



CITY OF MILPITAS

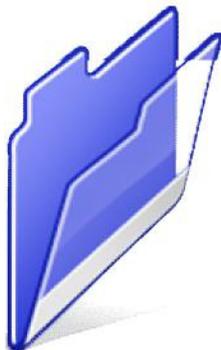
455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

10/16/2018

Agenda Item No. 11



ADDITIONAL ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



List of Supplemental Attachments for Item No. 11

Appeal: 1831 – 1841 Tarob Court

Supplemental Attachments:

- A. Letter from Geomax to Planning Staff dated July 19, 2018
- B. Letter from Geomax to Planning Staff dated July 27, 2018
- C. Booklet of Documents Distributed to the Planning Commission on September 26, 2018
- D. Letter from Geomax Counsel, Andrew L. Faber, to the Planning Commission, dated September 25, 2018
- E. Planning Department's Sign-Off on Geomax's Building Permit, dated July 18, 2017
- F. Excerpts from the Milpitas Zoning Code re: The Definition of "Use"
- G. Email from Future Tarob Court Resident dated September 25, 2018

GEOMAX

July 19, 2018

Ms. Adrienne Smith
Planning Department
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411

Re: 1841 Tarob Court, Milpitas

Dear Ms. Smith:

As we discussed, GEOMAX has a letter of intent to lease the building at 1841 Tarob Court, Milpitas, CA. The new use is manufacturing use, as this building has been manufacturing/warehouse for the 40 odd years that GEOMAX has owned it. *what? How?*

The City of Milpitas re-zoned the property without our approval a few years ago, and last year, our long term tenant, TTM Technologies, terminated their lease effective January 31, 2017 (See attachment #1).

This year, we leased the property to Stratford Schools, with a second short term (month-to-month) lease as warehouse dated December 13, 2017, which was also approved under the original zoning (See attachment #2).

Because the City of Milpitas did not approve Stratford's use as a school, they terminated that lease and the warehouse use lease as of June 25, 2018 (See attachment #3).

The property has been continuously used as a manufacturing/warehouse use under your regulations. Please approve this use for NIO USA, Inc.

Sincerely,

GEOMAX



George L. Quinn, Jr.
Partner

Attachments

GEOMAX

July 27, 2018

Ms. Adrienne Smith
Associate Planner
City of Milpitas Planning Dept.
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411

Re: 1841 Tarob Court, Milpitas

Dear Adrienne:

The above referenced building was leased for many years to TTM Technologies. TTM used the property as it has been since 1980 (plus or minus) as a manufacturing/warehousing facility making multi-level chips, many of which were prototypes. We then leased the property to Stratford Schools, less than one year after TTM vacated, for two purposes. Stratford intended to use the space for warehousing records (1/3 of the space) and a school (2/3 of the space).

Stratford Schools did not receive approval from the City of Milpitas for the school, so they terminated both the school and warehouse leases, copies of which I sent to you recently. This building, like all GEOMAX buildings, has been used for some office, some manufacturing and some warehouse.

It has been occupied continuously (i.e. less than one year vacant) and should qualify to be grandfathered in, per your requirements.

As you know, we have a new tenant who would like to use the building, and we would like approval as soon as possible, as they are anxious to move.

Sincerely,

GEOMAX



George L. Quinn, Jr.
Partner

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into as of March 13, 2017 and is made by and between TTM Technologies, Inc. ("TTM") and Geomax ("Geomax") (collectively the "Parties.")

RECITALS

Whereas, predecessors to TTM as lessees, and Geomax, as lessor, entered into a commercial lease dated July 22, 1991, which was amended (the "Lease") for real property located at 1831-1841 Tarob Court, Milpitas, California 95035 (hereinafter collectively the "Premises").

Whereas, the Lease term was to expire by its terms on September 30, 2016. Prior to the end of the Lease, the Parties agreed that upon expiration of the Lease, TTM's tenancy would continue month to month based on the calendar month. As of January 31, 2017, TTM is no longer in possession of the Premises.

Whereas, the Parties have various disagreements concerning the Parties' obligations under the Lease. Geomax has claimed, among other things, that TTM has not performed all maintenance, restoration, upkeep, cleaning, and repair required by the Lease. TTM denies these allegations.

Whereas, without admitting any liability, the Parties have agreed, pursuant to the following terms, to resolve any and all disputes and matters between the Parties arising out of the Lease and TTM's tenancy on the Premises.

AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, IT IS AGREED BETWEEN THE PARTIES THAT:

1. Recitals. The recitals hereinabove are hereby incorporated into the terms of the Agreement set forth below.
2. TTM's Remaining Obligations. TTM has no remaining obligations under the Lease.
3. No Work Required. No work, repair, restoration clean up, installation, removal, and/or maintenance, including removal of Alteration and Utility Installations owned by TTM or one of its predecessors, or otherwise, need be undertaken by TTM, including but not limited to any removal of improvements previously placed on or about the Premises by TTM or others. TTM is not required to perform any of the repairs, restoration, maintenance, installations, removals, or clean up, not already performed by TTM, described in Paragraph 7 of Rider 5 of the Lease.
4. Settlement Consideration. Geomax presently holds TTM's security deposit in the amount of \$100,000. Geomax shall keep \$20,000 of TTM's security deposit as good and

valuable consideration for the promises and releases herein contained. On or before March 15, 2017, Geomax will return the remaining \$80,000 of the security deposit to TTM by certified check in the amount of \$80,000 payable to TTM Technologies, Inc. to be mailed to TTM Technologies, Inc., 1665 Scenic Ave., Suite 250, Costa Mesa, California 92626.

5. Property Taxes. Geomax and TTM understand and agree that TTM owes no additional real property taxes for the Premises for 2016, 2017, or any other year.

6. Insurance. Geomax and TTM understand and agree that TTM owes no additional amounts for property insurance.

7. Security Deposit. Geomax presently holds a security deposit in the amount of \$100,000. On or before March 15, 2017, Geomax will return \$80,000 of the security deposit to TTM by mailing same to TTM Technologies, Inc., 1665 Scenic Ave., Suite 250, Costa Mesa, California 92626.

8. Mutual Releases.

A. Except for the obligations set forth in this Agreement and as expressly set forth in Section 8B. below, the Parties, on behalf of themselves and their respective heirs, predecessors (including, but not limited to, Viasystems Technologies Corp., L.L.C., Viasystems TC, L.L.C., DDI Milpitas Corp., Dynamic Circuits, Inc. and Dynamic Details, Inc.), successors, trusts, officers, directors, managers, partners, members, agents, attorneys, insurers, employees, personal representatives, affiliates, and assigns (as applicable to each of them) hereby release and discharge one another and one another's respective officers, directors, managers, partners, members, agents, attorneys, insurers, employees, personal representatives, heirs, predecessors, successors, assigns, trusts, affiliates, subsidiaries and parent entities (as applicable to each of them) from any and all claims, liabilities, obligations, suits, requirements, indebtedness, causes of action, injuries, losses, damages, claims for indemnity and costs or expenses of any nature, whether known or unknown, suspected or unsuspected, contingent or fixed, which any of the Parties or their predecessors now own or hold or at any time owned or held by reason of any act, matter, cause or thing arising from or related to the Lease, the occupation of the Premises or any property ever occupied by TTM under the terms of the Lease, any prior leases between the Parties or their predecessors, or any relationship, transaction, or other business dealing between the Parties or their predecessors.

B. The sole exception to the mutual release set forth in Section 8A above is for any claims or causes of action in any way relating to the release or use of a Hazardous Material as that term is defined in Section 43A of the Lease, including without limitation, any causes of action or claims under State or Federal common or statutory law (including without limitation CERCLA, RCRA, TSCA, the California Health and Safety Code and the California Code of Civil Procedure.

9. 1542 Waiver.

The parties expressly waive and relinquish all rights and benefits they may have under any statute, court rule, court decision or other source of law that otherwise might limit the effect of the releases and discharges in this Agreement based on their knowledge at the time that this

Agreement is executed, or that might preserve, notwithstanding those releases and discharges, claims of which they were not aware, including without limitation, Civil Code Section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

In connection with such waiver, each party acknowledges that it is aware that it may later discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Agreement, but that it is its intention to hereby fully, finally and forever to settle and release all such matters referred to notwithstanding the discovery or existence of additional or different facts.

Each of the Parties acknowledges, represents and warrants that it is familiar with Section 1542 of the Civil Code of the State of California and has had the opportunity to consult with legal counsel regarding such statute and with the benefit of such familiarity and opportunity for such consultation elects to enter into this Agreement, including its releases and discharges of unsuspected and unknown claims.

10. Representations and Warranties.

A. Each Party hereto warrants and represents that it is the sole owner of all rights and claims herein released, and it has the power and authority to execute the within releases, and the power and authority to execute this Agreement on behalf of the Party in whose name it executes same.

B. All Parties hereby represent that they have had the opportunity to receive independent legal advice. All Parties hereby represent that they have had the opportunity to receive independent tax advice in connection with this Agreement.

C. The Parties hereto, and each of them, further represent and declare that they have carefully read this Agreement, know the contents thereof and that they sign the same freely and voluntarily.

D. All Parties hereby represent they investigated the facts and are not relying upon any representation or acknowledgement, whether oral or in writing, of any other party hereto except as expressly contained herein.

E. The individuals signing this Agreement on behalf of the Parties have been duly authorized by appropriate resolutions which are in full force and effect, without any additional approval and consent required.

11. Construction.

This Agreement shall be deemed to have been jointly drafted by the Parties, and shall be construed and interpreted according to the ordinary meaning of the words used as to fairly accomplish the purposes and intentions of all parties hereto.

12. Binding Effect.

This Agreement shall be binding on the successors and assigns of the Parties. TTM may assign its rights and obligations hereunder to any corporate affiliate or successor, upon notice to Geomax. Except as set forth in the preceding sentence, this Agreement may only be assigned by a Party with the prior written consent of the other Party, not to be unreasonably withheld or delayed.

13. Severability.

In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

14. Waiver.

No breach of any provision hereof can be waived unless in writing. Waiver of or failure to assert any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same on any other provision hereof. No provision of this Agreement may be waived, modified, or altered except in writing executed by the Parties.

15. Attorneys' Fees.

The Parties to this Agreement shall bear their respective costs and attorneys' fees in connection with its preparation and execution. In the event of any legal action to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to costs and reasonable attorneys' fees, the amount of which may be set and awarded and judgment entered in favor of the prevailing Party and against the losing Party in the same action, in addition to any other relief to which such Party may be entitled.

16. Notices.

Notices hereunder shall be given in writing to the Parties, via email, to George Quinn at gquinn@geo-max.net for Geomax, and to Dan Weber at dan.weber@ttm.com for TTM.

17. Entire Agreement.

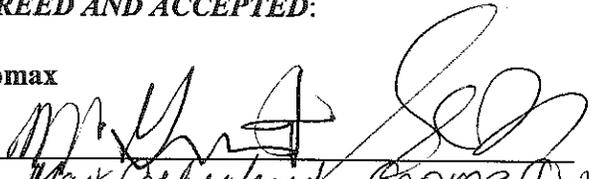
Each party individually and collectively declares and represents that no promises, inducements, or other agreements not expressly contained herein have been made and that this Agreement contains the entire agreement between the Parties.

18. Counterparts.

All parties agree that this Agreement may be executed by one or more duplicate copies, in counterparts (each of which, and together, shall be deemed one integrated document), and/or by facsimile or electronic PDF signature with such executions being binding on all the Parties.

AGREED AND ACCEPTED:

Geomax


By: Max Cabral George Quinn
Its: Partners

TTM Technologies, Inc.


By: Dan Weber
Its: SVP & General Counsel

MONTH TO MONTH LEASE AGREEMENT

THIS MONTH TO MONTH LEASE AGREEMENT is made as of December 13, 2017, by and between GEOMAX, a California General Partnership, having an address at 3460 Edward Avenue, Santa Clara, CA 95054 ("Licensor"), and Stratford School, Inc., a California Corporation, having an address at 12930 Saratoga Ave, Saratoga, 95070 ("Licensee"). Licensor is the owner of that certain real property commonly known as 1831-1841 Tarob Court, Milpitas, CA 95035 (the "Property"). Licensee desires to acquire a license to enter upon and use a portion of the Property, the Premises, for the purposes more particularly described herein. Licensor has agreed to grant to Licensee a license for the purposes described herein, subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Licensor hereby grants to Licensee a license (the "License"), subject to the conditions described below, to enter upon the Property and use approximately **39,720 SF of the subject property** (the "Premises"), on a month-to-month basis with a Commencement Date upon execution of the Month to Month Lease Agreement and in no event later than January 1, 2018, terminating at any time upon a 15 day advanced written notice from either party to the other.
2. Use. Licensee shall use the Premises for storage and warehousing use. Licensee, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements").
3. Access. Licensor shall not authorize or grant access to the Premises by others without having delivered fifteen (15) days prior written notice to Licensee. In the event Licensor elects to grant access to the Premises by others Licensee shall have the right to terminate this License in the manner set forth in §1. In the event Licensee does not exercise the right to terminate then Licensee shall have the right to construct temporary means of securing its property stored within the Premises, provided that Licensee shall remove any such temporary security measures upon termination of this License.
4. The License granted hereby is expressly conditioned upon the following:
 - a. Licensee, at all times during the term hereof, shall at its cost maintain a comprehensive form of liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Licensee shall provide Licensor with a Certificate of Insurance showing Licensor as additional named insured and providing for a thirty-day written notice to Licensor in the event of cancellation or material change of coverage.
 - b. Licensee shall not assign the rights of Licensee hereunder without the prior written consent of Licensor, it being understood that Licensor shall have the right, in its sole discretion, to approve or disapprove such assignment, provided, however, Licensee shall have the right to sublicense a portion of the Premises for the same use as set forth herein subject to Landlord's prior written approval which shall not be unreasonably withheld or delayed. Any such sublicense is expressly subject to the Terms of this License.
5. In consideration for the granting of this License, Licensee shall pay to Licensor a monthly license fee equal to \$100.00. In the event Licensee doesn't not timely vacate the Premises pursuant to

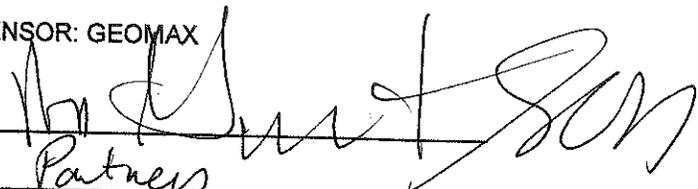
the terms of paragraph 1 above, the license fee shall be increased to a daily rate of \$500 for the initial 15 days after written notice and \$1500 per day thereafter plus any additional losses that Licensor may suffer due to such unauthorized hold over by Licensee.

6. Licensor shall not be liable for any damage or injury to Licensee, or any other person, or to any Licensee property, occurring on the Property or any part thereof, except where caused by the gross negligence or willful misconduct of Licensor. Licensee agrees to indemnify, defend and hold Licensor, its agents, partners, representatives, shareholders, officers and employees, harmless from any claims, liability damages, suits, judgments, actions, causes of action and losses of any kind whatsoever (including without limitation reasonable attorneys' fees) arising out of or relating in any fashion whatsoever to this License or the use of the Property pursuant to this License. The provisions of this paragraph shall survive the termination of this License with respect to any damage, liability or loss occurring prior to such termination.
7. All notices, requests or demands to a party hereunder shall be in writing and shall be given or served upon the other party by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, addressed as set forth below. Any such notice, demand, request or other communication shall be deemed to have been given upon the earlier of personal delivery thereof, three (3) business days after having been mailed as provided above, or one (1) business day after delivery through a commercial courier, as the case may be. Each party shall be entitled to modify its address by notice given in accordance with this paragraph.

If to Licensor:	If to Licensee:
GEOMAX	Stratford School, Inc.
3460 Edward Avenue	12930 Saratoga Ave, #A-2
Santa Clara, CA 95054	Saratoga, CA 95070
8. Subject to the provisions of ¶4.b. above, this License is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.
9. If Licensee is a corporation, each individual executing this License on behalf of Licensee represents and warrants that he is duly authorized to execute and deliver this License on behalf of such corporation in accordance with the by-laws of such corporation and that this License is binding upon such corporation in accordance with its terms. Each of the persons executing this License on behalf of a corporation does hereby covenant and warrant that the party for whom it is executing this License is a duly authorized and existing corporation, that it is qualified to do business in California, and that the corporation has full right and authority to enter into this License.
10. The occurrence of any of the following shall constitute a default by Licensee: (a) the failure of Licensee to pay the license fee as described in ¶5; or (b) the failure of Licensee to perform any other provision of this License to be performed by Licensee. In the event of the occurrence of any such default, Licensor shall be entitled to immediately terminate this Agreement.
11. Licensee shall, at Licensee's sole cost and expense, repair any and all damage with respect to the Premises resulting from the use of such area pursuant to this License and such repair shall be completed promptly by Licensee in a fashion reasonably satisfactory to Licensor.
12. The parties acknowledge that each party and its counsel have reviewed and approved this License, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this License or any amendments or exhibits hereto.

13. This License may be executed in counterparts, each of which shall constitute an original. This License can be transmitted by one party to the other party by facsimile.
14. No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.
15. The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.
16. IN WITNESS WHEREOF, the parties have executed this License as of the date first above written.

LICENSOR: GEOMAX

By: 

Its: Partner

Date: 01/22/2018

LICENSEE: STRATFORD SCHOOL, INC.

By: 

Its: VP DEVELOPMENT

Date: 01/18/2018

3



STRATFORD SCHOOL

12930 Saratoga Ave, Suite A-2
Saratoga, CA 95070

June 25, 2018

VIA FAX AND U.S. MAIL

GEOMAX
3460 Edward Ave.
Santa Clara, CA 95054

Fax: (408) 330-0806

Premises: 1831-1841 Tarob Court, Milpitas, CA 95035
Lease: Lease Agreement dated February 1, 2018
 Month to Month Lease Agreement dated December 13, 2017
Tenant: LePort Educational Institute, Inc.

To Whom It May Concern:

This letter will serve as termination notice to GEOMAX, a California general partnership ("Landlord") that Stratford School, Inc. ("Tenant") has elected to terminate the Lease Agreement dated February 1, 2017, as permitted by Rider 1, Section 3(A) thereof, effective as of the date of this letter. Pursuant to the Lease Agreement, Stratford hereby requests return of the Prepaid Rent and Security Deposit, less the sum of \$10,000.

This letter will also serve as termination notice to Landlord that Tenant has elected to terminate the Month to Month Lease Agreement dated December 13, 2017, and terminates its occupancy of the Premises effective as of the date of this letter.

Very truly yours,

Sean Powell
Vice President

*Andrew Noble, Counsel for
Tenant, on behalf of Sean Powell.*



ANDREW L. FABER
RALPH J. SWANSON
PEGGY L. SPRINGGAY
JOSEPH E. DWORAK
SAMUEL L. FARB
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TYLER A. SHEWEY
JAMES F. LANDRUM, JR.

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OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
ERIC WONG

JEFFREY S. KAUFMAN
NANCY L. BRANDT
LESLIE KALIM McHUGH

DOCUMENTS IN SUPPORT OF APPEAL TO THE CITY OF MILPITAS PLANNING COMMISSION

SEPTEMBER 26, 2018 HEARING

Re: Sept. 26, 2018
Planning Commission Hearing
Agenda Item VIII-1
1831/1841 Tarob Court, Milpitas

**EXHIBIT INDEX AND TIMELINE
 DEMONSTRATING CONTINUOUS INDUSTRIAL USE AT
 1831/1841 TAROB COURT, MILPITAS**

<u>Date</u>	<u>Tab</u>	<u>Exhibit Description</u>
August 13, 2018	1	Appeal of formal determination issued by Acting Planning Director, Jessica Garner, on August 3, 2018, submitted by Geomax ("Owner"), on August 14, 2018

<u>Date</u>	<u>Timeline Event</u>	<u>Tab</u>	<u>Exhibit Description</u>
1977-Present	For 41 years Geomax ("Owner") has owned the subject property and the industrial building on it ("Premises") as well as the adjacent three properties and buildings.	2a 2b	Aerial photograph of subject property Owner's multi-property ownership plot on the Milpitas Transit Area Specific Plan (MTASP) map
2008	City of Milpitas ("City") rezoned the subject property and adjacent properties from M1 "Light Industrial District" to R4 "Multiple Family Very High Density District" pursuant to the Milpitas Transit Area Specific Plan (MTASP).	3	Subject property on MTASP map
2014-2016	Owner received numerous offers from residential developers to purchase all four adjacent properties, throughout 2014-2016. In 2016, Owner and residential developer, Braddock & Logan, signed a purchase agreement for all four properties. However, efforts to sell were frustrated by uncertainty as to the City roads and park planned on Owner's properties, pursuant to the MTASP (see Tab 2, MTASP map)	4	First page of Purchase Agreement between Owner and Braddock and Logan

<u>Date</u>	<u>Timeline Event</u>	<u>Tab</u>	<u>Exhibit Description</u>
January 2017- Present -----	Owner has continuously marketed property as industrial use, through the present.	5a	Photograph of "For Lease" sign advertising "93,720 SF Industrial" located at front of subject property
January 23, 2017 (Tab 5b)	After TTM Technologies, Inc., an industrial tenant that had occupied the Premises for decades terminated their lease in January 2017, Owner immediately entered into a listing agreement with two brokerage firms to find a new industrial use tenant.	5b	First page of listing agreement with Cushman & Wakefield, U.S., Inc. and Colliers International, dated January 23, 2017
May-July 2017 (Tab 5c)		5c	Listing Brochure advertising the Premises, as "Industrial / Warehouse" for lease, and proposed "Site & Building Improvements," circulated to entire brokerage community in May, June, and July of 2017
October 2017 (Tab 5d)		5d	Listing Brochure advertising the Premises as "Industrial/Warehouse" for lease, with "Market Ready Construction Complete," first circulated to entire brokerage community in October 2017
January 2017- Present -----	Owner has continuously searched for and negotiated with prospective industrial use tenants	6a	First page of Lease Proposal from C & D Semiconductor, Inc., to use Premises for office, R&D, manufacturing, and testing
January 23, 2017 (Tab 6a)	Owner was approached by Stratford initially to use one-half of the building for records storage and office space for a pre-school. Based on his experience as a developer and broker, Owner understood this to be an industrial use.	6b	First page of license agreement permitting Stratford School, Inc. to use Premises for storage and warehousing use
December 13, 2017 (Tab 6b)		6c	First Page of Owner's fourth Lease Counter-Proposal to Azel Enterprises, Inc., to use Premises for precision manufacturing, a machine shop, and other industrial uses
December 15, 2017 (Tab 6c)	Owner signed a license agreement with Stratford to use Premises for record storage, but continued to negotiate with other industrial tenants to lease the building long-term.		
January 2017- Present -----	Owner has continued to maintain and repair Premises for the purpose of	7a	Summary of costs and expenses for maintenance and repair of Premises from January 1, 2017 to September 20, 2018

<u>Date</u>	<u>Timeline Event</u>	<u>Tab</u>	<u>Exhibit Description</u>
January 1, 2017- September 20, 2018 (Tab 7a)	making it “market ready” for prospective industrial tenants. (See Tabs 5c and 5d, listing brochures marketing Premises to industrial use tenants, specifically – first brochure highlights proposed improvements; second brochure highlights “market ready construction complete” and contains photos of interior improvements)	7b	Building permit issued July 18, 2017 with final inspection sign-off on May 24, 2018
July 18, 2017- May 24, 2018 (Tab 7b)	Owner also made alterations to subject property to comply with City building code, disability access, and fire safety requirements, for the existing industrial use, not for a conforming use. The City’s final signoff on the improvements was on May 24, 2018.	7c	Photograph of new roof
		7d	Photograph of new ADA parking,
July 2018- Present ----- July 11, 2018 (Tab 8a)	Owner continues to suffer damages in: 1) monthly rent that Owner would have received in the amount of \$1.10/sqft from NIO USA, Inc., if City had not incorrectly determined that industrial use on Premises has been discontinued 2) in triple-net expenses in the amount of \$8,566.75/month that it continues to pay on the subject property, which would otherwise have been paid by the tenant	8a	First page of Lease Agreement between Owner and NIO USA, Inc., to use Premises for manufacturing, warehousing, and other industrial uses, showing rent bases and amounts
		8b	Summary of ongoing triple-net costs and expenses for subject property

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, CA 95035



File with: Milpitas City Clerk
Milpitas City Hall, 3rd floor
455 E. Calaveras Blvd.
Milpitas, CA 95035

If questions, call:

PLANNING: (408) 586-3271
CITY CLERK: (408) 586-3001

APPEAL FORM

1. APPELLANT(S):

Name: George Quinn
Company: Geomax
Address: 3460 Edward Ave.
City/State/Zip: Santa Clara, CA 95054

2. DECISION BEING APPEALED:

I (we), the undersigned, do hereby appeal a ~~decision of the Planning Commission's~~
~~(or other body's)~~ approval of:

See attachment.

PROJECT: N/A

LOCATION: 1831 - 1841 Tank Ct., Milpitas, CA 95035

DATE OF DECISION BEING APPEALED: August 3, 2018

3. STATE THE SPECIFIC RELIEF WHICH THE APPELLANT SEEKS:

See attachment.

4. SUMMARY OF REASONS WHY THE APPELLANT CLAIMS ENTITLEMENT TO THE RELIEF SOUGHT:

- (a) The Existing Facts Demonstrate That There Has Not Been a Cessation of the Industrial Use
(b) Under the Milpitas Code and Applicable California Law, the Legal, Non-conforming Use of the Property Has Not Been Discontinued.

Attach additional pages, if more space is needed.

I, the undersigned, acknowledge the procedures for filing an appeal, including the responsibilities of public notices in accordance with the Milpitas Municipal Codes Title XI 10-64.04, as prescribed for zoning related hearings, and Title I 20-2.02 for Notices provided by mail.

DATE: 8/14/18

SIGNATURE [Signature]

PRINT NAME: George L. Quinn Jr

PAID Filing Fee \$100.00

ADDRESS 3460 Edward Ave.

Cash

CITY/ST/ZIP Santa Clara, CA 95054

Check No.

PHONE #s: 408-330-0801

E-MAIL ADDRESS: gquinn@geo-max.net

FORM & FEE RECEIVED BY: _____
(City staff name)

DATE RECEIVED: _____

August 14, 2018

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

File with: Milpitas City Clerk
Milpitas City Hall, 3rd Floor
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Appeal to Planning Commission – Appeal Form Attachment, p. 1 of 1

2. DECISION BEING APPEALED:

I, the undersigned, do hereby appeal to the Planning Commission the Acting Planning Director Jessica Garner's determination, discussed in the attached letter to the Appellant dated August 3, 2018, that under the City of Milpitas's nonconforming use regulations, the industrial use of the building at 1831-1841 Tarob Court, Milpitas, CA, the property at issue, was discontinued for a continuous period of one (1) year or more.

3. STATE THE SPECIFIC RELIEF WHICH THE APPELLANT SEEKS:

I, the undersigned, request that the Planning Commission grant this appeal, vacate the Acting Planning Director Jessica Garner's interpretation, and determine that the legal, nonconforming use of the property at issues may continue, in light of the facts and legal arguments presented by the Appellant in the attached appeal letter to the City of Milpitas Planning Commission dated August 13, 2018.



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3050, FAX: 408-586-3056, www.ci.milpitas.ca.gov

August 3, 2018

George L. Quinn, Jr.
3460 Edward Ave.
Santa Clara, CA 95054

RE: 1831 Tarob Court--Request for Interpretation of City's Nonconforming Use Regulations

Dear Mr. Quinn:

The City of Milpitas has reviewed your request for interpretation of the City's nonconforming use regulations to replace a previous nonconforming use located at 1831 Tarob Court in Milpitas, with a proposed research and development use.

As you know, the subject property is zoned R4 (Multiple Family Very High Density District), and previous uses of the site by your tenant TTM were subject to compliance with the nonconforming use provisions of the Milpitas Municipal Code. According to Section XI-10-56.03 (A)(2) - Nonconforming Use of Buildings and Structures of the Milpitas Municipal Code, a nonconforming use which has been discontinued for a period of less than one (1) year may be replaced with a nonconforming use of the same use classification as a matter of right. Nonconforming use of a building structure or portion thereof, which is discontinued for a period of a year or more, may be replaced only with a conforming use.

Based upon the information presented to the City, Staff has determined that the nonconforming uses on the site have been discontinued for a period of more than one year and, therefore, cannot be replaced with a nonconforming use as a matter of right. This determination is based upon the following information provided to the City. The previous tenant, TTM, occupied the premises from July 22, 1991 to January 31, 2017. TTM operated a manufacturing facility, which falls within the "Plant or facility" subcategory within the "Industrial Uses" use classification per Table XI-10-7.02-1 Industrial Zone Uses of the Milpitas Municipal Code, which was a legal conforming use under the zoning in effect at the time it was established. As noted above, under the Milpitas Municipal Code, for a different subsequent nonconforming use to qualify to operate by right, that use must fall within the same "Industrial Uses" use classification. You have asserted that the nonconforming use on the site continued throughout Stratford Schools' subsequent tenancy of the property from December 13, 2017 through June 25, 2018, because the school stored records on the site, thereby establishing a "warehousing and wholesale" use that continued the legal nonconforming status of the property.

Staff does not agree with your interpretation of the Municipal Code. As stated in your letter dated July 27, 2018, Stratford Schools used the premises for "warehousing records;" however, the storage of school records does not qualify as a warehousing use within the meaning of the Municipal Code. Although the Code does not have an express definition of "warehousing and wholesale," the most reasonable interpretation of the Code's meaning, as well as customary use of the term in the zoning context, is that the term "warehousing" refers to the storage and/or

distribution of commercial goods on-site prior to delivery of those goods to commercial recipients. The Code expressly couples the terms "warehousing" and "wholesale" as one use. There is no "wholesale" or any other commercial purpose associated with the mere onsite storage of a school's own records. In the zoning context, the term "warehousing" is not typically applied to incidental onsite storage, particularly when the storage use is merely ancillary to a noncommercial enterprise, such as a school. The school's records are not a commodity, they were not stored in exchange for payment of a fee, nor would they be sold for distribution to an outside party.

Moreover, no occupancy permit was issued for the Stratford School for any warehouse (or any other) activity on the site. As a new tenant, Stratford should have applied for an occupancy permit prior to establishing any uses on the site. If the school had complied with this requirement, the application undoubtedly would have been for a school, not a warehouse. The fact that the school stored some of its records onsite before ultimately choosing not to open an undeniably nonconforming school did not establish a "Warehousing and wholesale" use under the Milpitas Municipal Code. To the contrary, under your theory, any operation's onsite storage of its own records could be considered "warehousing."

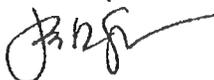
In addition to not qualifying as a "warehousing" use, Stratford Schools' storage of its own records also was not a legal nonconforming "storage" use within the Industrial Use sub-category. The only storage related Industrial Use authorized under Milpitas Municipal Code Table XI-10-7.02-1 is "Mini-storage complex." Any such use would have required a Conditional Use Permit before the premises legally could be occupied, but Stratford Schools did not obtain such a permit.

Staff has received no other information to determine that the research and development tenant proposed for 1831 Tarob Court could be established as a legal nonconforming use as a matter of right. Because Stratford Schools' use of the premises was not a legal nonconforming use, the last known Industrial use of the building was discontinued as of January 31, 2017. As a result, the prior nonconforming use of the site was discontinued for a continuous period of one (1) year or more and may be replaced only with a conforming use.

This decision is appealable to the Planning Commission in accordance with the Milpitas Municipal Code, including, without limitation, Table XI-10-64.02-1 Decision-Making Body and Role of the Milpitas Municipal Code. Any such appeal **must be filed by no later than twelve (12) calendar days from the date of this letter.** Failure to timely appeal and to raise each and every issue that is contested may preclude you, or any interested party, from challenging this determination or raising such issues during any appeal and/or in court. Any Planning Commission decision on such an appeal may be appealed to the City Council in accordance with Milpitas Municipal Code I-20-5.02.

If there are any questions, please contact Jessica Garner at 408-586-3284.

Sincerely,



Jessica Garner
Acting Planning Director
City of Milpitas

B BERLINER COHEN_{LLP}

ANDREW L. FABER
RALPH J. SWANSON
PEGGY L. SPRINGGAY
JOSEPH E. DWORAK
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
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EMILY TEWES

* (Admitted in New York only)

RETIRED

SANFORD A. BERLINER
SAMUEL J. COHEN
HUGH L. ISOLA

ROBERT W. HUMPHREYS
ROBERT L. CHORTEK

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
ERIC WONG

JEFFREY S. KAUFMAN
NANCY L. BRANDT
LESLIE KALIM McHUGH

August 13, 2018

VIA E-MAIL & U.S. MAIL

Planning Commission
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: 1831/1841 Tarob Court, Milpitas
Our File No.: 01475.015

Dear Chair Mandal and Commissioners:

This letter is in support of the appeal by our client, Geomax, of the formal interpretation (the "Interpretation") issued by Jessica Garner, Acting Planning Director, on August 3, 2018, concerning the above-referenced property. The Interpretation states that "the prior nonconforming use of the site was discontinued for a continuous period of one (1) year or more and may be replaced only with a conforming use."

We believe the Interpretation is incorrect. It was apparently based upon an incomplete understanding of the relevant facts as well as an improper interpretation of the legal basis for continuing to maintain an existing legal, nonconforming use. We believe that if the Acting Director had been aware of all of the facts, then under applicable California law her interpretation would be different.

The Facts Demonstrate That There Has Not Been a Cessation of the Industrial Use. As I understand them from my client, here are the relevant facts that establish that the existing legal, nonconforming use of the property has not been discontinued:

- 1) Geomax purchased this property 41 years ago and shortly thereafter built on it a nearly 40,000 square foot industrial building. This was at the time and for decades thereafter a

legal, conforming use of the property, consistent with the City's General Plan and Zoning Code.

- 2) When the City adopted the Milpitas Transit Area Specific Plan, the property was designated for residential use. A new road is shown going through the property and the existing building (see MTASP, figure 3-2 Street System).
- 3) The tenant, TTM, operated a chip manufacturing facility, a permitted industrial use, from 1991 to January 31, 2017.
- 4) Geomax entered into a real estate brokerage agreement with Cushman & Wakefield U.S., Inc. and Colliers International on January 23, 2017, to lease the property for industrial uses. The brokers have advertised the property and suitable signs have been on site since January 2017. That agreement is still in effect.
- 5) Because the tenant had been in the building for decades, there was significant cleanup and deferred maintenance necessary after they vacated. The repairs and maintenance included, among other things, a new roof, glass repair, repainting, new landscaping and paving in the parking lot. In addition, tenant improvements were made to the interior of the building, including the reconstruction of approximately 4,000 square feet of office space in the front of the structure.
- 6) All of the repairs and tenant improvement work was accomplished with City permits. The Planning Department approved the permits. The total cost of the work was over \$800,000. The work took many months and was finally completed in or about April 2018, with final signoffs by the City in that month, following City-required reworking of the sprinkler system, the sprinkler alarm system and the handicapped parking. The work was undertaken solely for the purpose of continuing the use of the building consistent with its existing industrial uses.
- 7) If the property were to be redeveloped for residential use, all of these improvements would have to be demolished, so this entire investment would be lost.
- 8) The recent inquiry to the Planning Department by George Quinn (one of the partners of Geomax) was prompted by the desire of a prospective tenant to use the building for research and development and light manufacturing involving prototype electric vehicles. This would be a standard industrial use.
- 9) The market rent for such uses is approximately \$45,000, or about \$1,500 per day. This is the amount of damage being incurred by Geomax due to the City's refusal to allow such a use.

Under the Milpitas Code and Applicable California Law, the Legal, Nonconforming Use of the Property Has Not Been Discontinued. It should be apparent from the above recital of facts that the owners have never discontinued the industrial use of the property.

Planning Commission
August 13, 2018

The Milpitas nonconforming use ordinance specifically supports such investment in nonconforming uses as has been made by Geomax on this property. Thus, Section XI-10.56.01 of the Milpitas Municipal Code states the intent of the ordinance. After stating the general intent to encourage conforming uses, the code says:

“However, the City recognizes that until nonconforming buildings, structures, and uses are converted, improvements to them which promote their compatibility with their neighborhoods, enhance the quality of development, and do not increase nonconformity should be encouraged and allowed.”

In this case the very improvements that have been made by the owners meet this statement of intent in the Ordinance. The improvements to upgrade the exterior of the building and the landscaping and parking area do encourage neighborhood compatibility, they enhance the quality of the property, and since the building has not been expanded in size, there is no increase in nonconformity.

The interpretation of the Planning Director seems to be erroneously based primarily, if not solely, on the fact that the long-term tenant, TTM, moved out of the building effective January 31, 2017, and that there has not yet been a new tenant in occupancy. The California Supreme Court, however, has made it clear that a nonconforming use ordinance cannot be invoked by a city simply because of a vacancy in a building.

The courts have found that temporary nonuse of property, especially resulting from fluctuation in market demands or compliance with City demands, does not constitute discontinuance of a nonconforming use. (*See Hansen Bros. Enters. v. Bd. of Supervisors* (1996) 12 Cal.4th 533, 569-71, in which the Supreme Court held that because the business of aggregate mining is seasonal and dependent on fluctuating market demand, the cessation of mining for several years because of low demand did not constitute a discontinuance of that nonconforming use]. This has been the law in California for many years. For example, *see Fontana v. Atkinson* (1963) 212 Cal.App.2d 499, 507 (Temporarily removing fences that created a corral for cattle, to repair and rebuild them to conform to regulations of the county health department, did not constitute a forfeiture of the owner’s right to continue operating the property in a nonconforming manner as a dairy farm). The court in *Hansen* held that “mere cessation of use” neither amounts to discontinuance of the use nor demonstrates an intent to abandon the use. *Hansen Bros. Enters.*, 12 Cal.4th at 569.

The *Hansen* court rejected the county’s position that because a quarry operation had ceased active mining of rock for six months, it had lost the right to resume mining operations. The actual mining of rock was only one component of the use of the quarry, and a temporary cessation of that particular operation did not indicate an abandonment or discontinuance of the overall quarry use or of the mining operation. Similarly, here the industrial use of the property comprises a number of components, including constructing and repairing the building, holding it out for lease, and actual occupancy. In fact the Milpitas Zoning Code recognizes this mix of activities; thus, in its statement of Purpose and Intent for the Light Industrial (M1) Zone, it states: “The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities....” (Section XI-10-7.01, emphasis added). The code clearly recognizes that mere occupancy is not synonymous with use of a property. So too, mere vacancy is not synonymous with discontinuance of use.

Planning Commission
August 13, 2018

Here, Geomax's building has been vacant despite their active and continued search for an industrial use tenant. The vacancy was also required to make the repairs necessary to meet City safety demands and to upgrade the building so that it could continue as an industrial use.

Accordingly we respectfully request that the Planning Commission grant this appeal, vacate the Interpretation, and determine that the legal, nonconforming use of the property may continue. Please contact the undersigned if any further information is needed.

Because of the continuing damages to the owners from being unable to consummate an industrial lease, we request that this matter be heard at the earliest possible date.

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF

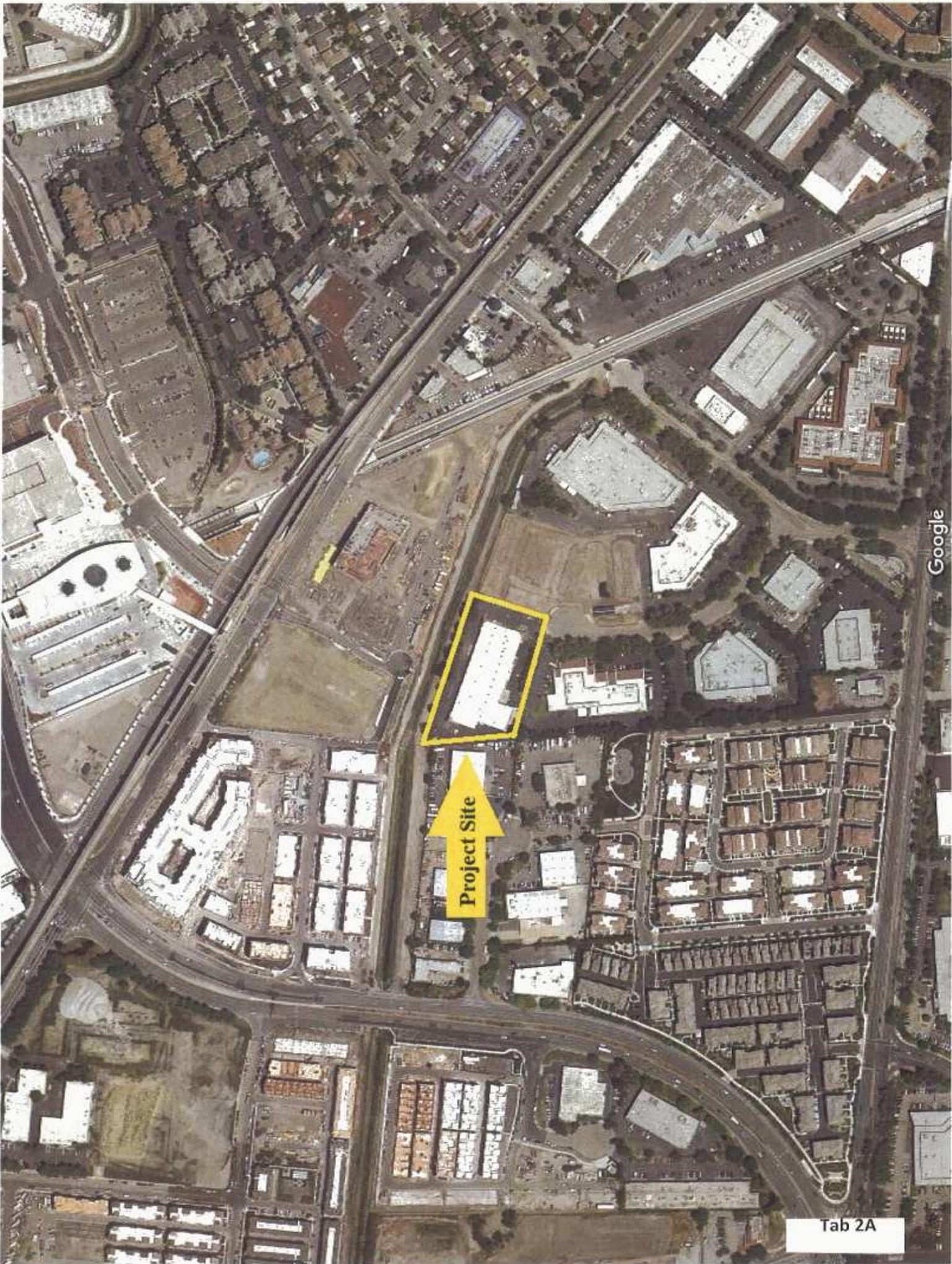
Cc:

Jessica Garner, Acting Planning Director

Chris Diaz, City Attorney

George Quinn

Max Gahrahmat



Project Site

Google

PROPERTY OWNERSHIP

The Transit Area has approximately 110 private parcels, owned by around 80 different corporations and individuals as shown in Figure 2-9. In several areas, groups of parcels are controlled by a single owner or by a partnership between separate owners. These groups are marked in red on Figure 2-9. Much of the area south of the Great Mall and west of Montague Expressway is controlled by just two entities, and the land east of the Great Mall and north of the rail spur is owned by just three separate interests.

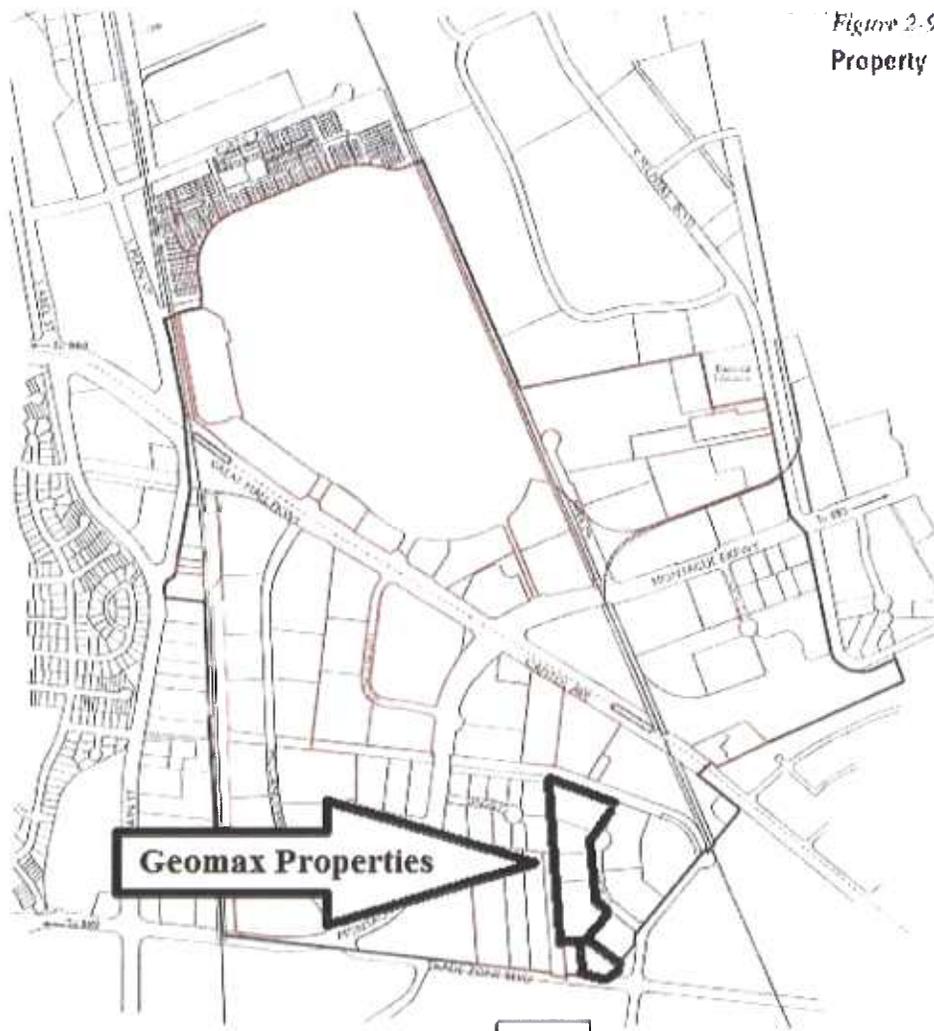


Figure 2-9
Property Ownership

-  Multiple Properties with a Single Owner or Partnership
-  VTA Light Rail Transit
-  Study Area
-  Building Footprint

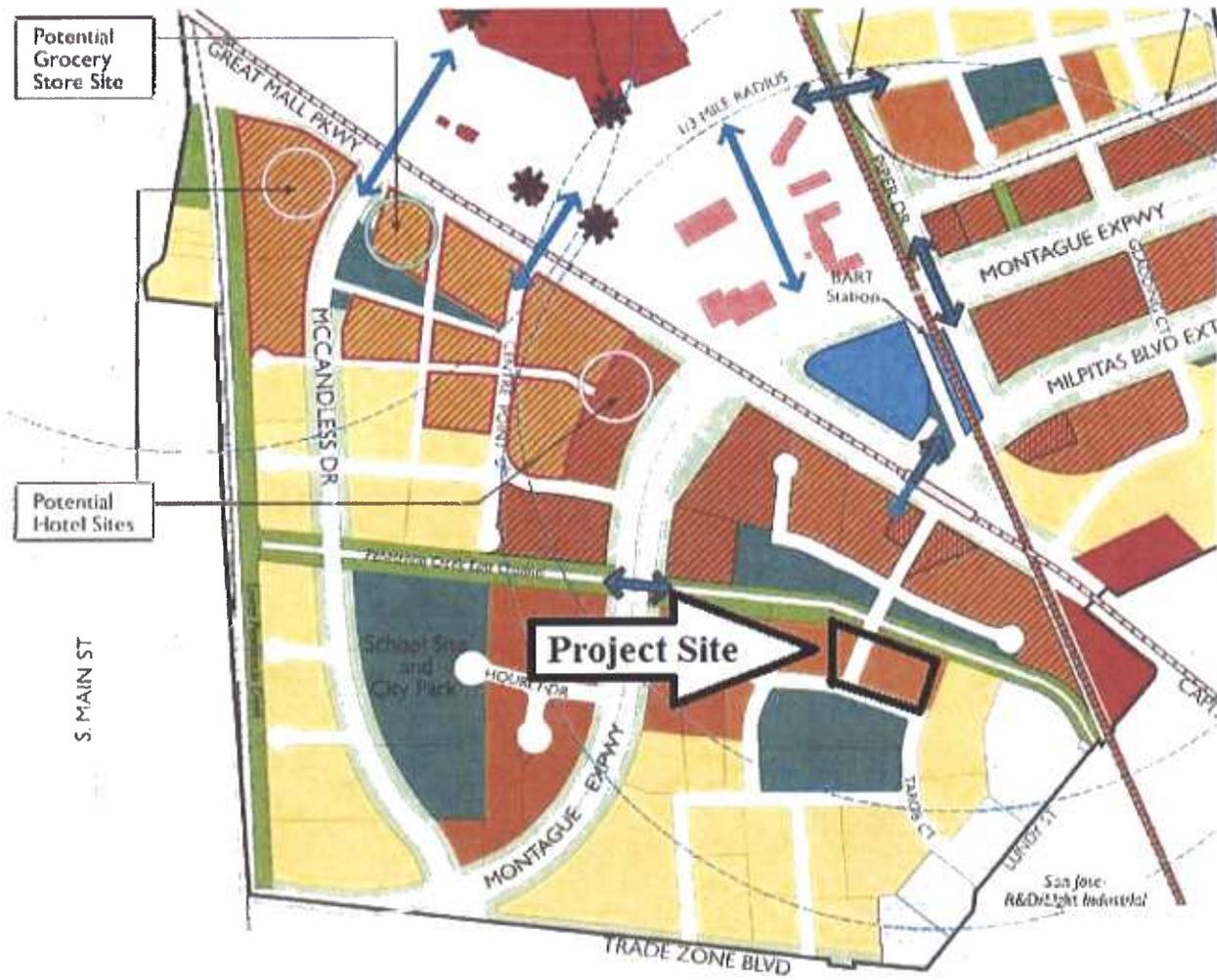


Figure 4-3
Montague Corridor Subdistrict Plan

**REAL ESTATE PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS REAL ESTATE PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("Agreement") is entered into as of _____, 2016, by and between GEOMAX, a California general partnership ("Seller") and BRADDOCK & LOGAN SERVICES, INC., a California corporation, or assignee ("Buyer").

RECITALS

A. Seller is the owner of certain real property located on Tarob Court and Trade Zone Blvd., Milpitas ("City"), Santa Clara County ("County"), California, consisting of approximately 8.85 acres, Santa Clara County APN 086-36-030, -041, -033, -045, all as more particularly described in Exhibit A attached hereto (the "Real Property," and as more fully described below).

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller the Real Property together with all improvements, easements, rights and appurtenances relating to the Real Property (collectively the "Property" as more fully described below), subject to the terms and conditions of this Agreement.

THEREFORE, in consideration of the foregoing and the agreements set forth below, the parties hereto agree as follows:

1. **Purchase and Sale.** Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller the real and personal property and improvements described below (the "Property") on the terms and subject to the conditions set forth below.

A. **Real Property.** All of the real property described in Exhibit A, and all appurtenances pertaining thereto, including all easements, privileges, and rights of way benefiting such land (including, without limitation, all mineral, oil, gas, and other hydrocarbon substances on or under the land, air rights, water and water rights) (the "Real Property"). The "Industrial Parcel" (APN: 086-36-045) may be excluded from the Real Property, as provided in Section 2 below.

B. **Intangible Property and Entitlements.** At the Closing, Seller shall assign to Buyer all of Seller's rights and interests in all personal and intangible property owned in connection with the Property together with all all tangible and intangible property, warranties, guaranties, choses in action, approvals, entitlements, development rights, plans, specifications, drawings and entitlements relating to the Real Property, and permits obtained by Seller with respect to the Property. To effectuate the assignment and assumption of the Intangible Property, at the Closing, the parties shall execute and deliver to each other the Assignment and Assumption of Intangible Property in the form attached hereto as Exhibit B.

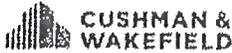
C. **Improvements.** All improvements located on the Land ("Improvements").



For Lease
Colliers
COMMERCIAL REAL ESTATE
39,720 SF Industrial
divides to 25,000 SF
George Quinn 408 282 3912
Kaiti Jenab 408 200 8800
www.colliers.com

1841 Tarob Ct.
1831 Tarob Ct.

RESTRICTED
PARKING
NO
STANDING
OR
STOPPING
EXCEPT
FOR
LOADING
OR
UNLOADING



EXCLUSIVE AUTHORIZATION TO LEASE

Pursuant to this Exclusive Authorization to Lease ("Agreement"), the undersigned GEOMAX ("Client") hereby irrevocably grants to CUSHMAN & WAKEFIELD U.S., INC. ("C&W") & COLLIERS INTERNATIONAL ("Colliers") (C&W and Colliers shall be collectively referred to herein as "Broker"), the exclusive right to negotiate leases with respect to a certain real property hereinafter described ("Property"). The exclusive agency hereby created ("Agency") shall be for a period commencing on January 23, 2017 ("start date") and ending at midnight on July 22, 2017 ("end date") ("Initial Agency Period").

A. PROPERTY

The property is located at 1841 Tarob Court, in the City of Milpitas, County of Santa Clara, State of California and further described as an industrial/warehouse building totaling approximately 39,720 rentable square feet ("Property").

B. PRICE AND TERMS

The Lease(s) shall be for a rental at terms acceptable to Client.

C. EXTENSION OF INITIAL AGENCY PERIOD

The Agency shall continue automatically for thirty (30) days from and after the end date of the Initial Agency Period and thereafter be extended again for additional thirty (30) day increments until the Agency is expressly revoked by Client in writing OR on the one year anniversary of the originally established end date, whichever occurs first. Client agrees to provide thirty (30) days' notice to Broker before such express revocation shall be effective. The Agency can be extended beyond the one year anniversary date by the Client's written notice to Broker that Client agrees to extend the Agency to a new date certain. In this Agreement, "Agency Period" shall refer to the period of time from the start date to the end of the last extension of the Agency.

D. COMMISSION SCHEDULE AND PAYMENT

1. **AMOUNT OF COMMISSION:** The Commission shall be based on the value of the rent to be paid by the tenant, rent being defined as the dollar value of consideration paid by the tenant for the benefit of Client. *In consideration of this Agreement and Broker's agreement to diligently pursue the procurement of tenant(s) for the Property Client hereby agrees to pay commissions equal to 150% of the schedule shown in the attached Schedule of Commissions.* Commissions shall be split 1/3 to Broker and 2/3 to cooperating broker. C&W and Colliers shall evenly split any commissions retained by Broker.
2. **MONTH-TO-MONTH TENANCY:** In the event of a month-to-month tenancy, the commission shall be the greater of fifty percent (50%) of the first month's rent or Five Hundred Dollars (\$500.00). If, within twenty-four (24) months from the date of occupancy of the month-to-month tenant, a month-to-month tenant executes a term lease, then Broker shall receive a leasing commission with respect to such term lease in accordance with the provisions of the foregoing Schedule.
3. **TIME FOR PAYMENT OF COMMISSION:** The commissions shall be paid in accordance with Section B of the Schedule of Commissions.
4. ~~**PURCHASE OF PROPERTY BY TENANT:** If a tenant procured during the Agency Period, or a successor or assign of such tenant, purchases the Property during (i) the term of the lease or any extensions thereof or (ii) within one (1) year after the expiration of the lease (including an extension thereof), Client shall pay Broker a sales commission equal to ~~10%~~ ~~10%~~ of the gross sales price; provided, however, that the amount of said sales commission shall be reduced by the dollar amount of any leasing commissions, if any, previously paid by Client to Broker in connection with the lease on which the Property was leased and the effective date of such purchase.~~

E. OBLIGATION TO PAY COMMISSION

Client shall pay the commission to Broker according to the terms of this Agreement if, during the Agency Period either (a) the Property or any interest therein is leased directly or indirectly by Client, whether or not through the efforts of Broker; or (b) a qualified tenant is procured by or through Broker, Client or any other person or entity (such as another real estate broker) and said tenant is ready, willing and able to lease the Property or any interest therein on the terms stated above or other terms reasonably acceptable to Client.

Client shall also pay the commission to Broker if the conditions in Section A(5) of the Schedule of Commissions are met.

F. CLIENT COOPERATION

Client agrees to cooperate with Broker in effecting a lease of the Property and immediately to refer to Broker all inquiries of any person or entity interested in leasing the Property, or a portion thereof or an interest therein. Client agrees that all negotiations for such lease shall be through Broker. Client agrees to execute such documents as may be necessary to consummate a lease of the Property. Client hereby authorizes Broker to accept a deposit from any prospective tenant. If a transaction is not consummated, any deposits, payments, including payments for options, liquidated damages

FOR LEASE > INDUSTRIAL/WAREHOUSE

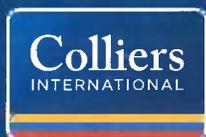
±39,720 Square Feet

1841 TAROB COURT, MILPITAS, CA



Property Highlights

- > Freestanding Building
- > Divisible to ±16,706 - 23,334 SF
- > Site & Building Improvements Underway
- > Proposed ±4,000 SF office, new roof, parking lot resurfaced, etc.
- > Great Loading (14 Roll Up Doors)
- > 2,000 Amps, 110/208 Volts, 3 phase
- > 3.29/1000 Parking
- > Secured, Fenced Parking
- > \$1.25 PSF Gross
- > Call to Show



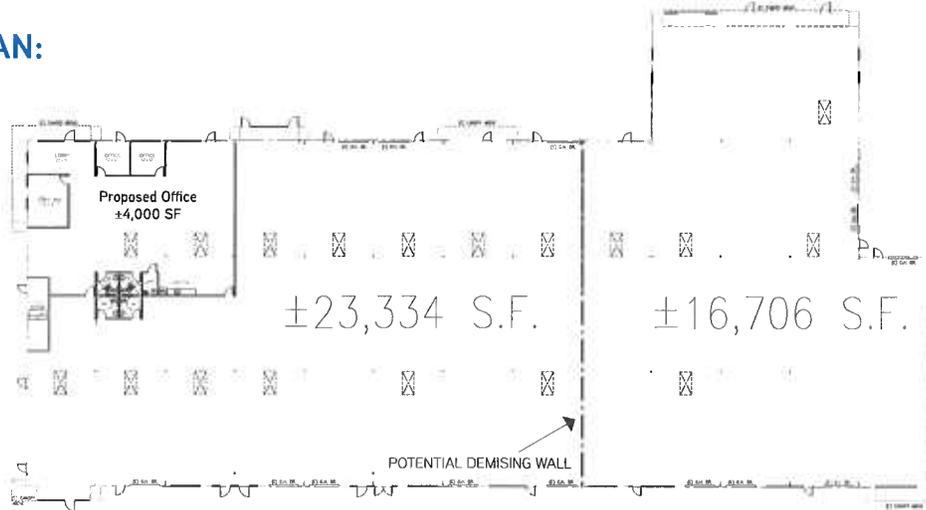
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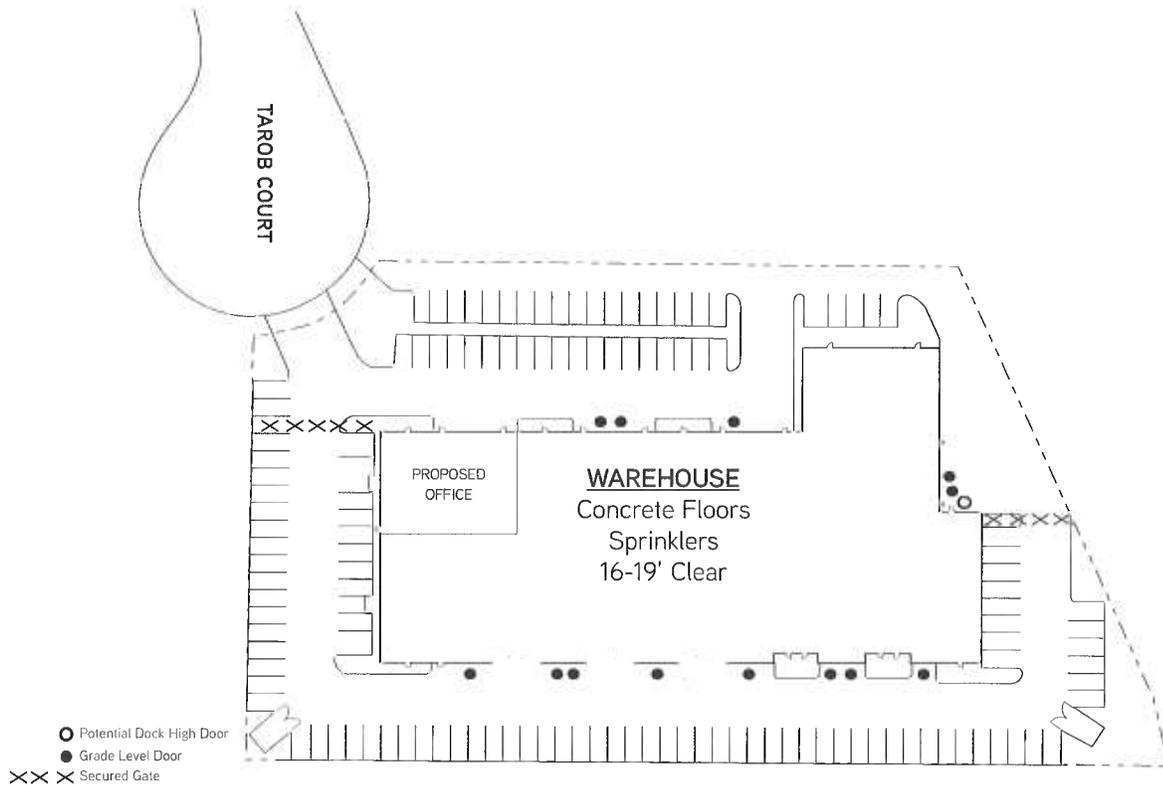
KALIL JENAB
+1 408 200 8800
kalil.jenab@cushwake.com
CA License No. 00848988

±39,720 SF

FLOOR PLAN:



SITE PLAN:



Drawings not exact/not to scale. The information furnished has been obtained from sources we deem reliable and is submitted subject to errors, omissions and changes. Although Colliers International has no reason to doubt its accuracy, we do not guarantee it. All information should be verified by the recipient prior to lease, purchase, exchange, or execution of legal documents. © 2017 Colliers International



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CUSHMAN &
WAKEFIELD

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kalil.jenab@cushwake.com
CA License No. 00848988

INDUSTRIAL/WAREHOUSE FOR LEASE

MILPITAS, CALIFORNIA

Market Ready Construction Complete



±39,720 SF

- Freestanding building
- 10% office with 2 private offices, conference room, kitchenette & IT room
- Balance open production or warehouse with 16 - 19' clear height
- Newly-constructed office, new roof, parking lot resurfaced, etc.
- Great loading (14 roll up doors)
- 2,000 Amps, 110/208 volts, 3 phase
- 3.29/1000 parking
- Secured, fenced parking
- \$1.25 PSF GROSS
- Call to show



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george.quinn@colliers.com
CA License No. 01250595



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kalil.jenab@cushwake.com
CA License No. 00848988



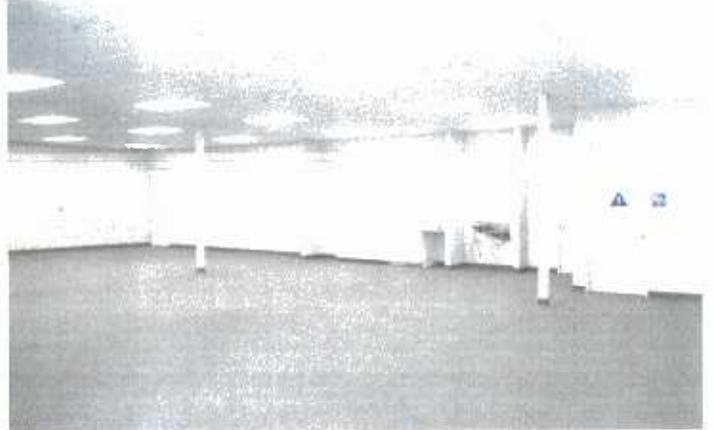
2570 El Camino Real #222, Mountain View, CA 94040 / +1 650 492 5250 / www.colliers.com

Tab 5D

**INDUSTRIAL/WAREHOUSE
FOR LEASE**

MILPITAS, CALIFORNIA

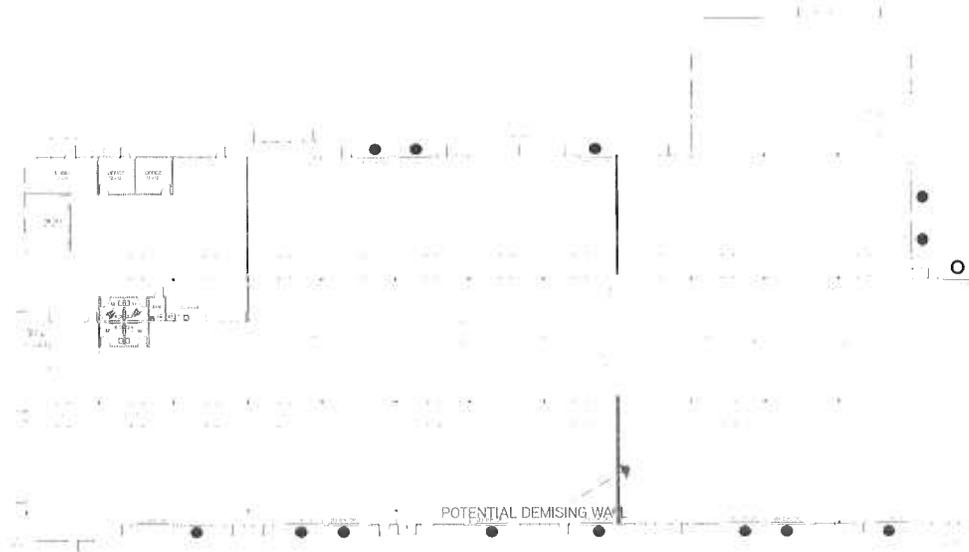
PROPERTY



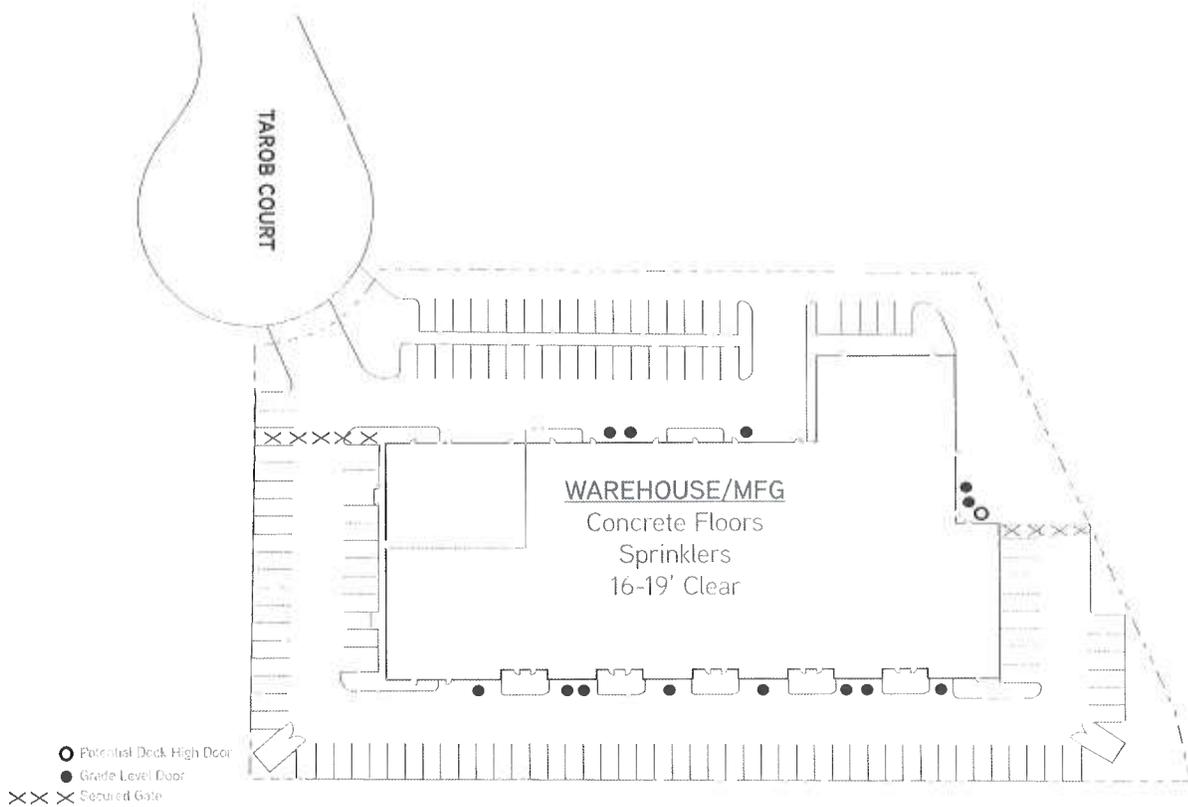
INDUSTRIAL/WAREHOUSE FOR LEASE

MILPITAS, CALIFORNIA

PROPERTY



PROPERTY



Drawings not exact/not to scale. The information furnished has been obtained from sources we deem reliable and is submitted subject to errors, omissions and changes. Although Colliers International has every reason to doubt its accuracy, we do not guarantee it. All information should be verified by the recipient prior to lease, purchase, exchange, or execution of legal documents. © 2017 Colliers International



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San Jose, CA 95128
Tel +1 408 615 3400
Fax +1 408 615 3444
cushmanwakefield.com

CalBRE License #01880493

January 23, 2017

Mr. George Quinn
Colliers International
450 West Santa Clara St.
San Jose, CA 95113

Mr. Kalil Jenab
Cushman & Wakefield
1950 University Ave., Suite 220
East Palo Alto, CA 94303

RE: Lease Proposal for the Premises located at 1831 Tarob Court, Milpitas, California

Dear George and Kalil:

This is not a contract on the part of the undersigned Tenant but is the expression of an interest in entering into a lease for the premises described above ("Premises"), at the rental and upon the general terms and conditions set forth herein, subject to reasonable and good faith negotiations and a final lease agreement between Landlord and Tenant (the "Lease").

1. **LANDLORD:** Geomax
2. **TENANT:** C & D Semiconductor, Inc.
3. **PREMISES:** Approximately 25,000 square feet located at 1831 Tarob Court, Milpitas, California.
4. **TERM/COMMENCEMENT:** Ten (10) years commencing August 1, 2017.
5. **EARLY ACCESS:** Landlord shall provide Tenant Early Access, free of charge (base rent and operating expenses) 60 days prior to the Commencement Date. Landlord shall use Landlord's best reasonable efforts to have all of Landlord Tenant Improvements completed by June 1, 2017. For each days Landlord fails to provide Early Access after June 20th, 2017 the amount of Early Access shall increase by 2 days to offset Tenant's holdover expense they will incur on their existing facility.
6. **RENT:** Initial Base Rent shall be at \$1.10 NNN per square foot, per month. Base Rent shall increase 3% annually starting on the 13th month of the lease term.

Please provide the last two years operating expense information along with any budget for 2017 that Landlord might have.

7. **LANDLORD TENANT IMPROVEMENTS:** Landlord at Landlord's sole cost and expense and as soon as reasonably possible, shall perform the following improvements to the property:
 - Demise the building to roughly 25,000 sf (+/- 2,000 sf) separating, lighting, HVAC, electrical and gas to the demised Premises;

MONTH TO MONTH LEASE AGREEMENT

THIS MONTH TO MONTH LEASE AGREEMENT is made as of December 13, 2017, by and between **GEOMAX**, a California General Partnership, having an address at 3460 Edward Avenue, Santa Clara, CA 95054 ("Licensor"), and **Stratford School, Inc.**, a California Corporation, having an address at 341 Great Mall Parkway, Milpitas, CA 95035 ("Licensee"). Licensor is the owner of that certain real property commonly known as 1831-1841 Tarob Court, Milpitas, CA 95035 (the "Property"). Licensee desires to acquire a license to enter upon and use a portion of the Property, the Premises, for the purposes more particularly described herein. Licensor has agreed to grant to Licensee a license for the purposes described herein, subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Licensor hereby grants to Licensee a license (the "License"), subject to the conditions described below, to enter upon the Property and use approximately **39,720 SF of the subject property** (the "Premises"), on a month-to-month basis with a Commencement Date upon execution of the Month to Month Lease Agreement and in no event later than January 1, 2018, terminating at any time upon a 15 day advanced written notice from either party to the other.
2. Use. Licensee shall use the Premises for storage and warehousing use. Licensee, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements").
3. Access. Licensee hereby accepts and acknowledges that the Premises has open access within the Property and may not be secured for Licensee's sole use.
4. The License granted hereby is expressly conditioned upon the following:
 - a. Licensee, at all times during the term hereof, shall at its cost maintain a comprehensive form of liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Licensee shall provide Licensor with a Certificate of Insurance showing Licensor as additional named insured and providing for a thirty-day written notice to Licensor in the event of cancellation or material change of coverage.
 - b. Licensee shall not assign the rights of Licensee hereunder without the prior written consent of Licensor, it being understood that Licensor shall have the right, in its sole discretion, to approve or disapprove such assignment, provided, however, Licensee shall have the right to sublicense a portion of the Premises for the same use as set forth herein subject to Landlord's prior written approval which shall not be unreasonably withheld or delayed. Any such sublicense is expressly subject to the Terms of this License.
5. In consideration for the granting of this License, Licensee shall pay to Licensor a monthly license fee equal to \$100.00. In the event Licensee doesn't not timely vacate the Premises pursuant to the terms of paragraph 1 above, the license fee shall be increased to a daily rate of \$500 for the initial 15 days and \$1500 per day thereafter plus any additional losses that Licensor may suffer due to such unauthorized hold over by Licensee.



December 15, 2017

VIA EMAIL

Azel Enterprise, Inc.
c/o Mr. Andrew Bach
Weststone Partners
1141 Ringwood Avenue, Suite 80
San Jose, CA 95131

Re: Landlord's Counter Proposal #3-4 for the Premises Located at 1841 Tarob Court, Milpitas, California

Dear Andrew:

On behalf of Geomax, a California General Partnership, we are pleased to present the following counter Lease proposal:

1. **Premises:** 1841 Tarob Court, Milpitas, California (23,334 SF)
2. **Landlord:** Geomax ("Landlord")
3. **Tenant:** Azel Enterprise, Inc., a California Corporation ("Tenant")
4. **Size:** Approximately 23,334 Square Feet
5. **Term:** The term of the Lease shall be for a period of Sixty-Three (63) months, beginning January 1, 2018 and ending March 31, 2023
6. **Option to Extend:** Tenant shall have one (1) option to extend for a Thirty-Six (36) Month term with the base rent to be Fair Market Rate at the time of lease extensions.
7. **Lease Commencement Date:** Lease shall commence on January 1, 2018.
8. **Early Occupancy Date:** Tenant may have access to Premises prior to Lease Commencement Date following a fully executed lease document and Tenant meets all conditions of said lease.
9. **Rent:**

Months

Gross Rent/SF/Mo.*

1831-1841 TAROB COURT, MILPITAS

EXPENSES JAN. 1, 2017 – SEPT. 20, 2018

CATEGORY	AMOUNT
Tenant Improvements Offices Bathrooms	\$336,612.84
Repairs & Maintenance Fence Repair Landscape Management Concrete Polishing Parking Repaving & Signs Glass Replacement Interior Painting & Patching Electrical Wiring & Systems Repair Roof Resurfacing Overhead Door Repair Janitorial Services & Debris Removal Fire Sprinkler Repair & Maintenance	\$449,731.80
Permits & Professional Fees	\$51,537.95
Subtotal:	\$837,882.59
Ground Maintenance	\$12,380.52
Utilities	\$12,097.53
Subtotal:	\$24,478.05

TOTAL EXPENSES:

\$862,360.64

BUILDING PROJECT IDENTIFICATION

SITE: 1631 TAROS CT
 APPLICANT: VALLEY DESIGN & CONSTRUCTION INC
 1180 COLEMAN AVENUE
 SAN JOSE, CA 95110
 OWNER: GEOMAX
 3460 EDWARD AVENUE
 SANTA CLARA, CA 95054
 CONTRACTOR: VALLEY DESIGN & CONSTRUCTION INC
 1180 COLEMAN AVENUE
 SAN JOSE, CA 95110
 ARCHITECT/ENGINEER: DENIS KOBZA
 2083 OLD MIDDLEFIELD RD
 MOUNTAIN VIEW, CA 94043

PERMIT NO. **B-BP17-0333**
 PROJECT TYPE: CTI OFFICE PROF BLD
 SQ. FT.: 4,000.00
 VALUATION: 22,000.00
 FIRE SPRINKLERS: Yes
 APN: 8636030
 USE: Commercial

CITY OF MILPITAS
 BUILDING & SAFETY DEPARTMENT
 455 E. CALAVERAS BLVD.
 MILPITAS, CA 95035

INSPECTION REQUEST LINE
(408) 586-2797
OR
SCHEDULE INSPECTION ONLINE
<https://trakit.ci.milpitas.ca.gov/traktz/>

PERMIT ISSUED: 07/18/2017
 CONST. TYPES: III B
 OCCUPANCY TYPES: B

DESCRIPTION OF WORK / USE: SPEC SPACE. Tenant improvement to make it market ready
 ADOPTED BUILDING CODES: 2016 CBC, 2015 CRC, 2016 CEC, 2016 CFC, 2016 CMC, 2016 Calif Energy Code, 2016 CAL GREEN BUILDING CODE

NOTE: This job copy of this permit shall be kept on the job site to make the required entries thereon. The permit will expire if work is not started in 180 days, is abandoned, or does not receive pass on any inspection for more than 180 days. Additional fees will be collected to renew expired permits. This Building Permit is not transferable.

Construction Hour: Construction is limited to the hours of 7:00am to 7:00pm each day. No work shall be performed on certain holidays (MIMC V-213-3(a)).

An approved Liquefied Petroleum Gas (LPG) Detector shall be permitted when replacing the gas fuel appliance or installing any new gas fuel appliance. (MIMC II-170-2.09)

22717-0333

JUL 18 2017

CITY OF MILPITAS
BUILDING DIVISION

Building Fee 5,570.74
Electrical Fee 613.83
Mechanical Fee 641.78
Plumbing Fee 750.35

Total Fees Collected: 7,576.70

Permit Final Date: **5-24-18** Inspector Name: **MCC**

PERMIT ISSUED 07/18/2017

CONST. TYPES III B

OCCUPANCY TYPES B

DESCRIPTION OF WORK / USE SPEC SPACE. Tenant improvement to make it market ready

ADOPTED BUILDING CODES 2016 CBC, 2015 CRC, 2016 CEC, 2016 CFC, 2016 CMC, 2016 Calif Energy Code, 2016 CAL GREEN BUILDING CODE

CODE Building Inspections
 1000 BPC-UNDERGROUND
 1015 BPC-FOUNDATION
 1055 BPC-FLOOR SYSTEM
 1075 BPC-EXT/STRUCT
 1095 BPC-INT/STRUCT
 1135 BPC-INSULATION
 1700 BPC-FINISH
 1800 BPC-FINALS
Electrical Inspections
 1400 ELC-UNDERGROUND
 1410 ELC-UNDERFLOOR
 1420 ELC-ROUGH ELECTRICAL
 1440 ELC-ELECTRIC TRIMOUT
 1450 ELC-FINAL ELECTRICAL
Mechanical Inspections
 1500 MEC-UNDERFLOOR
 1510 MEC-ROUGH MECHANICAL
 1520 MEC-FINA- MECHANICAL
Plumbing Inspections
 1600 PLC-UNDERGROUND
 1610 PLC-ROUGH PLUMBING
 1620 PLC-UNDERFLOOR
 1640 PLC-TOPOUT PLUMBING
 1650 PLC-FINAL PLUMBING
 1660 PLC-FINISH

UPHOURS
 Sprinkler Rough 7/17
 Sprinkler Final 7/17
 Haz Mat Rough 7/18
 Haz Mat Final 7/18
 Alarm Final 7/18
 Life Safety Final 7/18

Signature: [Signature]

Fire Department Final [Signature]

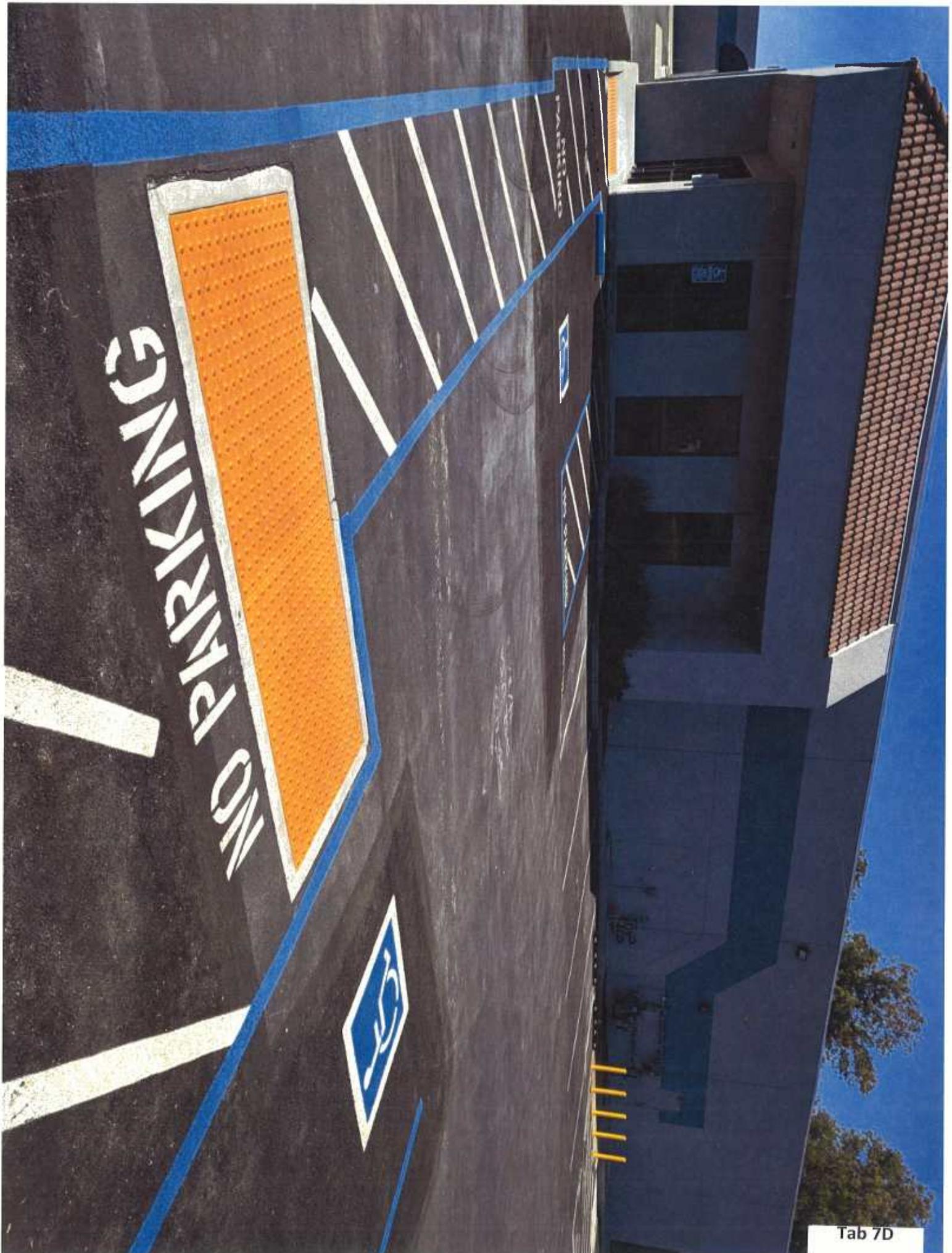
Planning Final [Signature]

Engineering Final [Signature]

Fire Department Inspection Request Line (408) 566-3380



Tab 7C



LEASE AGREEMENT

DATED: July 11, 2018
 LANDLORD: GEOMAX, a California General Partnership
 TENANT: NIO USA, Inc., a California Corporation

1. FUNDAMENTAL LEASE PROVISIONS.

A. PREMISES: Approximately 39,720 square feet of leasable area in the building containing approximately 39,720 leasable square feet located on a parcel of land in the County of Santa Clara, State of California, as more particularly described in the legal description attached as Exhibit A hereto, with a common address of 1831-1841 Tarob Court, Milpitas, CA 95035. The location of Premises is indicated on the site plan attached as Exhibit B hereto. (Paragraph 2)

B. LEASE TERM: Sixty (60) full calendar months, plus any partial month at the beginning of the Lease Term. (Paragraph 5)

C. COMMENCEMENT DATE: October 1, 2018.

D. INITIAL BASIC RENT: (Paragraph 4.A)

<u>Lease Months (inclusive)</u>	<u>Basic Rent (per leasable sq. ft.)</u>	<u>Basic Rent (total)</u>
10/01/18 – 02/15/19	None	-0- **
02/16/19 – 09/30/19	\$1.10	\$43,692.00
10/01/19 – 09/30/20	\$1.133	\$45,002.76
10/01/20 – 09/30/21	\$1.167	\$46,352.84
10/01/21 – 09/30/22	\$1.202	\$47,743.43
10/01/22 – 09/30/23	\$1.238	\$49,175.73

**Tenant shall pay no rent but Tenant shall pay NNN's for this period.

E. ADDITIONAL RENT: Real Property Taxes, insurance premiums, maintenance and other costs and expenses under this Lease. (Paragraph 4.E)

F. TENANT'S SHARE: One Hundred Percent (100%). (Paragraph 4.E)

G. PREPAID RENT & ADDITIONAL RENT: \$52,258.75. (Paragraph 4.H)

H. ~~ADJUSTMENT~~ ADJUSTMENT: The Basic Rent shall be subject to a CPI adjustment on the first day of each of the following full calendar months of the Lease Term: _____ (Paragraph 4.B)

I. SECURITY DEPOSIT: \$49,175.73. (Paragraph 4.G)

J. PERMITTED USE: Manufacturing, warehousing and all other legally permitted uses. (Paragraph 3)

K. NUMBER OF PARKING SPACES: Approximately 132 stalls. (Paragraph 8)

L. ADDRESSES FOR NOTICES AND PAYMENT OF RENT (Paragraphs 4.F and 36):

To Landlord:	GEOMAX 3460 Edward Ave. Santa Clara, CA 95054	To Tenant:	NIO USA, Inc. 3200 N. 1 st Street San Jose, CA 95134
Office No.:	408/330-0801	Office No.:	408/518-7000
Facsimile No.:	408/330-0806	Facsimile No.:	TBD

M. TENANT'S BROKER: Sean Toomey & Jere Hench of Colliers International. (Paragraph 41)

N. GUARANTORS: _____ N/A.

O. OTHER PROVISIONS: The following Riders are added hereto and included as part of this Lease:

<u>Rider No.</u>	<u>Title</u>
1	Option to Terminate, Condition of Premises

Each reference in this Lease to any of the provisions in this Paragraph 1 shall be construed to incorporate all of the terms of each such provision. In the event of any conflict between this Paragraph 1 and the balance of the Lease, the balance of the Lease shall control.

2. PREMISES.

A. Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the Lease Term, at the Rent and upon the terms and conditions hereinafter set forth, that certain space ("Premises") within that certain building ("Building") described in Paragraph 1.A. As used herein, the "Complex" shall mean and include all of the land described in Exhibit A and shown on Exhibit B attached hereto, and all of the buildings, improvements, fixtures and equipment now or hereafter situated on said land.

Said letting and hiring is upon and subject to the terms, covenants and conditions hereinafter set forth, and Tenant covenants as a material part of the consideration for this Lease to perform and observe each and all of said terms, covenants and conditions. This Lease is made upon the condition of such performance and observance.

Landlord agrees to provide a tenant improvement allowance ("TI Allowance") as may be described in Exhibit C attached hereto and incorporated herein by reference, upon such terms and conditions as are set forth in such Exhibit C.

B. Square Footage. Landlord and Tenant conclusively agree that the statements of rentable square footage contained herein shall be deemed to be correct and binding upon the parties for all purposes under this

1831-1841 TAROB COURT, MILPITAS

ANNUAL NNN CHARGES*

Management – Personnel & Management Costs	\$21,925.00
Property Taxes	\$33,229.00
Building Insurance	\$10,917.00
Landscaping/Ground Maintenance	\$7,500.00
Repairs	\$7,000.00
Utilities	\$5,500.00
Major Repair Fee	\$15,729.00
TOTAL:	\$102,801.00 (\$8,566.75/month)

*Owner leases Premises as a triple net lease (triple-Net or NNN). A triple net lease is a lease agreement on a property where the tenant or lessee agrees to pay all real estate taxes, building insurance, and maintenance (the three "nets") on the property in addition to any normal fees that are expected under the agreement (rent, utilities, etc.).



ANDREW L. FABER
RALPH J. SWANSON
PEGGY I. SPRINGGAY
JOSEPH E. DWORAK
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON

BRIAN L. SHETLER
JOHN F. DOMINGUE
HARRY A. LOPEZ
CHARLES W. VOLPE
CHRISTINE H. LONG
AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP
SANDRA G. SEPÚLVEDA
MICHAEL B. IJAMS
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM, JR.

TEN ALMADEN BOULEVARD
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ELLEN M. TAYLOR
CYNTHIA M. CHU
BRANDON L. REBBOAH
LINDSAY I. HOVER
EMILY TEWES

RETIRED

SANFORD A. BERLINER
SAMUEL J. COHEN
HUGH L. ISOLA

ROBERT W. HUMPHREYS
ROBERT L. CHORTEK

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
ERIC WONG

JEFFREY S. KAUFMAN
NANCY L. BRANDT
LESLIE KALIM McHUGH

September 25, 2018

VIA E-MAIL & U.S. MAIL

Planning Commission
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Sept. 26, 2018 Agenda item VIII-1
1831/1841 Tarob Court, Milpitas
Our File No.: 01475.015

Dear Chair Mandal and Commissioners:

This letter is in response to the Staff Report that recommends upholding the Staff Determination that industrial uses have been discontinued on the above-referenced site (the "Property"). The Staff Report misapplies the law and misconstrues the facts. Furthermore, if the Planning Commission upholds the Staff Determination, that would leave the owners with no viable use of the Property, thus potentially causing a compensable taking of the Property. So we urge the Commission to uphold our appeal and overturn the Staff Determination.

The Staff Report Misapplies the City's Code on Nonconforming Uses

The Staff Report cites the City's nonconforming use Code Section, but surprisingly does not quote the relevant portion. This is Section XI-10-56.03(A)(1), which reads in part:

“Continuation of Existing Nonconforming Use. A legally established use that is no longer permitted in a particular zoning district because of a modification of this Chapter shall be allowed to continue indefinitely, absent discontinuation of the use for a year or more and failure to comply with the re-establishment provisions of Section XI-10-56.03(B) below.”

The term “discontinuation of the use” is defined in the next subsection as follows:

“(2) Discontinuation of Nonconforming Use. The nonconforming use of a building, structure or portion thereof, which is discontinued for a continuous period of one (1) year or more, may be replaced only with a conforming use...” (emphasis added)

The Staff Report is based primarily on a presumed “intent permanently to abandon” the industrial use of the building. Putting aside the fact that the inference is incorrect (see below), the emphasis on the owners’ intent is improper. The decision does not turn on the Staff’s interpretation of the owners’ intent to abandon a use. Instead, the criterion for loss of nonconforming uses is solely the discontinuance of the use “**for a continuous period of one (1) year or more.**”

And, contrary to the Staff Report, a vacancy in the building is not equivalent to a discontinuance of use. This distinction is even incorporated into the City Code. Thus, as noted in our appeal letter of August 13, 2018, and in the Staff Report, the Zoning Ordinance itself draws a distinction between “use” and “occupancy,” when it states “The M1 Light Industrial District is reserved for the **construction, use and occupancy** of buildings and facilities....” (Section XI-10-7.01, emphasis added).

Therefore, in order to find that the nonconforming uses have been discontinued, the Planning Commission must make findings, supported by substantial evidence in the record that such uses have been discontinued “for a continuous period of one (1) year or more.” Mere vacancy or speculation as to the intent of the owners will not suffice to establish the discontinuance of use.

The Staff Report focuses on the Stratford School license and lease, which is stated to have been in effect from Dec. 13, 2017 to June 29, 2018, a period of six and one-half months. Staff argues that this shows an “affirmative intent to abandon the prior industrial uses.”

But, the City must be guided by the words of the ordinance, which say nothing about an owner’s “intent”. Instead, they say that nonconforming uses cannot be reestablished only if they are “discontinued for a continuous period of one (1) year or more.” Clearly that has not happened here.

The Staff Report Misconstrues the Facts

The Staff Report contains many factual errors and much unsupported speculation. For example:

- The Staff Report infers that the industrial “use” of the building was discontinued when the long-term tenant moved out on Jan. 31, 2017 (p. 8). To the contrary, the Property was immediately listed with two real estate brokerages for industrial use, and remains so listed today. The cases cited in our appeal letter clearly hold that mere vacancy is not equal to discontinuance of use (which of course must be true, since a building owner can’t control the leasing market).
- The repairs and improvements cost the owners over \$800,000. The Staff Report is wrong in concluding that there was some improper purpose or intent to these improvements (i.e., to “increase the nonconformity of uses” (p. 8), whatever that means). On the contrary, they were necessary to make the building “market ready” for new industrial tenants, after it had been used for chip manufacturing for decades. For example:
 - The existing roof was 40 years old, leaking, and had multiple patches and holes due to the tenant’s roof equipment. It had to be replaced. This does not constitute “increasing the nonconformity” as the Staff Report states (p. 8), but rather was necessary in the brokers’ view to market the Property to new industrial users.
 - The bathrooms and exterior access needed updating to comply with Disability Access laws (required by the City).
 - Industrial and warehousing tenants need some office space, so provision of such space was done within the existing envelope, without expanding the building.
 - These improvements were begun, and many of them completed, before the Stratford lease was entered into in December, 2017.
 - The City’s final signoff on the improvements was on May 24, 2018, after compliance with City requirements from the Building Department for additional fire alarm and disabled access construction – these were not Planning requirements for a conforming use.
 - In summary, the improvements to the building are compatible with continued industrial use. While they could perhaps have been used also by a school, they are not evidence of a change of use. They were all permitted by the City and did not constitute an expansion of the structure.
- The Staff Report misinterprets the cause and effect of the 6-month Stratford license/lease. The owners were approached by Stratford initially to use one-half of the building for records storage, and to use the office space for a pre-school. Agreeing to this, in the owners’ minds, did not constitute abandoning industrial

uses. They and their brokers have been involved with many properties in which tenants store records, supplies, furniture, cars, etc., all under the rubric of industrial uses.

- The Staff Determination that such use would not constitute “warehouse and wholesale” use is unsupported, in that “warehouse and wholesale” is not a category understood in the real estate world. Presumably it just means no retailing out of the warehouse, which would be typical for a company storing its own supplies or records.
- The Stratford license/lease was for warehouse use and was believed by the owners to be for nonconforming industrial use. In fact that is the substance of the claim made by George Quinn that is rebutted in the Staff Determination that is being appealed. This is based on his experience as a developer and broker. Perhaps he is incorrect -- at least as the Code is interpreted by City Staff -- but it is certainly true that he had no intent to abandon industrial uses. Stratford never actually moved into the Premises.
- Although the Staff Report is incorrect in focusing on intent, in actuality the owners never intended to discontinue industrial use. In fact they continued to negotiate with prospective industrial users throughout 2017 and into 2018. But even if they did so intend, the maximum period of such “abandonment” would be for the six and one-half months of the Stratford license/lease. As soon as Stratford became discouraged by the City and gave up, the owners immediately brought to the City the NIO lease, for car prototyping, a classic industrial use. So under no interpretation was there “discontinuance of the industrial use for a continuous period of one (1) year or more.”

The Staff Determination leaves the Property with no Viable Economic Use

This Property has been industrial since the building was constructed by the present owners some 40 years ago. The building is in excellent condition, and is suitable only for industrial type uses.

The zoning was changed to Very High Density Residential by the Milpitas Transit Area Specific Plan (“MTASP”) 10 years ago, but the MTASP shows an East-West Road through the Property connecting Tarob and Sango courts, a North-South Road through the Property with a bridge over the Creek, and a 5.1 acre park just south of the East-West Road. These improvements would take at least half of the Property and destroy the building.

When residential developers interested in the Property contacted the City, they were told by Staff that the City could not say precisely where these roads and the park would be located or when, if ever, the acquisition process would start. They were also told the

Planning Commission
September 25, 2018

City's opinion of value, which was a fraction of true market value. It is not surprising, then, that the Property is not marketable to residential developers. The owners have also been told by Staff that there is no way the City will allow housing development on this Property, even though the zoning is residential.

Accordingly, the only viable use of the Property is for its continued industrial use. The City must decide either to allow this use, or to purchase the Property. The City cannot require that the owners keep the building vacant while it makes up its mind about acquisition. Delay is a very serious matter. The building is immediately rentable for industrial use, and the owners are losing over \$50,000 each month that the building remains vacant.

Finally, please note that all statements of facts made in this letter can be, or will be, supported by witness testimony at the hearing. As stated in an earlier email, we request at least 30 minutes to present our case, to afford Geomax adequate due process and a fair hearing.

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF

Cc:
Jessica Garner, Acting Planning Director
Chris Diaz, City Attorney
Heather Lee, Assistant City Attorney
Julie Edmonds-Mares, City Manager
George Quinn
Max Gahrahmat

E

1. SHELL IS EXISTING.
2. THE PANELIZED ROOF SYSTEM SHALL NOT BE USED TO SUPPORT ANY ITEMS OF CONSTRUCTION CONDUITS, LIGHT FIXTURES, DUCTWORK, T-BAR CEILING, ETC. ALL SUCH ITEMS TO BE HUNG
3. ALL WARRANTIES DUE TO THE OWNER SHALL BE FORWARDED IN TRIPPLICATE FORM TO OWNER.
4. SUBCONTRACTORS SHALL SUBMIT AS-BUILT DRAWINGS/COMPACT DISK TO OWNER & ARCHITECT (PDF FORMAT RELEASE 2007 OR LATEST VERSION)
5. ALL GLAZING SHALL CONFORM TO CHAPTER 24, 2016 C.B.C.
6. ALL NEW HARDWARE PER TITLE 24 REQUIREMENTS AND 2016 C.B.C.
7. CONTROLS FOR LIGHTS, AIR CONDITIONING ETC., SHALL BE MOUNTED AT 4'-0" MAXIMUM ABOVE FLOOR.
8. WALL OUTLETS MOUNTED AT MINIMUM 15" ABOVE FLOOR.
9. EXIT DOORS SHALL BE OPENABLE FROM THE INSIDE WITHOUT THE USE OF KEY OR ANY SPECIAL DOOR MAY BE PROVIDED WITH A DURABLE CONSPICUOUS SIGN HAVING LETTERS AT LEAST 4" HIGH WHEN THIS SPACE IS OCCUPIED."
10. EMERGENCY EXIT ILLUMINATION SHALL OPERATE ON TWO SOURCES OF POWER. SEE ELECTRICAL SPECIFICATIONS.
11. FIRE SPRINKLER SUBCONTRACTOR TO SUBMIT PLANS TO THE CITY OF MILPITAS FIRE DEPARTMENT. ALL WORK TO CONFORM WITH N.F.P.A. PAMPHLET 13, C.F.C. 2016 AND CITY OF MILPITAS FIRE DEPARTMENT ORDINANCE 11.1.
12. PROVIDE 2A: 10BC FIRE EXTINGUISHERS WITH TRAVEL DISTANCE NOT TO EXCEED 75'. SEE ELECTRICAL SPECIFICATIONS.



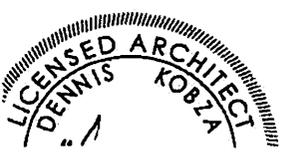
City of Milpitas
 APPROVED BY PLANNING DIVISION
 Date 7/12/17 By [Signature]

APPROVED FOR BUILDING PERMIT
 BY [Signature] DATE _____
 PERMIT No. 18-0817-0333

This approved set of plans and specifications must be used for the job at all times and it is unlawful to make any alterations without written permission of the Building Department of the City of Milpitas. Stamping of these plans and specifications shall not be held to permit or to approve the work if it is in violation of any law or ordinance.

JOB ADDRESS 1831 Tabor Ct.
 TYPE CONSTRUCTION TIRB
 OCCUPANCY g SQ. FT. _____
 SPRINKLERS Yes No. OF STORIES _____

APN



REVISION 1
 PLAN CHECK
 07.14.2017
 REVISION 2

REVISION 4
 REVISION 5

INTERIOR IMPROVEMENTS FOR:
BUILDING - 6 Market
 1831 1831 Tabor Court Milpitas

Milpitas Zoning Code Excerpts

Nonconforming Uses

XI-10-56.03 (2)- Discontinuation of Nonconforming Use.

The nonconforming use of a building, structure or portion thereof, which is discontinued for a continuous period of one (1) year or more, may be replaced only with a conforming use....

Definition of "Use"

The Zoning Code clearly distinguishes "use" from "occupancy."

XI-10-2.03 - Definitions

"Use" means the purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

XI-10-7.01(A) Light Industrial (M1) Zone

The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities....

Elizabeth Medina

From: 995 xyan <xyan995@gmail.com>
Sent: Tuesday, September 25, 2018 9:10 PM
To: Ned Thomas
Subject: Comments on the Public Hearing of 1831 Tarob Court Appeal

Dear Sir or Madam,

As a future Milpitas resident moving into the townhomes currently being built at Tarob Court, I would like to provide some comments on the Public Hearing which is going to happen at 7pm on Wednesday 9/26:
1831 TAROB COURT, APPEAL OF GEORGE QUINN OF A DETERMINATION BY THE CITY OF MILPITAS PLANNING DIRECTOR REGARDING INTERPRETATION OF CITY'S LEGAL NONCONFORMING USE REGULATIONS

I strongly support the Planning Director's determination of denying the appeal. I actively showed up at Tarob Court every week because of my new home there, and obviously the property has been unoccupied for a long time.

The 1831 Tarob Court land is going to be surrounded by high density residential buildings as TASP area is quickly becoming a highly populated neighborhood. I'm very worried that the industrial soil/water pollution case at 1831 Tarob Court (CA GeoTracker http://geotracker.waterboards.ca.gov/profile_report?global_id=T10000008880) may affect nearby properties. Continuing the industrial land use especially establishing an electric car factory could be a deep concern from the residents in the neighborhood as it might create even more noises and pollutions.

Regards,
Evan

This is an **EXTERNAL EMAIL**.
Please do not open unexpected attachments or those sent by unknown senders.
