recycled water.
 - c) Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance, the Permittee shall obtain approval from the State Water Resources control Board, Division of Drinking Water, SWRCB DDW. This approval requires additional processing time. The Permittee shall be responsible for all costs of design and installation of site improvements, connection to the recycled water main, and processing City and Department of Drinking Water approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
 - d) The cross-connection specialist shall be responsible to design the recycled water phasing plan. It shall include phases showing the active construction areas, temporary staging areas and occupied building(s). Demarcation lines between areas served by potable water and recycled water must be approved in advance and complied with. All potable domestic and irrigation water services serving a site with recycled water must have at least a reduced pressure backflow preventer on each services-- it must be tested, passed and certification must be provided on annual basis.
 - e) Prior to recycled water meter installation, the Permittee and/or HOA shall designate a Recycled Water Site Supervisor that has been trained by SBWR. For more information on Site Supervisor Trainings, go to <https://www.sanjoseca.gov/index.aspx?nid=1594>
 - f) 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.
 - g) Because of drought, plantings shall be deferred until the recycled water meter is installed and the irrigation system is charged. No potable irrigation is allowed in the interim.
67. Permittee shall obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, CALTRAN, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Department. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division.
68. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the Permittee may be required to obtain a permit for removal of any existing tree(s). Contact the Public Works Department at (408) 586-2601 to obtain the requirements and forms.

69. The Permittee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
70. Prior to start of any construction, the 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, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The Permittee shall coordinate their construction activities with other construction activities in the vicinity of this project. The 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.
71. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X".
72. The Permittee shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review.
73. The Permittee shall obtain information from the Milpitas Unified School District (MUSD) regarding providing services.
74. Prior to submittal for building permit issuance, the Permittee shall submit plans to CALTRANS for review and approval. Provide their comments to the City.
75. 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 immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off 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. Unless otherwise noted, all utility stubs not utilized shall be capped at the main.
76. Prior to demolition permit issuance, the Permittee, or Contracted Designee, 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/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) Permittee and its contractor shall make every effort to salvage materials for reuse and recycling, and shall comply with all applicable City ordinances pertaining to construction and demolition debris.
77. Prior to building permit issuance, Permittee shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section that confirms 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 approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division.
78. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Permittee/Contractor, all to the satisfaction of the City Engineer or designee. The Permittee/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Permittee/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. The Permittee/Contractor shall perform all recycling and/or disposal by removal from the job site.
79. Permittee shall design, submit for review, and construct public water and sewer lines in accordance with state and local requirements. Permittee is alerted that Barber Lane has limited space available for large utilities.
80. Prior to issuance of a Grading Permit Permittee shall submit a design-level geotechnical investigation prepared by a qualified geologist and approved by a third party reviewer selected by the City Engineer. All recommendations in the approved geotechnical investigation shall be incorporated into the project design. The geotechnical investigation shall address, at a minimum, the following issues:
- a) compressible soils,
 - b) liquefaction,
 - c) expansive soils,
 - d) loose surficial soils,
 - e) shallow groundwater, and
 - f) sulfates in soil.
81. Project to be served by SCVWD Zone 1. Contractual water supply with SCVWD is available.

82. Due to revised project scope, Permittee shall fund both water and sanitary sewer hydraulic modeling through the established PJ account.
83. Provide a separate water meter for each of the following services: residential, non-residential, irrigation, and fire. Permittee is strongly encouraged to provide a separate water meter for food service. All landscape located inside any building footprint shall be served by a separate potable irrigation meter. Permittee is alerted that on-site pumping to upper floors may be required. Permittee shall provide backflow protection on all water connections, including fire services, in accordance with City guidelines and USC Manual of Cross Connection Control. Permittee is encouraged to install 2 meters for each service, for redundancy.
84. Permittee shall own, operate and maintain all on-site (private) utilities. The separation between public and private shall be indicated by master meters & backflows (potable water), cleanouts (sewer), and manholes.
85. City Ordinance prohibits the use of potable water for construction use. Recycled water must be used for construction purposes, including dust control and compaction.
86. This project shall use recycled water for irrigation of street frontage landscaping and landscaping located around the building perimeter. Interior courtyards within the building footprint shall be irrigated with potable water.
87. The development shall include a phasing plan for the occupancy of the buildings considering the improvements such as streets, utilities, garbage enclosure, mail box, including the shutdown testing of each water fixture.
88. The City Council has declared a water supply emergency and enacted a Water Shortage Contingency Plan. The project is required to use recycled water for construction purposes such as dust control and compaction. Landscape planting shall be deferred for any areas designated to use potable water, such as internal podium areas. Water features such as pools and fountains, may not be filled until the drought is over. (E)
89. City has confirmed adequate contractual sewer treatment capacity is available.
90. Permittee is advised that Milpitas has high groundwater table and shall plan accordingly for both construction and long-term occupancy.
91. Contact SJ/SC WPCP Senior Source Control Inspector, at 408 277-3897 for sizing and location requirements for grease interceptor(s).
92. 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. If building is next to a City Easement, the City is not responsible for any foundation damage that would occur due to excavating in the

event of servicing or repairs in that easement. Dedicate new public easements and abandon existing public easements once public utilities are relocated, abandoned or removed. Abandonment and/or removal of existing City utilities shall be in accordance with City requirements to the satisfaction of the Director of Engineering and Director of Public Works. (E)

93. Submit plan/profile views and calculations for all relocated utilities.
94. Permittee shall install a radio antenna, any repeaters or transmitters as needed and dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna.
95. The proposed access for trash collection does not appear to meet City Guidelines. Project is recommended to have self-contained roll-off compactors. The max allowed service is a 30-yard compactor. The Property Management Association (PMA) shall be responsible for solid waste management and provide sufficient facilities for on-site storage and collection of solid waste and recyclables. Permittee shall provide a Solid Waste Handling Plan showing calculating of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point. Demonstrate how recycling shall have a separately maintained process from garbage handling. The Solid Waste Handling Plan shall also address other requirements, such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control. Permittee shall procure sufficient service frequency. All solid waste collection facilities shall comply with City guidelines. Comply with access dimensions such as turning radius. The collection vehicle is not allowed to block sidewalks, parking garages, and driveway access. The collection vehicle is not allowed to back up on streets, drive aisles, or alleys. If the hauler will be entering the parking garage, provide sufficient vertical clearance and comply with maximum ramp slope requirements. The trash enclosure area shall be designed to parking garage standards if any vehicles will be entering it. Permittee shall show the presence of a sanitary sewer connection within the trash enclosure. Residential and commercial trash may be commingled. Residential and commercial recycling may be commingled. On-site equipment shall be compatible with the hauler's equipment. Permittee shall adhere to City's development standards regarding chutes. Permittee must meet City's minimum collection frequency requirements. No on-call only option is allowed. The compactors shall be installed and functional prior to issuance of occupancy of the 80th dwelling unit.
96. Prior to recording of Final Map, Permittee shall obtain necessary easements from the adjacent property owner, along southerly property line, at 640 Barber Lane (APN 086-01-035) for relocation of existing sewer line.
97. In addition to the subdivision improvement securities, Permittee shall provide separate improvement securities for all applicable transportation mitigation measures required to be implemented by the Permittee.

SPECIAL CONDITIONS OF APPROVAL: FIRE

98. Fire Equipment / Training. Due to the size and height of these buildings/structures, the proposed number of residential units and mixed uses on the parcel, the limited Fire Department access roadways, and the complexity in managing an emergency response that may develop under a fire incident and/or a medical emergency, the Fire Department will require from the project (project owner and/or agent) the funding necessary to purchase a Tiller Truck Fire Apparatus along with the required training. The project shall contribute 100% of the cost of the said fire apparatus and training, to a maximum monetary contribution of \$1,700,000.00 (one million, seven hundred thousand dollars). Fifty Percent (50%) funding shall be paid to the City prior to the issuance of a foundation permit for the high-rise building(s)/structure(s) and the remainder Fifty Percent (50%) shall be paid to the City at the time of when the structural frame for the First Hi-Rise Tower is erected. 2013 California Fire Code Section 102.9 (F)
99. Permittee shall comply with the requirements of the Milpitas Fire Department and the California Fire Code, as adopted by the City. Changes to the site plan and/or buildings require review and approval by the Milpitas Fire Department. (F)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney

(MM) = Mitigation Measure