RESOLUTION NO. 16-016

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL APPROVAL OF SITE DEVELOPMENT PERMIT SD15-0010, CONDITIONAL USE PERMIT UP15-0015, AND VESTING TENTATIVE MAP MT15-0010 FOR THE PROJECT LOCATED AT 720 MONTAGUE EXPRESSWAY

WHEREAS, on September 09, 2015 an application was submitted by Montague Place, LLC for a Site Development Permit, Conditional Use Permit and Vesting Tentative Map for the development of a new 248,183 square foot mixed use building consisting of 216 dwelling units, 10,555 square feet of retail, leasing office and residential amenity space and other associated site improvements on the 2.35 acre parcel located at 720 Montague Expressway at Gladding Court (APN: 092-08-077) located within the Transit Area Specific Plan area –Montague Corridor sub-district; and

WHEREAS, an initial environmental assessment of the project was completed in accordance with the California Environmental Quality Act (CEQA) and determined that the project is exempt from further environmental review pursuant to Section 15168(c)(2) of the CEQA Guidelines because of its consistency with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council, and;

WHEREAS, on April 13, 2016, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and unanimously recommended approval to the City Council of the project; and

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

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

2. The project is exempt from further environmental review pursuant to Section 15168(c)(2) of the CEQA Guidelines because of its consistency with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council.

3. Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific findings before recommending approval of a Site Development Permit, Vesting Tentative Subdivision Map, and Use Permit. Findings shall identify the rationale behind the decision to take a certain action. Each code-required finding is analyzed below.

The Proposed Project

Montague Place, LLC has submitted applications to entitle an approximately 2.35 acre site (the "project area") to develop a mixed-use development comprised of 216 multi-family residential units and 10,555 square feet of retail, leasing office and residential amenity space. The site is located within the Transit Area Specific Plan (TASP), Montague Corridor sub-district.

Site Development Permit

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 proposed project's site and design are consistent with the intent of the TASP policies and the TASP development standards. The proposed project is within the height limit identified in the TASP for this site and the project steps down from five stories along South Milpitas Boulevard to four stories along Montague Expressway. The project also provides for retail space nearest to the BART station with an outdoor plaza to activate the space and provide a publicly accessible plaza. The streetscape improvements are consistent with the TASP with sidewalks and landscape improvements. The building design is also consistent with TASP policies with the design of the ground floor providing an attractive and safe environment for pedestrians by placing windows and balconies on the ground level and the primary building entrances oriented toward the street. The project is consistent with TASP policies regarding parking, which is not be visible from the street, and the minimization of curb cuts.

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

   The TASP land use designation for this site is Boulevard Very High Density Mixed Use (BVMU) with a Density Increase Overlay. The corresponding zoning of the site is Very High Density Mixed Use (MXD3), with a Transit Oriented Development (TOD) Overlay. Both the TASP land use designation and the underlying zoning provide for a density range of 41 minimum-75 maximum du/acre by right, with an additional 25% density increase permitted for parcels subject to the Density Increase /TOD overlays. With the 25% density increase, the maximum density allowed is 94 du/acre.

   The project density is within the range of development contemplated under this zoning district with the 25% density increase. Where deviations from other development standards have been requested, those exceptions are permitted pursuant to the provisions of the TASP which allow exceptions from strict compliance with the development standards with approval of a conditional use permit.

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

   The project's land uses will be developed consistent with the residential and commercial uses contemplated by the General Plan land use designations for the project area. The project's overall density and intensity of development is consistent with the goals and

objectives for development of this area. The project area is designated for Transit Oriented Development, which the General Plan notes is for areas located near transit stations, and provides for special requirements regarding development density, parking, mix of uses and transit supportive design features. The project provides for high density multi-family development, ground floor retail areas and commercial uses all within close proximity to transit stations.

The project is consistent with the following General Plan Land Use Guiding Principles:

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 project is an urban infill redevelopment project that redevelops an underutilized site with residential and commercial uses envisioned by the TASP. It is designed as a high density residential development, contributing to a compact, dense urban form. The project provides both residential and retail elements, providing retail (commercial) opportunities directly adjacent to the residential development.

2.a-G-3: Provide for a variety of housing types and densities that meet the needs of individuals and families.

The project provides a mix of residential unit types. The project includes 15 junior one bedroom units, 126 one bedroom units and 75 two bedroom units. The one bedroom units range in size from 690 square feet to 915 square feet and the two bedroom units range in size from 1,090 square feet to 1,200 square feet. The project provides a variety of housing choices for individuals and families in Milpitas.

2.a.1-2: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.

The project site is directly adjacent to the new BART station, in the heart of the Transit Area Specific Plan (TASP) district. By its very nature, the TASP district is an in-fill district, and does not support or cause any expansion of urban services into outlying areas.

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 lively and attractive street character, and a distinctive identity for each subdistrict.

The project as proposed falls at the top of the allowable density range for this site, contributing to the development of the high-density, urban neighborhood envisioned by the General Plan. The project is directly adjacent to the new BART station, and provides both residential and retail elements, supporting the mix of land uses envisioned around the

BART Station. Finally, the project proposes various pathways, plazas and seating area amenities along both Montague Expressway and South Milpitas Boulevard, contributing to pedestrian connections and lively street character envisioned by the General Plan.

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 project implements the intent of the development standards and design guidelines in the TASP. Where deviations have been requested, they are minor in nature (e.g. permitting the required balcony space required for 15 junior one bedroom units to be substituted with on-site private recreation space), or are necessary to achieve the high density residential development envisioned by the TASP (e.g. the use of a tandem/compact parking design for 10% of parking spaces).

4. In the case of a project located within a Specific Plan, the following additional finding shall be made:

   a. The project is consistent with the Specific Plan.

      The project implements the range of uses, the density of development and the intent of the development standards set forth in the TASP. The modest exceptions from TASP development standards are necessary to achieve the density range contemplated in the General Plan. The public benefits from the project include the provision of housing, active retail use near the BART station and improvements to sidewalks, as well as landscape improvements to promote a walkable environment. In addition, the exceptions requested do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.

Major Tentative Map Findings (Section XI-1-20.01)

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

   The subdivision maps provide the residential and commercial uses contemplated by the General Plan land use designations for the area. The density is within the General Plan designated minimum and maximum density with the Transit Oriented Development Overlay density increase.

Conditional Use Permit (Section XI-10-57-04(F))

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; Although the applicant is requesting several deviations from the TASP development standards, as outlined in the staff report, the project also provides public benefits which include the provision of housing, active retail use near the BART station and improvements to sidewalks, and landscape improvements to promote a walkable environment. The modest exceptions from TASP development standards are necessary to achieve the density

range contemplated in the General Plan and, do not result in a degradation or lessening of the intent of TASP, nor are they detrimental or injurious in any way to the public, surrounding properties, or public health, safety and welfare.

The mix of uses proposed by the project are consistent with the range of uses contemplated by the TASP, including the development of a high density residences in close proximity to the BART station. The proposed density of development falls within the designated minimum and maximum residential densities for this area of the TASP with the TOD density increase. The number of residential units and commercial square footage are all within the ranges that were anticipated upon buildout of the TASP, and the environmental impacts of the development of the proposed project do not exceed the projections or analysis in the environmental impact report prepared for the TASP.

The City finds that the requested deviations from the TASP development standards meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development. Landscaping along the streets and greenspace with the developments are provided as envisioned by the TASP.

2. The proposed use is consistent with the Milpitas General Plan; and

   See above regarding General Plan consistency findings.

3. The proposed use is consistent with the Milpitas Zoning Ordinance.

   See above regarding Zoning Ordinance consistency findings.

4. In the case of a project located within a Specific Plan, the following additional finding shall be made:

   a. The proposed use is consistent with the Specific Plan.

   The project implements the range of uses, the density of development and the intent of the development standards set forth in the TASP. The modest exceptions from TASP development standards are necessary to achieve the density range contemplated in the General Plan and, do not result in a degradation or lessening of the intent of TASP, nor are they injurious in any way to the public or surrounding properties. Although the applicant is requesting several deviations from the TASP development standards, as outlined in the staff report, the project also provides public benefits which include the provision of housing, active retail use near the BART station and improvements to sidewalks, and landscape improvements to promote a walkable environment.

18 The Planning Commission recommends the City Council approve the Site Development Permit SD15-0010, Use Permit UP15-0015, Major Tentative Map MT15-0010 for the development of a new 248,183 square foot mixed use building with 216 dwelling units, 10,555 square feet of commercial and amenity space and other associated site on the 2.35

acre site at 720 Montague Expressway, subject to the above findings, the Mitigation Monitoring and Reporting Program prepared for the Transit Area Specific Plan EIR, and the Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on April 13, 2016:

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 April 13, 2016 and carried by the following roll call vote:

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

EXHIBIT 1

CONDITIONS OF APPROVAL
720 MONTAGUE EXPRESSWAY
P-SD15-0010; P-MT15-0010, P-UP15-0015.

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. This SITE DEVELOPMENT PERMIT NO. SD15-0012, CONDITIONAL USE PERMIT UP15-0016, TENTATIVE MAP NO. MT15-0011 (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 and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. (P)

2. The Permittee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the City Council, in accordance with these Conditions of Approval. **(P)**

3. Modifications to project. Any deviation from the approved site plan, floor plans, 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)

4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

6. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the term of which may be extended upon approval by the City or the filing of a final map, then the term of the permits shall coincide with the life of the map. Pursuant to Section XI-10-64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined 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.

7. 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)

8. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**.

9. Indemnification. The project applicant shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of Site Development Permit No. SD15-0010, Conditional Use Permit No. UP15-0015, and Vesting Tentative Map No. 15-0010. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The applicant shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the project applicant of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the project applicant, or if City fails to engage in reasonable efforts to cooperate in the defense, then the project applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The project applicant shall not be required to pay or perform any settlement unless the settlement is approved by the project applicant. **(CA)**

10. Compliance with Fire Department and CA Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the CA Fire Code. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**

11. Compliance with Building Department. Permittee shall comply with the California Building Code, California Mechanical Code, California Electrical Code, California Plumbing Code, Green Building Standards Code, California Energy Code and Milpitas Municipal Code in effect at the time of building permit submittal. (B)

12. Prior to any first Engineering and/or Building permit issuance, Permittee shall obtain approval from the City for the following items, including but not limited to:

a) Stormwater Control Plan demonstrating how the project site would comply with the latest Municipal Regional N.P.D.E.S. Permit.

b) Utility engineering and design to ensure that any proposed public utility relocations on the project site as well as within the public rights-of-way are acceptable to the City for perpetual operation / repair / replacement / maintenance of city utilities and to optimize utility right-of-way management

c) A Solid Waste Handling Plan that meets City guidelines and is approved by the City.

13. The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land development project. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply assurance for a major catastrophic event that restricts City's assurance to provide water supply. In the event the issuance of building permits are suspended due to lack of available water supplies, the period of time set forth as the term for the vesting tentative map in Government Code Section 66452.6(a)(1) shall be tolled for up to five years until said suspension is terminated.

14. Prior to issuance of any first permit by any department, Permittee shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall provide detailed calculations to confirm adequate design of the service laterals from the project site connecting to the main. Hydraulic modeling may be required as needed

15. Prior to final map approval, the Subdivider shall submit a final grading plan and drainage study prepared by a registered Civil Engineer. The plans shall satisfy the conclusions and recommendations of the approved drainage study. **(E)**

16. Prior to final map approval by City Council, Permittee shall submit an executed petition to annex the subject property into the CFD2008-1, and agree to pay the special taxes levied by Community Facility District (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 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 of approval is nonseverable from the Permit and any invalidation or limitation of this condition invalidates the Permit.

17. If Permittee intends to file multiple maps for the project, each final map shall be recorded prior to issuance of any building permit for that corresponding final map, unless otherwise approved by the City. As part of the first final map, Permittee shall execute a Subdivision Improvement Agreement with improvement securities for the entire project. 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

18. Prior to final map approval by City Council, Permittee shall submit the Conditions, Covenants, and Restrictions (CC&R) for review and approval by the City. There shall be provisions in the CC&Rs for formation of Homeowners Association (HOA) including 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. (E)

19. Drainage facilities out-letting sump conditions shall be designed to convey the flows and protect all buildings. (E)

20. Prior to final map approval by City Council, 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.

21. 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, dry utilities.

22. Prior to final map approval by City Council, Permittee shall obtain design approval and bond for all necessary public improvements including but not limited to, all mitigation measures, curb, gutter, new sidewalk installation, surface the entire street width along project frontage, signage and striping, street lights and fire hydrants. Plans for all public improvements shall be prepared, sealed and signed by a California registered Civil Engineer. Plans shall be prepared and submitted both on 24" x 36" Mylar sheets and digitally per City submittal requirements 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, including, but not limited to water meters, RP backflow preventers (privately owned and maintained), and sewer clean outs, shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard details and specifications. All public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to first building occupancy of the first final map, unless otherwise an off-site improvement phasing plan is approved by the City Engineer.

23. 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: $16,771/acre for multi-family and $21,562/acre for commercial/retail
    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: $1,164/unit for multi-family and $5.97/gpd for commercial/retail, based upon increased water usage
e) Sewer connection fee: $1,406/unit for multi-family and $8.52/gpd for commercial/retail, based upon increased wastewater flow
f) **TASP fee of $32,781 per residential unit and $22.80 per square foot of retail.**

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

24. Permittee shall provide street lights and street furniture on project frontage per TASP guidelines and standards. (E)

25. Prior to final map approval or building permit submittal, Subdivider shall submit the project Flood Study, demonstrating to the satisfaction of the City Engineer that the proposed development has NO adverse impact to the surrounding flood plain within the Special Flood Hazard Area and flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments (Integral, Lyon District 1, Montague Residential Project, 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 in order to establish the BFE and development requirements. 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. **(E)**

26. Prior to issuance of the first building permit, Permittee shall pay all applicable development fees, 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. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount equal to 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. (B)

27. 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.

28. Prior to any work within public right of way or City easement, Permittee shall obtain an encroachment permit from City of Milpitas Engineering Department.
29. If necessary for dewatering activities during construction, Permittee shall obtain required Short Term Industrial Wastewater Discharge permit from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 793-5300.

30. 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. Contact the Utility Engineer at 586-3350 for further information.

31. 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. 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. 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 occupancy permit issuance, 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 Permittee has started its business, 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, 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.

32. Permittee shall submit a Storm Water Control Plan in accordance with the following timeline:
    a) At the time of building permit plan check submittal, 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 certify 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, 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, 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.

33. 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 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)

    Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with 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.

34. 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.

    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)

35. Landscaping Ordinance 238: In accordance with the provisions of Chapter 5, Title VIII (Most current update of Ordinance 238 – Currently 238.4) of the MMC for new construction projects with an aggregate landscaping areas equaling 500 square feet or greater, Permittee shall provide separate water meters for domestic water service and irrigation service, and submit two sets of landscape and irrigation improvement plans to the Building Division with the building permit plan check package.

    Landscape shall comply with the most current Ordinance 238 requirements in effect at the time of 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.

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

36. 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 Permittee shall:
    a) Hire an AWWA cross-connection specialist (subject to approval by City and paid by Permittee) prior to any first plan check submittal 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, Permittee shall obtain approval from the State Water Resources control Board, Division of Drinking Water, SWRCB DDW. This approval requires additional processing time. 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 buildings. 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, 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) Due of the 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.

39. It is the responsibility of Permittee to 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.

40. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), Permittee is required to obtain a permit for removal of any existing trees on the project site. Contact the Public Works Department at (408) 586-2601 to obtain the requirements and forms.

41. Undergrounding Utilities. In accordance with Milpitas Municipal Code XI-1-7.02-2, the Permittee shall underground all existing wires and remove the related poles within the proposed development and along the street frontages, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing Pacific Gas & Electric (PG&E) wire towers and state line voltage. Permittee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hours prior to construction for location of utilities.

42. Prior to start of any construction, Permittee shall submit a construction schedule and monitoring plan for City Engineer's 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 establishment of a neighborhood hotline to record and respond to neighborhood construction related concerns. Permittee should coordinate construction schedule with other construction schedule in the vicinity of this project to minimize traffic impact for the commuters and to enhance the safety for the pedestrians.. 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.

43. Permittee shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review.

44. Permittee shall obtain information from the Milpitas Unified School District (MUSD) regarding providing services.

45. All utilities shall be properly disconnected before the building can be demolished. Permittee shall demonstrate to City staff how the water service(s), sewer service(s) and storm service(s) will be disconnected prior to doing so. 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.

46. Prior to demolition permit issuance, 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.

Permittee and its contractors shall make every effort to salvage materials for reuse and recycling and shall comply with all applicable City ordinances on construction and demolition debris.

47. 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.

48. 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 and its contractors, all to the satisfaction of the City Engineer or designee. Permittee and its contractors shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. Permittee and its contractors 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 and its contractors shall perform all recycling and/or disposal by removal from the job site.

49. Permittee shall design, submit for review, and construct public water and sewer lines in accordance with state and local requirements.

50. 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.

51. 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. Permitteee 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 two meters for each service, for redundancy.

52. 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.

53. City Ordinance prohibits the use of potable water for construction use. Recycled water must be used for construction purposes, including dust control and compaction.

54. 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.

55.

57. City has confirmed adequate contractual sewer treatment capacity is available.

58. Permittee is advised that Milpitas has high groundwater table and shall plan accordingly for both construction and long-term occupancy.

59. Contact SJ/SC WPCP Senior Source Control Inspector, at **(408) 277-3897** for sizing and location requirements for grease interceptor(s).

60. 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)

61. Submit plan/profile views and calculations for all relocated utilities.

62. 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.

63. 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.

64.

65. Flood Management. The project is located within the Special Flood Hazard Zone AO (depth 1 and AH (elevation 52), and therefore shall comply with the National Flood Insurance Program (NFIP) Title 44 of the Code Federal Regulations and City's Flood Plain Management Regulations, City of Milpitas Code Title XI Chapter 15. Prior to issuance of a building permit, Permittee shall obtain a Conditional Letter of Map Revision (CLOMR) from Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain. The Permittee shall also obtain a Letter of Map Revision (LOMR) prior to issuance of the first certificate of occupancy, and provide all elevation certificates prior to final building inspection or certificate of occupancy for any portion of the development. The proposed grading plan shown in the tentative map shall comply with the established BFE as determined in the final flood study report. (E)

66. Per VIII-6-5.08, the City Council authorizes the construction of a swimming pool and spa at the project.

67. Unless exceptions thereto are specifically authorized herein, Permittee shall comply with all applicable provisions of the Milpitas General Plan, Transit Area Specific Plan, Municipal Code, and other City standards and regulations.

68. Unless otherwise noted and except as set forth in Government Code section 66474.2, City ordinances and other applicable law shall mean the requirements in effect at the time of building permit issuance.

69. Per City Policy No. BDP-BLG17 and CalGreen Sec. 4.106.4.2.2, one in every 25 electric vehicle charging stations (EVCS), but no less than one, shall be provided with aisle access and on accessible routes.

70. Transit Area Impact Fee. Prior to building permit issuance the Permittee shall pay a Transit Area Development Impact fee. The subject fee will be estimated at the time of subdivision Improvement Agreement and will be collected prior to building permit issuance. **(E)**

71. The site shall be served by SCVWD Zone 2. (E)

72. Hydraulic modeling may be required to verity capacity of both existing and proposed water system and to determine points of connection to the sanitary sewer system. Applicant to authorize City to proceed with hydraulic modeling as costs will be charged to Applicant's PJ account. (E)

73. Applicant shall install approximately 600 linear feet of 8" diameter recycled water pipe on Gladding Court, between Montague Expressway and South Milpitas Boulevard. (E)

74. Per City Policy No. BDP-BLG17 and CalGreen sec. 4.106.4.2.2, one in every 25 electric vehicle charging stations (EVCS), but no less than 1, shall be provided with access aisle and on accessible route (B).

75. The applicant shall plant at least 52 trees with a minimum planting of 19 trees at 24" box size and 33 trees at 36" box size to replace for the trees removed with the development. (P)

76. Construction of the Gladding Court cul-de-sac shall be the sole responsibility of the developer and shall be accomplished at the developer's sole expense. Applicant shall coordinate with other Agencies to ensure that site improvements are compatible with future Montague Expressway widening, construction of South Milpitas Boulevard extension, and the Gladding Court reconstruction. (E)

Key:

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

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these

Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

Pursuant to Condition No. 71 contained herein, prior to any building permit issuance, Permittee shall pay the applicable Transit Area Specific Plan Development Impact Fee as determined by the City Council at the time of project approval.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

_____
Signature of Permittee

_____