

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD21-0004, CONDITIONAL USE PERMIT NO. UP21-0005, VESTING TENTATIVE MAP NO. MT21-0001, AND ENVIRONMENTAL ASSESSMENT NO. EA21-0002 TO ALLOW DEVELOPMENT OF A 32-UNIT TOWNHOME SUBDIVISION COMPRISED OF TWO MULTI-FAMILY BUILDINGS, UP TO 50 FEET IN HEIGHT (THREE TO FOUR STORIES), WITH TANDEM GARAGES ACCESSED FROM A CENTRAL DRIVE AISLE, AND ASSOCIATED SITE IMPROVEMENTS ON A 1.22-GROSS ACRE SITE LOCATED IN THE MULTI-FAMILY HIGH DENSITY RESIDENTIAL (R3) ZONING DISTRICT AT 2001 TAROB COURT AND MAKING FINDINGS OF CEQA EXEMPTION

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 et seq.), the State CEQA Guidelines (California Code of Regulations, title 14, § 15000 et seq.) (collectively, “CEQA”), the City of Milpitas is the lead agency for the proposed project described below; and

WHEREAS, on June 3, 2008, the City Council of the City of Milpitas certified an Environmental Impact Report (“EIR”) prepared to analyze the environmental impacts associated with the proposed Transit Area Specific Plan (the “TASP EIR,” State Clearinghouse No. 2006032091), and subsequently adopted the Transit Area Specific Plan (the “TASP”); and

WHEREAS, the TASP EIR reviewed the potential environmental impacts associated with the implementation of the TASP, which envisioned the development of 7,109 dwelling units, 287,075 square feet of retail space, 993,843 square feet of office and industrial park space, and 350 hotel rooms; and

WHEREAS, 2001 Tarob Court is located within the TASP planning area; specifically, within the Trade Zone/Montague subdistrict of the TASP; and

WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified has been adopted, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public Resources Code § 21166 and State CEQA Guidelines § 15162 require additional environmental review; and

WHEREAS, on March 24, 2021, The True Life Companies (the “Applicant”) submitted a preliminary application to the City of Milpitas, invoking California Senate Bill 330 (SB 330), for the approvals necessary to develop a 32-unit condominium residential project at 2001 Tarob Court; and

WHEREAS, on April 30, 2021, the Applicant submitted a formal application for the project (the “Project”). The Project consists of and requires:

- a. Site Development Permit (SD21-0004) to allow the development of two multi-family buildings, ranging from three to four stories in height, with up to 32 residential units on a 1.22-acre site; and
- b. Conditional Use Permit (UP21-0005) to allow the condominium use; and
- c. Vesting Tentative Map (MT21-0001) to establish 32 residential condominium spaces and related common areas and to record site easements; and
- d. Environmental Assessment (EA21-0002) to review and verify an exemption from further environmental review under CEQA.

WHEREAS, the Planning Department completed Environmental Assessment No. EA21-0002 for the Project in accordance with CEQA and recommends that the City Council determine this Project is covered under the program of activities identified in the Transit Area Specific Plan EIR, SCH#2006032091, certified by the City Council on June 3, 2008,

based on the CEQA findings included in this Resolution (the “Addendum” and “Memorandums,” true and correct copies of which are attached hereto and incorporated herein as **Exhibits 2 and 3**); and

WHEREAS, per 14 C.C.R (CEQA Guidelines) Section 15164(b), the Addendum demonstrated and concluded that none of the circumstances necessitating preparation of a supplemental or subsequent EIR, as specified in CEQA Guidelines Sections 15162 or 15163, are present in that: (a) no substantial changes are proposed in the Project which will require major revisions of the TASP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (b) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken which will require major revisions in the TASP EIR due to new or substantially more severe significant effects; and (c) no new information of substantial importance, as defined in CEQA Guidelines Section 15162, which was not known and could not have been known at the time the TASP EIR was certified has become available; and

WHEREAS, on August 20, 2019, the City Council approved the Addendum to the TASP EIR; and

WHEREAS, the City Council hereby adopts the Memorandums and makes and accepts as its own the findings set forth in **Exhibits 2 and 3** attached hereto; and

WHEREAS, as separate and independent bases, the City Council hereby finds and determines that the Project is exempt from further CEQA review pursuant to (1) CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning; (2) CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan); and (3) CEQA Guidelines Section 15168 (Program EIR); and

WHEREAS, the Planning Commission is an advisory body to the City Council pursuant to Milpitas Municipal Code Section XI-10-64.03 (Consideration of Concurrent Applications), where, as here, due to the application for a vesting tentative map pursuant to Milpitas Municipal Code Section XI-1-20.01, the City Council is the highest review authority for the Project, and, accordingly, all review by other bodies with approval authority over the application shall be in the form of a recommendation to the City Council; and

WHEREAS, on October 27, 2021, the Planning Commission held a duly-noticed public hearing, during which meeting the Planning Commission considered the Environmental Assessment No. EA21-0002, as well as the requested Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, and Vesting Tentative Map No. MT21-0001 for 2001 Tarob Court, heard a presentation from staff, and had the opportunity hear from members of the public; and

WHEREAS, by adoption of Resolution No. 21-022, the Planning Commission recommended the City Council approve Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001, and Environmental Assessment No. EA21-0002 for 2001 Tarob Court; and

WHEREAS, the documents and other materials which constitute the record of proceedings upon which the City Council bases the findings contained within this Resolution are available and may be reviewed at Milpitas City Hall, located at 455 E. Calaveras Boulevard, Milpitas, California 95035; and

WHEREAS, on January 18, 2022, the City Council held a duly-noticed public hearing, during which meeting the City Council considered the Environmental Assessment No. EA21-0002, as well as the requested Site Development Permit No. SD21-0004 and Vesting Tentative Map No. MT21-0001 for 2001 Tarob Court, heard a presentation from staff, and had the opportunity hear from members of the public; and

WHEREAS, the findings and conclusions made by the City Council pursuant to this Resolution are based upon the oral and written evidence before it as a whole; and

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

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

SECTION 1. Recitals

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

SECTION 2. California Environmental Quality Act Findings

The proposed Project is covered under the scope of activities approved under the TASP EIR, SCH#2006032091, which was certified by the Milpitas City Council on June 3, 2008. The EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The proposed 32 residential units fall within this scope of development activity contemplated in the TASP EIR. An earlier environmental assessment for a higher density version of the Project was prepared by LSA Associates. The environmental assessment confirmed that the earlier version of the Project was within the scope of the TASP EIR. The analysis found that the earlier Project was consistent with the TASP EIR and confirmed that the earlier Project was within the scope of development density considered under the TASP EIR. As part of this Project, a subsequent peer review memorandum (Exhibit 3 to the Resolution), prepared by First Carbon Solutions, confirmed that the Project is still within the scope of the TASP EIR and will have no new significant or more severe impacts beyond those identified in the 2019 Environmental Checklist and TASP EIR. LSA prepared a subsequent environmental assessment, in the form of a memorandum (Exhibit 3 to the Resolution), and found that the Consistency Analysis generally meets the requirements of CEQA. The Project is still within the scope of the TASP FEIR and the subsequently prepared Categorical Exemptions prepared for the previous version of the Project in 2019 and would not have any new significant or more severe environmental impacts beyond those that have been previously identified. Policies and/or mitigation measures required of projects covered under the TASP EIR are included as Conditions of Approval. Pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15168, 15182, and 15183, the Project is exempt from further review under CEQA.

SECTION 3. Vesting Tentative Map Findings (Section XI-1-20.01)

The City Council makes the following findings based on the evidence in the administrative record in support of Vesting Tentative Map No. MT21-0001:

A. The tentative subdivision map is consistent with the General Plan.

The General Plan designation for the Project site is Milpitas Metro Specific Plan (MMSP), but since the City Council has not formally adopted the MMSP, the TASP development standards currently apply. The intent of both the MMSP and TASP standards is to facilitate development of higher intensity, mixed-use neighborhoods near the Milpitas Transit Center and to encourage walking, biking, and the use of alternative modes of transportation.

The TASP designates this project site as High Density, Transit Oriented Residential (HD-TOR). The intent of this designation is to provide high-density housing at a density range of 21-40 dwelling units/acre. As this Project proposes 25 dwelling units/acre, it is consistent with both the intended land use of the General Plan and the relevant density requirement. The Project site was not identified as a potential site for yielding affordable housing units in the City's Housing Element, as the site was zoned for industrial uses prior to October 2017. Therefore, there is no net loss of affordable housing units.

Further, the tentative subdivision map is consistent with the Milpitas General Plan, as demonstrated and outlined in Table 1 below.

Table 1: General Plan Consistency

Policy	Conformance
<i>Policy LU 1-4:</i> Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offers residents of all income levels, age groups and special needs sufficient housing opportunities and choices for locating in Milpitas.	Consistent. The Project provides an additional housing type to meet the needs of various families and residents of all income levels. The Project, as proposed, consists of 32 townhome residential units, ranging from two to three bedrooms. Five of the residential units will be made affordable to moderate-income households. The City would prefer to see higher density development at this location.
<i>Policy LU 5-1:</i> Require new development and redevelopment to be compatible, complementary and, where appropriate, well integrated with existing residential areas. Integrate new large-scale development projects into the fabric of the existing community rather than allowing projects to be insular and self-contained, walled off, or physically divided from surrounding uses. Improve connectivity between neighborhoods and services with new development. Tie circulation systems and open spaces into existing streets and open spaces. Reduce unnecessary barriers and improve connections between neighborhoods and services by retrofitting existing development over time as area improvements or redevelopment occurs.	Consistent. The Project, as proposed, is well integrated with the existing residential developments along Lundy Place and Tarob Court, as the Project has a similar architectural style, building height, multi-family product, and site layout. Additionally, the Project will gain ingress and egress from both Tarob Court and Lundy Place via existing driveway curb cuts, and as a result, the Project will blend seamlessly into the fabric of the existing community. The project will also be compatible and complementary to future high-density residential development planned for other parcels on Tarob Court which are currently developed with light industrial uses but are zoned for redevelopment as similar high-density residential uses.
<i>Policy LU 5-3:</i> Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance as applied through the zoning district for all properties within the City.	Consistent. The Project meets the height standards by proposing two three to four-story buildings, up to 50 feet in height, in a zoning district that allows a maximum height of 75 feet.

B. None of the conditions identified in California Government Code Section 66474 exist, to wit:

- 1. That the proposed map is not consistent with applicable general and specific plans as specified in Government Code Section 65451.*

As set forth in Section 3(A) above, the map proposes the development of the site into 32 residential condominium units at a density of 25 dwelling units/acre. The General Plan and Milpitas Metro Specific Plan/Transit Area Specific Plan land use designation applicable to the site (Milpitas Metro Specific Plan (MMSP), and High Density, Transit-Oriented Residential (HD-TOR)) permits residential development at densities of 21 to 40 dwelling units/acre. The map is therefore consistent with the General Plan and Milpitas Metro Specific Plan/Transit Area Specific Plan.

- 2. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*

The design and improvement of the subdivision is consistent with the density range of 21-40 dwelling units per acre as permitted by the General Plan and Milpitas Metro Specific Plan/Transit Area Specific Plan. The proposed density is 25 dwelling units per acre. The proposed project is also consistent with the Milpitas Metro Specific Plan/Transit Area Specific Plan development standards, including height (maximum of 50 feet proposed, where 75 feet is the maximum allowed), number of vehicular parking spaces (64 vehicular spaces proposed, where a maximum of 64 is allowed), bicycle parking (10 spaces proposed, where 3 are required), building orientation (proposed buildings will face streets, where requirement provides building must face streets).

3. *That the site is not physically suitable for the type of development.*

The site is surrounded by property designated for high density, transit-oriented residential development under the City's General Plan and zoned for this type of development under the Milpitas Metro Specific Plan/Transit Area Specific Plan. In addition, this site is suitable for the higher density development based on the location, physical attributes, and proposed infrastructure improvements.

4. *That the site is not physically suitable for the proposed density of development.*

The City Council, through adoption of Resolution No. 8702, has determined that the site is physically suitable for development at the proposed density of 25 dwelling units per acre, inasmuch as it has amended the applicable general plan land use designation to High Density, Transit Oriented Residential (HD-TOR), and subsequently Milpitas Metro Specific Plan (MMSP), which currently allows densities of 21-40 dwelling units per acre. The site is also flat and has direct access to adjacent streets (Tarob Court and Lundy Place) to accommodate the proposed density of the development.

5. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The Project, including the subdivision and its associated improvements, has been subjected to environmental review under CEQA through the preparation of an Environmental Assessment/Categorical Exemption/Peer Review Memorandums (Exhibits 2 and 3 to the Resolution). The Memorandums did not find that the Project would be likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Project is also located in an urbanized area and previously developed as an industrial building, and therefore, will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

6. *That the design of the subdivision or type of improvements is likely to cause serious public health problems.*

The Project, including the subdivision and its associated improvements, has been subjected to environmental review under CEQA through the preparation of an Environmental Assessment/Categorical Exemption/Peer Review Memorandums (Exhibits 2 and 3 to the Resolution). The Memorandums did not find that the design of the subdivision or type of improvements is likely to cause serious public health problems.

7. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

Upon review of the subdivision map, it has been determined that the design of the subdivision or the type of improvements will not conflict with any easements acquired by the public at large, for access through or use of, property within the proposed subdivision. The subdivision does not involve the vacation of easements; however, the existing right-of-way will be abandoned and portions of the area will be retained for a Public Services Utility Easement (PSUE).

SECTION 4. Site Development Permit Findings (Section XI-10-57.03(F)(1))

The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD21-0004:

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

The Project's site design is consistent with the MMSP/TASP development standards for the Trade Zone/Montague Sub-district. The Project consists of 32 condominium units and associated site amenities on a 1.22-acre site. The building's contemporary architectural design visually relates to and is compatible with the adjacent townhome projects along Tarob Court. The Project also features exterior horizontal blue and green-hued siding. The Project has a strong sense of identity, achieving compatibility and aesthetic harmony with surrounding developments.

- B. *The Project is consistent with the Milpitas Zoning Ordinance.*

The Project site is zoned R3 (Multiple-Family, High Density Residential with a Transit Oriented Development (-TOD) Overlay). Residential uses are permitted in the zoning district. The proposed residential uses are permitted in the zoning district.

The Project also conforms to MMC Section XI-10-54.015 (Density Bonus for Affordable Housing Developments) and XI-10-57.05 (Density Bonus Permits). As the Project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5), the Project is entitled to reduced parking requirements. The requested deviations will support the development of affordable housing units on a site where it would not otherwise be possible through a strict application of the specified standard. As demonstrated in the Table 2, the Project substantially conforms to the zoning district and meets the intent for this type of project envisioned in this area.

Table 2:
Summary of TASP R3-TOD Development Standards

Standard (R3-TOD)	Requirement	Proposed	Compliance (Y/N)
Density	21-40 du/ac	25 du/ac	Y
Setbacks			
Front (min/max)	8 foot-15 foot (max.) from back of sidewalk	15 feet	
Side	15 foot (min.), 20 foot over three stories when abutting residential	26 – 47 feet	Y
Rear	15 foot (min.), 20 foot over three stories when abutting residential	20-28 feet	
Height	Up to 75 feet	49-feet-11-inches	Y
Private Open Space	An average of 200 SF of usable open space shall be provided for each dwelling unit. Balconies, porches, or roof decks may be considered usable	Private recreational area: 0.14 acres	Y

	<p>open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit.</p> <p>$200 \times 32 = 6,400 \text{ SF} = 0.15 \text{ acres}$</p> <p>Each dwelling unit shall be provided with private open space as follows:</p> <ul style="list-style-type: none"> - Balconies and porches (above ground level): minimum 60 SF; or Patios (at ground level): minimum one hundred square feet. 	<p>Private open space (balconies) = 1784 SF/building = $1784 \times 2 = 3,568 \text{ SF} = 0.08 \text{ acres}$</p> <p>Total private open space = 0.22 acres = 299.5 SF/unit</p> <p>Private balconies provided for every unit</p>	Y
Landscaping	<p>A minimum of twenty-five percent (25%) of the total lot area shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area.</p> <p>$25\% \times 1.22 = 0.31 \text{ acres}$</p>	0.46 acres (37.7%)	Y
Projections into Required Yards	Porches, stairs, balconies, bay windows, and awning may project up to six feet into required setbacks.	None	Y
Building Orientation and Entrances	Building must face the street; and primary building entrances must be oriented toward the street.	Buildings face Tarob Court, which is the project's primary street frontage.	Y
Vehicle Parking	<p>Two to Three Bedrooms: 1.6 covered (min), two (2) covered (max)</p> <p>Guest: 20% of the total spaces required = 10</p>	<p>64 tandem spaces in 32 garages (2 per unit)</p> <p>9 guest spaces</p>	This is permitted under Gov. Code, § 65915(p)(1) under State Density Bonus Law
Bicycle Parking	One space per four housing units, exempting those with private garages; on-street guest racks equivalent to five percent (5%) of parking requirement.	10 public spaces provided plus project has 32 private garages	Y
Parking Structure and Parking Lot Location	Parking must be located so that it is not visible from the street.	32 private garage entrances face interior drive aisle	Y
Parking Access and Curb Cuts	Maximum two curb cuts per lot per street frontage	One curb cut along each street frontage	Y
Tandem Parking	May be allowed with a Conditional Use Permit pursuant to MMC Section 53, Off-Street Parking Regulations of	All residential unit parking is tandem (64 spaces).	This is permitted under Gov. Code, §

	City's Zoning Ordinance; maximum of fifty percent (50%) of parking required for residential uses may be tandem parking in projects with private individual garages.		65915(p)(5) under State Density Bonus Law
Park Acreage Requirements	0.03 acres (after payment of TASP/MMSP fee)	0.12 acres proposed, which includes private recreation areas along the southern end of the site	Y

C. The Project is consistent with the Milpitas General Plan.

The Project is consistent with the Milpitas General Plan in that the project, as proposed and conditioned, conforms to the density and land use envisioned by the Plan. In addition, see the general plan consistency findings set forth in Section 3 above in support of issuance of the Vesting Tentative Map.

D. The Project is consistent with the Transit Area Specific Plan.

The proposed Project is consistent with the applicable policies and design guidelines of the TASP/MMSP, as demonstrated and outlined in Tables 2 and 3. As the Project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5), the Project is entitled to reduced parking requirements. The requested deviations will support the development of affordable housing units on a site where it would not otherwise be possible through a strict application of the specified standard.

Table 3: TASP/MMSP Consistency

Policy	Conformance
<i>Policy 3.4:</i> <i>Provide a variety of housing types for different types of households, different income levels, different age groups, and different lifestyles.</i>	Consistent. The proposed project will provide various housing types, including two and three-bedroom units for sale at market-rate and five of the 32 units will be for sale to moderate-income individuals or households, consistent with the City's goal of providing housing for various households and income levels. The City would prefer to see higher density development at this location.
<i>Policy 3.17:</i> <i>New streets shall be located as generally shown on the Street System Map, Figure 3-2 within the TASP</i>	Consistent. A portion of the project's TASP fees will contribute to the new Tarob Court configuration, designed to replace the cul-de-sac with a local street and connection to Sango Court.
<i>Policy 3.2:</i> <i>Affordable housing units should be provided with new housing developments. Determine affordable unit requirements on a project-by project basis, considering the size of the project, the location of the site, and the mix of affordable units in the Midtown Area. Allow housing developments of 12 units or less to pay a fee in lieu of providing affordable units.</i>	Consistent. The project conforms to the City's Affordable Housing Ordinance and will designate five out of the 32 units, or fifteen percent (15%) of the base number of units, for moderate-income level individuals or households.

Policy	Conformance
Policy 3.3: <i>Affordable housing should be integrated into all residential projects.</i>	Consistent. The project will designate five residential units for sale to moderate-income individuals or households and the units will be dispersed throughout the project site.

SECTION 5. Conditional Use Permit Findings (Section XI-10-57.04(F))

The City Council makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP21-0005:

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

The Project will not be detrimental or injurious to property or improvements in the vicinity, nor to the health, safety or general welfare. The project is consistent with other high density residential projects within the TASP. The condominium project creates housing opportunities and increases the diversity of housing types in the TASP area.

B. The Project is consistent with the Milpitas Zoning Ordinance.

The Project is consistent with the Zoning Ordinance, as the condominium use is conditionally permitted per MMC Table XI-10-4.02-1. The project substantially conforms to most of the development standards set forth by the Zoning Ordinance, as discussed in the Zoning Ordinance consistency discussion set out in support of issuing a Site Development Permit.

Moreover, the Project also conforms to MMC Section XI-10-54.015 (Density Bonus for Affordable Housing Developments) and XI-10-57.05 (Density Bonus Permits). As the project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5), the Project is entitled to reduced parking requirements. The requested deviations will support the development of affordable housing units on a site where it would not otherwise be possible through a strict application of the specified standard.

C. The Project is consistent with the Milpitas General Plan.

As stated in the Site Development Permit discussion above, the Project implements the range of uses and the density of development set forth in the Milpitas General Plan.

D. The Project is consistent with the Transit Area Specific Plan.

As stated in the Site Development Permit discussion above, the Project implements the range of uses, the density of development and the development standards as set forth in the TASP.

SECTION 6: Density Bonus (Section XI-10-54.15(D), (F))

The City Council hereby finds that the Project complies with the requirements necessary to qualify for the requested deviations under the State Density Bonus Law and Milpitas Municipal Code Section XI-10-54.15, and, as such, the City Council hereby makes the following findings based on the evidence in the public record:

1. Determination of Maximum Allowable Densities. The maximum allowable base density specified in the General Plan, including any other permitted increases to density.

Based on 15% affordability, with 5 units (15%) reserved for moderate-income households, the proposed Project is eligible for a 5% density bonus. The maximum allowable density in the R3-TOD Zoning District is 40 du/ac, which would yield 42 units on the subject 1.22-acre parcel. The proposed 32-unit development is less than the allowable 5% density bonus. Under the State Density Bonus Law, the applicant is entitled to receive the 5% density bonus as a matter of right.

2. *Unit Type and Location.* All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-affordable units in the project, and shall be comparable with the non-affordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council and/or Housing Authority modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.

This standard is satisfied, as the Project proposes five units to be reserved for moderate-income households. These five three-bedroom units will be dispersed throughout the two multi-family buildings.

3. *Agreement.* Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.

The Project will be conditioned to execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property.

4. *Retaining Affordability.* A developer shall agree to, and the City shall insure continued affordability of, all lower- or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Section XI-10-54.15(E), Density Bonus Conditions, of this Chapter, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low-income housing units receiving a density bonus.

The designated affordable units will be required to remain for a minimum of 50 years as stated in the Conditions of Approval and will require a Regulatory Agreement to be recorded over the Project site.

5. *Affordable Rents.* Those units targeted for lower-income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low-income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income.

This finding does not apply to the Project. The Project provides five for-sale units, or fifteen percent of the 32 units, to moderate-income households.

6. *Relation to State.* Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code Section 65915, et seq.

Any density bonus requirements not specified in the City's Municipal Code shall be governed by the State Density Bonus Law, Government Code Section 65915, et seq.

Waivers and Modifications of Development Standards

In accordance with Government Code Section 65915 and MMC Section XI-10.54.15(F)(6), the City must grant waivers of development standards if the applicant demonstrates the waiver is necessary to make the affordable housing units economically feasible and can only deny such waiver request if the City makes the findings specified in MMC Section XI10.54.15(F)(3) based on substantial evidence:

- a. *The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety Section 50052.2 or for rents for the affordable units pursuant to Section XI-10- 54.15(D)(5), Standards, of Chapter 10 (Zoning) of the Milpitas Municipal Code.*
- b. *The concession would have a specific adverse impact as defined in State Government Code Section 65589.5(d) (2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.*

If findings cannot be made, the requested waivers must be granted, based on the requirements of the Municipal Code and California Government Code Section 65915.

The City does not have substantial evidence to demonstrate that the proposed modifications to the development standards as described in the Table 2 above would fail to result in actual and identifiable cost savings, and/or that these savings are unnecessary to provide the level of affordability proposed. Moreover, the City has no substantial evidence that any of the requested concessions or waivers would result in any specific, adverse impacts to public health, safety, the physical environment, or historical resources. Accordingly, the City Council hereby approves such requested waivers.

SECTION 7. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held incorrect, invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared incorrect, invalid, illegal, or unenforceable.

SECTION 8. City Council Approval

The City Council hereby approves Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001, and Environmental Assessment No. EA21-0002, based on the above findings and subject to the Conditions of Approval attached hereto and incorporated herein as **Exhibit 1**.

PASSED AND ADOPTED this 18th day of January 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Wendy Wood, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT '1'

CONDITIONS OF APPROVAL 2001 TAROB COURT RESIDENTIAL DEVELOPMENT

**SITE DEVELOPMENT PERMIT NO. SD21-0004
CONDITIONAL USE PERMIT NO. UP21-0005
VESTING TENTATIVE MAP NO. MT21-0001
ENVIRONMENTAL ASSESSMENT NO. EA21-0002**

GENERAL CONDITIONS

1. General Compliance: The Permittee and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This **SITE DEVELOPMENT PERMIT SD21-0004, CONDITIONAL USE PERMIT UP21-0005, VESTING TENTATIVE MAP MT21-0001, and ENVIRONMENTAL ASSESSMENT EA21-0002** and associated permits noted above (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date: Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the City Council approved this Permit.
3. Acceptance of Permit: Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the Project. **(P)**
6. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
7. Permit Expiration: Pursuant to Section XI-10-64-06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the Project:
 - a. Completes a foundation associated with the Project; or
 - b. Dedicates any land or easement as required from the zoning action; or

- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. **(ALL)**
8. Time Extension: Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
9. Project Job Account: If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees or consultant time, including City Attorney time, the review of permits will not be initiated until the balance is paid in full. **(P/E)**.
10. Notice: Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1). **(ALL)**
11. Cost and Approval: Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. **(ALL)**
12. Conditions: Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Project is operating under the permits and approvals in this Resolution. **(ALL)**
13. Compliance with Laws: The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state and federal laws, rules, regulations, guidelines, requirements and policies. **(CAO/P/E/B)**
14. Indemnification: The project applicant, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of the Project, including adoption of Site Development Permit No. SD21-0004 and Vesting Tentative Map MT21-0001, and including any environmental determination made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The applicant shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the project applicant of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the project applicant, or if City fails to engage in reasonable efforts to cooperate in the defense, then the project applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The project applicant shall not be required to pay or perform any settlement unless the settlement is approved by the project applicant. **(CA)**
15. Certificate of Insurance: Permittee shall provide certificate of insurance and name City as an additional insured in its insurance policies for the Project.
16. Revocation, Suspension, Modification: This Permit may be suspended, revoked or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.

17. Severability: If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.
18. Compliance with Fire Department and California Fire Code: The project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code, as adopted by the City and stated per Fire Memorandum, dated August 4, 2021. Changes to the site plan and/or buildings requires review and approval by the Fire Department. **(F)**
19. Compliance with Building Department and California Building Code. The Project shall comply with the requirements of the Building, Safety and Housing Department and the California Building Code (CBC) as adopted by the City and stated per Building Memorandum, dated May 13, 2021. Changes to the site plan and/or building(s) requires review and approval by the Building, Safety and Housing Department. **(B)**
20. Development in Conformance with Approved Plans: Permittee shall develop the approved Project in conformance with the plans dated September 10, 2021 and approved by the City Council on January 18, 2022, in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review, and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

PLANNING AND HOUSING CONDITIONS

21. Landscape: All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. **(P)**
22. Street Lights: Permittee shall provide street lighting along all street frontages subject to the review and approval of the Planning Division. Permittee shall likewise install pedestrian scale lights along all public and private street frontages. The Permittee shall submit a photometric plan to determine appropriate light levels with submittal of on-site improvement plans. **(P)**
23. Parking: Parking shall be provided as depicted on the Site Plan approved by the City Council and shall consist of the following:
 - a. **RESIDENT**: 32 individual tandem garages to provide a total 64 parking spaces.
 - b. **GUEST**: A total of 9 guest spaces are to be provided in the internal driveway. **(P)**
24. Bicycle Racks: A minimum of ten (10) short-term bicycle parking spaces shall be installed on the site. **(P)**
25. Trees: The project will remove 34 trees and replace with 128 trees, in conformance with the plans approved by City Council on January 18, 2022. **(P)**
26. Public Art Requirement: Permittee shall comply with the City's Public Art Requirements for Private Development, as set forth in Milpitas Municipal Code Section XI-10-14. Fee shall be no less than one-half of one percent of building development costs and shall be payable at time of building permit issuance. **(P)**
27. Affordable Housing Requirement: Permittee shall comply with the City's Affordable Housing Ordinance, as set forth in Milpitas Municipal Code Section XI-1-3.00. All new residential development projects of ten units or more designed and intended for permanent occupancy shall construct 15 percent of the total number of dwelling units within the development as affordable units, unless otherwise remedied by the City Council. **(H)**

28. Agreement. Prior to final building inspection and occupancy for a project containing affordable units, the Permittee shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation. **(H)**
29. Density Bonus: Permittee shall provide 32 residential units, with 5 of the units designated as affordable. The Project may have the following deviations as permitted under Gov. Code, § 65915(p)(1):
- Allow tandem parking for all 32 private individual garages.
 - Reduction of 1 required guest parking space. **(P)**

PLANNING & BUILDING PROJECT-RELATED TASP MITIGATION MEASURES & REQUIRED PROJECT DESIGN FEATURES

Biological Resources (TASP Policy 5.26)

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

Noise (TASP Policy 5.10))

31. Noise Insulation: Prior to issuance of any building permit, Permittee shall demonstrate that the Project will meet the required 45 dBA maximum interior noise standard.

Air Quality (TASP Policy 5.16)

32. Dust Control Emissions: During the construction of the Project, Permittee shall comply with all of the following:
- All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas and unpaved roads) shall be watered two times per day.
 - All haul trucks transporting soil, sand or other loose material off the site shall be covered.
 - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day or more often if determined necessary by City Engineer or designee. The use of dry power sweeping is prohibited.
 - All vehicle speeds on unpaved roads shall be limited to 15 MPH.
 - All roadways, driveways and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. **(B)**
33. ROG Emissions: Prior to issuance of any building permit, Permittee shall develop, submit and obtain approval from the City of a plan to reduce ROG emissions by 17 percent or greater during the architectural coating phase of the

construction. Acceptable measures to achieve this goal include, but are not limited to, using paint that contains 125 grams per liter of VOC or less, the use of pre-fabricated building materials, or a combination of both. The plan shall be implemented as approved by the City. (B)

Cultural Resources (TASP Policies 5.34 and 5.35)

34. Archeological Monitoring: Any future ground disturbing activities, including grading, in the Transit Area shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines §15064.5 regarding discovery of archeological sites and burial sites, and Guidelines §15126.4(b) identifying mitigation measures for impacts on historic and cultural resources (see Public Resources Code §§21083.2, 21084.1). In the event that buried remains are encountered, work shall be halted in the immediate area and the Santa Clara County coroner and the City of Milpitas Department of Planning and Department of Building shall be immediately contacted to determine the nature of the remains and related appropriate mitigation plan. If remains are determined to be of Native American origin, the coroner will then contact the Native American Heritage Commission (NAHC), which will in turn contact the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods. (P/B)
35. Paleontological Monitoring: All grading plans for development projects involving ground displacement shall include a requirement for monitoring by a qualified paleontologist to review underground materials recovered. In the event fossils are encountered, work in the area shall be halted and the City of Milpitas Department of Planning and Department of Building shall be immediately contacted to determine the nature of the remains and related appropriate mitigation plan. A qualified paleontologist shall evaluate the fossils, and steps needed to photo-document or to recover the fossils shall be taken. (P/B)

ENGINEERING CONDITIONS

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

*The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. (E)*

36. Modifications: The Site Development Plan dated September 10, 2021 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
37. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; demonstrate how compost shall have a separately maintained process from garbage handling; address other requirements such as waste generation and property management responsibility for bin management and litter control; and procure sufficient service frequency.
38. Recycle Water Cross-Connection Specialist: In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee must hire a certified cross-connection specialist for their consultation as to irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all landscape submittal plans.
39. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each construction permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.

40. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be determined based on the public improvement cost estimates as prepared by the Permittee's engineer.

PRIOR TO FINAL MAP APPROVAL/RECORDATION

*The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recordation (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (E)*

41. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.
42. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.
43. Partial Street Vacation: This project is subject to and contingent upon partial vacation on Tarob Court.
44. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map.
45. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
46. Street Name Approval: Permittee shall obtain approval from the City Council for all new street names based upon recommendation from the Planning Commission and City guidelines.
47. Utility Company Approval: Permittee shall obtain approval documentation from utility companies (PG&E, AT&T, Comcast) for abandonment of existing and dedication of new public service utilities easements.
48. Covenant, Conditions & Restrictions (CC&Rs): Permittee shall provide CC&Rs for City's review and approval for perpetual maintenance of private roadways, private utilities, stormwater management facilities in accordance with a separately recorded Stormwater Management Facilities Operation and Maintenance Agreement. There shall be provisions in the CC&Rs to retain a recycled water site supervisor with annual re-certification report to the City's Public Works Department.
49. Subdivision Improvement Agreement and Securities: Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).
50. Annexation to the Community Facilities District: Permittee shall submit an executed petition affirmatively consenting to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The CFD annexation process shall be completed prior to final map approval. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 14 notwithstanding.
51. Easement Acquisition for Pedestrian Path: Permittee shall acquire a Public Sidewalk and Service Utility Easement (PSSUE) where proposed sidewalks or walkways encroach onto private properties, or present an alternative path that doesn't encroach onto private property will be required prior to the issuance of the building site improvement permit

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

*The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. (E)*

52. **Coordination with other Projects:** Permittee shall coordinate with City of San Jose obtain encroachment permits for any work within their jurisdiction.
53. **Public Improvement Design Standards:** All public improvements shall be designed and constructed in accordance with all applicable public improvement design standards, including but not limited to:
 - a. Milpitas Design Guidelines: (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>);
 - b. Standard details and specifications: (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/standard-details-and-specifications/>);
 - c. Transit Area Specific Plan design guidelines: (http://www.ci.milpitas.ca.gov/_pdfs/engDesignGuidelines/en_dg_vi_transitAreaSpecific.pdf); and
 - d. Americans with Disabilities Act (ADA) requirements, where applicable.
54. **Sanitary Sewer Calculations:** Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design, allocation of discharge for each of the lateral, and impact to the existing main. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.
55. **Storm Drain Design:** Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.
56. **Domestic Water and Fire Service Calculations:** Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.
57. **Specific Improvements:** In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.
 - a) Installation of separate water service tap and meter for each of the following services: residential and irrigation.
 - b) Installation of separate utility service lines (domestic water, fire service, sanitary sewer) for residential and non-residential.
 - c) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna.
 - d) Installation of half street width asphalt concrete grind and overlay with as needed base repair along the project street frontage on Tarob Court and Lundy Avenue to the City Engineer’s satisfaction.
 - e) Installation of new street trees along the project frontage. The locations, spacing of trees and tree species shall be in compliance with applicable City standards and details.
58. **Abandonment of Existing City Utilities:** Permittee shall cap, abandon or remove any unused existing public utilities based upon City’s Abandonment Notes and to the City’s satisfaction.

59. Relocation and Adjustment of Existing Public Utilities: Permittee shall relocate and/or adjust existing public utilities as needed that are in conflict with the proposed improvements.
60. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.
61. Wet Utility Separation Requirements: A minimum one (1) foot vertical separation, and 10 foot horizontal separation is required between water and sewer/storm. Please ensure all horizontal and vertical separations meet the CCR title 22 requirements.
62. Recycled Water: Per the TASP Area Specific Plan, new developments shall include recycled water lines for irrigation.
63. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.
64. Pothole Encroachment Permit: Due to multiple new utility service connections on Tarob Court, Lundy Place and any other public place where work will take place. Permittee shall pothole and verify all potential utility crossing conflict as part of the public improvement plan during the design stage.

PRIOR TO BUILDING PERMIT ISSUANCE

*The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (E)*

65. Final Map Recordation: Permittee shall record the final map.
66. Easements on the Building Permit Plans: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on applicable building permit plans.
67. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).
68. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department. The subject O&M Agreement shall be referenced in the CC&Rs, if applicable.
69. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.
70. Recycle Water Approval: Permittee shall use recycled water for landscape irrigation purpose. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled "*Water Recycling Criteria*", CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled "*Drinking Water Supply*" and all other recycled water regulations as listed under the publication titled "*California Department of Public Health Regulations Related to Recycled Water June 18, 2014*". Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water.

71. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 (Water Efficient Landscapes) for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.
72. Solid Waste, Compost, and Recycling Facility Design: Permittee shall comply with all applicable City and CA State SB1383 design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, staging area, storage area, etc.
73. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
- What materials will be salvaged.
 - How materials will be processed during demolition.
 - Intended locations or businesses for reuse or recycling.
 - Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
- Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.
74. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.
75. Flood Plain Management: This project is in the Flood Zone "AO" with 1' average flood depth, therefore, Permittee shall comply with all applicable flood protection criterion required by the Federal Emergency Management Agency (FEMA) and MMC Title XI, Chapter 15. Permittee shall also submit a Flood Study for the Project demonstrating, to the satisfaction of the City Engineer, that the proposed development has no adverse impact to the surrounding flood plain within the Special Flood Hazard Area (SFHA) and to the flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood Elevation (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. The study shall clearly identify the lowest floor elevation as being either the bottom of garage, bottom of first floor residential units, bottom of elevator pit, etc. and shall be completely elevated out of the SFHA.
76. Mailboxes: The Permittee shall coordinate with US Postal Services regarding placement of required mailboxes. Mailbox location shall not be on public street frontages and shall be approved by City and US Postal Services prior to building permit issuance. Mailbox locations shall be shown on the improvement plans and Permittee shall submit a letter to the City's Land Development Engineering Section from the Post Master approving the location of the mailbox. Structures to protect mailboxes may require Building, Engineering and Planning Department review.
77. Stormwater Control Plan: Permittee shall submit City approved final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.

78. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City’s review and approval by the Engineering Department along Tarob Court and Lundy Place, that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines.

79. Development Fees: Permittee shall pay the following development fees. The following fees, listed in items “a” through “g” shall be paid at the fee rate in effect as of March 25, 2021, apart from those fees subject to increase resulting from an automatic annual adjustment based on an independently public cost index that is referenced in the ordinance or resolution establishing the fee. The exact fee amount shall be determined at the time of building permit fee payment.

- a. Transit Area Specific Plan fee at \$44,009/unit for residential uses. Based on approval for development of 32 units, the estimated Transit Area Specific Plan Development Impact Fee for this project is \$1,408,288 (\$44,009/unit x 40 units). TASP fees shall be paid prior to building permit issuance.
- b. Parkland:
 1. The project is required to dedicate 0.28 acres of parkland, equivalent to \$777,472.82 fees-in-lieu.
 2. The park portion of the TASP fee is valued at \$690,061.12, equivalent to 0.25 acres. This will be applied to the project parkland requirement.
 3. The applicant will receive credit for 0.12 acres of private recreation space on site. Upon demonstration of provision of this private recreation space to the satisfaction of the Director of Planning or his/her designee, no additional parkland fees will be due, per table below.

2001 Tarob Court Unit Count	32
2001 Tarob Court Population Estimate	80 persons
TASP Parkland Requirement	3.5 acres/1,000 people or equivalent fees-in-lieu
PARKLAND ACREAGE DUE/FEE EQUIVALENT	0.28 acres/\$777,472.82
Amount Satisfied Through TASP Fees (Acreage/Dollars)	0.25 acres/\$690,061.12
REMAINING DELTA TO BE SATISFIED (Acreage/Dollars)	0.03 acres/\$87,411.70
Private Recreation Acreage Approved by City	0.12 acres
TOTAL ACREAGE/FEEES PROVIDED	0.28 acres
REMAINING ACREAGE/FEE REQUIREMENT TO BE MET	0.0 acres/\$0
BALANCE OF PARKLAND ACREAGE/FEEES DUE	0.0 acres/\$0

- c. Storm water connection fee at \$16,771/acre for residential and \$21,562/acre for commercial.
- d. Water connection fee at \$1,164/unit for residential and \$5.97/gpd for commercial, based upon increased water usage.
- e. Sewer connection fee at \$1,406/unit for residential and \$8.52/gpd for commercial, based upon increased average wastewater flow.
- f. 3.8% of applicable fees in accordance with City Resolution No. 8969 as Permitting Automation Fee.

- g. FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each. (If needed)

DURING CONSTRUCTION

*The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. (E)*

80. **Dewatering**: If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
81. **On-site Recycle Water Coordination**: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling. Developer shall notify SBWR 7 days in advance to schedule attendance of SBWR inspector during Cross-connection Test.
82. **Prohibition of Potable Water Usage**: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.
83. **Construction Staging and Employee Parking**: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.
84. **Water Shut-down Plan**: Permittee shall provide a water shut-down plan at least seven days in advance of the shut-down in coordination with the Engineering Inspector, and notify affected property owners/tenants when cut-in tee(s) is/are required.

PRIOR TO FIRST OCCUPANCY

*The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.*

85. **Completion of Public Improvements**: Permittee shall complete all public improvements, including but not limited to improvements along Tarob Court and Lundy Place as shown on City approved plans.
86. **LOMR-F**: Permittee shall submit the FEMA approved LOMR-F for each unit/building associated with the requested occupancy, if project is located in the SFHA.
87. **Elevation and/or Flood Proofing Certificate**: Permittee's civil engineer shall submit Elevation and/or Flood Proofing Certificate for the lowest finished floor elevation of each building for City record.
88. **Landscape Certificate of Completion**: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.
89. **Certificate of Cross-Connection**: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program <http://www.sanjoseca.gov/index.aspx?NID=1595> and forward them to the City.
90. **Record Drawings**: Permittee shall submit record drawings in AutoCAD, Tiff, and PDF formats for City records. Record drawings shall include all public improvements. Additionally, if the project uses recycled water, the permittee shall also submit record drawings of on-site irrigation facilities.

91. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.

LEGEND

P = Planning Department

B = Building Department

E = Engineering Department

F = Fire Department

CAO = City Attorney's Office

ALL = All Reviewing Departments

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT

Permittee/Property Owner

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

Dated: _____

Signature of Permittee

EXHIBIT 2

**ADDENDUM TO THE TRANSIT AREA SPECIFIC PLAN ENVIRONMENTAL IMPACT
REPORT**

EXHIBIT 3

CONSISTENCY MEMORANDUMS BY FIRST CARBON SOLUTIONS, TJKM, AND LSA