

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD18-0014, CONDITIONAL USE PERMIT NO. UP19-0009, VESTING TENTATIVE MAP NO. MT18-0004, AND ENVIRONMENTAL ASSESSMENT NO. EA19-0002 TO ALLOW A 40-UNIT RESIDENTIAL CONDOMINIUM BUILDING, UP TO 49 FEET IN HEIGHT (FOUR STORIES), WITH PARKING FOR UP TO 74 VEHICLES, ON A 1.22 ACRE SITE LOCATED IN THE MULTI-FAMILY HIGH DENSITY RESIDENTIAL (R3) ZONING DISTRICT AT 2001 TAROB COURT, AND MAKING FINDINGS PURSUANT TO SECTION XII-1.00, *et seq.* OF THE MILPITAS MUNICIPAL CODE AND CEQA FINDINGS PURSUANT TO CEQA GUIDELINES SECTIONS 15162, 15163, 15164, 15168, 15182, AND 15183**

**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 November 2, 2018, The True Life Companies (the “Applicant”) submitted an application to the City of Milpitas for the approvals necessary to develop a 40-unit condominium residential project at 2001 Tarob Court. The project (the “Project”) thus consists of and requires:

- a. Site Development Permit (SD18-0014) to allow the development of four-story building with up to forty residential units on a 1.22 acre site; and
- b. Conditional Use Permit (UP19-0009) to allow the condominium use; and
- c. Vesting Tentative Map (MT18-0004) to establish forty residential condominium spaces and related common areas and to record site easements; and
- d. Environmental Assessment (EA19-0002) to review and assess all requested entitlements for consistency with the 2008 Transit Area Specific Plan EIR.

**WHEREAS**, the Planning Division completed an environmental assessment No. EA19-0002 for the Project in accordance with CEQA, and the Planning Commission recommended 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 finding included in this

resolution (the “Addendum,” a true and correct copy of which is attached hereto and incorporated herein as **Exhibit 2 to Exhibit A**); and

**WHEREAS**, per 14 C.C.R (CEQA Guidelines) Section 15164(b), the Addendum demonstrates and concludes that none of circumstances necessitating preparation of a supplemental or subsequent EIR, as specified in CEQA Guidelines Sections 15162 or 15163 are present in that there are (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**, the City Council hereby adopts the Addendum makes and accepts as its own the findings set forth in **Exhibit A** 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, General Plan or Zoning; (2) CEQA Guidelines Section 15182 (residential projects consistent with a specific plan); and (3) CEQA Guidelines Section 15168 (projects within the scope of a 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 density bonus pursuant to Milpitas Municipal Code Section XI-10-54.15, 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 July 31, 2019, the Planning Commission held a duly-noticed public hearing, during which meeting the Planning Commission considered the Addendum EA19-0002, as well as the requested Site Development Permit SD18-0014, Conditional Use Permit UP19-0009, and Vesting Tentative Map MT18-0002 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. 19-022, the Planning Commission recommended the City Council approve Site Development Permit No. SD18-0014, Conditional Use Permit No. UP19-0009, Vesting Tentative Map No. MT18-0002, and Environmental Assessment No. EA19-0002 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 August 20, 2019, the City Council held a duly-noticed public hearing, during which meeting the City Council considered the Environmental Assessment No. EA19-0002, as well as the requested Site Development Permit No. SD18-0014, Conditional Use Permit No. UP19-0009, and Vesting Tentative Map No. MT18-0002 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 40 residential units fall within this scope of development activity contemplated in the TASP EIR. LSA Associates completed an environmental assessment of the proposed Project to confirm the proposed Project is within the scope of the TASP EIR. The analysis found that the Project is consistent with the TASP EIR and confirmed that the Project is within the scope of development density considered under the TASP EIR. No new impacts were identified and no new mitigation measures are required. 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 Section 15168(c)(2), the Project is except 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. MT18-0004:

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

The Project site has a General Plan land use designation of 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 32.8 dwelling units/acre, it is consistent with both the intended land use of the General Plan and the relevant density requirement.

Further, the Project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- 1. 2.a 1-31 Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

The Project is consistent with this policy as it includes attractive four-story residential buildings in close proximity to the future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague Subdistrict, with connections to the BART and Light Rail transportation hubs.

- 2. 2.a 1-32 Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

The Project is consistent with this policy as it has been designed per the adopted design requirements contained in the Transit Area Plan. As demonstrated in Section B(2) below, the project meets the applicable requirements of the Transit Area Plan, including building setbacks and height, density, parking, open space, landscaping, access and circulation.

*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 40 residential condominium units at a density of 32.8 dwelling units/acre. The General Plan and Transit Area Specific Plan land use designation applicable to the site (High Density, Transit Oriented Residential – (HD-TOR) permits residential development at densities of 21 to 40 dwelling units/acre. The map is thus consistent with the General Plan and 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 Transit Area Specific Plan. The proposed density is 32.8 dwelling units per acre. The proposed project is also consistent with the Transit Area Specific Plan development standards, including height (maximum of 49' proposed, where 75' is maximum allowed), number of vehicular parking spaces (74 vehicular spaces proposed, where a minimum of 74 is allowed), bicycle parking (14 spaces proposed, where 14 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 Transit Area Specific Plan. In addition, the developer has determined this site to be 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 32.8 dwelling units per acre, insomuch as it has amended the applicable general plan land use designation to High Density, Transit Oriented Residential (HD-TOR), which 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 Memo (Exhibit 2 to Exhibit A of Attachment A). The memo

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 Memo (Exhibit 2 to Exhibit A). The memo 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. SD18-0014:

- 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 TASP development standards for the Trade Zone/Montague Subdistrict. The Project consists of 40 condominium units and associated site amenities on a 1.22-acre site. The building's contemporary architectural design features varied materials and complements previously-approved and adjacent projects within the subdistrict. 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. As demonstrated in the Table 1, the Project conforms to the zoning district and meets the intent for this type of project envisioned in this area.

**Table 1:**  
**Summary of TASP R3-TOD Development Standards**

<b>Standard (R3-TOD)</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Compliance (Y/N)</b>
<b>Height</b>	Up to 75 feet	49 feet	Y
<b>Setbacks</b>	Front Yard: 8 foot-15 foot maximum; Side and Rear Yards: 15 foot minimum,	10 foot front yard setback; 8 foot to overhead projection; 40 foot side and 21 foot rear yard setback	Y
<b>Projections</b>	Up to 6 feet	2 feet	Y
<b>Building Orientation</b>	Buildings must face street	Buildings face street	Y
<b>Density</b>	21-40 du/ac	32.8 du/ac	Y
<b>Parking (Resident)</b>	2-3 bedroom – 1.6 – 2 covered per unit  Between 64 (min) - 80 (max) spaces	64 spaces	Y
<b>Parking (Guest)</b>	15 percent of required = 10 spaces	10 spaces	Y
<b>Parking (Bicycle)</b>	1 space per 4 housing units, exempting units with private garages = 10 spaces; on-street guest racks equivalent to 5 percent of parking requirement = 4 spaces	10 secure, long term spaces 4 exterior guest spaces	Y
<b>Usable Open Space</b>	Minimum 25 percent of the total site shall be usable open space or recreational facilities = 0.31 acres required;	0.44 acres	Y
<b>Private Open Space</b>	An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least 4 ½ feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not	Private recreational area = 0.28 acres  60 SF balconies provided per unit. 60 x 40 = 2,400 SF or 0.06 acres. 0.06/0.18 = 30% of the required contiguous open space  Total private open space = 0.31 acres = 337.6 SF/unit	Y

	<p>adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable 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 x 40 = 8,000 SF or 0.18 acres</p>		
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*C. The Project is consistent with the Milpitas General Plan.*

The Project site has a General Plan land use designation of 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 32.8 dwelling units/acre, it is consistent with both the intended land use of the general plan and the relevant density requirement.

Further, the Project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- a. 2.a 1-31 Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

The Project is consistent with this policy as it includes attractive four-story residential buildings in close proximity to the future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague Subdistrict, with connections to the BART and Light Rail transportation hubs.

- b. 2.a 1-32 Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

The Project is consistent with this policy as it has been designed per the adopted design requirements contained in the Transit Area Plan. As demonstrated in subsection D, the Project meets the applicable requirements of the Transit Area Plan, including building setbacks and height, density, parking, open space, landscaping, access and circulation.

*D. The Project is consistent with the Specific Plan.*

The Project proposes the development of the site in to one four-story building consisting of 40 residential condominium units at a density of 32.8 dwelling units/acre. The Transit Area Specific Plan land use designation applicable to the site (High Density, Transit-Oriented Residential (HD-TOR)) permits

residential development at densities of 21 to 40 dwelling units/acre. The Project is thus consistent with the Transit Area Specific Plan use and density requirements. As demonstrated in Table 1, the project also complies with TASP development standards. Landscaping along the streets and greenspace with the development is provided as envisioned by the TASP.

#### **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. UP19-0009:

*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 conforms to all 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.

*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. Affordable Housing Ordinance (Section XII-1-4.00)**

The City Council approves the Applicant's request for an exception from the requirement to construct affordable housing units as part of the Project as required by the Milpitas Municipal Code Section XII-1-00, *et seq.* The Applicant has demonstrated that the Project qualifies for such an exception based upon the following findings based on the evidence in the public record for the affordable housing exception request:

*A. The exception requested exceeds the minimum affordable requirements; and*

Based on the current in-lieu housing fee of \$33 per square foot for residential projects, the applicant shall pay approximately \$1.8 million to the City's affordable housing fund to meet the minimum affordable requirements for the proposed project. Pursuant to Resolution no. 8852, the affordable housing fee is based on the building permit application date. The residential affordable housing fee is \$33 per square foot until June 30, 2020, and the fee will be adjusted by the Rate Index for the next fiscal year after June 30, 2020. In addition to the minimum affordable requirements, the applicant shall pay an additional \$200,000 to the affordable housing fund to meet the required finding for approval of the exception.



*B. The community benefits exceed the project benefits.*

Pursuant to MMC Section XI-10-14, private residential development of 20 or more dwelling units shall devote an amount not less than one-half of one percent of Building Development Costs for acquisition and installation of Publicly Accessible Art on the project site or contribute the value into the Public Art Fund for acquisition and placement of Public Art throughout the City. The applicant has agreed to double the required contribution to the City's Public Art fund to provide a community benefit. The applicant shall pay no less than one percent of building development costs, with the actual fee amount determined at the time of building permit issuance.

As an additional community benefit, the applicant shall also pay \$100,000 toward the cost of aesthetic enhancements to the planned vehicle/pedestrian bridge that will extend South Milpitas Boulevard over Penetencia Creek and into the Tarob Court neighborhood. With the payment of additional funds to the design of the South Milpitas Boulevard bridge, the community benefits will exceed the project benefits to meet the required finding.

**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. SD18-0014, Conditional Use Permit No. UP19-0009, Vesting Tentative Map No. MT18-0004, and Environmental Assessment No. EA19-0002 (subject to the Conditions of Approval attached hereto and incorporated herein as **Exhibit 1**), based on the above findings.

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 2001 TAROB COURT RESIDENTIAL DEVELOPMENT

**SITE DEVELOPMENT PERMIT NO. SD18-0014**  
**CONDITIONAL USE PERMIT NO. UP19-0009**  
**VESTING TENTATIVE MAP NO. MT18-0004**  
**ENVIRONMENTAL ASSESSMENT NO. EA19-0001**

#### 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. **SITE DEVELOPMENT PERMIT SD18-0014, CONDITIONAL USE PERMIT UP19-0009, VESTING TENTATIVE MAP MT18-0004, and ENVIRONMENTAL ASSESSMENT EA19-0002** (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. The Permittee shall develop the site in accordance with the approved Attachments and as modified by these Conditions of Approval.
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. 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.
5. 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)**
6. Project Job Account: If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's project job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit as applicable, Permittee shall pay in full the Project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P/E)**
7. 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).

8. 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)**
9. 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)**
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. **(CAO/P/E/B)**
11. Indemnification: To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including, but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Permittee, City and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to Vesting Tentative Map No. MT16-0003, and the balance of the Permit shall be unaffected by Government Code Section 66474.9.
12. Certificate of Insurance: Permittee shall provide certificate of insurance and name City as an additional insured in its insurance policies for the Project.
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.
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. Response to Conditions of Approval: Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
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 buildings requires review and approval by the Fire Department. **(F)**

17. Development in Conformance with Approved Plans: Permittee shall develop the approved Project in conformance with the plans dated July 10, 2019 and approved by the City Council on September 17, 2019, 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 CONDITIONS**

18. 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.
19. Architecture: Permittee shall submit updated Project Architecture depicted on the Building Elevations sheets to the Planning Division, and obtain approval from the Planning Director or Designee prior to Building Permit submittal. Any deviations from approved Project Architecture shall be approved at the sole discretion of the Director of Planning or his/her approved designee
20. 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.
21. Parking: Parking shall be provided as depicted on the Site Plan approved by the City Council and shall consist of the following:
- a. RESIDENT: A total of 64 spaces within the parking garage and on the site.
  - b. GUEST: A total of 10 guest spaces are to be provided in the internal driveway and in the parking garage.
  - c. COMPACT: 29 of the resident and guest parking spaces will be designated as compact spaces. No additional spaces shall be compact without written approval from the Planning Director or his/her designee.
22. Bicycle Racks: A minimum of ten (10) long-term bicycle parking spaces shall be installed on the site. A total of four (4) short-term bicycle parking spaces shall also be installed on the site.
23. Trees: The project will remove 34 trees and replace with 40 trees, in conformance with the plans approved by City Council on September 17, 2019.
24. 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.
25. 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 and Resolution no. 8852. The applicable fee levels will be determined by the building permit application date.

- a. Fee-In Lieu Exception Request: Prior to Building Permit issuance, the applicant shall pay the in-lieu fees pursuant to Resolution no. 8852, as well as an additional \$200,000 to the Affordable Housing Ordinance Fund.
- b. Fee-In Lieu Exception Request: Prior to Building Permit issuance, the applicant shall pay an additional one-half of one percent of building development costs towards the City's Public Art Fund.
- c. Fee-In Lieu Exception Request: Prior to Building Permit insurance, the applicant shall pay \$100,000 to benefit the aesthetic enhancement of the South Milpitas Boulevard culvert bridge.

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

### **Biological Resources (TASP Policy 5.26)**

26. 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))**

27. 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)**

28. Dust Control Emissions: During the construction of the Project, Permittee shall comply with all of the following:
- a. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas and unpaved roads) shall be watered two times per day.
  - b. All haul trucks transporting soil, sand or other loose material off the site shall be covered.
  - c. 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.
  - d. All vehicle speeds on unpaved roads shall be limited to 15 MPH.
  - e. 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.
  - f. 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.
  - g. 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.
  - h. 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)**

29. 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)**

30. 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)**
31. 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)***

32. Modifications: The Site Development Plan dated July 10, 2019 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
33. 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; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.

34. 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.
35. 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.
36. 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.
37. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.
38. 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.
39. Coordination with other Projects: Permittee shall coordinate designs with 1992 Tarob Court subdivision (E-EN18-0056) in advance prior to any plan submittal.

#### **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)*

40. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easement, public service utility easement, sanitary sewer easement and other public easement(s) deemed necessary for the project.
41. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.
42. Partial Street Vacation: This project is subject to and contingent upon partial vacation on Tarob Court and Lundy Place.
43. 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.
44. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
45. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, Comcast) for abandonment of existing and dedication of new public service utilities easements.

46. Demolition of Existing Building: Permittee shall demolish existing buildings/facilities that are in conflict with the new property lines.
47. 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.
48. 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).
49. 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.

**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)*

50. 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](http://www.ci.milpitas.ca.gov/_pdfs/engDesignGuidelines/en_dg_vi_transitAreaSpecific.pdf));  
and
  - d. Americans with Disabilities Act (ADA) requirements, where applicable.
51. 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.
52. 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.
53. 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.

54. 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, irrigation, and fire.
  - b) Installation of separate utility service lines (domestic water, fire service, sanitary sewer) for 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) Provide 2" grind and overlay with base repair of existing asphalt pavement to the centerline of the street along the Tarob Court and Lundy Avenue project frontage to the City Engineer's satisfaction.
  - e) Street taper design along the Tarob Court project frontage shall be to the City Traffic Engineer's satisfaction.
  - f) 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.
55. 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.
56. 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.
57. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.
58. 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.
59. Pothole Encroachment Permit: Due to multiple new utility service connections along the project frontage, Permittee shall pothole and verify all potential utility crossing conflict as part of the public improvement plan during the design stage.
60. Permittee shall relocate the existing 12" water main along the Tarob Court project frontage. The permittee shall connect the new 12" water main to the existing 12" water main at both ends per City standards and install per backbone guidelines. The existing water main shall be abandoned per the City's Abandonment Notes and to the City Engineer's satisfaction.
61. Permittee shall upsize the existing 15" storm drain to 24" HDPE from the existing manhole within the 20' Public Utility Easement as shown on parcel map in book 431 of maps at pages 2 and 3, to the point of connection on Tarob Court.
62. Permittee shall abandon and remove the existing 6" sanitary sewer line within the 20' Public Utility Easement as shown on parcel map in book 431 of maps at pages 2 and 3. Existing service to 1971 Tarob Court (APN 086-36-033) and existing sewer main within the easement downstream of said service shall

remain to continue to serve 1971 Tarob Court. The Permittee shall communicate and coordinate with adjacent property owners of 1971 Tarob Court declaring work on the sanitary sewer line serving 1971 Tarob Court.

63. A new 8-inch recycled water main line shall be installed along the City's Preferred Alignment, as described below, or an alignment the City identifies as the most feasible route for the recycled water main line. The City's Preferred Alignment is, connect to the existing recycled water main line on Tarob Court extending, at a minimum, to the point of future irrigation connection for 2001 Tarob Court.

The Permittee agrees to fulfill the requirement of installing a new recycled water main line by completing one of the following options at the City's discretion:

- a. If an alignment has not been installed by another party at the time of Building Permit issuance, the Permittee and the City shall enter into a reimbursement agreement to reimburse the permittee for the design and construction of the portion of the new recycled water main line that exceeds the property frontage length of 230 linear feet.
- b. If the recycled water main is under construction or the construction of the recycle water main has been completed, by another party, at the time of Building Permit issuance, the permittee shall pay the City for the cost of design and construction equivalent to the property frontage length, measured to be 230 linear feet. The cost of design and construction shall be based upon a licensed Civil Engineer's cost estimate, approved by the City.
- c. If the installation of a new recycled water main line is determined to be infeasible by the City, the permittee shall pay the City for the cost of design and construction equivalent to the property frontage length, measured to be 230 linear feet for the City's use to fund the City's preferred future recycled water improvements which the City will design and install at a later time. The cost of design and construction shall be based upon a licensed Civil Engineer's cost estimate, approved by the City.

64. Permittee shall obtain approval and encroachment permit from the City of San Jose for work on the City of San Jose manhole due to realignment of the curb. Permittee shall comply with City of San Jose design requirements and submit offsite plans to the City of San Jose for their review and approval of improvements impacting City of San Jose Infrastructure.

#### **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. (NOTE: Pursuant to Density Bonus approval, standard conditions regarding the reconstruction of the street and the upgrade of stormwater requirements have been requested as regulatory concessions, and therefore do not apply to this project). (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, except for the interior courtyard/podium areas within the building footprint where the potable water shall be used for irrigation. 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 and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, 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. Development Fees: Permittee shall pay the following development fees. The information listed in items “a” through “g” are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.

- a. Transit Area Specific Plan fee at \$32,781/unit for residential uses. Based on approval for development of 40 units, the estimated Transit Area Specific Plan Development Impact Fee for this project is \$1,311,240 (\$32,781/unit x 40 units). TASP fees shall be paid prior to Building Permit Final.
- b. Parkland:
  1. The project is required to dedicate 0.35 acres of parkland, equivalent to \$971,841.02 fees-in-lieu.
  2. The park portion of the TASP fee is valued at \$600,548, equivalent to 0.22 acres. This will be applied to the project parkland requirement.
  3. The applicant will receive credit for 0.13 acres of private recreation space on site. Upon demonstration of provision of this private recreation space to the satisfaction of the Direction of Planning or his/her designee, no additional parkland fees will be due, per table below.

2001 Tarob Court Unit Count	40
2001 Tarob Court Population Estimate	97 persons
TASP Parkland Requirement	3.5 acres/1,000 people or equivalent fees-in-lieu
<b>PARKLAND ACREAGE DUE/FEE EQUIVALENT</b>	<b>0.35 acres/\$971,841.02</b>
<b>Amount Satisfied Through TASP Fees (Acreage/Dollars)</b>	<b>0.22 acres/\$600,548</b>
<b>REMAINING DELTA TO BE SATISFIED (Acreage/Dollars)</b>	<b>0.13 acres/\$371,293.02</b>
Private Recreation Acreage Approved by City	0.13 acres
<b>TOTAL ACREAGE/FEES PROVIDED</b>	<b>0.26 acres</b>
<b>REMAINING ACREAGE/FEE REQUIREMENT TO BE MET</b>	<b>0.0 acres/\$0</b>
<b>BALANCE OF PARKLAND ACREAGE/FEES DUE</b>	<b>0.0 acres/\$0</b>

- c. Storm water connection fee at \$16,771/acre for residential.
- d. Water connection fee at \$1,164/unit for residential, based upon increased water usage.
- e. Sewer connection fee at \$1,406/unit for residential, based upon increased average wastewater flow.

- f. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
- g. FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each.

- 77. Building foundations adjacent to public utilities shall be designed to be self-supporting such that the building weight is not required to be supported during shoring and excavation of adjacent utilities. If any project building is located next to a City easement, the City is not responsible for any foundation damage that would occur due to excavating in the event of servicing or repairs in that easement.
- 78. All domestic, irrigation, and fire water services serving the site shall have at least a reduced pressure backflow preventer.

### **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)*

- 79. 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.
- 80. 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.
- 81. 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.
- 82. 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.
- 83. 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.*

- 84. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to frontage improvements along Tarob Court and Lundy Avenue, as shown on City approved plans.
- 85. 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.
- 86. 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.

87. Landscape Certificate of Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.
88. 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.
89. 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.
90. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.
91. Backflow Devices: All backflow preventer devices shall be tested by a certified backflow tester, and results of the test shall be submitted to the City before going into service.

## **FIRE CONDITIONS**

*The plans approved by City Council are **not** building plans and have not been reviewed nor approved for conformance to the California Building Code (CBC), California Fire Code (CFC) and the Milpitas Municipal Code (MMC). Do not consider the plan set approved by City Council as final building plans approved by the Fire Department. Building plans **must** be submitted for review and approval before construction is to commence. The following notes are a general list of the applicable code requirements (2016) and are provided to assist with the building permit process. Please note that these are not all inclusive. All applicable Building, Fire and Municipal Code requirements must be met in advance of any building permit approvals or related construction. Note, Jan. 01, 2020, new CA Building Codes go into effect.*

92. Technical Assistance: To determine the acceptability of technologies, processes, products, facilities, materials, and uses attending the design, operation or use of a building or premises subject to inspection by the Fire Code Official, the Fire Code Official is authorized to require the owner or agent to provide, without charge to the jurisdiction, a technical opinion(s), plan review(s) and/or report(s). CFC Section 104.7.2
93. Electronic documents: The Fire Code Official may require electronic base documents for all construction documents and operational permits. The Fire Code Official shall designate the software base format for the electronic documents. CFC Section 105.4.2.2, added by MMC Section V-300-2.11
94. Fire Department Emergency Key Box (aka: Knox Box, Knox Locks, Knox Electric Switches, etc.): The Fire Code Official is authorized to require a key box(es) to be installed in an approved location(s) if necessary for life-saving or fire-fighting purposes. Quantity and location shall be as directed by the Fire Code Official. CFC Section 506. In addition to the building, locked mechanical closets, fire alarm closets, sprinkler riser closets, etc. may need a Fire Dept. approved “Knox” key box.
95. Emergency Responder Radio: A Fire Department approved emergency responder radio coverage system shall be provided. CFC Section 510, MMC V-300-2.57
96. Standby Power for Elevators. Elevators shall be provided with standby power. CFC Section 1009.4

97. Two Way Communication: A tow-way communication system complying with Sections 1009.8.1 and 1009.8.2 shall be provided at the landing serving each elevator or bank of elevators on each accessible floor that is one or more stories above or below the level of exit discharge. CFC Section 1009.8
98. Fire Safety: Fire safety during construction, alteration or demolition of the building shall meet the requirements of Chapter 33 of the California Fire Code and the Standards for Construction Site Fire Safety (un-024) by “unidocs” organization (<http://www.unidocs.org>). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. CFC Chapter 33
99. Access Control Devices: When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the Fire Code Official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. CFC Section 504.6, added by MMC Section V-300-2.51
100. Fire Department Access: Fire Department apparatus and staff access shall be provided to all buildings and site. Detailed review will be done during construction permit process. CFC Section 503
- a. Minimum Number of Fire Apparatus Access Points: A Minimum of two independent and approved (approved by the Fire Code Official) means of fire apparatus access shall be provided for the site. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760 m<sup>2</sup>) shall be provided with at least two means of fire apparatus access for each structure. International Fire Code, Section D104.1, adopted and amended by MMC V-300-2.143
  - b. Turning Radius: Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (center). CFC Section 503.2.4
  - c. Fire Apparatus Clearance: Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105.2, adopted and amended by Milpitas Municipal Code. MMC V-300-2.142 and 2.145
  - d. Timing of Installation and Serviceability of Fire Protection Elements: When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed (paved, or other acceptable Fire Department roads that are weather resistive and able to meet the fire apparatus requirements). CFC Section 501.4
  - e. Fire Apparatus Access: Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided.
  - f. Adjacent Access Rights: No source of access from lands adjoining a property to be developed shall be considered fire apparatus access roads, unless there is obtained the irrevocable and unobstructed rights and recorded as an ingress/egress access easement with the Country of Santa Clara. CFC Section 503.7, added by MMC V-300-2.48
  - g. Fire Access Road Materials and Load Bearing Requirements: Fire access roads shall be paved (concrete and/or asphalt cement, or other concrete type pavement approved by the Fire Dept.). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus

Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division for specifications. CFC Section 503.2.3

- h. Obstruction of Fire Access: Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4
- i. Emergency Vehicle Access (EVA): EVA roads, when required, shall meet the fire department site access requirements. CFC Section 503.
- j. Marking of Fire Access Roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE". CFC Section 503.3. Minimum marking shall be pole signage and red curb with "FIRE LANE" stencil. Signage and red curbs shall be done throughout and as needed to clearly identify the no parking zones.

Minimum marking shall be (1) pole signage and (3) red curb with "FIRE LANE – CVC 22500.1" stencil.

- k. Buildings with Courtyards. Fire access shall be provided to enclosed courts for firefighting and rescue operations. Each court shall be designed to provide readily accessible method of bring a fire department ground ladder (36' long) into the courtyard. Please anticipate and accommodate personnel carrying ladder. CFC Section 102.9
- l. Building Setbacks: Building/structure set back, proximity to fire access roads. At least one of the required access routes meeting the Fire Dept. conditions shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to the entire side of the building. 2016 International Fire Code, Section D105.3, adopted by MMC Section V-300-1.01
- m. Site Design Changes: The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.

101. Fire Protection Water Supply (Hydrants, On-site and/or Public): An approved water supply (hydrants on-site and/or public) capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Water supply shall meet the Fire Code and the City of Milpitas Engineering Division water supply guidelines and the CFC Section 507, Appendix B and Appendix C. Note, the Civil plans submitted under this Planning review are not approved for construction.

- a. Water System Calculations: Private fire service mains and appurtenances shall be designed and installed in accordance with the City of Milpitas Engineering design guideline requirements and the NFPA 24. Design calculations and all the necessary design information for the water system to meet the domestic and fire flow requirements as per the City of Milpitas Engineer Division water design requirements shall be provided as part of the construction permit process. CFC Section 507.

The minimum water flow at the worst case hydrant outlet within the private system shall be not less than 3,000 gpm.

- b. Fire Hydrant Location: The location and quantity of hydrants will be evaluation during the construction permit process. This applies to the on-site private streets as well as to the public streets. CFC Section 507.5
- c. Hydrant for Automatic Fire Sprinkler/Standpipe Systems: Buildings equipped with an automatic fire sprinkler system and/or a standpipe system installed in accordance with Sections



903 and or 905 shall have a fire hydrant within 50 feet of the fire department connections. CFC Section 507.1.1, amended by MMC Section V-300-2.53

- d. Private Hydrant Requirements: Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color. CFC Section 507.5.7, added by MMC V-300-2.54.
- e. No Parking in Front of Hydrants: No parking is permitted in front of fire hydrants. Hydrants located on streets (Public or Private Street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514

102. Automatic Fire Sprinkler System for Structures:

- a. Automatic Fire Sprinkler. The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 Standards. Note, system type will depend on building/structure "construction type" analysis. California Fire Code Section 903
- b. Sprinkler Valves: All valves controlling the water supply for the automatic sprinkler system shall be electrically supervised by a listed fire alarm control unit. CFC 903.4
- c. Fire Riser Location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.65
- d. Sprinkler Design. Hydraulic design for the automatic fire sprinkler system shall provide a minimum of 20% safety margin. CFC Section 903.3.5.6, MMC V-300-2.68

103. Requirements for Fire Service Water Laterals for Building Sprinkler Systems: Each building shall have a fire service water laterals for the automatic fire sprinkler system and shall meet the California Fire Code requirements Chapter 9 and the NFPA applicable Standards. Note that the utilities drawings provided are not reviewed nor approved for construction. CFC Section 912.1

- a. FDC/PIV (fire department connection/post indicating valve) Location(s). The location of the fire department FDC's/PIV's shall be at a readily visible and accessible location off the fire access road and approved by the Fire Code Official. FDC's/PIV's shall not be located behind parking stalls nor behind any other obstruction. Final review for location for the FDC's/PIV's will be conducted during the construction permit process. CFC Section 912.2
- b. FDC/PIC Signage. A metal sign with raised letters at least 1 inch in size shall be mounted on all fire department connections. Signage shall be reflective, weather resistive and approved by the Fire Code Official. CFC Section 912.5
- c. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Section 903 and or 905 of the CA Fire Code shall have a fire hydrant within 50 feet of the fire department connections. CA Fire Code Section 507.5.1.1 Added by MMC V-300-2.53
- d. Fire Service Water Lines: Service water supply laterals for the sprinkler systems and the on-site fire hydrants shall be independent of each other. NFPA 13, Chapter 24
- e. Backflow Protection. Potable water supply to the automatic sprinkler and/or the standpipe systems shall be protected against backflow as required by the Health and Safety Code section 13114.7 and the City of Milpitas Utilities Engineering Division. CFC Section 912.6
- f. Water Drainage. All new installations of sprinkler systems shall preclude sprinkler test and system drain water from discharging into the storm drain; provisions to direct water to the sanitary sewer or landscape or other approved means shall be provided. Sprinkler system design shall include the proposed method for drainage of sprinkler system discharge. Storm Water Pollution Regulations.

104. Fire Alarm System, R-2 Occupancy: A fire alarm system and smoke alarms shall be installed in Group R-2 Occupancies as required in Sections 907.2.9.1 through 907.2.9.4. CFC Section 907.2.9  
CFC Section 907.2.9.1 - Manual Fire Alarm System  
CFC Section 907.2.9.2 - Smoke Alarm (in accordance with 907.2.11)

- a. Manual Fire Alarm System: A manual fire alarm system that activated the occupant notification system in accordance with Section 907.5 shall be installed in Group R-2 occupancies. CFC 907.2.9.1
- b. Smoke Alarm, R-2 Occupancy: R-2 Occupancy, listed single and multiple-station smoke alarms complying with UL217 shall be installed in accordance with Sections 907.2.11.2 through 907.2.11.6 and the NFPA 72. CFC Section 907.2.11
- c. Visible Alarm Notification: For Group R-2 required by Section 907 to have a fire alarm system, all dwellings units and sleeping units shall be provide with the capability to support visible alarm notification appliances in accordance with NFPA 72. CFC 907.5.2.3.3
- d. Fire Alarm Zones: Fire alarm system(s) shall be zoned as per the requirements of the CFC Sections 907.6.3 and 907.6.4.
- e. Fire Alarm Panel: Fire alarm panel (or fire alarm annunciator panel) shall be located in a readily accessible location and shall be provided with the necessary access and working clearance as required by the CA Electrical Code. CFC Section 907.6.4.1.1
- f. Fire Alarm Monitoring: Fire alarm monitoring (approved supervising station - UL, or FM approved). Fire alarm systems required by the Fire Code or by the California Building Code shall be monitored by an approved supervising station in accordance with the NFPA 72. CFC Section 907.6.6

105. Building/Structure Other Requirements:

- a. Stairs to Roof: All stairs shall run up to the roof. The fire code official shall determine the required number and location of stairway(s) to the roof. CFC Section 504.3.1, MMC Section V-300-2.49
- b. Roof stairs. When there are roof planes with vertical difference of more than 24" there shall be stairs for access between the different roof planes. The Fire Code Official shall determine the location for the stairs. CFC Section 102.9
- c. Roof Guardrails at Interior Courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through. CFC 316.7, added by Milpitas Municipal Code V-300-2.45

Exception: Where the roof opening is greater than 600 square feet in area.

- d. Premises Identification: New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505. The Fire Dept. may require the installation of address numbers at multiple building locations. CFC Section 102.9
- e. Address Illumination: All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.52.
- f. Medical Service Elevators. All new passenger service elevators shall meet the medical service elevator requirements in the California Building Code, 2016 Edition, Chapter 30. CFC Section 607.1.1, MMC V-300-2.59
- g. Standpipe System: Standpipe system shall be installed in accordance with the California Fire Code Section 905.2 and NFPA 15. When stairs are provided with intermediate landings, the standpipes shall be located at the bottom floor level, at the top floor level and at all intermediate landings. CFC Section 905.4
- h. Portable Fire Extinguishers. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.

106. Electrical Generators:
- a. Fuel tank(s) located below grade shall be considered underground tanks in accordance with the California code of Regulations, Title 23, Division 3, Chapter 16 (State Underground Tank Regulations).
  - b. If the fuel tank system(s) is not to be considered an underground tank, as defined by the underground tank regulations, provide documentation demonstrating compliance with the specified State Water Resource Control Board's Guidance letter LG-165-2.
  - c. Construction drawings, for the fuel tank, shall be submitted to the City for compliance with the California Fire Code Chapters 27 and 34.
107. Landscape sheets: The proposed landscaping may be impacted by the comments above and the requirements for fire access, fire systems and devices (such as apparatus access, hydrants, fire service lines, fire department connections valves, etc.). The Fire Dept. reserves the right to relocate, delete or change the proposed landscaping when in conflict with fire systems and devices. CFC 507.5.4.
108. Plan Submittal: Complete plans and specifications for all aspects of fire protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2

## **BUILDING CONDITIONS**

### **General**

109. Applicable Codes: Applicable codes shall be 2016 California Building Code (CBC), California Mechanical Code (CMC), California Electrical Code (CEC), California Plumbing Code (CPC), Green Building Standards Code (CalGreen), California Energy Code (CEnC) and 2017 Milpitas Municipal Code (MMC).
110. Build It Green/LEED Requirement: Residential portion of the building shall meet Build It Green 50 Green Points or LEED for Homes Certified threshold per MMC sec. II-20-3.01.
111. Licensed Engineer/Architect: Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for a building permit.
112. Application for New Building Address: Applicant shall apply for new building addresses prior to submitting for a building permit.
113. Occupancy Group Designations: Apartment/Condominium building shall be classified as Group R2 Occupancy per CBC sec. 310 and private garages not exceeding 1,000 square feet as Group U Occupancy per sec. 312. Each private garage shall be separated from other private garage by 1 hr fire barriers and/or 1 hr horizontal assemblies per CBC sec. 406.3.1. Multiple private garages not separated by fire barriers shall be classified as Group S-2 Occupancy per sec. 311.
114. Fire Rating for Apartment Buildings: Apartment/Condominium buildings over 2 stories high shall be one-hour fire-rated minimum (Type V-A) when allowable area increase with sprinkler is used per CBC Table 504.4.
115. Allowable Building Area: Allowable building area for the building shall be as per CBC Table 506.2.

116. Exterior Wall Openings: The maximum area of protected and unprotected openings in exterior walls shall comply with CBC sec. 705.8.
117. Separating Units Requirements: Wall and floor separating units in the same building and separating units from other occupancies are required to be one-hour fire resistive construction per CBC sec. 420, 708 and 711.
118. Apartment Building Considered Separate and Distinct: Apartment/condominium building shall be considered as separate and distinct buildings for the purpose of determining area limitations, continuity of fire walls, limitation of number of stories and type of construction where it is separated from Group S-2 garage by 3-hour fire rated horizontal assembly, garage is not more than one story above grade and of Type I-A construction as per CBC sec. 510.2.
119. Required Separation in Residential Building: Required separation in buildings between dwellings and private garages shall be as per CBC sec. 420.2 and 420.3.
120. Required Separation in Residential Building: Required separation in buildings with mixed occupancies shall be per CBC sec. 508
121. Corridor Fire Rating: Corridor with occupant load over 10 shall be one-hour rated with 20-minute doors leading to it per CBC sec. 1020.1.
122. Minimum Number of Exits: Minimum no. of exits shall be provided per CBC Table 1006.3.1 and the exits provided shall comply with CBC sec. 1022 through 1027. The required number of exits from any story shall be maintained until arrival at grade or public way per CBC sec. 1006.3.1. Elevator shall not be used as a component of a required means of egress per CBC sec. 1003.7, except elevators are used as an accessible means of egress in accordance with sec. 1009.4.
123. Required Egress: At least one required accessible means of egress shall be an elevator complying with CBC sec. 1009.4 in buildings where a required accessible floor is four or more stories above or below a level of exit discharge per sec. 1009.2.1.
124. Two-Way Communication System: Two way communication system is required at elevator landing on each accessible floor that is one or more stories above or below the story of exit discharge per CBC sec. 1009.8.
125. Exit Stair Enclosures: Exit stair enclosures shall not provide exit through corridor as per CBC sec. 1022.1, but shall extend to exterior of the building with an exit passageway.
126. Mezzanines: Mezzanine in the upper units shall be considered a story if it does not meet requirements of CBC sec. 505.2
127. Carbon Monoxide/Smoke Detectors Required: In the dwelling units, provide carbon monoxide detectors and smoke detectors per CBC sec. 915 and 907.2.11.
128. Escape Window Location: Escape bedroom windows below the 4<sup>th</sup> floor shall open into a public street, yard or exit court that opens to a public way as per CBC sec. 1030.1.
129. Exit Courts: Exit from exit courts shall not reenter exit access as per CBC sec. 1028.1 and sec. 1028.5
130. Exit Courts: Required exit courts to which escape bedroom windows open, shall be provided with exiting as per CBC sec. 1028.1.

131. Elevator Enclosure: Elevator shall be enclosed in a shaft enclosure per CBC sect. 713.2 and 713.4.
132. Elevator Hoistway Opening: Elevator hoistway opening shall be protected and enclosed within a shaft enclosure per CBC 3006.2 and 712.1.1.
133. Elevator Hoistway Door Opening: Elevator hoistway door opening shall be protected per CBC 3006.3.
134. Elevator Lobby Sign: Elevator lobby identification signs shall be provided at any door with direct access to an enclosed elevator lobby at landings in interior exit stairways where two or more doors lead to the floor level per CBC 1023.10.
135. Interior Stairway Enclosure: Interior stairway shall be enclosed per CBC sec. 1023.2.
136. Roofing Material: Roofing material shall be as per CBC Table 1505.1.
137. Exit Doors: Doors in a room with occupant load of 50 or more persons shall swing in the direction of exit per CBC sec. 1010.1.2.1. Exit doors from assembly occupancy shall be provided with panic hardware per sec. 1010.1.10.
138. Exit Signs: Provide exit signs and tactile exit signs when two exits are required per CBC sect. 1013.1 and 1013.4.
139. Building Occupancy Frontage: Buildings that house Group A Occupancy shall front directly on or discharge to a public street not less than 20 feet in width per sec. 1029.2 and 1029.3. The main entrance to the building shall be located on a public street or on the exit discharge.
140. Occupant Load: Occupant load factor for assembly and multi-use room without fixed seats, including clubhouse, common use deck area, courtyard, etc., shall be 1 occupant per 7 sq. ft per CBC Table 1004.1.2.
141. Exit Enclosure: Exit enclosure in building less than four stories in height shall be one-hour fire-resistive construction per CBC sec. 1023.2.
142. Exit Enclosure: Exit enclosure in building four or more stories in height shall be two-hour fire-resistive construction per CBC sec. 1023.2.
143. Stairways: In buildings four or more stories in height, one stairway shall extend to the roof surface through a penthouse complying with CBC sec. 1510.2, unless the roof has a slope steeper than 4:12 per CBC sec. 1011.12. In buildings without an occupied roof, access to the roof shall be permitted to be a roof hatch or trap door not less than 16 sq ft with a min. dimension of 2ft and accessed by an alternating tread device, ship ladder or a permanent ladder.
144. Exterior Openings: Exterior openings required for natural light shall open directly onto a public way, yard or court as set forth in CBC sec. 1205.1.
145. Egress Balconies: Egress balconies shall comply with CBC sec. 1021.
146. Egress Courts: Egress courts shall comply with CBC sec. 1028.4.
147. Acoustical Report: Provide acoustical report to determine sound insulation requirements for at least exterior walls. Interior sound insulation shall be as per CBC sec.1207 or as per acoustical report.

148. Ventilation Requirements for Dwelling Units with Non-Openable Windows: Dwelling units, which has non-openable windows as required by acoustical report shall be provided with mechanical ventilation per CBC sec. 1203.1 and CMC sec. 402.3. As per City policy BDP-ME05, City does not allow the use of exhaust only fans to achieve the fresh outside air requirement through infiltration.
149. Ventilation Requirements for Studio Units: In studios, natural light and ventilation for sleeping areas shall meet requirements per CBC sec.1203.5 and sec.1205.2. Any room is permitted to be considered as a portion of an adjoining room for natural lighting and ventilation purpose where the common wall is open and unobstructed and provides an opening of not less than 1/10 of the floor area of the interior room and not less than 25 square feet per CBC 1205.2.1.
150. Electric Vehicle Charging Stations Requirement: Where 17 or more multifamily dwelling units are constructed on a building site, 3% of the total number of parking spaces provided for all types of parking facilities, but no less than 1, shall be electric vehicle charging stations (EVCS) capable to supporting future electric vehicle supply equipment per CalGreen sec. 4.106.4.2.
151. Electric Vehicle Charging Stations Location: At least one EVCS shall be located in common use areas and available for use by all residents per CalGreen sec. 4.106.4.2.1. Per City Policy No. BDP-BLG17 and CalGreen sec. 4.106.4.2.2, one in every 25 EVCS, but no less than 1, shall be accessible and located on an accessible route. Accessible EV charging parking space shall not be counted as one of the required accessible parking spaces as required by CBC, because the space is allowed to be used by non-disabled people.
152. Solar Ready Requirement: The buildings shall comply with solar ready requirements per CEnC 110.10.
153. Mechanical Duct Location: No mechanical duct shall penetrate exterior walls unless approved by Planning Division.
154. Balconies, Landings and Decks: Balconies, landings, decks, stairs and similar floor projections exposed to the weather shall comply with City Policy No. BDP-BLG40:  
[http://www.ci.milpitas.ca.gov/\\_pdfs/BLG40\\_RequirementsforConstructionofBalconies.pdf](http://www.ci.milpitas.ca.gov/_pdfs/BLG40_RequirementsforConstructionofBalconies.pdf).

## **ACCESSIBILITY**

155. Site Accessibility Plan: Provide site accessibility plan.
156. Group U Private Garages: Group U private garages, which are accessory to covered multifamily dwelling units shall be accessible as required in CBC sec. 1109A
157. Accessible Parking Provided: People with disabilities accessible parking shall be provided per CBC sec. 1109A.3 (2% shall be accessible of the covered dwelling units). Signage is not required.
158. Accessible Parking Required: Each type of parking shall be accessible as per CBC sec. 1009A.3 and 1009A.4.
159. Accessible Assigned Parking Requirement: If assigned parking spaces are provided for residents, at least 2% of the assigned parking spaces shall be accessible in each type of parking facility per CBC 1109A.4.
160. Accessible Visitor Parking Requirement: If unassigned or visitor parking is provided, a minimum of 5% parking stalls shall be accessible and shall be provided with signage as per CBC sec. 1009A.5.

161. Accessible Parking Location: Accessible parking spaces shall be dispersed and located closest to the accessible entrances and elevators per CBC per sec.1009A.7.
162. Accessible Parking Location: Accessible parking spaces shall be located so that persons with disabilities is not compelled to walk or wheel behind parked cars other than their own as per sec. 1109A.7.
163. Van Accessible Parking for Resident and Guest: One in every eight accessible parking spaces for resident and guest parking shall be “Van accessible”, but not less than one per CBC sec. 1109A.8.6.
164. Van Accessible Parking for Public Parking: One in every six accessible parking spaces for public parking (e.g. retail space or leasing office, etc.) shall be “Van accessible”, but not less than one per CBC sec. 11B-208.2.4.
165. Accessible Routes of Travel: An accessible route of travel shall be provided to all accessible building entrances. At least one accessible route shall be provided from public transportation stop, accessible parking and public street to building entrance per CBC sect. 1110A.1. When more than one route is provided, all routes shall be accessible.
166. Accessibility Signs: Accessibility signs shall be provided at every primary public entrance and at every major junction along or leading to an accessible route of travel and at building entrance that are accessible per CBC, sec. 1110A.2
167. Accessible Access: All primary entrances and required exit doors to building and facilities shall be accessible to people with disabilities per CBC, sec. 1117A.2.
168. Egress Clearance: Exit stairways considered as an accessible means of egress shall be min. 48” clear width between handrails and provided with the area of refuge per CBC sec. 1009.3 unless building is provided with approved automatic fire sprinkler system.
169. Egress Elevator: At least one accessible means of egress shall be an elevator per CBC sec. 1009.2.1 unless building is provided with approved automatic fire sprinkler system and horizontal exit at each floor and approved by Fire Department to exempt this requirement.
170. Accessible Elevators: All elevators shall be accessible per CBC sec. 1124A and at least one shall be medical emergency service elevator as per sec. 3002.4a.
171. Parking Structure Clearances: All entrances to and vertical clearances within parking structures shall have a minimum of 8 feet 2 inches where required for persons with disabilities per CBC sec. 1109.A.8.1.
172. Accessible Means of Egress: Each accessible portion of the space shall be served by accessible means of egress in at least the same number as required by CBC sec. 1006.2 or 1006.3 per sec. 1009.1.
173. Areas of Refuge: Areas of refuge shall be provided with a 2-way communication system between the area of refuge and a central control point per CBC sec. 1009.6.3.
174. Two-Way Communication System: 2-way communication system shall be provided at each elevator landing serving each accessible floor per CBC 1009.8.
175. Accessible Elevators: All elevators shall be accessible as per CBC sec. 1124A, except private elevators serving one dwelling unit.

176. Medical Emergency Service Elevators: All elevators in buildings four or more stories in height (including private elevator) shall be provided with not less than one medical emergency service to all landings meeting the provisions of CBC sec. 3002.4a.
177. Elevator Emergency Operation: If an elevator is considered as part of an accessible means of egress, it shall comply with the emergency operation, signaling device and standby power requirements and shall be accessed from an area of refuge per CBC sec. 1009.4.
178. Accessible Bathing and Toilet Facilities: Bathing and toilet facilities within covered multifamily dwelling units shall comply with CBC sec. 1134A.
179. Maneuvering Clearance: Provide maneuvering clearance at all interior doors per CBC sec. 1132A.5 and at entrance doors and exit doors per CBC sec. 1126A.3.
180. Accessible Kitchens: Kitchens within covered multifamily dwelling units shall comply with CBC sec. 1133A.
181. Bread Board Clear Space: Where bread board is provided in lieu of 30" work surface per CBC 1133A.4 exception, clear floor space shall be provided at each bread board and the clear floor space shall extend min. 19" into the knee and toe space per CBC 1133A.7.
182. Accessible Entrance: Covered multifamily dwellings served by an elevator, including private elevator, shall be designed and constructed to provide at least one accessible entrance on an accessible route per CBC sec. 1106A.1 and the units shall be adaptable and accessible into and throughout the dwelling unit as provided in Division IV per CBC sec. 1128A.
183. Multistory Dwelling Units Without Elevators: Multistory dwelling units without elevator shall comply with CBC sec. 1102A.3.1

#### **PUBLIC AND COMMON AREA**

184. Accessible Public-Use Areas: Public-use areas shall be accessible per CBC Ch. 11B and common-use areas for residents and their guests shall be accessible per CBC sec. 1127A.
185. Accessible Common Facilities: Fitness center, swimming pools and all common facilities shall be fully accessible to people with disabilities per CBC sec. 1102A.4, sec.1141A and sec.1127A.

#### **ENGINEERING**

186. Storm Drain and Sanitary Sewer System: Storm drain and sanitary sewer system shall be gravity system without use of mechanical device.
187. Utility Lines: No utility lines shall cross property lines unless an easement agreement between the properties are recorded with the County and shall be submitted as part of the submittal documents and noted on the plans.
188. Soil Report: A soil report shall be provided when applying for grading, site improvement and building permit.
189. Paving: Paving of driveways and parking lot shall comply with MMC sec. II-13-18.
190. Concrete Flat Work: All non-structural concrete flat work shall be as per MMC sec. II-13-17.05.



191. Erosion and Sediment Control Plan: Erosion and sediment control plan shall be submitted when applying for grading permit as per MMC sec. II-13-10.
192. Recordation of Easements: Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. The developer shall include interim erosion control provisions and schedules in the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained as per MMC sec. II-13-11.

### **ELECTRICAL**

193. New Electrical Services: All new electrical services shall be underground per MMC sec. II-6-2.02.
194. Building Main Services Disconnect: The building main services disconnect shall be located on the first floor level of the building per MMC sec. II-6-2.03.
195. Grounding System: Grounding system shall comply with MMC sec. II-6-2.04.

### **STRUCTURAL**

196. Structural Design Calculations: Provide two complete sets of structural design calculations (vertical and lateral) and five sets of construction plans and details when applying for a building permit. Plans and calculations shall be wet signed and stamped by Civil/Structural Engineer.

### **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**