

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AMENDMENT (NO. PA19-0001) TO PLANNED UNIT DEVELOPMENT NO. 45 (SPINNAKER POINTE APARTMENTS) TO AMEND THE CONDITIONS OF APPROVAL TO ALLOW A CHANGE IN ROOF MATERIALS FOR ALL BUILDINGS, INCLUDING CARPORTS, ON A 9.24-ACRE SITE LOCATED AT 231 DIXON LANDING ROAD (APN 022-01-014)**

**WHEREAS**, on December 9, 1986, the Milpitas City Council approved Planned Unit Development No. 45 (Spinnaker Pointe Apartments) to allow the development of 220 residential apartments, 493 parking spaces, and related facilities on a 9.24-acre site located at 231 Dixon Landing Road; and

**WHEREAS**, on July 29, 2019, David Litty of Enclave Enterprises, LLC, submitted an application to amend the Conditions of Approval for Planned Unit Development No. 45; and

**WHEREAS**, Planned Unit Development No. 45 (“PUD No. 45”) is located within the Multi-Family Residential (R3) Zoning District; and

**WHEREAS**, a Planned Unit Development Amendment (Permit No. PA19-0001) is required to modify the Conditions of Approval for PUD No. 45 to allow a change in roof materials for all buildings, including carports, to be architecturally compatible and use the same roof materials (the “Project”); and

**WHEREAS**, the Planning Department determined that the Project is categorically exempt from further environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section 15301 (Existing Facilities) and; on a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and

**WHEREAS**, on September 25, 2019, the Planning Commission held a duly-noticed public hearing to consider the exemption in accordance with CEQA and voted unanimously (7-0-0) to recommend that the City Council approve Planned Unit Development Amendment (Permit No. PA19-0001); and

**WHEREAS**, on October 15, 2019, the City Council held a duly-noticed public hearing, at which time all those in attendance were given the opportunity to speak on the Project; and

**WHEREAS**, the City Council considered all of the written and oral testimony presented at the public hearing in making its decision; and

**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 and findings set forth herein are found to be true and correct and incorporated herein by reference.

**SECTION 2. Record.** The location and custodian of the documents or other material which constitute the record of proceedings upon which this decision is based is within the Planning Department, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.

**SECTION 3. CEQA.** The Project is categorically exempt from further environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section

15301 (Existing Facilities) and; on a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

**SECTION 4. Findings.** In accordance with Section XI-10-54.07(B)(6)(d) of the Zoning Code, the City Council makes the following required findings based on the evidence in the public record in support of Planned Unit Development Amendment No. PA19-0001:

1. Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.

*The current project is an amendment to the conditions of approval for the original Planned Unit Development (PUD). The proposed amendment would allow replacement of roof materials throughout the project, including carports. The original PUD met all of the review requirements of the City of Milpitas Zoning Code, and amending the Conditions of Approval to allow a change in roof materials will not fundamentally change the design of the original PUD or the public benefit derived from the original approval. Re-roofing the entire project with new materials will upgrade the existing buildings, enhance the neighborhood, and improve safety.*

2. The proposed Planned Unit Development is consistent with the Milpitas General Plan.

*The Project is in conformance with the applicable policies and standards in the City's General Plan, as outlined in the Table 1 below:*

Table 1: General Plan Consistency

Policy	Conformance
<i>2.a-G-1 Maintain a land-use program that balances Milpitas' regional and local role by providing for a highly amenable community environment and a thriving regional industrial center</i>	<i><u>Consistent.</u> The existing PUD is an attractive residential project with amenities for its residents. The development provides affordable housing options to Milpitas residents employed in the area.</i>
<i>2.a-G-3 Provide a variety of housing types and densities that meet the needs of individuals and families.</i>	<i><u>Consistent.</u> The existing PUD provides multi-family apartments to meet the needs of individuals and families in Milpitas. The proposed re-roofing will help ensure the longevity of the project.</i>
<i>2.a-I-12 Use zoning for new residential developments to encourage a variety and mix in housing types and costs.</i>	<i><u>Consistent.</u> The existing PUD provides a variety of housing types and costs in Milpitas.. The proposed re-roofing will help ensure the longevity of the project.</i>

*The General Plan designation for the site is Multi-Family Residential Very High Density (MFH). The intent of this designation is to stabilize and protect the residential characteristics of the area and promote, insofar as compatible with the intensity of land use, a suitable environment for family life. The existing multi-family residential development (Planned Unit Development No. 45), was approved by the City Council on December 9, 1986.*

3. The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.

*The proposed PUD amendment will allow a change in roof materials for all buildings, including carports, within an existing development approved in 1986. The new roofing materials (composite shingles) will be consistent for all buildings across the site and will complement and enhance the surrounding neighborhood. The proposed re-roofing project will not change the existing size or bulk of the existing buildings and will not result in any adverse impacts such as shadows, loss of views, or loss of privacy upon adjacent development.*

**SECTION 5: City Council Decision and Approval**

Based on the above Findings, the City Council of the City of Milpitas hereby approves Planned Unit Development Amendment Permit No. PA18-0001, subject to the Conditions of Approval attached hereto as **Exhibit 1**,

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## **EXHIBIT 1**

### **CONDITIONS OF APPROVAL FOR SPINNAKER POINT, LLC PLANNED UNIT DEVELOPMENT PERMIT AMENDMENT NO. PA19-0001 213 DIXON LANDING ROAD (APN 022-01-014)**

#### **General Conditions**

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. Planned Unit Development Amendment Permit NO. PA 19-0001, (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. The Permittee shall develop the approved project in conformance with the approved plans (dated September 25, 2019), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. **(P)**
3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(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.

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, the review of permits will not be initiated until the balance is paid in full. **(E)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. 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.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any and all 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 PLANNED UNIT DEVELOPMENT AMENDMENT PERMIT NO. PA19-0001; 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 Permittee 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 Permittee 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 Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then the Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Permittee. The above indemnification is intended to be as broad as permitted by applicable law. **(CA)**
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code. **(P)**
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Previous Approvals. Permittee shall abide by and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.

16. 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. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
17. Compliance with Building Department. The project shall comply with the requirements of the Building Department and the International Building Code. **(B)**

**Special Conditions:**

18. The Planning Director or designee will determine the level of review required for all additions or alterations to the buildings or site design in accordance with the provisions of Milpitas Municipal Code Section XI-10-57.03 (Site Development Permits and Minor Site Development Permits).

**Key:**

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

**NOTICE OF RIGHT TO PROTEST**

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

**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**