SPECIAL JOINT MEETING OF THE MILPITAS CITY COUNCIL AND HOUSING AUTHORITY

AGENDA

TUESDAY, JANUARY 13, 2026
CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA
5:30 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:
Đối với Việt Nam, gọi 408-586-2400
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3072

** To access written translation during the meeting, scan the QR Code.*

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.
You may watch the Council meeting without providing public comment by accessing it via links here.

Meeting shall be livestreamed - Go to:
Facebook: https://www.facebook.com/CityofMilpitas/
YouTube: https://www.milpitas.gov/youtube
Web Streaming: https://www.milpitas.gov/webstreaming

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may only be provided live during the City Council meeting in person, unless the City Council approves remote public comment. All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items. Members of the public may submit written comments by email to CityClerk@milpitas.gov

The meeting will be streamed via Zoom for viewing purposes only unless the City Council approves remote public comment. To watch via Zoom, please register at:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_PdjAOw74R0CtH7aNBIilfA

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@milpitas.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

MILPITAS CITY COUNCIL CODE OF CONDUCT

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Use electronic devices appropriately while on the Council dais.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (5:30 PM)

ADJOURN TO CLOSED SESSION

(a) PUBLIC EMPLOYEE APPOINTMENT AND HIRING

Pursuant to Government Code Section 54957(b)(1)
Employee Position: City Manager

(b) CONFERENCE WITH LEGAL COUNSEL

Pursuant to Government Code Section 54956.9(d)(1)
Existing Litigation: *McHarris vs. City of Milpitas*, Santa Clara County Superior Court Docket No. 23-CV-427505; Sixth District Docket No. H053453

(c) PUBLIC EMPLOYEE APPOINTMENT AND HIRING

Pursuant to Government Code Section 54957(b)(1)
Employee Position: Acting City Manager

CLOSED SESSION ANNOUNCEMENT:

Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present.

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Lam)

PRESENTATIONS

- Certificate Presentation to Library and Education Advisory Commission Essay Winners
- Martin Luther King, Jr. Day (Proclamation)

PUBLIC FORUM

Members of the public are invited to speak on any item that does not appear on today's agenda. Comments will be limited to three minutes or less at the Mayor's discretion. When called to speak, you are encouraged to state your name for the record. As an item not listed on the agenda, no action can be taken, however the City Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar.

C1. Receive City Council Calendar of Meetings (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for January 2026.

C2. Approve City Council Meeting Minutes (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of December 16, 2025.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive the list of items that have been requested by City Councilmembers and received consensus in previous meetings to date.

C5. Consider Recommendations from Mayor Montano for Appointments to Rent Review Board (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive Mayor Montano's recommendations and approve and confirm recommendations for appointments to the Rent Review Board

C6. Approve Report of Actions Taken by the City Manager During the City Council and City of Milpitas Housing Authority Winter Recess from December 16, 2025 through January 13, 2026 (Staff Contact: Matt Cano Assistant City Manager, 408-586-3012)

Recommendation: Approve report of actions taken by the City Manager during the City Council and City of Milpitas Housing Authority Winter Recess from December 16, 2025 through January 13, 2026.

C7. Authorize and Approve Travel Request for Mayor Carmen Montano to Washington, D.C. (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

Recommendation: Authorize and approve the travel to Washington, D.C., for Mayor Carmen Montano to attend the 94th Winter Meeting of the United States Conference of Mayors to be held on January 28-30, 2026, for a combined estimated total amount of $4,500 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

C8. Authorize the Assistant City Manager to Release the Option to Purchase the Affordable Housing Unit (Lot 20, Building 2) at 2001 Tarob Court, Accept the Net Proceeds from the Sale, and Execute the Necessary Documents (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

Recommendation: Authorize the Assistant City Manager to release the option to purchase the Affordable Housing Unit (Lot 20, Building 2) at 2001 Tarob Court, accept from the Developer the net proceeds from the sale of the unit in accordance with the Affordable Housing Agreement, and execute the necessary documents.

C9. Authorize the Assistant City Manager, or Designee, to Negotiate and Execute an Amendment to the Agreement with Harris & Associates, Inc. for a Transit Area Development Impact Fee Nexus Fee and Community Facilities District Nexus Study (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111; and Jay Lee, Planning Director, 408-586-3077)

Recommendation: Authorize the Assistant City Manager, or designee, to negotiate and execute an amendment to the Professional Services Agreement with Harris & Associates, Inc. for a Transit Area

Development Impact Fee (TADIF) Nexus Fee and Community Facilities District (CFD) Nexus Study to include: (1) retroactively extend the Agreement through December 1, 2026; (2) add $5,100 for a revised maximum compensation of $105,085; (3) revise Exhibit A, Scope of Services, to add additional services; (4) revise Exhibit B, Schedule of Charges/Payments, to reflect payments for additional services; and (5) revise Exhibit C-4, Activity Schedule, to reflect updated project timeline.

C10. Accept the Additional FY 2025 Citizens' Option for Public Safety (COPS) Grant for Front-Line Law Enforcement Services and Approve the Appropriation of Funds to the Police Department's FY 2025-26 Operating Budget (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)

Recommendation: 1) Accept the additional FY 2025 Citizens' Option for Public Safety (COPS) Grant in the amount of $128,220.02 to be spent in alignment with the City Council approved FY 2025 spending plan; and 2) Approve the appropriation of funds to the Police Department's FY 2025-26 Operating Budget for front-line law enforcement services.

C11. Accept the FY 2026 Citizens' Option for Public Safety (COPS) for Front-Line Law Enforcement Services and Approve the Appropriation of Funds (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)

Recommendation: (1) Accept the FY 2026 Citizens' Option for Public Safety (COPS) Grant in the Amount of $125,185 for Front-Line Law Enforcement Services; and (2) Approve the Appropriation of Funds in the Total Amount of $125,185 to the Police Department's FY2025-26 Operating Budget.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a "yes" or "no" as whether to move the item forward. If a majority of the City Council agrees to move the item forward, the City Manager shall place the item on a future agenda.

ADJOURNMENT

December 2025

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Milpitas City Council Calendar
January 2026

February 2026

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1  **CITY OBSERVED HOLIDAY** **CITY OFFICES CLOSED**	**2**	**3**
4	**5** **7:00 PM**-Parks, Recreation & Cultural Resources Commission (EC)	**6**	**7** **2:00 PM**-Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara)	**8** **4:00 PM**-Santa Clara VTA Policy Advisory Committee (EC) **4:00 PM**-Treatment Plant Advisory Committee (CM) (San Jose) **6:00 PM**-Youth Advisory Commission (HL) **7:00 PM**-Cities Assoc of SCC (CM)	**9**	**10**
11	**12** **7:00 PM**- Library and Education Advisory Commission (HL)	**13** **5:30 PM**-Special City Council	**14** **4:30 PM**-City Council Finance Subcommittee (CM/EC) **4:30 PM**-Economic Development and Trade Commission (WL) **7:00 PM**-Silicon Valley Clean Energy Board of Directors (GB) (Sunnyvale)	**15** **6:30 PM**-Bay Area Water Supply Conserv Agency (CM) (Oak Room - San Mateo Main Library)	**16**	**17**
18	**19**  **MARTIN LUTHER KING JR. BIRTHDAY** **CITY OFFICES CLOSED**	**20** **6:00 PM**-Closed Session **7:00 PM**-City Council	**21** **6:00 PM**-Energy and Environmental Sustainability Commission (EC) **7:30 PM-**Science, Technology and Innovation Commission (WL)	**22** **4:00 PM**-Silicon Valley Regional Interoperability Authority (SVRIA) (GB)	**23**	**24**
25	**26** **7:00 PM**-Arts Commission (CM)	**27**	**28** **7:00 PM**-Planning Commission	**29** **12:00 PM**-Santa Clara County Library JPA Board Meeting (CM) (Campbell, CA)	**30**	**31**

REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, DECEMBER 16, 2025

The City Council of the City of Milpitas convened in a Regular Meeting of the Milpitas City Council on December 16, 2025, in the City Council Chamber, 455 E. Calaveras Blvd, Milpitas, CA, and via teleconference/Zoom webinar.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

Mayor Montano called the Regular City Council meeting to order at 6:01 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT:	Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien
ABSENT:	None.

ADJOURN TO CLOSED SESSION

Acting City Attorney Creech briefed the City Council on the Closed Session Items.

There were no public comments.

The City Council adjourned to closed session at 6:03 PM.

(a) PUBLIC EMPLOYEE APPOINTMENT AND HIRING

Pursuant to Government Code Section 54957(b)(1)
Employee Position: City Manager

(b) PUBLIC EMPLOYEE APPOINTMENT AND HIRING

Pursuant to Government Code Section 54957(b)(1)
Employee Position: City Attorney

CLOSED SESSION ANNOUNCEMENT:

Upon returning from closed session at approximately 7:00 PM, Acting City Attorney Creech reported that there was nothing to report out.

PLEDGE OF ALLEGIANCE

Mayor Montano led the Pledge of Allegiance.

INVOCATION

Mayor Montano delivered the invocation.

PRESENTATIONS

There were no presentations.

PUBLIC FORUM

There were the following public speakers:
1. Gwan Alisantosa
2. Kaveri Rangaraj

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

Acting City Attorney Creech asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest. Acting City Attorney Creech asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Councilmember Lam read the City Council Code of Conduct.

APPROVAL OF AGENDA

Assistant City Manager Cano requested a modification to the agenda, requesting that Item C5 be continued to the January 13 meeting.

After discussion, motion: to approve the agenda with Item C5 continued to the next City Council meeting.

Motion/Second: Councilmember Chua / Vice Mayor Barbadillo
Motion carried by the following:

AYES:	Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien
NOES:	None

CONSENT CALENDAR

There were no public speakers.

After discussion, motion: to approve the Consent Calendar.

Motion/Second: Councilmember Lien / Mayor Montano
Motion carried by the following:

AYES:	Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien
NOES:	None

1. Receive City Council Calendar of Meetings (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received City Council Calendar of Meetings for December 2025 and January 2026.

2. Approve City Council Meeting Minutes (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Approved City Council Meeting minutes of November 18 and December 2, 2025.

3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received the list of anticipated agenda items for the next regular City Council meeting.

4. **Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

   Received the list of items that have been requested by City Councilmembers and received consensus in previous meetings to date.

5. **Consider Recommendations from Mayor Montano for Appointments to Rent Review Board (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

   Continued to January 13, 2026.

6. **Authorize and Approve Request from Mayor Carmen Montano to Present a Key to the City to the Mayor of Mexico City, Alcaldesa/Mayor Clara Brugada (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**

   Authorized and approved request from Mayor Carmen Montano to present a Key to the City to the Mayor of Mexico City, Alcaldesa/Mayor Clara Brugada.

7. **Authorize and Approve Travel Request for Councilmember Lam to Sacramento, CA for the League of California Cities Mayors and Council Members Academy (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**

   Authorized and approved the travel to Sacramento, CA, for Councilmember William Lam to attend the League of California Cities Mayors and Council Members Academy to be held on January 21–23, 2026, for a combined estimated total not-to-exceed amount of $1,600 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

8. **Authorize the City Manager, or Designee, to Execute a Purchase Order with CDW Government LLC for Desktops and Laptops (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111; and Daniel Nam, Information Technology Director, 408-586-2712)**

   Authorized the City Manager, or designee, to execute a purchase order with CDW Government LLC for the purchase of desktops and laptops for a total amount not to exceed $292,866, inclusive of applicable sales tax and recycling fees.

9. **Adopt a Resolution Delegating Authority to the City's Personnel Officer or Designee to Notify Recognized Employee Organizations of Specified Procurements and Contracts as Required by California Assembly Bill 339 (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086; Luz Cofresí-Howe, Finance Director, 408-586-3111)**

   Adopted **Resolution No. 9463** delegating authority to the City's Personnel Officer, or their designee, to notify recognized employee organizations of specific procurements and contracts that may materially affect represented positions pursuant to California Assembly Bill 339 beginning January 1, 2026.

10. **Adopt a Resolution Authorizing the City Manager, or Designee, to Accept Grant Funds from Santa Clara Valley Transportation Authority, Negotiate and Execute Necessary Agreements, and Appropriate Related Funds for the Continuation and Expansion of the Milpitas SMART Program (Staff Contact: Jay Lee, Planning Director, 408-586-3077; and Luz Cofresí-Howe, Finance Director, 408-586-3111)**

    Adopted **Resolution No. 9464** authorizing the City Manager, or designee, to: (1) Accept $2,766,144 in grant funds from the Santa Clara Valley Transportation Authority (VTA) for the continuation and expansion of the Milpitas SMART (Simple, Mobile, Access to Reliable Transit) program; (2) Negotiate and execute all necessary instruments, including a grant funding agreement with VTA, for disbursement and/or expenditure of these grant funds; (3) Approve the related budget appropriation actions in the amount of $2,856,144 in the General Fund to the Intergovernmental Revenue and the Planning Department budgets; and $243,486 in the General Government Fund to the Planning Department; and to the Intergovernmental Revenue estimate and Planning Department budget; and (4) Negotiate and execute a related amendment to the Agreement with RideCo US Inc. to add $3,099,630, extend the term through June 30, 2027, and add scope of services as required by this grant, including for trip planning and data sharing features.

PUBLIC HEARINGS

11. Review and Accept the Development Impact Fee Annual and Five-Year Reports for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan Impact Fee, and Storm Drainage Improvement Fee (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111)

Assistant City Manager Cano introduced the item. Finance Director Cofresí-Howe presented the report.

Councilmember Lien asked for clarification on the fund balances.

Councilmember Chua inquired about how these funds compared to previous years and asked for specifics about how the funds are used, noting that they are restricted to specific purposes rather than going to the General Fund.

Vice Mayor Barbadillo expressed interest in analyzing the economic impact of converting commercial land to residential within the TASP area, particularly looking at how property tax revenues from residential developments compare to what might have been earned from commercial uses. Acting City Attorney Creech noted that impact fees are designed to offset public improvement costs regardless of development type and may not be a good measure for this analysis. Assistant City Manager Cano noted that a comprehensive analysis of TASP fees would be conducted early in 2026.

Mayor Montano opened the public hearing. There being no public speakers, she closed the public hearing.

Councilmember Lam questioned why the Calaveras fund balance was relatively low, and staff clarified that the balances shown were point-in-time figures rather than cumulative totals. Mayor Montano also expressed surprise at the low figures. Assistant City Manager Cano mentioned that $5 million had previously been spent on Calaveras project analysis, with $1.5 million from the Calaveras fund and $3.5 million from the TASP fund.

After discussion, motion: to (1) Review and accept the Development Impact Fee Annual consistent with the Mitigation Fee Act for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan (TASP) Impact Fee, and Storm Drainage Improvement Fee for the fiscal year ended June 30, 2025; (2) Adopt **Resolution No. 9465** making all findings required by the Mitigation Fee Act..

Motion/Second: Councilmember Lien / Mayor Montano
Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien

NOES: None

12. **Accept the City’s Annual Comprehensive Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2025 (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111)**

Assistant City Manager Cano introduced the item. Finance Director Cofresí-Howe presented the report and responded to questions from the City Council.

Mayor Montano opened the public hearing. There were no public speakers and Mayor Montano closed the public hearing.

After discussion, <u>motion:</u> to review and accept the City’s Annual Comprehensive Financial Report and other related Annual Audited Reports for the Fiscal Year Ended June 30, 2025. .

Motion/Second: Councilmember Lien / Vice Mayor Barbadillo
Motion carried by the following:

AYES:	Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien
NOES:	None

13. **Adopt a Resolution Approving the Fiscal Year 2025-26 User and Regulatory Fee Schedule (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111)**

Assistant City Manager Cano introduced the item. Finance Director Cofresí-Howe presented the report.

Mayor Montano opened the public hearing. There were the following public speakers:
1. Voltaire Montemayor

Mayor Montano closed the public hearing.

Councilmember Lam asked why public safety fees increased by 15.17%. Finance Director Cofresí-Howe explained this was based on the year-over-year increase in average compensation for public safety employees, resulting from recently completed negotiations. Assistant City Manager Cano added that the first year of the agreement had larger increases than subsequent years.

After discussion, <u>motion:</u> to Adopt **Resolution No. 9466** approving the Fiscal Year 2025-26 User and Regulatory Fee Schedule..

Motion/Second: Councilmember Lien / Vice Mayor Barbadillo
Motion carried by the following:

AYES:	Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien
NOES:	None

<u>COMMUNITY DEVELOPMENT</u>

14. **Receive a Presentation on the Work Completed on the Innovation District Parks and Trails Master Plan and Provide Feedback (Staff Contact: Jay Lee, Planning Director, 408-586-3077)**

Assistant City Manager Cano and Planning Director Lee introduced the item. Principal Planner Van Hua, joined by consultants Karen Folsom and Beverly Yee, presented the report.

The Council provided individual feedback on their preferred concepts:

- Vice Mayor Barbadillo: Concept #1 for southern park, Concept #1 for northern park, and trail Concept #2
- Councilmember Chua: Concept #1 for both parks (citing support for food trucks and vendor activities), and trail Concept #2
- Councilmember Lam: Concept #3 for both parks, and trail Concept #1
- Councilmember Lien: Concept #2 for both parks, and trail Concept #2 (with a caution about community outreach for dog parks)
- Mayor Montano: Concept #1 for southern park and Concept #3 for northern park, with trail Concept #2. She emphasized the need for facilities that would serve workers in the Innovation District, such as walking paths and gathering spaces, rather than children's play structures.

There were the following public speakers:
1. Voltaire Montemayor

No action taken.

LEADERSHIP AND SUPPORT SERVICES

15. Consider Appropriating Unassigned Fund Balances or Reserves Based on the November 4, 2025 Prioritization Vote (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

Assistant City Manager Cano introduced the item and Senior City Manager Analyst Minot presented the report.

There were the following public speakers:
1. Voltaire Montemayor

The Council discussed additional priorities for funding. Mayor Montano suggested funding the library security improvements at $150,000 for one year (half of the original two-year request), which would include $100,000 for security services and $50,000 for maintenance and enhancements. Public Works Director Christian Di Renzo explained that security services had previously been effective, but vandalism had increased since the contract expired on September 30. Councilmember Lam asked about long-term solutions, and Assistant City Manager Cano noted that while security funding would likely be needed for several years, staff was also exploring ways to address underlying socioeconomic issues and possible infrastructure hardening. The Council reached consensus to fund Library Improved Security at $150,000 for one year.

The Council also discussed the Park Improvements Grant Matching fund. Assistant City Manager Cano explained that while Sandalwood Park was a particular priority for which design had been funded but construction funding was not yet identified, the request was made more generic to allow flexibility in pursuing grant opportunities. The Council reached consensus to fund Park Improvements Grant Matching at $200,000.

Councilmember Lien advocated for funding the Milpitas Youth Force summer jobs program at $80,000, noting its importance in providing youth with valuable work experience. The Council reached consensus to fund the Milpitas Youth Force at $80,000.

Councilmembers Chua and Lam discussed a previously prioritized initiative to expand Milpitas SMART transportation services to San Jose International Airport and Valley Medical Center. Staff explained that cost estimates were not yet available but would be developed by late January through discussions with RideCo, the service provider. The Council decided to wait for these estimates before allocating funding.

After discussion, motion: to Adopt **Resolution No. 9467** to appropriate unassigned fund balances or reserves for approved one-time funded priorities based on the November 4, 2025 prioritization vote. as follows:

- $150,000 for Library Security Improvements
- $200,000 for Park Improvements Grant Matching
- $80,000 for the Milpitas Youth Force

Motion/Second: Councilmember Chua / Vice Mayor Barbadillo
Motion carried by the following:

AYES:	Mayor Montano, Vice Mayor Barbadillo, Councilmember Chua, Councilmember Lam, Councilmember Lien
NOES:	None

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Assistant City Manager Cano announced the remaining schedule for Tillering with Santa events by the Fire Department for December 17.

Councilmember Chua acknowledged Voltaire Montemayor's birthday on December 10, and led the Council in wishing him a happy birthday.

Councilmember Lien requested consideration of an "Adopt a Drain" program to engage community members and students, which received unanimous consensus from the Council.

ADJOURNMENT

Mayor Montano adjourned the meeting at 9:51 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

as of 1/9/2026

January 20, 2026 – Regular Meeting (7:00 PM)

CLOSED SESSION

INVOCATION (Councilmember Lam)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for January and February 2026 (City Clerk)
2. Approve City Council Meeting minutes of January 13, 2026 (City Clerk)
3. Preview list of items for February 3, 2026 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Appointments (City Clerk)
6. Authority to Proceed with State Disability Insurance for ProTech Members (Human Resources)
7. One-Year Continuation of Library Security Services (Public Works)
8. Architectural and Engineering Services Agreements (Public Works)
9. Initial Acceptance of Holiday Inn and Springhill Suites Project (Public Works / Engineering)

PUBLIC HEARINGS

10. Community Development Bloc Grant FY 26-27 Application Review (Housing)

COMMUNITY DEVELOPMENT

11. PLHA Funding Application for 2022 + 2023 (Housing)

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

OPEN ITEMS				
Request No.	**Topic**	**Submitted by:**	**Date Requested**	**STATUS and/or DATE scheduled on City Council meeting agenda:**
1	Consider an "Adopt a Drain" program to engage community members and students	Lien	12/16/2025	An update on this item will be included in the next quarterly prioritization update.
2	Conduct a review of commission names to better reflect their focus	Montano	11/18/2025	An update on this item will be included in the next quarterly prioritization update.
3	Review the Council prioritization process	Chua	11/18/2025	An update on this item will be included in the next quarterly prioritization update.
4	Look into the process of establishing a Friendship City relationship	Montano	11/18/2025	An update on this item will be included in the next quarterly prioritization update.
5	Research how public funds could be used to advertise local restaurants during the upcoming Super Bowl	Montano	11/18/2025	An update on this item will be included in the next quarterly prioritization update.
6	Have a community forum on the Crown Castle Small Cell towers.	Montano	11/18/2025	An update on this item will be included in the next quarterly prioritization update.
7	Install debrillators on city properties	Barbadillo	10/28/2025	An update on this item will be included in the next quarterly prioritization update.
8	Place a billboard at the Sport Center to inform the community about events and activities	Montano	10/21/2025	An update on this item will be included in the next quarterly prioritization update.
9	Explore the creation of small parks in neighborhoods without them	Montano	10/21/2025	An update on this item will be included in the next quarterly prioritization update.

ACTIVE ITEMS				
Request No.	**Topic**	**Submitted by:**	**Date Requested**	**STATUS and/or DATE scheduled on City Council meeting agenda:**
10	Increase the amount of funding for the ADU Permit Subsidy	Council	4/1/2025	An update on this item will be included in the next quarterly prioritization update.
11	Council Special Events Fund to provide funding for City Councilmembers to attend local, non-political, events where their attendance is beneficial for the City of Milpitas	Montano/Chua	4/1/2025	An update on this item will be included in the next quarterly prioritization update.
12	Add to the existing Strategic Land Acquisition Revenue Reserve	Council		An update on this item will be included in the next quarterly prioritization update.
13	Storefront and Crime Prevention Initiative by making funding available for businesses to focus on public safety related physical improvements to their storefronts.	Montano		An update on this item will be included in the next quarterly prioritization update.
14	Revisit the mural selection committee process to make it more inclusive by involving all commissioners in the Arts Commission	Montano	8/19/2025	An update on this item will be included in the next quarterly prioritization update.
15	Exapnd the Milpitas SMART program to include service to the San Jose Airport	Lam	8/12/2025	An update on this item will be included in the next quarterly prioritization update.
16	Staff explore a program similar to San Leandro's, which provides Ring doorbell cameras to residents	Chua	8/12/2025	An update on this item will be included in the next quarterly prioritization update.
17	Develop a project management informational memo.	Barbadillo	4/1/2025	An update on this item will be included in the next quarterly prioritization update.
18	Look into adding an entertainment zone to Main Street.	Montano	3/4/2025	An update on this item will be included in the next quarterly prioritization update.
19	Staff provide a detailed analysis of overtime expenditures by department.	Barbadillo	3/4/2025	An update on this item will be included in the next quarterly prioritization update.
20	Look into a policy to require a Super Majority vote by Council for any deductions to budget reserves.	Chua	2/18/2025	An update on this item will be included in the next quarterly prioritization update.
21	Bring back a discussion regarding fentanyl-related issues	Barbadillo	2/18/2025	An update on this item will be included in the next quarterly prioritization update.
22	Feasibility study regarding a police satellite office.	Montano	2/18/2025	An update on this item will be included in the next quarterly prioritization update.
23	Staff organize a job fair for City job openings	Chua	11/19/2024	An update on this item will be included in the next quarterly prioritization update.

NOTE: Deferred and Completed Items are not listed

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

ACTIVE ITEMS				
Request No.	**Topic**	**Submitted by:**	**Date Requested**	**STATUS and/or DATE scheduled on City Council meeting agenda:**
24	Bring back a study or analysis of the permit process	Chua	11/19/2024	An update on this item will be included in the next quarterly prioritization update.
25	Explore updating the city's business tax rate schedule	Chua	10/1/2024	An update on this item will be included in the next quarterly prioritization update.
26	Explore funding options for new signage following the decision to rename the Milpitas Library to the Milpitas Jose Esteves Library	Barbadillo	9/3/2024	An update on this item will be included in the next quarterly prioritization update.
27	Look into adopting an ordinance similar to San Jose allowing ADUs (Accessory Dwelling Units) to have a separate title and be sold separately.	Chua	8/13/2024	An update on this item will be included in the next quarterly prioritization update.
28	Conduct a traffic study on Escuela Parkway to address circulation concerns	Montano	5/7/2024	An update on this item will be included in the next quarterly prioritization update.
29	Explore the possibility of augmenting the Planning Commission stipend	Barbadillo	4/16/2024	An update on this item will be included in the next quarterly prioritization update.
30	Consideration of the 20% Low Income Below Market Rate Housing	Montano	12/5/2023	An update on this item will be included in the next quarterly prioritization update.
31	Referral for utility infrastructure cost on Main Street from Carlo to Corning Streets	Montano	10/17/2023	An update on this item will be included in the next quarterly prioritization update.
32	Main Street International Festival	Lien	10/3/2023	An update on this item will be included in the next quarterly prioritization update.
33	Pickleball Pilot Project	Chua	2/28/2023	An update on this item will be included in the next quarterly prioritization update.
34	Main Street Infrastructure Projects	Montano	2/28/2023	An update on this item will be included in the next quarterly prioritization update.
35	Main Street Flooding at Library	Chua	2/28/2023	An update on this item will be included in the next quarterly prioritization update.
36	Have the City look into the possibility of a Citywide Senior Discount	Barbadillo	2/7/2023	An update on this item will be included in the next quarterly prioritization update.
37	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	An update on this item will be included in the next quarterly prioritization update.
38	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	An update on this item will be included in the next quarterly prioritization update.
39	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	An update on this item will be included in the next quarterly prioritization update.
40	Consider Community Museum and Park on Main St.	Phan	8/20/2019	Discussions with the property owner of this site are ongoing and staff is tracking returning to council by June 2025 with an update.

NOTE: Deferred and Completed Items are not listed

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Consider Recommendations from Mayor Montano for Appointments to Rent Review Board (Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/13/2026
Recommendation:	Receive Mayor Montano's recommendations and approve and confirm recommendations for appointments to the Rent Review Board

BACKGROUND:

On October 15, 2019, the City of Milpitas adopted Chapters 2 and 3 of Title XII of the Milpitas Municipal Code related to the adoption of a rent review program and tenant protections. In particular, the ordinance outlines a process for landlords to notify tenants of rent increases and the establishment of a Rent Review Board that would hold a hearing on the potential rent increase, upon request, if the mediation process between the tenant and the landlord is not successful, per Section XII-2-9.01 of the Municipal Code,

> *The Rent Review Board's decision is non-binding on the parties and the rent increase shall be effective as provided in the notice of rent increase but subject to subsection XII-2-7.06 (a landlord's failure to appear renders the increase void), unless the parties enter into an agreement pursuant to subsection XII-2-9.00 of this Chapter.*

On November 3, 2025, the City received a request for a Rent Review Board hearing from a tenant. Per the Municipal Code, a Rent Review Board hearing must be held within 45 days of this request (by December 19, 2025). Since the adoption of the rent review program ordinance in 2019, staff is not aware of a prior request for review that has been made to the Rent Review Board, and the seats of the Rent Review Board are not currently filled.

Per Section XII-2-5.00 of the Milpitas Municipal Code, the Board must consist of five (5) members and one (1) alternative as follows:

- Two members shall be landlord representatives who own rental units in the City of Milpitas;
- Two members shall be tenant representatives who are residents of the City of Milpitas; and
- One member and one alternate shall be a neutral third party who is a resident of the City of Milpitas and is neither a landlord nor a tenant;
- The Rent Review Board members shall have a demonstrated interest in the issues considered by the Rent Review Board and will be selected based on their relevant experience.

Per Section XII-2-5.01 of the Municipal Code, the Rent Review Board is intended to evaluate the reasonableness of proposed rent increases at the request of either a landlord or tenant pursuant to the rent review program set forth in the Municipal Code.

Per Section XII-2-5.02 of the Municipal Code, members of the Rent Review Board generally serve four (4) year terms, with one of the landlord seats and one of the tenant seats serving an original two (2 year term such that term of appointment for members are staggered.

Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

The Milpitas Commissioner Handbook states that all Commissioners are expected to attend all regular meetings. Commissioners absent from three or more meetings in a year may be subject to removal from the Commission.

ANALYSIS:
The Mayor is expected to transmit their recommended appointments to the Rental Review Board prior to the City Council meeting. Due to timing, final names may not be available by the distribution of this agenda packet. If not, they will distributed separately prior to the meeting. Appointments will include:

- Landlord Representatives:
- Tenant Representatives:
- Neutral Third Pary Representative:
- Neutral Third Pary Representative (alternate):

FISCAL IMPACT:
There is no fiscal impact associated with this item.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):
The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

ATTACHMENTS:
None

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve Report of Actions Taken by the City Manager During the City Council and City of Milpitas Housing Authority Winter Recess from December 16, 2025 through January 13, 2026 (Staff Contact: Matt Cano Assistant City Manager, 408-586-3012)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/13/2026
Recommendation:	Approve report of actions taken by the City Manager during the City Council and City of Milpitas Housing Authority Winter Recess from December 16, 2025 through January 13, 2026.

BACKGROUND:
On December 2, 2025, the City Council and the City of Milpitas Housing Authority adopted a resolution delegating authority to the City Manager, or their designee, to approve and execute project-related documents, including contract documents, and urgent administrative items during the City Council and City of Milpitas Housing Authority winter recess from after the last City Council meeting held on December 16, 2025 through January 13, 2026.

ANALYSIS:
The purpose of this agenda report is to provide the City Council and City of Milpitas Housing Authority with a list of items upon which this authority was used.

There were no items during the Winter Recess from December 16, 2025 through January 13, 2026 upon which this authority was used.

POLICY ALTERNATIVE(S):
Not Applicable

FISCAL IMPACT:
No fiscal impact as no actions were taken.

California Environmental Quality Act (CEQA):
CEQA does not apply to actions that the City does not take pursuant to Cal. Code Regs., tit. 14, § 15270. The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378. Even if a project, the action is exempt from further CEQA review pursuant to Cal. Code Regs., tit. 14, § 15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Attachment(s):
None

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize and Approve Travel Request for Mayor Carmen Montano to Washington, D.C. (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/13/2026
Recommendation:	Authorize and approve the travel to Washington, D.C., for Mayor Carmen Montano to attend the *94th Winter Meeting of the United States Conference of Mayors* to be held on January 28-30, 2026, for a combined estimated total amount of $4,500 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

BACKGROUND:
The 94th Winter Meeting of the United States Conference of Mayors to be held on January 28-30, 2026. This conference brings together mayors and city officials to collaborate on issues affecting cities, share best practices, and engage with federal policymakers on municipal priorities, including housing, public safety, infrastructure, and economic development. Included in this agenda packet is the preliminary agenda for this academy as Attachment A.

ANALYSIS:
The City of Milpitas Travel and Expense Policy require the City Council to approve all travel for the elected officials and City Manager. Council approval of the Washington, D.C. travel request will allow Mayor Carmen Montano to gain additional knowledge from mayors and city officials nationwide and share that information with the City Council and staff. Continued conference participation and attendance also ensure that the Milpitas community is fully represented at the regional, state, and national levels.

POLICY ALTERNATIVE(S):
Not Applicable

FISCAL IMPACT:
The estimated individual expense for the Washington, D.C., 94th Winter Meeting of the United States Conference of Mayors, including the registration fee, airfare, lodging, meals, mileage, and incidental reimbursements, are $4,500.

To date, Mayor Carmen Montano has a balance of $5,114 in her Individual Elected Official allocation of $10,000 for Conferences/Meetings/Memberships, which is sufficient to cover the estimated conference cost of $4,500. A balance of $590 remains in Mayor Montano's account if this action is taken by City Council.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):
The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

ATTACHMENT(S):
(a) The 94th Winter Meeting of the United States Conference of Mayors Draft Agenda
(b) Council Conferences Budget Tracking

January 27, 2026

3:00 PM ET

Registration

3:00 PM-7:00 PM

January 28, 2026

7:00 AM ET

Registration

7:00 AM-6:00 PM

8:00 AM ET

Breakfast Available

8:00 AM-8:45 AM

8:45 AM ET

Opening Plenary Session

8:45 AM-10:00 AM

10:15 AM ET

Breakout Sessions

10:15 AM-11:15 AM

First-Time Attendee and New Mayors Session

10:15 AM-11:15 AM

11:30 AM ET

Breakout Sessions

11:30 AM-12:30 PM

12:45 PM ET **Wednesday Plenary Lunch**

12:45 PM-2:00 PM

2:15 PM ET **Breakout Sessions**

2:15 PM-3:15 PM

3:30 PM ET **Breakout Sessions**

3:30 PM-4:30 PM

4:45 PM ET **Mayors-Only Session**

4:45 PM-6:15 PM

6:30 PM ET **Opening Reception**

6:30 PM-8:00 PM

January 29, 2026

7:00 AM ET **Registration**

7:00 AM-6:00 PM

8:00 AM ET	**Breakfast Available** 8:00 AM-8:45 AM
8:45 AM ET	**Mayors and Business Leaders Plenary Session** 8:45 AM-10:00 AM
10:15 AM ET	**Breakout Sessions** 10:15 AM-11:15 AM
11:30 AM ET	**Breakout Sessions** 11:30 AM-12:30 PM
12:45 PM ET	**Healthy and Sustainable Communities Plenary Lunch** 12:45 PM-2:00 PM
2:15 PM ET	**Breakout Sessions** 2:15 PM-3:15 PM

3:30 PM ET **Breakout Sessions**

3:30 PM-4:30 PM

5:00 PM ET **Democratic Mayors Association Meeting**

5:00 PM-6:00 PM

Republican Mayor Forum Reception

5:00 PM-6:00 PM

7:00 PM ET **"Welcome to Washington, D.C. Reception"**

7:00 PM-9:00 PM

January 30, 2026

7:00 AM ET **Registration**

7:00 AM-12:00 PM

8:00 AM ET **Breakfast Available**

8:00 AM-8:45 AM

8:45 AM ET **Honoring Leadership in the Arts Plenary Session**

8:45 AM-10:00 AM

10:15 AM ET

Breakout Sessions

10:15 AM-11:15 AM

Executive Committee

10:15 AM-11:45 AM

11:30 AM ET

Breakout Sessions

11:30 AM-12:30 PM

12:45 PM ET

Closing Plenary Lunch

12:45 PM-2:00 PM

Council Conferences/Trainings FY 25-26 Budget Tracking Sheet

Mayor Montano				
	Training/Travel Event	FY25-26 Amount Expended/Estimates	Total $ 9,409.20	Remaining Balance $ 590.80
1	42nd Annual NALEO Conference	$1,490.99		
2	2025 Cal Cities	$3,094.88		
3	Cities Association of Santa Clara County Annual Holiday Party Ticket	$75.00		
4	Mission College Gala	$150.00		
5	Mayors Academy Registration Cancelation Fee	$75.00		
4	*USCM 94th Winter Meeting: Jan 28-30, 2026*	*$4,500.00*	*estimates only*	

Vice Mayor Barbadillo				
	Training/Travel Event	FY25-26 Amount Expended/Estimates	Total $ 50.00	Remaining Balance $ 9,950.00
1	Cities Association of SCC Annual Holiday Dinner: Dec 8, 2024	$50.00		

Councilmember Chua				
	Training/Travel Event	FY25-26 Amount Expended/Estimates	Total $ 0	Remaining Balance $10,000.00

Councilmember Lien				
	Training/Travel Event	FY25-26 Amount Expended/Estimates	Total $ 2,737.33	Remaining Balance $ 7,262.67
1	2025 Cal Cities	$2,662.33		
2	Cities Association of SCC Annual Holiday Dinner 2025	$75.00		

Councilmember Lam				
	Training/Travel Event	FY25-26 Amount Expended/Estimates	Total $4,608.52	Remaining Balance $5,391.48
1	2025 Cal Cities	$2,833.17		
2	Cities Association of SCC Annual Holiday Dinner 2025	$75.00		
3	Mayor and Councilmember Academy – Jan 21-23, 2026	$1,600.00	*estimates only*	

City of Milpitas
Agenda Report
(AR)

Item Title:	**Authorize the Assistant City Manager to Release the Option to Purchase the Affordable Housing Unit (Lot 20, Building 2) at 2001 Tarob Court, Accept the Net Proceeds from the Sale, and Execute the Necessary Documents (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**
Category:	Consent Calendar-Community Development
Meeting Date:	1/13/2026
Recommendation:	Authorize the Assistant City Manager to release the option to purchase the Affordable Housing Unit (Lot 20, Building 2) at 2001 Tarob Court, accept from the Developer the net proceeds from the sale of the unit in accordance with the Affordable Housing Agreement, and execute the necessary documents.

BACKGROUND:

Affordable Housing Ordinance

The City's Affordable Housing Ordinance ("AHO") requires developers to provide affordable units within any project that includes ten (10) or more residential units. Fifteen percent (15%) of housing units within applicable projects must be affordable units set at a defined Affordable Sales Price. For rental projects, units must be rented to very low or low-income households. For ownership projects, units must be sold to very low, low, or moderate-income households. The AHO includes provisions that address the design, location, and construction of affordable housing units. Alternative compliance options, such as off-site construction, land dedication, or inclusionary housing in-lieu fees, are available with City Council approval.

Prior to approval of occupancy of a residential project, developers must enter into an Affordable Housing Agreement ("Agreement") with the City to ensure compliance with the AHO. The Agreement addresses the number, size, and location of affordable units within the project, the Affordable Sales Price for the units, long-term rental/resale/occupancy restrictions, recording of affordable housing covenants, and other related requirements.

The Agreement also defines the required marketing period for the affordable units, with provisions if the developer cannot sell any of these units during the specified timeframe. Options include allowing the City to either: 1) purchase the affordable unit at the Affordable Sales Price, or 2) release the unit with the City receiving the net proceeds based on the difference between the market-rate sales price and the Affordable Sales Price, less real estate transaction expenses.

Current Inventory of Affordable Housing Units

The City currently oversees an inventory of approximately 283 affordable or below-market-rate (BMR) ownership units where the initial sale price and future resale of the units are restricted for at least 45 years. The inventory includes 36 very-low, 53 low, and 194 moderate-income units. The table below lists the current residential projects with affordable housing units.

Inventory of Affordable Housing Units

Developer	Location	Total Units	Affordable/BMR Units
Summerfield Homes	Summerfield Drive	110	22
Parc Metro	S. Main Street & E. Curtis Avenue	382	28
Parc Place	E. Curtis Avenue & Hammond Way	358	58
Luna at Terra Serena	Abel Street (north of Curtis Avenue)	25	25
Paragon	S. Main Street & Ede Lane	147	29
Terra Serena	Abel Street (north of Curtis Avenue)	683	63
Centria East	Great Mall Parkway & Main Street	137	26
Town Center Villas	Shaughnessy Drive & Belshaw Drive	65	16
Coyote Creek	Murphy Ranch Road & Nestwood Way	134	7
Robsen Homes	Dogwood Street & N. Park Victoria	38	4
KB Homes	Tarob Court	32	5
Total		**2,111**	**283**

Lumen at Tarob Court Affordable Housing Agreement
On January 22, 2022, the City Council approved a 32-unit ownership housing project, entitled "Lumen at Tarob Court," located at 2001 Tarob Court. The project consists of stacked townhomes/condominiums in two four-story buildings. Subsequently, on August 26, 2024, the City entered into an Agreement (Attachment A) with KB Homes of South Bay, Inc. ("Developer") to provide five three-bedroom, moderate-income units distributed between the two buildings.

Approval of occupancy was granted for the housing development in Fall/Winter 2024, and marketing of the units commenced at approximately the same time. Four of the five affordable units have been sold to qualifying moderate-income households at an Affordable Sales Price substantially below the market-rate price of approximately $1.2 million. Attachment B shows the site plan for the development and the location of the five affordable units. All the units contain three bedrooms and two bathrooms with over 1,400 square feet of living space and an enclosed two-car tandem garage. Attachment B also lists the Affordable Sales Price for the units, when the four units were sold, and the household size of the buyers.

The affordable units at the Lumen project have been challenging to market. Currently, all but one unit have been sold, marking the near completion of home sales for the development. Successfully marketing the affordable units requires a concerted effort by the KB Homes sales team, with significant support and numerous referrals from HouseKeys, the program manager for the City's affordable housing ownership portfolio. With the KB Homes sales team no longer on site, it has become increasingly difficult to attract potential buyers and promote the final available unit.

Additionally, the marketability of the units was hindered by the unconventional floor plans and interlocking configurations, where living spaces from one or more units were sometimes situated above others. Attachment C show the floor plan for the remaining affordable unit on Lot 20 (365 Lundy Place). The floor plan is a “Unit 2” and is highlighted in yellow. The unit contains 1,414 square feet of living space: the first floor (ground level) contains an entry area (173 square feet) with access to the tandem garage; the second floor contains the primary living space (1,241 square feet) with a family room, kitchen, three bedrooms, and two baths, and a small deck. Lot 20 is in a four-story building and is sandwiched between entry staircases that lead to two units located directly above Lot 20. These two units occupy the third and fourth floors and are shown as “Units 5 and 7” on the second page of Attachment C. To date, the City has pre-qualified multiple potential buyers for this unit, but following tour of the unit, potential buyers have voiced concerns about buying a “townhome” with units above them and have not completed the sale.

The challenge of marketing the affordable units is evident in the extensive outreach efforts conducted by Housekeys during the past year. HouseKeys ran a series of marketing campaigns, including 24 invites and 2 open houses. This drove an initial 178 applicants to the project and all 5 units went into contract. After the buyer for Lot 20 cancelled their contract. Finding a buyer for this last remaining unit has been particularly challenging despite additional marketing. HouseKeys ran a second set of campaigns to attract another 198 applicants. 64 applicants cancelled with the majority visiting the property and deciding, after viewing it, that they did not want to move forward.

ANALYSIS:

The Developer has submitted a letter dated November 17, 2025 (Attachment D), offering to sell the remaining unsold affordable unit (Lot 20, Building 2) to the City at the Affordable Sales Price as contemplated by Section 2.5 of the Agreement, which describes the terms for marketing the affordable units.

In accordance with Section 2.5(a) of the Agreement, if an affordable unit remains unsold one hundred fifty (150) calendar days after the date a Certificate of Occupancy was issued, the City can exercise an option to purchase the unit. The City has sixty (60) calendar days (in this case, until January 16, 2026) to notify the Developer if it will purchase the unit. If the City chooses to purchase, the Developer must convey the property to the City within thirty (30) days of the City's written notice. The City would need to allocate $716,361 to acquire the affordable unit at the Affordable Sales Price, plus an allowance for real estate and administrative expenses.

Alternatively, in accordance with Section 2.5(c) of the Agreement, the City can decline to purchase the affordable unit. The Developer would then have the right to sell the unit on the open market without affordability restrictions, and it would be considered a "Released Unit." Upon sale and close of escrow on the Released Unit, the Developer would remit to the City the net sale proceeds based on the difference between the eventual market-rate sales price and the Affordable Sales Price, less reasonable real estate transaction expenses.

When the loss of an affordable unit may be imminent, the usual preference of the City is to preserve the unit by exercising its option to purchase and selling it to an eligible affordable household. A recent example is 1377 Coyote Creek Way, where the Housing Authority authorized in June 2025 the purchase of a townhome to allow HouseKeys to resolve outstanding financing issues and find an eligible buyer. Sale of this townhome is still pending resolution of title and construction issues. Additionally, in November 2025, the Housing Authority authorized a possible option to purchase a townhome at 173 Parc Place Drive, if necessary, to avoid a potential foreclosure action.

In many instances, staff would recommend purchasing the unit to retain it in the City's portfolio. However, after conferring with HouseKeys staff and understanding the extensive outreach conducted to date to fine an eligible buyer, it is evident that considerable additional effort would be required to secure an eligible buyer if the City exercises its option to acquire the unit. The unit could be on the market for an indefinite period, and a price concession or other incentives may need to be considered. Although renting could be an interim solution, managing a single rental unit in an ownership project is not ideal from a property management perspective and raises potential future relocation issues. Other concerns include limited funds to protect all housing assets, a growing inventory of assets to protect, existing outlay to protect other potentially more valuable assets, and significant uncertainty in the duration that the City may have to carry the cost of purchase before reselling this unit.

Given the marketing challenges, staff recommends that the City Council decline to acquire the affordable unit in this instance. Instead, staff recommends releasing the unit from affordability restrictions and accepting the net sale proceeds in accordance with Section 2.5(c) of the Agreement. While the sales price is unknown and will be driven by the market, the estimated assessed value is $1.2 million. Deducting real estate transaction expenses, the City might receive up to approximately $450,000 in net proceeds upon sale of the unit by the Developer, with the maximum amount assuming it can be sold at the assessed value. These proceeds would be deposited in the City's Affordable Housing Fund (AHF).

POLICY ALTERNATIVE:

Alternative 1: Direct the purchase of the affordable unit and allocate $716,361 (Affordable Sales Price for moderate-income unit) and authorize Housekeys to be the City's agent for reselling the property. In accordance with the City's current contract and fee schedule with Housekeys, a six percent commission or maximum $36,000 would be charged for this service upon sale of the unit. An additional $10,000 allowance is suggested to cover additional real estate and administrative expenses as well as ongoing incidental costs such as homeowner association dues. If Alternative 1 is preferred, it is suggested that that City Council allocate up to $800,000 from the AHF for acquiring and reselling the property.

Pros: An affordable moderate-income ownership unit would be preserved. The City would eventually recover most of the acquisition cost. If after an additional marketing effort, an eligible buyer cannot be secured, the City could decide to relinquish the affordable unit and sell it at the market price and replenish the AHF with the proceeds. This backup option would be similar to the City releasing the unit to KB Homes for sale, except that the City would incur added costs for keeping the affordable unit on the market for an extended period, and the added costs may or may not be reimbursed.

Cons: The City would assume responsibility for marketing and selling the unit. it is uncertain when it could be sold to an eligible buyer. After a year of concerted marketing without success, it may be appropriate to release the unit at this time and reserve the net proceeds for other affordable housing projects and programs.

Reason for Not Recommending: The unit could remain on the market for many more months. A substantial amount of the Affordable Housing Fund would be expended and not replenished until the unit is resold. In the interim, potential funding for other AHF activities might have to be delayed or alternative funding sources must be identified. Additional costs beyond real estate transaction and administrative expenses might also be required, such as financial incentives or price concessions. For instance, the City could consider reducing the price and setting it at the Affordable Sales Price for a low-income household. This option would align with the City's affordable housing goals, although the City would essentially be subsidizing the sale of the unit since it would be purchased at the moderate-income Affordable Sales Price.

PROJECT SCHEDULE/KEY MILESTONES:

If the City Council approves the release of the affordable unit, staff will provide a written notice to KB Homes by January 16, 2026. The City would receive the net sale proceeds once the unit is sold by the Developer, which is uncertain at this time.

If the City Council directs Alternative 1 to purchase the unit, staff will inform the Developer accordingly to process the sales transaction and will work with HouseKeys to continue to market the unit to an eligible buyer.

FISCAL IMPACT:

If the affordable unit is released, upon close of escrow on the sale of the unit by the Developer, the net sale proceeds would be submitted to the City in accordance with the Agreement. This sum would be deposited in the AHF to support affordable housing programs and projects as directed by the City Council.

If Alternative 1 is selected, up to $800,000 would be allocated from the AHF to purchase the affordable unit and to cover real estate and incidental property expenses. Upon resale of the unit, the net sales proceeds would be deposited back into the AHF.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378. Even if a project, the action is exempt from further CEQA review pursuant to Cal. Code Regs., tit. 14, § 15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The action entails the operation and purchase of an existing residential structure, involving negligible or no expansion of existing or former use, and is exempt from CEQA pursuant to Cal. Code Regs., tit. 14, § 15301.

ATTACHMENTS:

(a) Affordable Housing Agreement for Lumen at Tarob Court, August 26, 2024
(b) Lumen at Tarob Court Site Plan
(c) Lot 20 Floor Plan
(d) KB Homes Notice of Offer to Sell Affordable Unit to City, November 17, 2025

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035
Attn: Housing Division

To be recorded without fee.
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

AFFORDABLE HOUSING AGREEMENT
(Lumen at Tarob Court by KB Home)

THIS AFFORDABLE HOUSING AGREEMENT ("Agreement") is dated as of August 26, 2024, by and between the CITY OF MILPITAS a California municipal corporation ("City"), and KB Home South Bay, Inc, a California corporation ("Developer"). City and Developer are sometimes referred to in this Agreement, individually, as a "Party" and, collectively, as the "Parties."

RECITALS

A. Developer is fee owner of certain real property located at 2001 Tarob Court, Milpitas, California, which is more specifically described in Exhibit A attached to this Agreement and incorporated into this Agreement by this reference ("Property").

B. Developer desires to, at Developer's sole cost and expense, develop Thirty-Two (32) owner occupied homes (each referred to as a "Unit" and collectively referred to as "Units") (the "Project") on the Property.

C. On January 18, 2022 the **City Council** approved Resolution No. 9116 approving **Site Development Permit No. SD21-0004 for 2001 Tarob Court** ("City Approvals") subject to certain conditions which require, among other things, that the Developer must comply with Title XII, Chapter 1 of the Milpitas Municipal Code (the "Affordable Housing Ordinance") by entering into an Affordable Housing Agreement with the City whereby the Developer agrees to construct and sell Five (5) units within the Project to Moderate-Income Households (as defined herein).

D. This Agreement, when fully executed by City and Developer and recorded, is intended to satisfy the requirement that Developer enter into an Affordable Housing Agreement, as set forth in the conditions to the City Approvals and the Affordable Housing Ordinance.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by City and Developer, the Parties agree as follows:

ARTICLE I
DEFINITIONS; PARTIES; REPRESENTATIONS AND WARRANTIES; EFFECTIVE DATE

1.1 Defined Terms. In addition to the usage of certain words, terms or phrases that are defined in the initial paragraph or Recitals of this Agreement, the following words, terms and phrases shall have the meanings set forth below:

1.1.1 Adjusted Household Income. The term "Adjusted Household Income" means the total annual income of each individual or household residing or treated as residing in the Affordable Unit as adjusted, based upon household size.

1.1.2 Affordable Housing Ordinance. The term "Affordable Housing Ordinance" means Title XII, Chapter 1 of the Milpitas Municipal Code as it is amended from time to time, or any successor ordinance thereto.

1.1.3 Affordable Sales Price. The term "Affordable Sales Price" means the maximum price that can be charged for an Affordable Unit, as determined by the City in accordance with the methodology set forth in Exhibit E to this Agreement.

1.1.4 Affordable Unit. The term "Affordable Unit" means each of the completed affordable owner-occupied housing Units in the Project (including the land and landscape improvements thereon) as constructed and installed by Developer and made available for sale to an Eligible Purchaser in accordance with this Agreement. The location of each Affordable Unit in the Project is shown on Exhibit B to this Agreement.

1.1.5 Affordable Unit Escrow. The term "Affordable Unit Escrow" means the escrow transaction by and between Developer and each Eligible Purchaser, through which Developer shall transfer fee title in each completed Affordable Unit to an Eligible Purchaser.

1.1.6 City Deed of Trust. The term "City Deed of Trust" means a deed of trust that secures Homeowner's compliance with the terms and conditions of the Resale Restriction Agreement, in the form attached hereto as Exhibit D.

1.1.7 City Manager. The term "City Manager" means the City Manager of the City.

1.1.8 Default. The term "Default" means the failure of a Party to perform any action or covenant required by this Agreement within the time period provided herein following notice and opportunity to cure, as set forth in Section 3.1 of this Agreement.

1.1.9 Delivery Date. The term "Delivery Date" means the date on which an Affordable Unit Escrow closes and the Eligible Purchaser acquires a fee title interest in the completed Affordable Unit.

1.1.10 Effective Date. The term "Effective Date" shall have the meaning ascribed to the term in Section 1.4.

1.1.11 Eligible Purchaser. The term "Eligible Purchaser" means a person who shall: (i) have an annual Adjusted Household Income which does not exceed the household income qualification limits of either a Very-Low Income Household, a Low Income Household or a Moderate-Income Household, as applicable to the Affordable Unit, (ii) pay no more than the Affordable Purchase Price for the Affordable Unit; and (iii) is purchasing the Affordable Unit for use as the Eligible Purchaser's principal residence.

1.1.12 Exhibits. The term "Exhibits" shall have the meaning ascribed to the term in Section 1.6.

1.1.13 Initial Eligible Purchaser. The term "Initial Eligible Purchaser" means the Eligible Purchaser that purchases the Affordable Unit directly from the Developer.

1.1.14 Low Income Household. The term "Low Income Household" means a household whose income meets the standards defined in Title 25 of the California Code of Regulations Section 6932, and by Health and Safety Code section 50079.5. The maximum Adjusted Household Income of a Low-Income Household shall not be greater than 80% of the Santa Clara County Median Income.

1.1.15 Market Value. The term "Market Value" means the fair market value of a Unit determined by an independent appraiser and subject to the approval of the City Manager, such approval not to be unreasonably withheld.

1.1.16 Market-Rate Unit. The term "Market-Rate Unit" means any Unit in the Project that is not an Affordable Unit.

1.1.17 Moderate-Income Household. The term "Moderate-Income Household" means a household whose income meets the standards defined in Title 25 of the California Code of Regulations Section 6932, and by Health and Safety Code section 50093. The maximum Adjusted Household Income of a Moderate-Income Household shall not be greater than 120% of the Santa Clara County Median Income.

1.1.18 Owner. The term "Owner" means the fee title owner of the Affordable Unit. The term "Owner" includes the Developer and any person or entity acquiring fee title to the Affordable Unit, whether from the Developer or from another Owner.

1.1.19 Resale Restriction Agreement. The term "Resale Restriction Agreement" means the Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase, which the Eligible Purchaser must enter into with the City prior to the Delivery Date for each Affordable Unit, in the form attached hereto as Exhibit C.

1.1.20 Santa Clara County Median Income. The term "Santa Clara County Median Income" is the median income in Santa Clara County, adjusted for household size, as calculated by California Department of Housing and Community Development ("HCD") using non-aggregated census income data and for the metropolitan statistical area (MSA) in which Santa Clara County is located.

1.1.21 Supportable Mortgage Amount. The amount that is determined based on the mortgage that can be supported given the income available after the other housing related expenses are paid.

1.1.22 Very-Low Income Household. The term "Very-Low Income Household" means a household whose income meets the standards defined in Title 25 of the California Code of Regulations Section 6932, and by Health and Safety Code section 50105. The maximum Adjusted Household Income of a Very-Low Income Household shall not be greater than 50% of the Santa Clara County Median Income.

1.2 Parties to Agreement.

1.2.1 City. City is a California municipal corporation. The mailing address of City, for the purposes of this Agreement, is City of Milpitas, 455 East Calaveras Boulevard, Milpitas California, 95035, Attention: City Manager

1.2.2 Developer. Developer is a California Corporation. The principal office and mailing address of Developer, for the purposes of this Agreement, is 5000 Executive Parkway, Suite 125, San Ramon, CA 94583, Attention: Michelle E. Suth (Msuth@kbhome.com).

1.3. Developer Representations and Warranties. The representations and warranties of Developer contained in this Section 1.3 shall be based upon the actual knowledge of Developer as of the Effective Date. All representations and warranties contained in this Section 1.3 are true and correct as of the Effective Date. Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement. Developer hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by City has been made in material reliance by City on such covenants, representations and warranties:

1.3.1 Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transaction contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of Developer hereby represent and warrant that such persons have the power, right and authority to bind Developer.

1.3.2 Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for Developer's authorization to enter into this Agreement.

1.3.3 This Agreement is, and all agreements, instruments, and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and are or shall be valid and legally binding upon Developer and enforceable in accordance with their respective terms.

1.4 Effective Date. This Agreement is dated December 14, 2023 for reference purposes only. This Agreement shall not become effective until the later to occur of the ("Effective Date"): (i) the date that this Agreement is approved and executed by the appropriate authorities of Developer and delivered to City; and (ii) the date that this Agreement is executed by the authorized representatives of City and delivered to Developer.

1.5 Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement in their entirety by this reference.

1.6 Exhibit List. The following is a list of the exhibits attached to this Agreement ("Exhibits"). Each of the Exhibits is incorporated by this reference into the text of this Agreement.

Exhibit A	Legal Description of Property
Exhibit B	Site Map Depicting Location of Affordable Units
Exhibit C	Occupancy, Refinancing and Resale Restriction Agreement
Exhibit D	City Deed of Trust
Exhibit E	Methodology for Calculating Affordable Sales Price

ARTICLE II
AFFORDABLE HOUSING COVENANT

2.1 Affordable Housing Covenant. Developer covenants and agrees that Five_ (5) of the Units to be developed on the Property shall be an Affordable Unit that is reserved for sale at the Affordable Sales Price and occupancy by Eligible Purchasers whose Adjusted Household Income at the time of initial occupancy of the Unit does not exceed the household income qualification limits of a Moderate-Income Household.

2.1.1 Location of Affordable Units. The Affordable Units to be developed on the Property shall be located within the Project as depicted on Exhibit B. Developer may change the location of any Affordable Unit to another area within the Project upon approval of the City Manager, or designee, which approval shall not be unreasonably withheld.

2.1.2 Size and Appearance of Affordable Units. Except as specifically set forth in the City Approvals, the Affordable Units shall be developed consistent with the following standards: The Affordable Units to be developed on the Property shall be proportional, in number of bedrooms, to the Market Rate Units. The exterior of the Affordable Units shall be visually indistinguishable from the Market Rate Units within the Project, except that if multiple floor plans with the same number of bedrooms are proposed, the Affordable Units may be the units with the smaller floor plans, and the Affordable Units may have non-garage parking or garages smaller than the Market Rate Units.

2.2.3 Schedule for Construction of the Affordable Units. Except as specifically set forth in the City Approvals, the Affordable Units to be developed on the Property shall be constructed concurrently with, or prior to, the Market-Rate Units in the Project. If the Project is phased, the Affordable Units shall be constructed concurrently with, or prior to, the Market-Rate Units within each phase.

2.3 Initial Sale of Affordable Units. Subject to the terms hereof, Five (5) of the Affordable Units shall be sold to Moderate-Income Households. The initial purchaser of each Affordable Unit shall qualify as an Eligible Purchaser, as defined in this Agreement.

2.4 Certification and City Approval of Eligible Purchaser. At the time Developer is prepared to sell an Affordable Unit, Developer shall notify City, and City shall prepare a lottery application and conduct a lottery process. After the City has confirmed the eligibility of the applicant selected, the Developer's sales agent or representative will negotiate a purchase contract in accordance with the terms of this Agreement. If, within thirty (30) calendar days after the City has confirmed applicant's eligibility, the Developer and such applicant have not entered into a binding purchase contract to sell an Affordable Unit, or upon Developer's notification and City's determination of concurrence by the applicant, that negotiations with the eligible applicant failed to result in the execution of a purchase agreement for an Affordable Unit, the Developer shall have the right (but not the obligation) to notify the City that the Developer and the applicant are unable to come to terms for purchase and sale of an Affordable Unit, and the City shall provide the name and contact information from the next Eligible Purchaser from the lottery list.

2.5 Marketing Period.

(a) If, for any reason, an Affordable Unit remains unsold for one hundred fifty (150) calendar days after the date that Certificate of Occupancy was issued by the City for such Affordable Unit, Developer shall notify City in writing of such fact. Such notice from Developer shall also specify the material terms (other than price) upon which Developer would be willing to sell such Affordable Unit. Within sixty (60) calendar days after receipt of such written notice from Developer, City may notify Developer in writing that it will purchase such Affordable Unit. If such notice is given by City, Developer shall then sell such Affordable Unit to City upon the terms set forth in Developer's notice, and at the same price at which it would have been sold to a household of Very-Low, Low- or Moderate-Income, as applicable to the Affordable Unit. For purposes of this provision, an Affordable Unit shall be deemed to remain "unsold" on a given date if title to such Affordable Unit has not been conveyed to an Eligible Buyer in accordance with the terms of an executed purchase contract.

(b) If City notifies Developer in writing that it will purchase the Affordable Unit on the terms set forth in Developer's notice, within the period of sixty (60) calendar days after receipt of Developer's written notice, such notification shall constitute a binding contract with Developer to purchase the Affordable Unit upon the terms set forth in Developer's written notice, and title to such Affordable Unit shall be conveyed within thirty (30) days after Developer's receipt of such written notice from the City.

(c) If City fails to give Developer written notice agreeing to purchase the Affordable Unit within such period of sixty (60) calendar days after receipt of Developer's written notice, then the City shall be deemed to have irrevocably declined to purchase such Affordable Unit, and Developer shall have the right to sell such Affordable Unit on the open market without restrictions as to price, affordability or future re-sale, and no Affordable Housing Covenant, nor City Deed of Trust or any other deed restrictions shall be placed on title to such Affordable Unit (thereafter, a "Released Unit"). In such event, Developer shall pay to the City, upon conveyance of title to such Released Unit upon sale, the amount by which the net price (defined below) for the Released Unit upon sale at a Market Rate exceeds the Affordable Sales Price previously established for the Released Unit. Said sum shall be paid to the City upon close of escrow for the sale of such Released Unit or, if the sale is consummated pursuant to a land sales contract, upon execution of such contract and transfer of possession to the buyer. Any such payments made to the City by Developer shall be retained by the City in a special account to be used solely for funding the construction or financing of housing units for or by persons or households of very-low to Moderate-Income. For purposes of calculating the "net price" of a Released Unit, there shall be deducted from the gross sales price received by Developer all reasonable and usual costs of selling and conveying the Released Unit, including (without limitation) reasonable sales commissions or equivalent administrative costs if the Released Unit is sold by Developer without a third-party agent or broker, premiums for title insurance, escrow and recording fees, reasonable attorneys' fees and any transfer taxes paid by Developer in selling the Released Unit, provided that the allowable deductions shall not exceed four percent (4%) of the gross price for the Released Unit.

2.6 Execution of Resale Restriction Agreement and City Deed of Trust. Developer shall not sell an Affordable Unit unless and until the City has reviewed and approved the Eligible Purchaser for purchase of the Affordable Unit, in accordance with Section 2.4, above, and the Eligible Purchaser has executed and submitted to the escrow officer handling the sale, in recordable form, the Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase and the City Deed of Trust in the form attached hereto as Exhibits C and D, respectively. Developer shall instruct the escrow officer to send conformed copies of the recorded Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase and the City Deed of Trust to the City upon receipt.

2.7 Enforcement of Resale Restriction Agreement. Developer irrevocably stipulates and agrees that breach of the covenant set forth in Section 2.1 will result in great and irreparable damage to City, and will result in damages to City which are either impracticable or extremely difficult to quantify. Accordingly, upon the breach of the covenant set forth in Sections 2.1, City may institute an action for injunctive relief attributable to such breach.

ARTICLE III
DEFAULTS AND REMEDIES

3.1 Default. If either Party defaults with regard to any provision of this Agreement, and the non-defaulting Party serves written notice of such default upon the defaulting Party, the defaulting Party shall cure such default within thirty (30) calendar days after service of the notice of default (or, if such cure reasonably takes longer than thirty (30) days, if such cure has not been commenced within the thirty (30) day period and is promptly completed within a reasonable time not to exceed ninety (90) calendar days), after the service of written notice of such default. If the defaulting Party fails to cure within the foregoing timeframes, the defaulting Party shall be in "Default" of the terms of this Agreement and shall be liable to the other Party for damages caused by such Default. Alternatively, the non-defaulting Party, at its option, may institute an action for specific performance of the terms of this Agreement. Provided, however, in no event shall either Party be liable to the other for any consequential, special or punitive damages.

3.2 Legal Actions.

3.2.1 In addition to any other rights or remedies, either Party may institute legal action to enforce performance with the terms of this Agreement, to recover damages for any Default, or to obtain any other remedy consistent with the purposes of this Agreement. Further, in the event that Developer sells any of the Affordable Units at a Market Rate, if such Market Rate exceeds the "Affordable Sales Price" in violation of this Agreement, Developer shall forfeit, and the City shall have the right to recover all monetary amounts obtained by Developer through the sale of the Affordable Units as restitution. Developer acknowledges and agrees that it shall be unjustly enriched by such sale at the expense of City, which has imposed restrictions on the Affordable Units to ensure the availability of such Units to Very Low, Low- and Moderate-Income Households.

3.2.1.1 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3.2.1.2 In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Manager of City, or in such other manner as may be provided by law.

3.2.1.3 In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service as may be provided by law, and shall be valid whether made within or without the State of California.

3.3 Rights and Remedies are Cumulative. The rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

ARTICLE IV
GENERAL PROVISIONS

4.1 Notices, Demands and Communications Between the Parties. Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger (including any nationally-recognized overnight courier, e.g., UPS or FedEx) for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of City and Developer, as applicable, as designated in Section 1.2. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate as provided in this Section. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is personally delivered, if dispatched by messenger, or two (2) calendar days after it is placed in the United States mail as heretofore provided.

4.2 Conflict of Interest. No board member, official, contractor, consultant, attorney or employee of City having any conflict of interest, direct or indirect, related to this Agreement, or in the development of the Property, shall participate in any decision relating to the Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

4.3 Nonliability of City or City Officials and Employees. No board member, official, contractor, consultant, attorney or employee of City shall be personally liable to Developer, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by City, or for any amount which may become due to Developer or to its successors or assignees, or on any obligations arising under this Agreement.

4.4 Indemnification. Developer agrees to indemnify and hold the City, its officers and employees, harmless from and against all damages, judgments, costs and expenses arising from or related to any negligent act or omission of Developer in performing its obligations hereunder, except to the extent caused by the negligence of City, its officers or employees. City agrees to indemnify and hold Developer, its officers and employees, harmless from and against all damages, judgments, costs, expenses and fees arising from or related to any negligent act or omission of City in performing its obligations hereunder, except to the extent caused by the negligence of Developer, its officers or employees.

4.5 No Waiver. Failure of a party to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4.6 Jurisdiction and Venue. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the Superior Court of Santa Clara County, California. Each Party hereto irrevocably consents to the personal jurisdiction of that court. City and Developer each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between City and Developer, due to the fact that either the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, Developer and City specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Developer acknowledges that the provisions of this Section 4.6 are material consideration to City for its entry into this Agreement, in that City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

4.7 Inspection of Books and Records. City shall have the right at all reasonable times at City's cost and expense to inspect the books and records of Developer pertaining to the Affordable Units, as necessary for City, in its reasonable discretion, to ensure that the Affordable Units are being constructed and sold or rented, as applicable, in accordance with the terms of this Agreement. Matters discovered by City shall not be disclosed to third parties unless required by law or unless otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of City hereunder.

4.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

4.9 No Third Party Beneficiaries. The performance of City's and Developer's respective obligations under this Agreement are not intended to benefit any party other than City or Developer, except as expressly provided otherwise herein. No person or entity, other than the Parties hereto, shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

4.10 No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project.

4.11 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter hereof with respect to the Property and the development thereof.

4.12 Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

4.13 Recordation. Developer and City agree to permit recordation of this Agreement or a memorandum of this Agreement against the Property in the Office of the County Recorder of Santa Clara County, California.

4.14 Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless, be and remain in full force and effect.

4.15 Termination. This Agreement shall be effective until all of the Affordable Units have been constructed and sold by the Developer to Eligible Purchasers and the Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase and City Deed of Trust in the form attached hereto as Exhibit C and Exhibit D, respectively, has been recorded against each Affordable Unit. Upon satisfaction of these requirements, Developer shall have no further obligations under this Agreement. Notwithstanding the foregoing, the provisions of Section 4.4 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the dates set forth below.

[Signatures on Following Pages]

SIGNATURE PAGE
TO
AFFORDABLE HOUSING AGREEMENT

CITY:

CITY OF MILPITAS
a California municipal corporation

By: Ned Thomas
Ned Thomas
City Manager

Date: 08/26/2024

APPROVED AS TO LEGAL FORM:

By: DocuSigned by:
Michael Mutalipassi
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

On August 26, 2024 , before me, Benjamin Silowitz, Notary Public, personally appeared Ned Thomas ,who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________ **(Seal)**

BENJAMIN SILOWITZ
Notary Public - California
Santa Clara County
Commission # 2450261
My Comm. Expires Jun 15, 2027

SIGNATURE PAGE
TO
AFFORDABLE HOUSING AGREEMENT

DEVELOPER:

KB Home South Bay, INC
a California Corporation

By: ______________________
Charles Hazelbaker

Its: Director of Forward Planning

Date: June 5th, 2024

By: ______________________

Its: ______________________

Date: ______________________

CALIFORNIA ACKNOWLEDGMENT CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Contra Costa

On June 5, 2024 before me, Casey Huang, Notary Public,
Date — *Here Insert Name and Title of the Officer*

personally appeared Charles Hazelbaker
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

CASEY HUANG
Notary Public - California
Alameda County
Commission # 2385012
My Comm. Expires Dec 1, 2025

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: ____________________

Document Date: ____________________ Number of Pages: ________

Signer(s) Other Than Named Above: ____________________

Capacity(ies) Claimed by Signer(s)

Signer's Name: ____________________
☐ Corporate Officer – Title(s): ____________
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: ____________________
Signer is Representing: ____________________

Signer's Name: ____________________
☐ Corporate Officer – Title(s): ____________
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: ____________________
Signer is Representing: ____________________

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION
TRACT MAP 10592

BEING ALL OF THE LAND SHOWN IN THE SUBDIVISION ENTITLED "TRACT MAP 10592, 2001 TAROB COURT" FILED IN BOOK 957 AT PAGES 13-15 SANTA CLARA COUNTY RECORDS,

DECEMBER 19, 2023

PROFESSIONAL LAND SURVEYOR
RYAN M. SEXTON
No. 9177
STATE OF CALIFORNIA

____

RYAN M. SEXTON / PLS 9177

EXHIBIT B

SITE MAP DEPICTING LOCATION OF AFFORDABLE UNITS

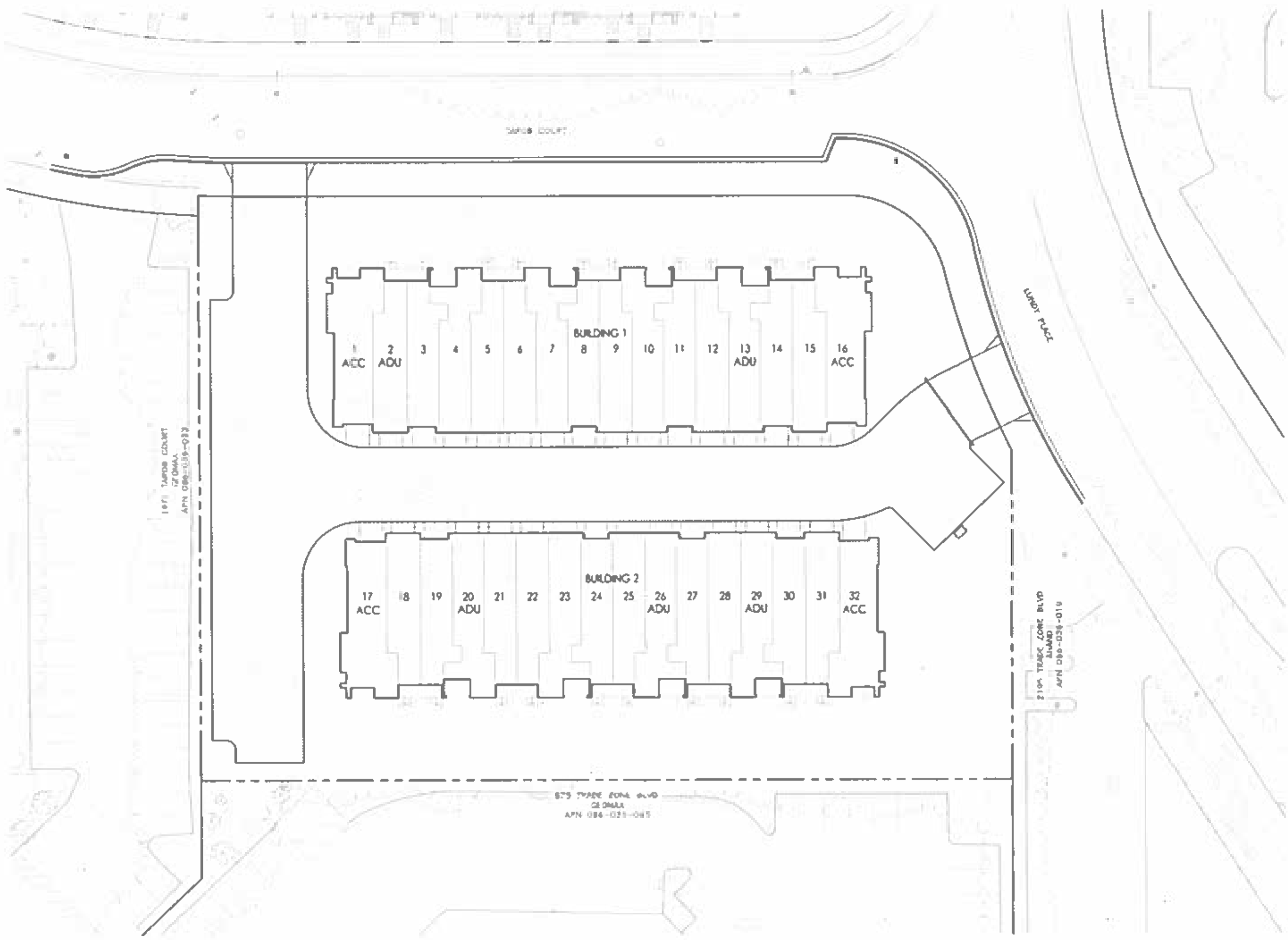


EXHIBIT C

OCCUPANCY, REFINANCING, AND RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE

[to be inserted]

EXHIBIT D

CITY DEED OF TRUST

RECORDING REQUESTED PURSUANT
TO GOVERNMENT
CODE SECTION 27383

When Recorded Mail To:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Housing Division

DEED OF TRUST AND SECURITY AGREEMENT

APN: ***[to be inserted]***

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this ____ day of ________________, 20__, among ***[insert name of homeowner]*** ("Trustor"), whose address is ***[insert address of homeowner]***, ***[insert name of title company]*** ("Trustee"), whose address is ***[insert address of title company]***, and the City of Milpitas ("Beneficiary"), whose address is 455 East Calaveras Boulevard, Milpitas, California 95035.

Trustor irrevocably grants, conveys, transfers and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's right, title and interest now owned or hereafter acquired in and to the real property in Santa Clara, California, described on Exhibit A attached hereto and incorporated herein by this reference, together with all buildings, structures and improvements now existing or hereafter constructed thereon (the "Improvements") and all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements (the "Property").

1. Secured Obligations. Trustor makes the grant, conveyance, transfer and assignment herein for the purpose of securing Trustor's obligations under that certain **Occupancy, Refinancing, and Resale Restriction Agreement with Option to Purchase** between Trustor and Beneficiary dated ***[insert date of Agreement]*** (the "Secured Obligations").

2. Maintenance and Repair. Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building; (b) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (c) pay when due all claims for labor performed and materials furnished; (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; and (e) not commit or permit waste.

3. **Insurance.** Trustor shall maintain hazard insurance against loss by fire, hazards included with the term "extended coverage," and any other hazards for which Beneficiary requires insurance, and liability insurance. The insurance carrier and the insurance policies and amounts of coverage shall be acceptable to Beneficiary, the liability policy shall name Beneficiary as an additional insured, and shall require 30 days' prior notice to Beneficiary before the policy is modified or terminated.

4. **Defense of Security.** Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. **Payment of Taxes and Liens.** Trustor shall pay (a) at least 10 days before delinquency, all taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all costs, fees and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (i) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (ii) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (iv) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. **Reimbursement of Costs.** Trustor shall pay upon demand all sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate allowed by law.

7. **No Waiver.** By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

8. **Reconveyance.** That upon written request of Beneficiary stating that the Secured Obligations have been fulfilled, and upon surrender of this Deed of Trust, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

9. Assignment of Rents. Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income and other benefits (collectively, the "Rents") derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title and interest in the Rents; provided, however, so long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use and enjoy the same. Upon the occurrence of such a default, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. Default and Foreclosure. Upon default by Trustor in performance of any Secured Obligation, Beneficiary may deliver to Trustee a declaration of default and demand for sale and of a notice of default and a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust and all documents evidencing the Secured Obligations and expenditures, if any, secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, if any, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3433.

11. Substitution of Trustee. Beneficiary, or any successor beneficiary of the Secured Obligations or of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

12. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the holder, including pledgees, of the covenants set forth in the **Occupancy, Refinancing, and Resale Restriction Agreement with Option to Purchase** whether or not named as Beneficiary herein.

13. Trustee Acceptance. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

14. Further Assurances. Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

15. Condemnation and Insurance Proceeds. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, at Beneficiary's option, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require.

16. Severability. If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

17. Estoppel Certificate. Trustor shall, within ten (10) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

18. Due-On-Sale or Encumbrance. If all or any part of the Property, or any interest therein, or any beneficial interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily or by operational law, Beneficiary may, at Beneficiary's option invoke any remedies permitted by this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

By: ______________________

Name: ______________________

By: ______________________

Name: ______________________

Exhibit A

[insert legal description]

[Add Notary Acknowledgments]

EXHIBIT E

METHODOLOGY FOR CALCULATING AFFORDABLE SALES PRICE

I. GENERAL POLICY

Affordable Units must be sold at no more than the defined Affordable Sales Price. This price will be calculated as set forth herein, based on the affordability level for the applicable Affordable Unit. The Affordable Sales Price is the maximum price for which an Affordable Unit may be sold or resold at any time starting with the initial sale and through the covenant period. The Affordable Sales Price is likely to be lower than the fair market value of the property.

This Agreement imposes the following basic financial requirements:

1. The Affordable Sales Price is calculated based on the standards set forth in Health and Safety Code Section 50052.5.

2. A Benchmark Down Payment amount set at 5% of the Affordable Sales Price will be used for the purposes of calculating the Affordable Sales Price. This Benchmark Down Payment amount is not tied to the actual down payment contributed by the home buyer.

II. AFFORDABLE SALES PRICE CALCULATIONS

The Affordable Sales Price is equal to the supportable mortgage plus the benchmark down payment. The City will calculate both the supportable mortgage and the benchmark down payment using the form provided at the end of this Exhibit.

This Exhibit establishes maximum sales prices that are affordable to eligible purchasers. This affordability requirement continues to apply when existing homeowners opt to resell their home. The amount of the Affordable Sales Price is calculated on the basis of the identified variables. As these variables change, the Affordable Sales Price can increase or decrease. Homeowners should be informed that the Affordable Sales Price can increase or decrease, and that the Affordable Sales Price is in no way tied to market prices.

It is possible that the Affordable Sales Price will decrease over time. This may result in a situation where the resale value of the home is less than the original purchase price.

A. Household Size

The household income applied in the affordable housing cost is calculated based on the number of bedrooms in the unit plus one. For example, the imputed household size for a three-bedroom home is four persons. Health and Safety Code Section 50052.5 refers to this as "the household size appropriate for the unit". However, this is not meant to be an occupancy cap; it is simply a benchmark used to create a consistent Affordable Housing Cost methodology.

B. Household Income

HSC Section 50052.5 uses the following household income levels to calculate the affordable housing cost:

1. Very-Low Income: 50% of the Santa Clara County Median Income for a household size equal to the number of bedrooms in the unit plus one.

2. Moderate-Income: 120% of the Santa Clara County Median Income for a household size equal to the number of bedrooms in the unit plus one.

C. Income Allocated to Housing Related Expenses

HSC Section 50052.5 allocates the following amount of the applicable household income to housing related expenses:

1. Very-Low Income: 35% of the benchmark household income.

2. Moderate-Income: The standard is set at 35% of the benchmark household income. However, households must expend at least 28% of their actual income on housing related expense.

D. Housing Related Expenses

Non-mortgage related expenses will be calculated based on standards defined by the City. The expenses and standards are:

1. Property Tax and Assessments: The tax rate applied to determine the annual property tax cost will be set at 1.15% of the purchase price of an affordable home, for the purposes of calculating an affordable sales price. The actual tax rate after purchase may change with legislative action at the City or County level.

2. Fire and Casualty Insurance: City staff will periodically survey local insurance companies to determine the typical annual cost of insuring a home for its replacement value.

3. Property Maintenance and Repairs: The City will apply a nominal cost allowance to cover the costs homeowners will typically bear for maintaining their property over a one-year period.

4. Utilities: City staff will estimate an annual utility cost based on data published by the Housing Authority of Santa Clara County.

5. Homeowner Association Fees (HOA): The HOA fees are estimated to be $404 per month, but will be set at the amount actually charged for the home being purchased.

E. Supportable Mortgage Amount

The Supportable Mortgage amount is determined based on the mortgage that can be supported given the income available after the other housing related expenses are paid. The interest rate used in the calculation will be the pertinent rate published in the Wall Street Journal for the last day of the quarter preceding the proposed home purchase.

F. Benchmark Down Payment

The Benchmark Down Payment used by the City to establish the Affordable Sales Price is 5% of the Affordable Sales Price. The actual down payment amount will vary from unit-to-unit.

Affordable Housing Sales Price Calculation Worksheet			
	Agency	City of Milpitas	
	Applicant (Developer)	KB Home	
	Project	Tarob Court	
	Marketing Name	Lumen	
	Date		8/21/2024
	Income Category	**Moderate**	
	Bedroom Count	**3 Bedroom**	
	Household Size		4
	Median Income for Household Size (as of 5/9/2024)	$	184,300.00
	Affordable Housing Income Percentage (Per Worksheet)		120%
1	Household Income @ 120% of Median	$	221,150.00
	Affordable Housing Payment Percentage		35%
2	Income Allotted to Housing @ 35% of Income	$	6,450.21
3a	Ongoing Expenses: Utility Allowance for 3Bd (see UA Tab)	$	416.00
3b	Ongoing Expenses: Maintenance	$	50.00
3c	Ongoing Expenses: Insurance Amount	$	150.00
3d	Ongoing Expenses: Insurance Percentage		0.241%
4a	Property Tax and Assessments Amount	$	715.00
4b	Property Tax and Assessment Percentage (Target 1.15)		1.15%
	Total RET and Insurance Expense Percentage		1.391%
5	HOA Dues (D5 from Exhibit E - Methodology for Calc Aff Price)	$	404.00
	Total Non-Mortgage Expenses	$	1,735.00
	Income Available for Mortgage (Net Payment)	$	4,715.21
	Interest Rate		7
	Term		360
6	Supportable Mortgage Amount	$	708,731.50
7	Benchmark Down Payment		5%
	Max Affordable Sales Price (Raw)	**$**	**746,033.15**
8	**Final Max Affordable Sales Price (Rounded)**	**$**	**746,033.00**
	Down Payment Dollar Amount	$	37,301.66

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: City Clerk

[Fee Exempt – Gov't Code § 27383]
(Space above for Recorder's Use)

OCCUPANCY AND RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE

by and between

THE CITY OF MILPITAS,
a municipal corporation

and

KB HOME

[Dated _____________, 20__ for reference purposes only]

Owner: ______________________________

Address of Home: ______________________

Income Category of Owner: ______________

Purchase Price of Home ("Owner's Base Price"): $_________________________

Median Income on Agreement Date: ________

This CITY OF MILPITAS OCCUPANCY AND RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE ("Resale Agreement") is made and entered into as of _____________, 20__, by and between the CITY OF MILPITAS, a municipal corporation ("City") and ________________ ("Owner").

RECITALS

A. City and KB Home South Bay, Inc, a California corporation ("Developer") have entered into that certain Affordable Housing Agreement (Lumen at KB Home), dated as of ______________, ("Agreement") which provides for, among other things, the creation of a total of five (5) affordable housing units on certain real property located within the City of Milpitas ("Affordable Units") subject to certain conditions, including the terms and conditions of this Resale Agreement.

B. Owner intends to purchase certain property located in the City of Milpitas, and more particularly described in the attached Exhibit A attached hereto and incorporated herein ("Home"). The Home is one of the Affordable Units.

C. The Owner is an Eligible Purchaser in the Income Category applicable to the Home, as set forth above.

D. The Owner has agreed to execute and comply with this Agreement in consideration of the Developer's agreement with the City to sell the Home to the Owner at an affordable price which is below the current fair market value of the Home.

E. The purpose of this Agreement is to place resale controls on the Home. This Agreement also provides the City an option to purchase the Home at a restricted price, given in consideration of the economic benefits to the Owner resulting from the purchase of the Home at a below market price under the City's Affordable Housing Ordinance.

E. The Owner is receiving a first mortgage loan (the "First Mortgage Loan") from ________________________ (the "First Lender"). The First Mortgage Loan is secured by a deed of trust dated ______________, 20__, executed by the Owner in favor of First Lender and recorded in the County of Santa Clara on ________________, 20__, as Document No. ____________ (the "First Mortgage Deed of Trust").

F. This Agreement shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Resale Agreement and the City Deed of Trust shall be subordinate to the lien of the First Mortgage Deed of Trust.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, DEVELOPER AND CITY DO HEREBY COVENANT AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS AS FOLLOWS:

1. Definitions of Certain Terms. As used in this Resale Agreement, the following words and terms shall have the meaning as provided in the Recitals or in this Section 1, unless the specific context of usage of a particular word or term may otherwise require:

1.1 Adjusted Household Income. The term "Adjusted Household Income" means the total annual income of each individual or household residing or treated as residing in the Unit as adjusted, based upon household size.

1.2 Eligible Purchaser. The words "Eligible Purchaser" shall mean the household of any Unit within the Project who shall, at the commencement of the occupancy of a Unit, have an income that does not exceed the Eligible Purchaser Income applicable to such Unit, as provided in this Resale Agreement.

1.3 Eligible Purchaser Income. The words "Eligible Purchaser Income" shall mean in the case of the Home, household income that, at the commencement of the occupancy of a Unit, does not exceed the income of a Very Low Income Household, Low Income Household or Moderate Income Household, as applicable to the Home.

1.4 Low Income Household. The words "Low Income Household" means a household whose income meets the standards defined in Title 25 of the California Code of Regulations Section 6932, and by Health and Safety Code section 50079.5. The maximum Adjusted Household Income of a Low Income Household shall not be greater than 80% of the Santa Clara County Median Income.

1.5 Moderate Income Household The words "Moderate Income Household" means a household whose income meets the standards defined in Title 25 of the California Code of Regulations Section 6932, and by Health and Safety Code section 50093. The maximum Adjusted Household Income of a Moderate Income Household shall not be greater than 120% of the Santa Clara County Median Income.

1.6 Santa Clara County Median Income. The term "Santa Clara County Median Income" is the median income in Santa Clara County, adjusted for household size, as calculated by California Department of Housing and Community Development ("HCD") using non-aggregated census income data and for the metropolitan statistical area (MSA) in which Santa Clara County is located.

1.7 Unit. The term "Unit" shall mean one (1) of the Affordable Housing Units.

1.8 Very-Low Income Household. The term "Very-Low Income Household" means a household whose income meets the standards defined in Title 25 of the California Code of Regulations Section 6932, and by Health and Safety Code section 50105. The maximum Adjusted Household Income of a Very-Low Income Household shall not be greater than 50% of the Santa Clara County Median Income.

2. Description of Property. This Agreement concerns the real property in the City of Milpitas, State of California located at ________________, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. Owner Covenants and Certifications; Owner Occupancy Requirement.

A. The Owner certifies that the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above.

B. The Owner for itself, its heirs, successors and assigns, hereby covenants and agrees that during the Term of this Agreement the Home shall be occupied by the Owner as its principal residence, and that the Home shall, except as otherwise permitted by this Agreement, be reserved for sale, use and occupancy by the Owner and/or for another Eligible Purchaser as a successor-in-interest who purchases the Home for not more than the Maximum Allowable Sales Price. The Owner shall be considered as occupying the Home if the Owner is living in the Home for at least ten (10) months out of each calendar year. The Owner, for itself, its heirs, successors and assigns, further covenants and agrees that, during the Term of this Agreement, the completion of any resale or Transfer of the Home to a successor-in-interest shall be subject to City approval. The Owner shall provide an annual written certification to the City that the Owner is occupying the Home as his or her principal place of residence.

4. Leasing of Home. The Owner shall not lease the Home to another party. Any lease in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust.

5. Maintenance and Insurance Requirements. The Owner, for itself, its successors and assigns, hereby covenants and agrees that:

A. The interior and exterior areas of the Home shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that at any time during the Term of this Agreement, there is an occurrence of an adverse condition on any area of the Home in contravention of the general maintenance standard described above, (a "Maintenance Deficiency") then the City shall notify the Owner in writing of the Maintenance Deficiency and give the Owner at least thirty (30) days from the date of such notice to cure the Maintenance Deficiency as identified in the notice.

In the event the Owner fails to cure or commence to cure the Maintenance Deficiency within the time allowed, the City may thereafter, without providing further notice of default, conduct a public hearing following transmittal of written notice thereof to the Owner ten (10) days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether the Owner has failed to comply with the provision of this Section 5A. If, upon the conclusion of a public hearing, the City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter the City shall have the right to enter the Home and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity the City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency as authorized by this Section 5A shall become a lien on the Home. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City to the Owner, the City shall have the right to enforce the lien in the manner as provided in Section 5B.

B. The parties hereto further mutually understand and agree that the rights conferred upon the City under Section 5A expressly include the power to establish and enforce a lien or other encumbrance against the Home in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount as reasonably necessary to restore the Home to the maintenance standard required under Section 5A, including attorneys' fees and costs of the City associated with the abatement of the Maintenance Deficiency and the collection of the costs of the City in connection with such action. The provisions of this Section 5, shall be a covenant running with the land for the Term of this Agreement and shall be enforceable by the City in its discretion, cumulative with any other rights or powers granted by the City under this Agreement or applicable law.

C. The Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the Home (adjusted every five (5) years by appraisal, if requested by City). Additional insurance requirements are set forth in Section 5 of the City Deed of Trust.

6. <u>Restrictions on Resale/Transfer of the Home</u>. Any Transfer or resale of the Home will be subject to the provisions of this Agreement including, without limitation, the City Option described in Section 12 below. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. Transfers by devise or inheritance to an existing spouse, domestic partner, or a spouse as part of a dissolution proceeding, or in connection with marriage, shall not be considered a Transfer for the purposes

of this Agreement. A transfer to children of the Owner where the income of such children exceeds the income requirements of an Eligible Purchaser, shall give rise to the option in favor of the City to purchase the Home as described in Section 12.

7. Notice of Intended Transfer; Preparation of Home For Sale.

A. In the event the Owner intends to Transfer or vacate the Home, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer"). The Owner's Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested at the address provided in this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Maximum Allowable Sales Price of the Home, including the following information:

(1) the address of the Property;

(2) the date of purchase of the Home by the Owner;

(3) the purchase price of the Home paid by the Owner at the time of his/her purchase;

(4) the date on which Owner intends to vacate Home; and

(5) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. Following delivery to the City of the Owner's Notice of Intent to Transfer, the Owner shall prepare the Home for sale, as follows:

(1) not earlier than ten (10) business days following the date of the Owner's Notice of Intent to Sell, the Owner shall allow the City, or its designee, to inspect the Home to determine its physical condition;

(2) Owner shall maintain utility connections until the close of escrow on the Transfer;

8. City Response to Owner's Notice of Intent to Transfer. The City shall respond in writing (the "First City Response Notice") to the Owner's Notice of Intent to Transfer within thirty (30) business days following City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7 above. The First City Response Notice shall inform the Owner of the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the certifications required of an Eligible Purchaser; (3) the Maximum Allowable Sales Price the Owner may receive for the Home, calculated by the City pursuant to Section 10 below.

9. Owner Acknowledgement of City Response Notice. No later than ten (10) business days following the date of the First City Response Notice, the Owner shall acknowledge in writing to the City that he/she has received the City Response Notice and still intends to Transfer the Home.

10. Determination of Maximum Allowable Sales Price for Restricted Sales. If the Owner sells to an Eligible Purchaser during the Term of this Resale Agreement, the maximum sales price (the "Maximum Allowable Sales Price") that the Owner shall receive from the Eligible Purchaser for purchase of the Home shall be the Indexed Price, but in no event greater than the Unrestricted Fair Market Value.

A. Indexed Price. The "Indexed Price" of the Home means the Owner's Base Price, increased by an amount equal to the percentage of increase in Santa Clara County Median Income from the date of the original purchase of the Home by the Owner to the date of receipt by the City of the Owner's Notice of Intent to Transfer, and, where applicable, adjusted pursuant to subsections (1 and 2) below to reflect the value of capital improvements or the cost of deferred maintenance. The Santa Clara County Median Income as of the date of this Agreement is shown on the first page of this Agreement.

(1) Where applicable, the Indexed Price shall include an upward adjustment reflecting the value of any substantial structural or permanent fixed improvements which the Owner has made to the Home after purchase of the Home. No such adjustment shall be made except for improvements: (a) made or installed by the Owner which conform with applicable building codes; and (b) that conform to Federal Housing Quality Standards, as set forth in 24 C.F.R. §982.401, as they may be amended from time to time. Capital improvements meeting the above requirements are referred to herein as "Eligible Capital Improvements." The adjustment to the Indexed Price for Eligible Capital Improvements shall be limited to appraised increases in value to the Home as a result of the improvements (pursuant to an appraisal performed as described in Section 12A below), including any depreciation in value of the capital improvements since the time of installation, and not the cost of construction of the improvements to the Home.

(2) The Indexed Price shall include a downward adjustment, where applicable, in an amount necessary to repair any violations of applicable building, plumbing, electrical, fire or housing codes or any other provisions of the City Building Code..

B. Unrestricted Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home (the "Unrestricted Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Maximum Allowable Sales Price exceeds the Unrestricted Fair Market Value in order to determine the Maximum Allowable Sales Price pursuant to Section 10; (2) where the Owner is selling the Home to a Market Purchaser (defined below) at an unrestricted price pursuant to Section 13; and (3) where the Owner wishes to refinance the First Mortgage Loan as described in Section 24 below. If it is necessary to determine the Unrestricted Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the

City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be shared equally by the City and the Owner, unless the appraisal is obtained for sale to a new Market Purchaser, or unless the appraisal is necessary because the Owner wishes to refinance the First Mortgage Loan pursuant to Section 24 below, in which event the Owner shall pay the cost of the appraisal. Nothing in this section shall preclude the Owner and the City from establishing the Unrestricted Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this section.

C. Holdback for Damage Repair Cost. If the City finds that the Owner, through neglect, abuse, or lack of adequate maintenance, has damaged the Home, the City may require that reasonable repairs be made at the Owner's cost prior to sale or through the escrow for the sale of the Home.

11. Sale of Home to Eligible Purchaser at Restricted Price. Following receipt of the First City Response Notice notifying the Owner of the Maximum Allowable Sales Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing Period. The Owner shall have two hundred forty (240) days from the date of the First City Response Notice (the "Marketing Period") to market the Home and find an Eligible Purchaser. The City shall provide an interest list. The Owner shall use bona fide good faith efforts to market and sell the Home to an Eligible Purchaser in compliance with this Section 11, including keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the buyer's resale and occupancy agreement with City option to purchase that will have to be executed by a Proposed Purchaser. A proposed purchaser ("Proposed Purchaser"), who the Owner believes will qualify as an Eligible Purchaser, shall be referred to the City for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the City:

(1) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership. An absence of sixty (60) days in any twelve (12) month period shall constitute abandonment of the Home as a principal place of residence.

(2) Agreement to Sign Buyer's Resale Agreement and to Cooperate with City. The Proposed Purchaser shall agree to sign a buyer's occupancy and resale restriction agreement with option to purchase restricting future resale of the Home for the duration of the Term and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the Proposed Purchaser's compliance with the buyer's resale and occupancy agreement with City option to purchase.

(3) Income Eligibility. The combined maximum income for all adult household members of the Proposed Purchaser shall not exceed the income level designated by the City in the First City Response Notice for an Eligible Purchaser.

C. Maximum Allowable Sales Price and Closing Costs. The purchase price for the sale of the Home by the Owner to the Proposed Purchaser shall not exceed the Maximum Allowable Sales Price calculated by the City pursuant to Section 10 above, as set forth in the First City Response Notice. The Maximum Allowable Sales Price shall not include closing costs paid by the Proposed Purchaser. The closing costs paid by the Proposed Purchaser shall not exceed reasonable and customary buyers' closing costs in the County of Santa Clara.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the City:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) A signed financial statement of the Proposed Purchaser in a form acceptable to the City and any other supporting documentation requested by the City, which may include but shall not be limited to State and Federal income tax returns from the Proposed Purchaser for the previous three (3) years. The financial information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the resale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, (c) escrow costs and charges, (d) Realtor broker fees and any other resale costs, charges credits, allowances or other consideration, if any.

(4) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the City and its designee harmless and reimburse the City's and its

designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed buyer's resale and occupancy agreement and City option to purchase and an executed deed of trust from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and buyer's resale and occupancy agreement and City option to purchase shall be a condition of the City's approval of the proposed sale.

(6) The name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer.

(7) Such other relevant information as the City may reasonably request.

If, following City's review of the documents and materials above, City reasonably determines that the Proposed Purchaser is income-qualified as an Eligible Purchaser and that the resale of the Home will fulfill the terms and conditions of this Agreement, the City shall deliver a written acknowledgment to the Owner and Proposed Purchaser indicating its approval of the resale of the Home to the Proposed Purchaser and thereafter, the Proposed Purchaser may acquire the Home subject to the satisfaction of all terms and conditions of this Agreement.

Upon the close of the proposed sale, Owner and Proposed Purchaser shall provide to City certified copies of the recorded City deed of trust and buyer's resale agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

E. Failure To Locate Eligible Purchaser: Notice to City. If, despite bona fide good faith marketing efforts, the Owner is unable to locate an Eligible Purchaser satisfactory to City during the Marketing Period and any extensions to the Marketing Period granted by the City, the Owner shall provide written notice to the City of this fact (the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser, the City shall provide a second response notice to the Owner (the "Second City Response Notice") stating either (1) that the City will exercise the City Option to purchase the Home pursuant to Section 12 below, or (2) that the Owner may Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at Unrestricted Fair Market Value (supported by an MAI or other qualified appraisal), but shall pay all Excess Sales Proceeds to the City as set forth in Section 13 below.

12. City Purchase Option.

A. Exercise of Option. If the Owner desires to Transfer or vacate the Home during the Term of this Resale Agreement but fails to locate an Eligible Purchaser to purchase a Home at or below the Maximum Allowable Sales Price, the City shall then have the option to purchase the Home (the "City Option") for the City Option Purchase Price, as defined below. The City Option may be exercised by the City in the Second City Response Notice (as described in Section 11E above, to be sent by the City to the Owner within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser) or within thirty (30) days of City's receipt of Owner's Notice of Intent to Transfer if the forty-five (45) year period from the date of purchase of the Home by the Owner has lapsed. If the City exercises the City Option, the City shall purchase the Home within seventy-five (75) days of the date of the City notice to exercise the City Option. The City may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the City Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser. In the event of exercise of the City Option and purchase of the Home by the City or its designee, the Owner shall permit a final walk-through of the Home by the City in the final three (3) days prior to close of escrow on the Transfer.

B. City Option Price. If the City exercises the City Option, the purchase price to be paid by the City (the "City Option Purchase Price") shall be the Maximum Allowable Sales Price, calculated in accordance with Section 10 of this Resale Agreement.

13. Unrestricted Sales. If the Second City Response Notice or other City notice states that the City will not exercise the City Option or the City or its designee fails to purchase the Home within seventy-five (75) days following the date of the City notice to exercise the City Option, the Owner may proceed to Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, for Unrestricted Fair Market Value of the Home (supported by an MAI or other qualified appraisal). In the event that the Owner Transfers the Home to a Market Purchaser, the Owner shall pay all Excess Sales Proceeds to the City as set forth in Section 14 below.

If the Owner Transfers the Home pursuant to this Section 13, the Market Purchaser shall not be required to execute a buyer's resale and occupancy agreement with City option to purchase, and the City shall reconvey and release the liens of this Agreement and the City Deed of Trust from the Home, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 14 below prior to said reconveyance and release. The Owner shall provide the City with the following documentation associated with such a Transfer:

(1) The name and address of the purchaser;

(2) The final sales contract and all other related documents which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, (c) escrow costs and charges, (d) real estate brokerage fees and any other resale costs, charges and any credits, allowances or other consideration, if any.

(3) A written certification, from the Owner and the Market Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other

party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) A copy of the MAI or other qualified appraisal for the Home.

(5) Upon the close of the proposed sale, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

14. Payment to City of Excess Sales Proceeds. If the Owner Transfers the Home at Unrestricted Fair Market Value pursuant to Section 13 above, or if the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds" shall mean ninety percent (90%) of the amount by which the Unrestricted Fair Market Value for the Home exceeds the Maximum Allowable Sales Price for the Home (in the amount that was stated in the First City Response Notice). This amount shall be a debt of the Owner to the City, secured by the City Deed of Trust. The Owner acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for City affordable housing programs. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same net sales proceeds (following payment by Owner of a standard broker's commission) from sale of the Home at an unrestricted price to ~~an~~ Market Purchaser as the Owner would receive from sale of the Home to the City or to an Eligible Purchaser at the Maximum Allowable Sales Price.

15. Defaults.

A. The following events shall constitute a Default by the Owner under this Agreement:

(1) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Home or in connection with its obligations under this Agreement;

(2) The Owner fails to owner-occupy the home, as required pursuant to Section 3 above, and such failure continues for a period of sixty (60) days within any 12-month period; the City from time to time may ask the owner for documents and things to prove owner occupancy;

(3) The Owner makes a Transfer in violation of this Agreement;

(4) The Owner otherwise fails to comply with the requirements of this Agreement and such violation is not corrected to the satisfaction of the City within ten (10) days after the date of written notice by the City to the Owner of such violation; or

(5) A notice of default is issued under First Mortgage Loan or other financing secured by the Home.

(6) A lien or mortgage is recorded against the Home, without prior approval of the City.

B. Upon a declaration of Default by the City under this Agreement, the City may exercise any remedies at law or in equity, including without limitation, any or all of the following:

(1) Declare all Excess Sales Proceeds immediately due and payable without further demand and invoke the power of sale under the City Deed of Trust;

(2) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(3) Declare a Default under the City Deed of Trust and pursue all City remedies under the City Deed of Trust; and

(4) Exercise the City Purchase Option Upon Default as described in Section 17 below.

16. Notice of Default and Foreclosure. In the event that Owner breaches any of the terms and conditions of this Agreement, City shall send written notice to Owner demanding that Owner cure said breach within thirty (30) days of the date of City's notice. If Owner fails to cure such breach within thirty (30) days after the delivery of the City a notice (or where the breach is of the nature which cannot be cured within such 30-day period, Owner fails to commence to cure such breach within the same 30-day period, City shall be entitled to declare Owner to be in default of this Agreement ("Default") and shall send written notice of such declaration of Default to Owner.

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Home shall be recorded by the City in the Office of the Recorder of the County of Santa Clara for the benefit of the City. The City may declare a Default under this Agreement upon receipt of any notice given to the City pursuant to Civil Code Section 2924b, and may exercise its rights as provided in Sections 15 and 17.

In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the City failed to file the request for notice of default, the City's right to purchase the Home shall commence from the date a notice of default is given by the City to the Owner.

17. Purchase Option Upon Default. Notwithstanding, and in addition to, the remedies provided the City in Section 16, and the City Option provided to the City in Section 12, the Owner hereby grants to the City the option to purchase the Home following written notice by the City to the Owner of the declaration of a Default by the City under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Home made possible by the City.

The City shall have thirty (30) days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this Section 17. Not later than ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option under this Section 17, the City shall purchase the Home for the City Option Price, payable in cash or by assuming existing debt and paying the balance in cash, calculated in the manner set forth in Section 12B.

During the term of this Agreement, the City shall have the right (but not the obligation) to bid on the purchase of any mortgage loan lien secured by the Home at the time of any trustee foreclosure sale or any judicial foreclosure sale. This City right is separate and distinct from the Default Purchase Option described above and no other provisions of this Section 17 shall limit or invalidate City's rights contained in this paragraph.

18. Nonliability of the City

A. No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 12 and 17 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a City affordable housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Home or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Home and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the Deed of Trust; or (2) the failure at any time of any of Owner's representations to the City to be true and correct.

19. Restrictions on Foreclosure Proceeds. If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Allowable Sales Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City in consideration of the benefits received by the Owner through purchase of the Home made possible by the City.

Notwithstanding any other provision of this Agreement to the contrary, the obligation to pay City excess foreclosure proceeds pursuant to this Section 19 shall survive the termination of this Agreement until City has received payment in full of any excess foreclosure proceeds to which City is entitled under this Section 19.

20. Restriction on Insurance Proceeds. If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, the Owner shall pay the City the portion of any insurance proceeds received by the Owner for such destruction or damage which is in excess of the Maximum Allowable Sales Price calculated pursuant to Section 10 above.

21. Term of Agreement. All the provisions of this Agreement, including the benefits and burdens, run with the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the earlier of (i) fifty-five (55) years from the date of purchase of the Home by Owner, or (ii) the date of Transfer of the Home to the City or another purchaser for Unrestricted Fair Market Value in compliance with this Agreement (the "Term").

22. Superiority of Agreement. The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

23. Subordination. Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 of this Agreement.

Notwithstanding any other provision hereof, the provisions of this Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the City Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the City Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender, (iii) the City shall not have exercised its option to purchase the Home pursuant to Section 17 above within such sixty (60)-day period and then proceeded diligently to cure the default within sixty (60) days of acquiring title to the Home.

24. Negative Amortization Loan; Refinance of First Mortgage Loan; and Further Encumbrance of Home.

A. The Owner covenants and agrees not to enter into any negative amortizing loan or any loan that has a significant built in payment increase, ie. interest only loan, or hybrid adjustment rate mortgage.

B. The City agrees to promptly upon request execute and deliver any documents reasonably requested to subordinate this Agreement and the City Deed of Trust to a deed of trust securing a refinanced First Mortgage Loan provided that, following such refinance, the principal amount of all debt secured by the Home will not exceed the greater of the outstanding principal balance of the refinanced First Mortgage Loan or ninety-five percent (95%) of the Indexed Price of the Home, determined in accordance with Section 10A above.

C. The Owner covenants and agrees: (i) not to place any mortgage or deeds of trust on the Home without obtaining prior written consent of the City; and (ii) that the total principal amount of all debt secured by the Home shall not exceed ninety-five percent (95%) of the Indexed Price of the Home, determined in accordance with Section 10A above, unless specifically approved in writing by the City. The City and the Owner agree that the requirements of Section 24 are necessary to ensure the continued affordability of the Home to Owner and to minimize the risk of loss of the Home by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 24 shall constitute a Default under this Agreement.

25. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual

orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Home, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

26. Rights of Beneficiaries Under Deeds of Trust. This Agreement shall not diminish or affect the rights of the City under the City Deed of Trust.

This Agreement shall not diminish or affect the rights of the California Housing Finance City ("CalHFA"), United States Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Mortgage Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 above.

Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect upon the occurrence of one of the following events:

A. Title is acquired by CalHFA, HUD, FNMA, VA, the First Lender or another party upon foreclosure of a deed of trust to the First Lender or CalHFA, or a deed of trust insured by HUD or guaranteed by VA.

B. Title is acquired by another party by a deed in lieu of foreclosure of the First Lender, CalHFA, or FNMA deed of trust.

27. Remedies. Upon the occurrence of an Event of Default, City shall, in addition to the remedial provisions of Section 6 as related to a Maintenance Deficiency at the Property, be entitled to seek any appropriate remedy or damages by initiating legal proceedings as follows: (i) by mandamus or other suit, action or proceeding at law or in equity, to require Developer to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of City; or (ii) by other action at law or in equity as necessary or convenient to enforce the obligations, covenants and agreements of Developer to City.

27.1. Rights and Remedies are Cumulative. The rights and remedies of City as set forth in this Section 27 are cumulative and the exercise by City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Developer.

27.2 Enforcement by Third Parties. Except for the City, which shall have the power to enforce this Resale Agreement as the successor of City, no third party shall have any right or power to enforce any provision of this Resale Agreement on behalf of City or to compel City to enforce any provision of this Resale Agreement against Developer or the Project.

28. Governing Law. This Resale Agreement shall be governed by the laws of the State of California, without regard to its conflicts of laws principles.

29. Amendment. This Resale Agreement may be amended after its recordation only by a written instrument executed by Owner and by City.

30. Attorney's Fees. In the event that a party brings an action to enforce any condition or covenant, representation or warranty in this Resale Agreement or otherwise arising out of this Resale Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable attorneys' fees to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Section 30, the words "reasonable attorneys' fees" in the case of City, include the salaries, costs and overhead of the lawyers employed as city attorneys of the City who provide legal counsel to City in such an action as well as any City attorney, as allocated on an hourly basis.

31. Severability. If any provision of this Resale Agreement shall be declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction such invalidity or unenforceability of such provision shall not affect the remaining parts of this Resale Agreement which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

32. Time is of the Essence. For each provision of this Resale Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed to be of the essence.

33. Notice. Any notice required to be given under this Resale Agreement shall be given by City or by Developer, as applicable, by personal delivery or by First Class United States mail at the addresses specified below or at such other address as may be specified in writing by the parties hereto:

to Owner:	with copy to:
to City:	with copy to:
City of Milpitas 455 East Calaveras Boulevard Milpitas, California 95035 Attn: City Manager	City of Milpitas 455 East Calaveras Boulevard Milpitas, California 95035 Attn: City Attorney

Notice shall be deemed given five (5) calendar days after the date of mailing to the party, or, if personally delivered, when received by the Executive Director of City or Developer, as applicable.

IN WITNESS WHEREOF, Owner and City have caused this Resale Agreement to be signed, acknowledged and attested on their behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

[Signatures on following pages]

SIGNATURE PAGE TO
OCCUPANCY AND RESALE RESTRICTION AGREEMENT
WITH OPTION TO PURCHASE

CITY:

CITY OF MILPITAS, a California municipal corporation

By: ______________________________
Ned Thomas
City Manager

APPROVED AS TO LEGAL FORM:

By: ______________________________
Michael Mutalipassi
City Attorney

SIGNATURE PAGE TO
OCCUPANCY AND RESALE RESTRICTION AGREEMENT
WITH OPTION TO PURCHASE

OWNER:

By: ______________________________

Its: ______________________________

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On, __________, 20__ before me, ______________________________, Notary Public, personally appeared ____ ____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________________ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On, __________, 20__ before me, ______________________________, Notary Public, personally appeared ____ ____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________________ (Seal)

EXHIBIT A
TO
OCCUPANCY AND RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE

Legal Description of the Property

[Attached behind this page]

RESOLUTION NO. 9116

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

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

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

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

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

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

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

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

a. Site Development Permit (SD21-0004) to allow the development of two multi-family buildings, ranging from three to four stories in height, with up to 32 residential units on a 1.22-acre site; and

b. Conditional Use Permit (UP21-0005) to allow the condominium use; and

c. Vesting Tentative Map (MT21-0001) to establish 32 residential condominium spaces and related common areas and to record site easements; and

d. Environmental Assessment (EA21-0002) to review and verify an exemption from further environmental review under CEQA.

WHEREAS, the Planning Department completed Environmental Assessment No. EA21-0002 for the Project in accordance with CEQA and recommends that the City Council determine this Project is covered under the program of activities identified in the Transit Area Specific Plan EIR, SCH#2006032091, certified by the City Council on June 3, 2008, based on the CEQA findings included in this Resolution (the "Addendum" and "Memorandums," true and correct copies of which are attached hereto and incorporated herein as **<u>Exhibits 2 and 3</u>**); and

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 1. Recitals

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

SECTION 2. California Environmental Quality Act Findings

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

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

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

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

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

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

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

Table 1: General Plan Consistency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 2:
Summary of TASP R3-TOD Development Standards

Standard (R3-TOD)	Requirement	Proposed	Compliance (Y/N)
Density	21-40 du/ac	25 du/ac	Y
Setbacks			
Front (min/max)	8 foot-15 foot (max.) from back of sidewalk	15 feet	
Side	15 foot (min.), 20 foot over three stories when abutting residential	26 – 47 feet	Y
Rear	15 foot (min.), 20 foot over three stories when abutting residential	20-28 feet	
Height	Up to 75 feet	49-feet-11-inches	Y
Private Open Space	An average of 200 SF of usable open space shall be provided for each dwelling unit. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required	Private recreational area: 0.14 acres Private open space (balconies) = 1784 SF/building = 1784 x 2 = 3,568 SF = 0.08 acres Total private open space = 0.22 acres = 299.5 SF/unit	Y

	open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. 200 x 32 = 6,400 SF = 0.15 acres Each dwelling unit shall be provided with private open space as follows: - Balconies and porches (above ground level): minimum 60 SF; or Patios (at ground level): minimum one hundred square feet.	Private balconies provided for every unit	Y
Landscaping	A minimum of twenty-five percent (25%) of the total lot area shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area. 25% x 1.22 = 0.31 acres	0.46 acres (37.7%)	Y
Projections into Required Yards	Porches, stairs, balconies, bay windows, and awning may project up to six feet into required setbacks.	None	Y
Building Orientation and Entrances	Building must face the street; and primary building entrances must be oriented toward the street.	Buildings face Tarob Court, which is the project's primary street frontage.	Y
Vehicle Parking	Two to Three Bedrooms: 1.6 covered (min), two (2) covered (max) Guest: 20% of the total spaces required = 10	64 tandem spaces in 32 garages (2 per unit) 9 guest spaces	This is permitted under Gov. Code, § 65915(p)(1) under State Density Bonus Law
Bicycle Parking	One space per four housing units, exempting those with private garages; on-street guest racks equivalent to five percent (5%) of parking requirement.	10 public spaces provided plus project has 32 private garages	Y
Parking Structure and Parking Lot Location	Parking must be located so that it is not visible from the street.	32 private garage entrances face interior drive aisle	Y
Parking Access and Curb Cuts	Maximum two curb cuts per lot per street frontage	One curb cut along each street frontage	Y
Tandem Parking	May be allowed with a Conditional Use Permit pursuant to MMC Section 53, Off-Street Parking Regulations of City's Zoning Ordinance; maximum of fifty percent (50%) of parking required for residential uses may be tandem parking in projects with private individual garages.	All residential unit parking is tandem (64 spaces).	This is permitted under Gov. Code, § 65915(p)(5) under State Density Bonus Law

Park Acreage Requirements	0.03 acres (after payment of TASP/MMSP fee)	0.12 acres proposed, which includes private recreation areas along the southern end of the site	Y

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

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

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

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

Table 3: TASP/MMSP Consistency

Policy	Conformance
Policy 3.4*: Provide a variety of housing types for different types of households, different income levels, different age groups, and different lifestyles.*	**Consistent**. The proposed project will provide various housing types, including two and three-bedroom units for sale at market-rate and five of the 32 units will be for sale to moderate-income individuals or households, consistent with the City's goal of providing housing for various households and income levels. The City would prefer to see higher density development at this location.
Policy 3.17*: New streets shall be located as generally shown on the Street System Map, Figure 3-2 within the TASP*	**Consistent.** A portion of the project's TASP fees will contribute to the new Tarob Court configuration, designed to replace the cul-de-sac with a local street and connection to Sango Court.
Policy 3.2: *Affordable housing units should be provided with new housing developments. Determine affordable unit requirements on a project-by project basis, considering the size of the project, the location of the site, and the mix of affordable units in the Midtown Area. Allow housing developments of 12 units or less to pay a fee in lieu of providing affordable units.*	**Consistent**. The project conforms to the City's Affordable Housing Ordinance and will designate five out of the 32 units, or fifteen percent (15%) of the base number of units, for moderate-income level individuals or households.
Policy 3.3: *Affordable housing should be integrated into all residential projects.*	**Consistent.** The project will designate five residential units for sale to moderate-income individuals or households and the units will be dispersed throughout the project site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>Waivers and Modifications of Development Standards</u>

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

a. *The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety Section 50052.2 or for rents for the affordable units pursuant to Section XI-10- 54.15(D)(5), Standards, of Chapter 10 (Zoning) of the Milpitas Municipal Code.*

b. *The concession would have a specific adverse impact as defined in State Government Code Section 65589.5(d) (2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.*

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

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

SECTION 7. Severability

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

SECTION 8. City Council Approval

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

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

AYES: (3) Vice Mayor Montano, Councilmembers Dominguez and Phan

NOES: (2) Mayor Tran and Councilmember Chua

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:

Wendy Wood, City Clerk

APPROVED:

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT '1'

CONDITIONS OF APPROVAL
2001 TAROB COURT RESIDENTIAL DEVELOPMENT

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

GENERAL CONDITIONS

1. General Compliance: The Permittee and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This **SITE DEVELOPMENT PERMIT SD21-0004, CONDITIONAL USE PERMIT UP21-0005, VESTING TENTATIVE MAP MT21-0001, and ENVIRONMENTAL ASSESSMENT EA21-0002** and associated permits noted above (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.

2. Effective Date: Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the City Council approved this Permit.

3. Acceptance of Permit: Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
   a. Acceptance of this Permit by Permittee; and
   b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.

4. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

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

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

7. Permit Expiration: Pursuant to Section XI-10-64-06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the Project:
   a. Completes a foundation associated with the Project; or
   b. Dedicates any land or easement as required from the zoning action; or
   c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. **(ALL)**

8. Time Extension: Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

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

10. Notice: Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the

Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1). **(ALL)**

11. Cost and Approval: Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. **(ALL)**

12. Conditions: Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Project is operating under the permits and approvals in this Resolution. **(ALL)**

13. Compliance with Laws: The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state and federal laws, rules, regulations, guidelines, requirements and policies. **(CAO/P/E/B)**

14. Indemnification: The project applicant, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of the Project, including adoption of Site Development Permit No. SD21-0004 and Vesting Tentative Map MT21-0001, and including any environmental determination made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The applicant shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the project applicant of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the project applicant, or if City fails to engage in reasonable efforts to cooperate in the defense, then the project applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The project applicant shall not be required to pay or perform any settlement unless the settlement is approved by the project applicant. **(CA)**

15. Certificate of Insurance: Permittee shall provide certificate of insurance and name City as an additional insured in its insurance policies for the Project.

16. Revocation, Suspension, Modification: This Permit may be suspended, revoked or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.

17. Severability: If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.

18. Compliance with Fire Department and California Fire Code: The project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code, as adopted by the City and stated per Fire Memorandum, dated August 4, 2021. Changes to the site plan and/or buildings requires review and approval by the Fire Department. **(F)**

19. Compliance with Building Department and California Building Code. The Project shall comply with the requirements of the Building, Safety and Housing Department and the California Building Code (CBC) as adopted by the City and stated per Building Memorandum, dated May 13, 2021. Changes to the site plan and/or building(s) requires review and approval by the Building, Safety and Housing Department. **(B)**

20. Development in Conformance with Approved Plans: Permittee shall develop the approved Project in conformance with the plans dated September 10, 2021 and approved by the City Council on January 18, 2022, in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified

plans and any other applicable materials as required by the City for review, and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

PLANNING AND HOUSING CONDITIONS

21. Landscape: All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. **(P)**

22. Street Lights: Permittee shall provide street lighting along all street frontages subject to the review and approval of the Planning Division. Permittee shall likewise install pedestrian scale lights along all public and private street frontages. The Permittee shall submit a photometric plan to determine appropriate light levels with submittal of on-site improvement plans. **(P)**

23. Parking: Parking shall be provided as depicted on the Site Plan approved by the City Council and shall consist of the following:

    a. RESIDENT: 32 individual tandem garages to provide a total 64 parking spaces.
    b. GUEST: A total of 9 guest spaces are to be provided in the internal driveway. **(P)**

24. Bicycle Racks: A minimum of ten (10) short-term bicycle parking spaces shall be installed on the site. **(P)**

25. Trees: The project will remove 34 trees and replace with 128 trees, in conformance with the plans approved by City Council on January 18, 2022. **(P)**

26. Public Art Requirement: Permittee shall comply with the City's Public Art Requirements for Private Development, as set forth in Milpitas Municipal Code Section XI-10-14. Fee shall be no less than one-half of one percent of building development costs and shall be payable at time of building permit issuance. **(P)**

27. Affordable Housing Requirement: Permittee shall comply with the City's Affordable Housing Ordinance, as set forth in Milpitas Municipal Code Section XI-1-3.00. All new residential development projects of ten units or more designed and intended for permanent occupancy shall construct 15 percent of the total number of dwelling units within the development as affordable units, unless otherwise remedied by the City Council. **(H)**

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

29. Density Bonus: Permittee shall provide 32 residential units, with 5 of the units designated as affordable. The Project may have the following deviations as permitted under Gov. Code, § 65915(p)(1):
    a. Allow tandem parking for all 32 private individual garages.
    b. Reduction of 1 required guest parking space. **(P)**

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

Biological Resources (TASP Policy 5.26)

30. Nesting Birds: To mitigate impacts on non-listed special-status nesting raptors and other nesting birds, a qualified biologist will survey the site for nesting raptors and other nesting birds within 14 days prior to any ground disturbing activity or vegetation removal. Results of the surveys will be forwarded to the U.S. Fish and Wildlife Services (USFWS)

and CDFG (as appropriate) and, on a case-by-case basis, avoidance procedures adopted. These can include construction buffer areas (several hundred feet in the case of raptors) or seasonal avoidance. However, if construction activities occur only during the non-breeding season between August 31 and February 1, no surveys will be required. **(P)**

Noise (TASP Policy 5.10))

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

Air Quality (TASP Policy 5.16)

32. Dust Control Emissions: During the construction of the Project, Permittee shall comply with all of the following:
    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)**

33. ROG Emissions: Prior to issuance of any building permit, Permittee shall develop, submit and obtain approval from the City of a plan to reduce ROG emissions by 17 percent or greater during the architectural coating phase of the construction. Acceptable measures to achieve this goal include, but are not limited to, using paint that contains 125 grams per liter of VOC or less, the use of pre-fabricated building materials, or a combination of both. The plan shall be implemented as approved by the City. **(B)**

Cultural Resources (TASP Policies 5.34 and 5.35)

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

35. Paleontological Monitoring: All grading plans for development projects involving ground displacement shall include a requirement for monitoring by a qualified paleontologist to review underground materials recovered. In the event fossils are encountered, work in the area shall be halted and the City of Milpitas Department of Planning and Department of Building shall be immediately contacted to determine the nature of the remains and related appropriate mitigation plan. A qualified paleontologist shall evaluate the fossils, and steps needed to photo-document or to recover the fossils shall be taken. **(P/B)**

ENGINEERING CONDITIONS

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

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

36. Modifications: The Site Development Plan dated September 10, 2021 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.

37. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; demonstrate how compost shall have a separately maintained process from garbage handling; address other requirements such as waste generation and property management responsibility for bin management and litter control; and procure sufficient service frequency.

38. Recycle Water Cross-Connection Specialist: In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee must hire a certified cross-connection specialist for their consultation as to irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all landscape submittal plans.

39. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each construction permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.

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

PRIOR TO FINAL MAP APPROVAL/RECORDATION

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

41. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.

42. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.

43. Partial Street Vacation: This project is subject to and contingent upon partial vacation on Tarob Court.

44. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map.

45. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.

46. Street Name Approval: Permittee shall obtain approval from the City Council for all new street names based upon recommendation from the Planning Commission and City guidelines.

47. Utility Company Approval: Permittee shall obtain approval documentation from utility companies (PG&E, AT&T, Comcast) for abandonment of existing and dedication of new public service utilities easements.

48. Covenant, Conditions & Restrictions (CC&Rs): Permittee shall provide CC&Rs for City's review and approval for perpetual maintenance of private roadways, private utilities, stormwater management facilities in accordance with a separately recorded Stormwater Management Facilities Operation and Maintenance Agreement. There shall be provisions in the CC&Rs to retain a recycled water site supervisor with annual re-certification report to the City's Public Works Department.

49. Subdivision Improvement Agreement and Securities: Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).

50. Annexation to the Community Facilities District: Permittee shall submit an executed petition affirmatively consenting to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The CFD annexation process shall be completed prior to final map approval. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 14 notwithstanding.

51. Easement Acquisition for Pedestrian Path: Permittee shall acquire a Public Sidewalk and Service Utility Easement (PSSUE) where proposed sidewalks or walkways encroach onto private properties, or present an alternative path that doesn't encroach onto private property will be required prior to the issuance of the building site improvement permit

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

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

52. Coordination with other Projects: Permittee shall coordinate with City of San Jose obtain encroachment permits for any work within their jurisdiction.

53. Public Improvement Design Standards: All public improvements shall be designed and constructed in accordance with all applicable public improvement design standards, including but not limited to:
    a. Milpitas Design Guidelines: (http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/);
    b. Standard details and specifications: (http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/standard-details-and-specifications/);
    c. Transit Area Specific Plan design guidelines: (http://www.ci.milpitas.ca.gov/_pdfs/engDesignGuidelines/en_dg_vi_transitAreaSpecific.pdf); and
    d. Americans with Disabilities Act (ADA) requirements, where applicable.

54. Sanitary Sewer Calculations: Permittee shall submit a completed "Sewer Needs Questionnaire" form and sanitary sewer calculations to justify lateral size design, allocation of discharge for each of the lateral, and impact to the

existing main. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.

55. Storm Drain Design: Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.

56. Domestic Water and Fire Service Calculations: Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.

57. Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.
    a) Installation of separate water service tap and meter for each of the following services: residential and irrigation.
    b) Installation of separate utility service lines (domestic water, fire service, sanitary sewer) for residential and non-residential.
    c) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna.
    d) Installation of half street width asphalt concrete grind and overlay with as needed base repair along the project street frontage on Tarob Court and Lundy Avenue to the City Engineer's satisfaction.
    e) Installation of new street trees along the project frontage. The locations, spacing of trees and tree species shall be in compliance with applicable City standards and details.

58. Abandonment of Existing City Utilities: Permittee shall cap, abandon or remove any unused existing public utilities based upon City's Abandonment Notes and to the City's satisfaction.

59. Relocation and Adjustment of Existing Public Utilities: Permittee shall relocate and/or adjust existing public utilities as needed that are in conflict with the proposed improvements.

60. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.

61. Wet Utility Separation Requirements: A minimum one (1) foot vertical separation, and 10 foot horizontal separation is required between water and sewer/storm. Please ensure all horizontal and vertical separations meet the CCR title 22 requirements.

62. Recycled Water: Per the TASP Area Specific Plan, new developments shall include recycled water lines for irrigation.

63. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.

64. Pothole Encroachment Permit: Due to multiple new utility service connections on Tarob Court, Lundy Place and any other public place where work will take place. Permittee shall pothole and verify all potential utility crossing conflict as part of the public improvement plan during the design stage.

PRIOR TO BUILDING PERMIT ISSUANCE

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

65. Final Map Recordation: Permittee shall record the final map.

66. Easements on the Building Permit Plans: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on applicable building permit plans.

67. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).

68. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department. The subject O&M Agreement shall be referenced in the CC&Rs, if applicable.

69. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.

70. Recycle Water Approval: Permittee shall use recycled water for landscape irrigation purpose. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled *"Water Recycling Criteria"*, CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled *"Drinking Water Supply"* and all other recycled water regulations as listed under the publication titled *"California Department of Public Health Regulations Related to Recycled Water June 18, 2014*". Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water.

71. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 (Water Efficient Landscapes) for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.

72. Solid Waste, Compost, and Recycling Facility Design: Permittee shall comply with all applicable City and CA State SB1383 design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, staging area, storage area, etc.

73. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
    a. What materials will be salvaged.
    b. How materials will be processed during demolition.
    c. Intended locations or businesses for reuse or recycling.
    d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

    Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.

74. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.

75. Flood Plain Management: This project is in the Flood Zone "AO" with 1' average flood depth, therefore, Permittee shall comply with all applicable flood protection criterion required by the Federal Emergency Management Agency (FEMA) and MMC Title XI, Chapter 15. Permittee shall also submit a Flood Study for the Project demonstrating, to the satisfaction of the City Engineer, that the proposed development has no adverse impact to the surrounding flood plain within the Special Flood Hazard Area (SFHA) and to the flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood Elevation (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. The study shall clearly identify the lowest floor elevation as being either the bottom of garage, bottom of first floor residential units, bottom of elevator pit, etc. and shall be completely elevated out of the SFHA.

76. Mailboxes: The Permittee shall coordinate with US Postal Services regarding placement of required mailboxes. Mailbox location shall not be on public street frontages and shall be approved by City and US Postal Services prior to building permit issuance. Mailbox locations shall be shown on the improvement plans and Permittee shall submit a letter to the City's Land Development Engineering Section from the Post Master approving the location of the mailbox. Structures to protect mailboxes may require Building, Engineering and Planning Department review.

77. Stormwater Control Plan: Permittee shall submit City approved final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.

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

79. Development Fees: Permittee shall pay the following development fees. The following fees, listed in items "a" through "g" shall be paid at the fee rate in effect as of March 25, 2021, apart from those fees subject to increase resulting from an automatic annual adjustment based on an independently public cost index that is referenced in the ordinance or resolution establishing the fee. The exact fee amount shall be determined at the time of building permit fee payment.
    a. Transit Area Specific Plan fee at $44,009/unit for residential uses. Based on approval for development of 32 units, the estimated Transit Area Specific Plan Development Impact Fee for this project is $1,408,288 ($44,009/unit x 40 units). TASP fees shall be paid prior to building permit issuance.
    b. Parkland:
        1. The project is required to dedicate 0.28 acres of parkland, equivalent to $777,472.82 fees-in-lieu.
        2. The park portion of the TASP fee is valued at $690,061.12, equivalent to 0.25 acres. This will be applied to the project parkland requirement.
        3. The applicant will receive credit for 0.12 acres of private recreation space on site. Upon demonstration of provision of this private recreation space to the satisfaction of the Director of Planning or his/her designee, no additional parkland fees will be due, per table below.

2001 Tarob Court Unit Count	32

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

c. Storm water connection fee at $16,771/acre for residential and $21,562/acre for commercial.
d. Water connection fee at $1,164/unit for residential and $5.97/gpd for commercial, based upon increased water usage.
e. Sewer connection fee at $1,406/unit for residential and $8.52/gpd for commercial, based upon increased average wastewater flow.
f. 3.8% of applicable fees in accordance with City Resolution No. 8969 as Permitting Automation Fee.
g. FEMA Flood Zone Designation Letter fee in the amount of $100.00 each. (If needed)

DURING CONSTRUCTION

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

80. Dewatering: If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.

81. On-site Recycle Water Coordination: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling. Developer shall notify SBWR 7 days in advance to schedule attendance of SBWR inspector during Cross-connection Test.

82. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.

83. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

84. Water Shut-down Plan: Permittee shall provide a water shut-down plan at least seven days in advance of the shut-down in coordination with the Engineering Inspector, and notify affected property owners/tenants when cut-in tee(s) is/are required.

PRIOR TO FIRST OCCUPANCY

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

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

86. LOMR-F: Permittee shall submit the FEMA approved LOMR-F for each unit/building associated with the requested occupancy, if project is located in the SFHA.

87. Elevation and/or Flood Proofing Certificate: Permittee's civil engineer shall submit Elevation and/or Flood Proofing Certificate for the lowest finished floor elevation of each building for City record.

88. Landscape Certificate of Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.

89. Certificate of Cross-Connection: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program http://www.sanjoseca.gov/index.aspx?NID=1595 and forward them to the City.

90. Record Drawings: Permittee shall submit record drawings in AutoCAD, Tiff, and PDF formats for City records. Record drawings shall include all public improvements. Additionally, if the project uses recycled water, the permittee shall also submit record drawings of on-site irrigation facilities.

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

LEGEND
P = Planning Department
B = Building Department
E = Engineering Department
F = Fire Department
CAO = City Attorney's Office
ALL = All Reviewing Departments

NOTICE OF RIGHT TO PROTEST

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

AGREEMENT

Permittee/Property Owner

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

Dated: ________________ ____________________________________
Signature of Permittee

EXHIBIT 2

ADDENDUM TO THE TRANSIT AREA SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT

EXHIBIT 3

CONSISTENCY MEMORANDUMS BY FIRST CARBON SOLUTIONS, TJKM, AND LSA

DocuSign

Certificate Of Completion

Envelope Id: 7A04979DAC8343CCADDD60DA7A93DCCE		Status: Completed
Subject: Complete with Docusign: 2001 Tarob Court Affordable Housing Agreement		
Source Envelope:		
Document Pages: 85	Signatures: 1	Envelope Originator:
Certificate Pages: 4	Initials: 0	Michelle Silva
AutoNav: Enabled		455 E Calaveras Blvd
EnvelopeId Stamping: Enabled		Milpitas, CA 95035
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		msilva@milpitas.gov
		IP Address: 107.128.211.191

Record Tracking

Status: Original August 23, 2024 | 12:24	Holder: Michelle Silva msilva@milpitas.gov	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Milpitas	Location: DocuSign

Signer Events	Signature	Timestamp
Michael Mutalipassi mmutalipassi@milpitas.gov City Attorney Security Level: Email, Account Authentication (None)	DocuSigned by: 71850D37D7764FB Signature Adoption: Uploaded Signature Image Using IP Address: 50.59.22.2	Sent: August 23, 2024 | 12:28 Resent: August 25, 2024 | 08:11 Viewed: August 26, 2024 | 10:44 Signed: August 26, 2024 | 10:44

Electronic Record and Signature Disclosure:
Accepted: July 12, 2024 | 16:17
ID: 36037436-c360-4bca-846e-da589663a4ce

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	August 23, 2024 | 12:28
Certified Delivered	Security Checked	August 26, 2024 | 10:44
Signing Complete	Security Checked	August 26, 2024 | 10:44
Completed	Security Checked	August 26, 2024 | 10:44

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Milpitas (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Milpitas:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: helpdesk@milpitas.gov

To advise City of Milpitas of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at helpdesk@milpitas.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Milpitas

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to helpdesk@milpitas.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Milpitas

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to helpdesk@milpitas.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Milpitas as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Milpitas during the course of your relationship with City of Milpitas.

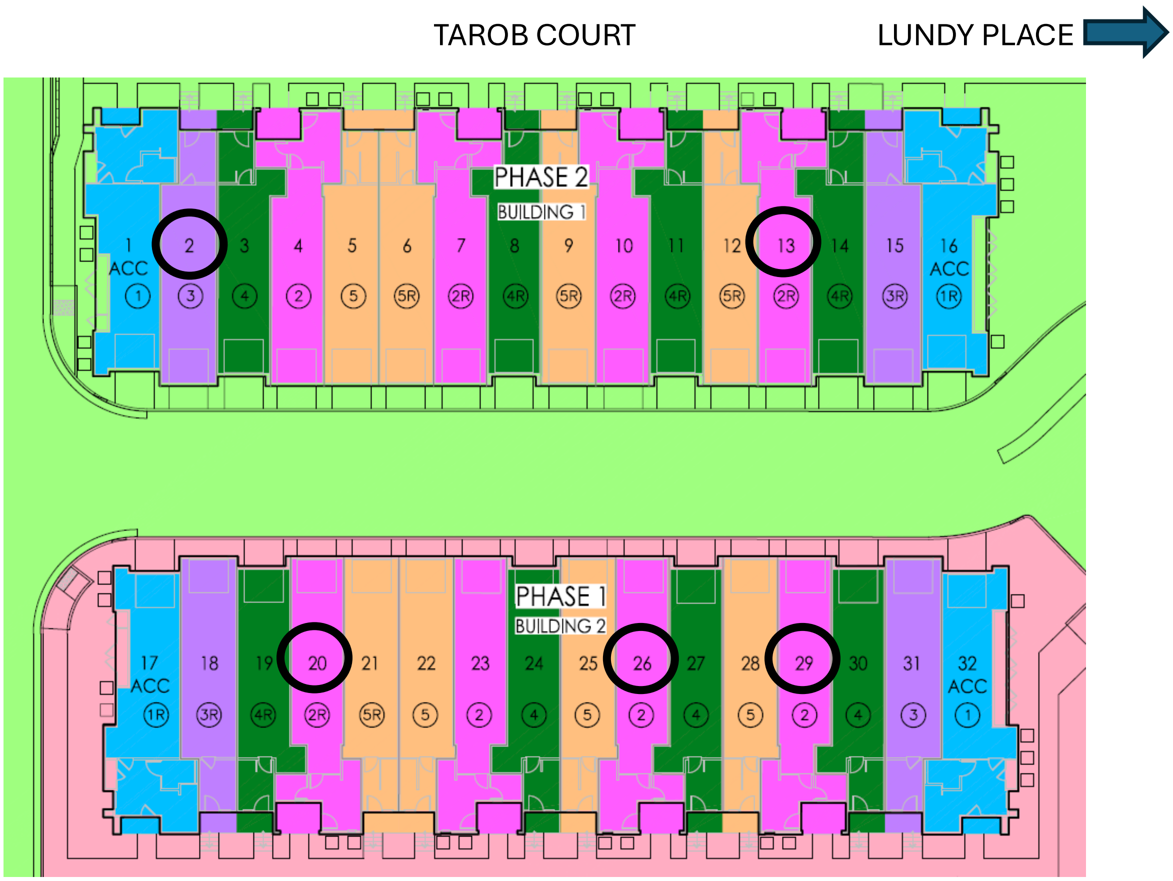
ATTACHMENT B

Lumen at Tarob Court

2001 Tarob Court

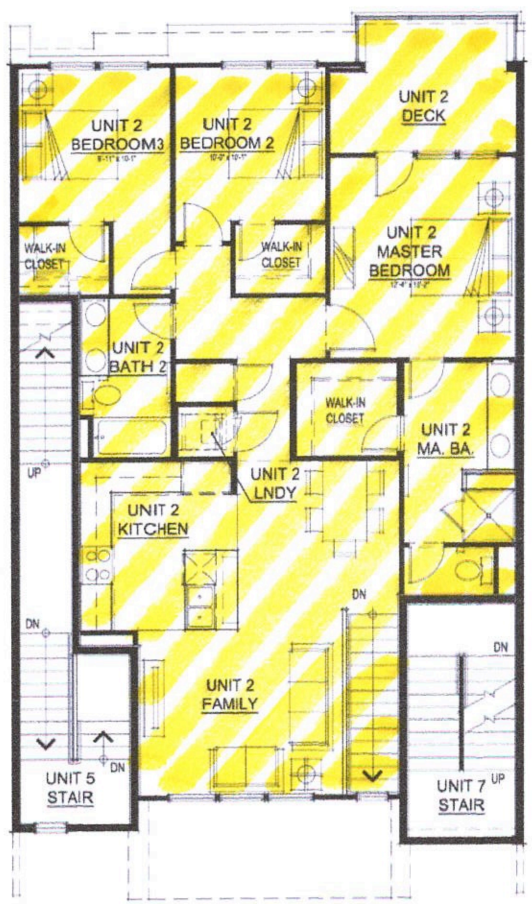
Site Plan

(Note: Depicts floor area of first level of units only;
upper floor area varies depending on the floor plan of unit)

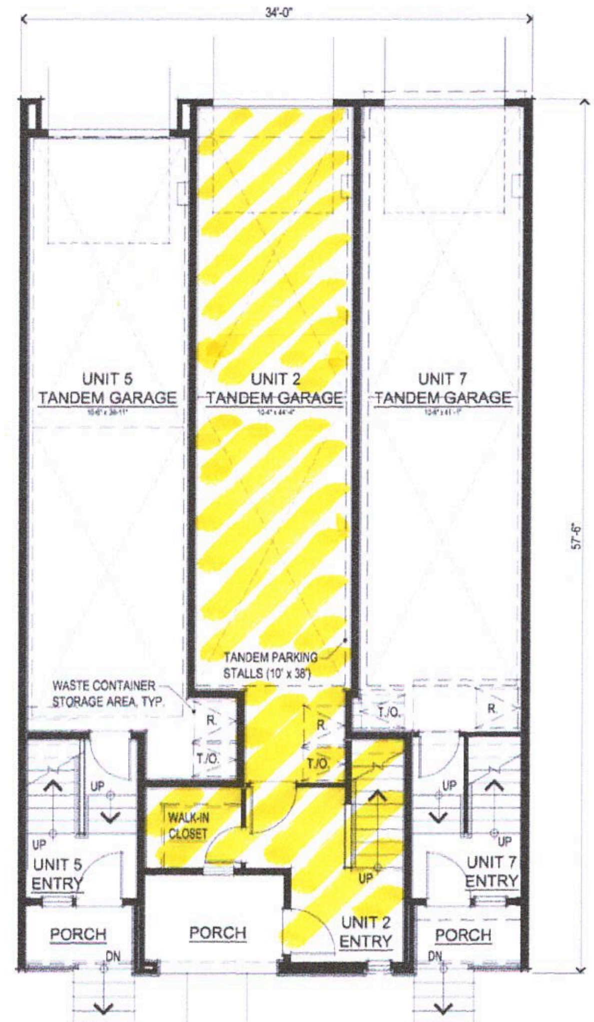


Affordable Units

Unit	Address	Plan Unit	Bedrooms/ Baths	Living Area (sf)	Date Sold	Affordable Sales Price	Buyer HH Size
Lot 20 Building 2	365 Lundy Place	2R	3/2	1,414	Unsold	$716,361	–
Lot 26 Building 2	377 Lundy Place	2	3/2	1,414	May 2, 2025	$746,045	1
Lot 29 Building 2	383 Lundy Place	2	3/2	1,414	May 1, 2025	$746,045	3
Lot 2 Building 1	2047 Lundy Place	4	3/2	1,430	February 3, 2025	$746,045	3
Lot 13 Building 1	2069 Lundy Place	2R	3/2	1,414	April 4, 2025	$746,079	4



SECOND FLOOR PLAN



FIRST FLOOR PLAN

UNIT 5 SQUARE FOOTAGES	
FIRST FLOOR	92 SQ. FT.
1ST-3RD STAIRS	97 SQ. FT.
THIRD FLOOR	715 SQ. FT.
FOURTH FLOOR	715 SQ. FT.
TOTAL LIVING	1619 SQ. FT.
TANDEM GARAGE	471 SQ. FT.
PORCH	33 SQ. FT.
DECK 1	87 SQ. FT.
DECK 2	87 SQ. FT.

UNIT 2 SQUARE FOOTAGES	
FIRST FLOOR	173 SQ. FT.
SECOND FLOOR	1241 SQ. FT.
TOTAL LIVING	1414 SQ. FT.
TANDEM GARAGE	474 SQ. FT.
PORCH	62 SQ. FT.
DECK	87 SQ. FT.

UNIT 7 SQUARE FOOTAGES	
FIRST FLOOR	89 SQ. FT.
1ST-3RD STAIRS	126 SQ. FT.
THIRD FLOOR	834 SQ. FT.
FOURTH FLOOR	831 SQ. FT.
TOTAL LIVING	1880 SQ. FT.
TANDEM GARAGE	474 SQ. FT.
PORCH	31 SQ. FT.
DECK	105 SQ. FT.

0 1' 2' 3' 4' 8'

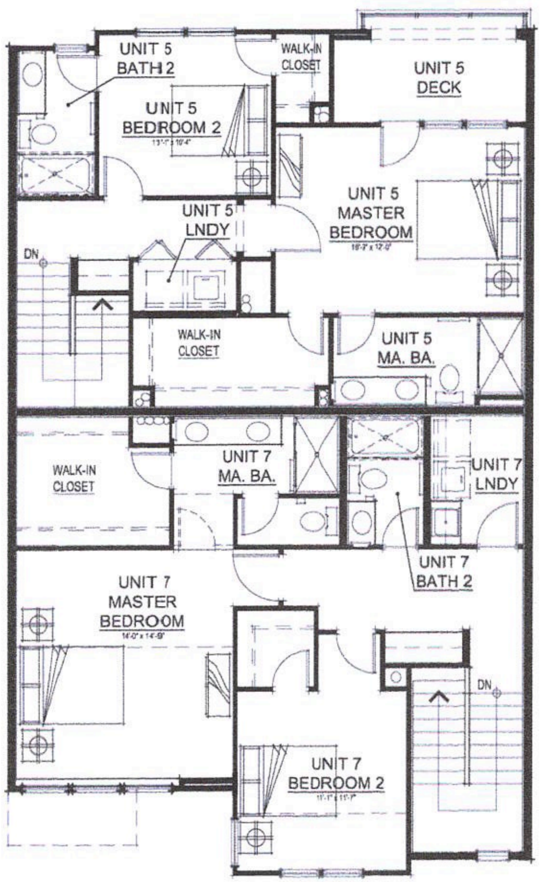
2001 TAROB COURT
Milpitas, CA
September 10, 2021

UNITS 2, 5 & 7 FLOOR PLANS
A02

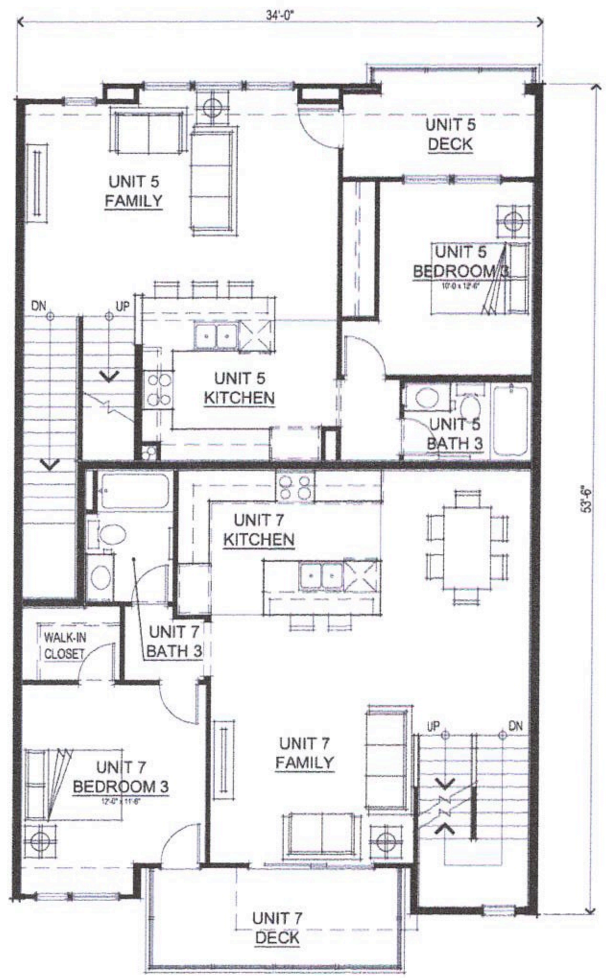
TTLC Tarob 4, LLC
12647 Alcosta Blvd., Suite 470 San Ramon CA 94583
925.824.4300

SDG Architects, Inc.
3361 Walnut Blvd. Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com

ATTACHMENT C
Lot 20 Floor Plan - Unit 2
(Page 1 of 2)



FOURTH FLOOR PLAN



THIRD FLOOR PLAN

2001 TAROB COURT
Milpitas, CA
September 10, 2021

UNITS 2, 5 & 7 FLOOR PLANS
A03

TTLC Tarob 4, LLC
12647 Alcosta Blvd., Suite 470 San Ramon CA 94583
925.824.4300

SDG Architects, Inc.
3361 Walnut Blvd. Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com

ATTACHMENT C
Lot 20 Floor Plan - Unit 2
(Page 2 of 2)

November 17, 2025

VIA EMAIL AND OVERNIGHT MAIL

City of Milpitas 455 East Calaveras Boulevard Milpitas, CA 95035 Attention: Deanna Santana, City Manager Email: dsantana@milpitas.gov	City of Milpitas 455 East Calaveras Boulevard Milpitas, CA 95035 Attention: Matt Cano, Asst. City Manager Email: mcano@milpitas.gov

Re: **Lot 20 at Lumen at Tarob Court (Milpitas)** – Affordable Housing Agreement (Lumen at Tarob Court by KB Home) ("**Agreement**") by and between the City of Milpitas (the "**City**") and KB Home South Bay Inc., a California corporation ("**Developer**") dated August 26, 2024, and recorded in the Official Records of Santa Clara County on August 30, 2024, as Document Number 25692509. Capitalized terms not otherwise defined herein shall have the meaning given them in the Agreement.

Dear Ms. Santana and Mr. Cano:

This letter serves as Developer's notice under Section 2.5 of the Agreement that, despite sustained marketing efforts in accordance with Section 2.4 of the Agreement, the Affordable Unit located at Lot 20 of the Lumen at Tarob Court project has remained unsold for more than one hundred fifty (150) days following issuance of its Certificate of Occupancy on October 18, 2024. Accordingly, the 150-day marketing period concluded on March 17, 2025.

In accordance with the terms of the Agreement, the Developer hereby offers to sell the remaining Affordable Unit (Lot 20) to the City at the Affordable Sales Price. The Affordable Unit would be conveyed under the same general terms applicable to a sale to an Eligible Purchaser. Pursuant to Section 2.5(a) of the Agreement, the Affordable Unit will be transferred to the City by grant deed, free and clear of monetary liens other than standard permitted exceptions such as non-delinquent taxes, assessments, and matters of record. Closing will occur within thirty (30) days after the City's written election to purchase, with escrow and title services handled through standard residential closing procedures. Developer will provide the limited warranty and homeowner materials typically provided to initial purchasers; otherwise, the Unit will be conveyed to the City in its as-is condition as of the close of escrow, consistent with the Agreement.

Under Section 2.5(b) of the Agreement, the City has sixty (60) calendar days from receipt of this notice to notify Developer in writing whether it elects to purchase the Unit at the Affordable Sales Price. If the City elects to purchase, the parties will proceed to closing on the terms described above. If the City does not elect to purchase the Unit within the 60-day period, then pursuant to the Agreement, the Unit will automatically become a Released Unit, and Developer may sell the Unit on the open market without affordability restrictions. In that event, Developer will pay to the City any difference between the Affordable Sales Price and the net market sale price, calculated in accordance with the Agreement.

Please confirm receipt of this notice. Should you require further information or wish to discuss the offer, please do not hesitate to contact me.

Sincerely,

Evelyn Jones
Regional Counsel
KB Home
5000 Executive Parkway, Suite 125
San Ramon, CA 94583
Tel: (925) 983-4519
Email: emjones@kbhome.com

cc: Oren Hershkovich (ohershkovich@kbhome.com)
Kerry Medellin (kamedellin@kbhome.com)
Bryon Lehl (blehl@kbhome.com)

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize the Assistant City Manager, or Designee, to Negotiate and Execute an Amendment to the Agreement with Harris & Associates, Inc. for a Transit Area Development Impact Fee Nexus Fee and Community Facilities District Nexus Study (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111; and Jay Lee, Planning Director, 408-586-3077)**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	1/13/2026
Recommendation:	Authorize the Assistant City Manager, or designee, to negotiate and execute an amendment to the Professional Services Agreement with Harris & Associates, Inc. for a Transit Area Development Impact Fee (TADIF) Nexus Fee and Community Facilities District (CFD) Nexus Study to include: (1) retroactively extend the Agreement through December 31, 2026; (2) add $5,100 for a revised maximum compensation of $105,085; (3) revise Exhibit A, Scope of Services, to add additional services; (4) revise Exhibit B, Schedule of Charges/Payments, to reflect payments for additional services; and (5) revise Exhibit C-4, Activity Schedule, to reflect updated project timeline.

BACKGROUND:

A development impact fee, in this case the Transit Area Development Impact Fee (TADIF), is allowed by State law (California Assembly Bill 1600, et. al). Through this fee, local agencies may fairly and proportionally cover some or all of the costs of infrastructure that support the proposed development expansion. Generally, this results in a savings for the General Fund and other resources that might pay for this infrastructure if development is allowed without imposing an impact fee. The City initially adopted an impact fee for the original Plan area in 2008 through adoption of the Transit Area Specific Plan (TASP), the predecessor to the current Metro Plan.

On February 7, 2023 the City adopted the current Milpitas Metro Specific Plan which increased the plan area from 437 to 510 acres and substantially increased the development scenario for a number of new infrastructures needed to support the increase in resident and worker populations. Given this expansion and the length of time since the last evaluation of proportional responsibility for funding the current and future infrastructure needs, it was determined that a new Nexus Study was required to analyze and update the impact fees applied to new development within the Metro plan area.

On July 17, 2023, the City executed a Professional Services Agreement with Harris & Associates, Inc. to conduct a Transit Area Development Impact Fee (TADIF) Nexus Fee and Community Facilities District (CFD) Nexus Study for a maximum compensation of $75,000 and a term period of July 17, 2023 through December 31, 2023. The scope of services included verifying infrastructure projects, developing the fee methodology and calculations, conducting a related CFD analysis, completing the Nexus Study, and attending public meetings. Since then, the Agreement has been amended four times to add additional compensation and scope of work as well as extend the term. The Agreement expired December 31, 2025 with a maximum compensation of $99,985.

ANALYSIS:

The Nexus Study is almost complete, but additional time, funds, and services are required to address additional items such as unresolved and evolving data issues, additional City review cycles, new legislative requirements, updated land-use information, and reviews by the Building Industry Association (BIA), interested developers, and the public prior to bringing the Nexus Study and fee resolution to City Council for consideration, which is currently anticipated in early 2026.

Staff requests City Council approval to amend the Agreement pursuant to Milpitas Municipal Code I-2-3.13-2(b) (Contracting for Consultants), which requires City Council approval if the consultant's total fee for materials and services under the contract exceed $100,000. The requested amendment would add the additional services required to complete the Nexus Study, increase the Agreement by $5,100, for a new not-to-exceed total of $105,085, and retroactively extend the term of the Agreement through December 31, 2026.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve staff's request to amend the Agreement.

Pros: None.

Cons: Not approving the amendment will result in an incomplete study and may result in inappropriate fees applied to new development or no fees at all.

Reason for Not Recommending: Approval of the amendment will allow the City to continue utilizing the consultant for the remaining services required to fully complete the Nexus Study, including the new development scenario and the infrastructure proposal to support growth in the Metro area. The Nexus Study will adjust fees for new development to pay its fair share of remaining and new infrastructure projects servicing those developments. This would result in an incomplete study and potentially inappropriate fees applied to new development or no fees at all.

FISCAL IMPACT:

Currently, the TADIF Nexus Fee and CFD Nexus Study are funded by the Metro Impact Fee Study capital project (CP 3469). With a remaining uncommitted balance of $50,000 in this project, there are sufficient funds remaining to fund this contract amendment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The project does not allow new development and only applies and updates funding requirements. The project involves the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges the City for the purpose of (1) Meeting operating expenses, including employee wage rates and fringe benefits, (2) Purchasing or leasing supplies, equipment, or materials, (3) Meeting financial reserve needs and requirements, or (4) Obtaining funds for capital projects, necessary to maintain service within existing service areas. The project is exempt pursuant to Cal. Code Regs., tit. 14, § 15273. The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

ATTACHMENT(S):

N/A

Harris & Associates

December 1, 2025

Matt Cano
Deputy City Manager/Acting City Engineer
City of Milpitas
1265 N. Milpitas Blvd.
Milpitas CA 95035

Re: Amendment No. 5 TADIF Nexus Fee and CFD Nexus Study

Dear Matt:

We appreciate the opportunity to continue assisting the City of Milpitas (City) with the preparation of the Milpitas Metro Specific Plan: Transit Area Development Impact Fee (TADIF) TADIF Nexus Study and Community Facilities District (CFD) evaluation. Per our prior discussions regarding additional work related to the Nexus Study including additional meetings and extended City review time, the following outlines the changes to the scope and estimated fee to provide these additional services. The updated revised timeline to complete the project is included as well. This will be amendment three to the contract.

Project Understanding

Harris is currently under contract and has been working on the TADIF Nexus Study with the City. Harris has completed a public review draft of the Nexus Study following extensive review and meetings with City staff. Since that time, several factors have extended the project timeline and significantly increased the level of effort required to complete the Nexus Study. These include: unresolved and evolving data issues, additional City review cycles, new legislative requirements, updated land use information, and the addition of items outside the original scope of work. In parallel, multiple rounds of revisions to the CFD analysis and questions related to CFD feasibility, also outside the original scope, have required substantial additional time and coordination.

Due to the extended project timeline, the need to prepare an additional revised draft of the Nexus Study, expanded edits to the report, and continued work to refine both the fee analysis and CFD analysis, Harris is requesting an amendment to the scope of work. This amendment covers the additional project management, meetings, coordination, research, and document revisions necessary to complete the updated Nexus Study. Harris is also requesting updated billing rates to reflect 2026 rates (an approximate 3 percent CPI increase), as shown in the fee table below.

Scope of Service

The scope of service for the TADIF Nexus Study includes preparing a comprehensive Development Impact Fee Nexus Study that summarizes the fee update in a clear and organized format, including an executive summary and all required legal and technical documentation. Due to recent AB 602 legislation and the Sheetz court decision, proportionality requirements must now be demonstrated at a more detailed level within the Nexus Study. Initially, the methodology for residential land uses was expected to shift from a per-square-foot basis to a per-bedroom basis; however, after extensive research and evaluation of the available City data, Harris determined that the data does not support this approach. Reevaluating the methodology and incorporating updated analyses required additional time, meetings, and coordination not included in the original scope of work.

The original scope included six (6) meetings outside of public hearings. At the time of the previous amendment, Harris had attended approximately twenty (20) meetings. With the ongoing review of project costs, analysis of fee program feasibility, evaluation of City projects, and numerous discussions related to the CFD analysis, Harris has now attended over twenty-five (25) meetings to date. Furthermore, there has been additional project management coordination and CFD revisions as well as discussions regarding the staff report and other items.

Accordingly, the additional scope of work request includes:

- Additional project management and coordination due to the extended schedule and expanded scope
- Additional meetings with City staff to review the revised Nexus Study and updated fee analysis
- Preparation of an additional draft of the Nexus Study reflecting responses to comments and updated fee scenarios
- Additional meetings and discussions regarding the feasibility of the fee program and CFD analysis
- Additional edits and revisions to the CFD analysis outside the original scope
- Updates to the Nexus Study, fee comparison tables, and supporting documentation to reflect current TADIF fees and changes resulting from the delay in fee adoption

Updated Timeline

Harris request a contract extension through June 30, 2026.

Proposed Fees

Based on the above scope of work our estimated fee for revising and finalizing the TADIF Nexus Study is below. Should additional work be required, or the timeline be extended, an amendment may be required.

	Harris & Associates Labor						
	Project Director $295/hr Hours	Project Manager $260/hr Hours	CFD Lead $280/hr Hours	Senior Analyst $180/hr Hours	Project Analyst $140/hr Hours	Total Harris Estimated Hours	Total Harris Estimated Fee
Task 1: Kick-off Meeting and Project Management	0	8	0	0	0	8	$ 2,080
Task 2: Verify Infrastructure Projects	0	0	0	0	0	0	$ -
Task 3: Develop Methodology and Calculate Fees	0	1	0	4	0	5	$ 980
Task 4: CFD Analysis	0	1	1	0	0	2	$ 540
Task 5: Nexus Study	0	3	0	4	0	7	$ 1,500
Task 6: Public Meetings	0	0	0	0	0	0	$ -
Task 7: Nexus Study	0	0	0	0	0	0	$ -
Total	**0**	**13**	**1**	**8**	**0**	**22**	**5,100**

Note: Hourly rates subject to annual increase based on CPI beginning January 1, 2027 and each year thereafter.

Note: Hourly rates subject to annual increase based on CPI beginning January 1, 2027 and each year thereafter.

If approved, the total Harris budget would be **$105,085**. This includes the original scope of work amount of $74,135 and the previous amendment requested amounts of $19,830 and $6,020 as well as the current amendment of $5,035.

We are looking forward to continuing our relationship with the City of Milpitas. If you have any questions regarding this proposal, please call me at 916-306-5704, or email me at Megan.Quinn@WeAreHarris.com.

Sincerely,
Harris & Associates, Inc.

Megan Quinn, MBA
Director, Municipal and District Finance
(916) 306-5704 ▯ Megan.Quinn@WeAreHarris.com

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Accept the Additional FY 2025 Citizens' Option for Public Safety (COPS) Grant for Front-Line Law Enforcement Services and Approve the Appropriation of Funds to the Police Department's FY 2025-26 Operating Budget (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)**
Category:	Consent Calendar-Public Safety
Meeting Date:	1/13/2026
Recommendation:	1) Accept the additional FY 2025 Citizens' Option for Public Safety (COPS) Grant in the amount of $128,220.02 to be spent in alignment with the City Council approved FY 2025 spending plan; and 2) Approve the appropriation of funds to the Police Department's FY 2025-26 Operating Budget for front-line law enforcement services.

BACKGROUND:
The Citizens' Option for Public Safety (COPS) program was originally adopted in Assembly Bill 3229 (Brulte) 1996 with funding from the state general fund. The COPS grant program provides funding for front-line law enforcement (municipal police, county sheriffs, and police protection districts); county jails; district attorneys for prosecution; and local juvenile justice programs (since FY 2001).

In FY 2001, the law was amended to provide a minimum front-line law enforcement allocation of $100,000 to any local agency receiving funding under the program. This funding must supplement existing services and may not be used to supplant any existing funding for law enforcement services.

The City of Milpitas' FY 2025 COPS Grant award was $126,280. In November 2025, the City was awarded an additional $128,220.02 for the FY 2025 COPS Grant. The Police Department will utilize the previously approved COPS 2025 spending plan for this funding (Attachment A).

ANALYSIS:
The City of Milpitas is not required to provide matching funds. California Government Code section 30062 specifies these funds must be used exclusively for front-line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police. The Milpitas Police Department has identified additional training, equipment, and services that can be purchased with this additional funding and will utilize the additional funding within the scope of the previously approved spending plan categories.

POLICY ALTERNATIVE(S):

Alternative 1: Refuse the additional FY 2025 COPS Grant funding.

Pros: There are no identified benefits to this alternative.
Cons: The Police Department would not be able to purchase the needed training and equipment, or the purchase of such would be delayed.
Reason for Not Recommending: The additional FY 2025 COPS award does not require matching funds nor are there any requirements that result in a negative impact to the City.

PROJECT SCHEDULE/KEY MILESTONES
Upon approval and appropriation, this funding will be utilized as soon as feasible and no later than the grant deadline of June 30, 2027.

BUDGET REFERENCE:
The table below identifies the fund and appropriation accounts to fund the actions recommended in this Agenda Report.

Fund	Function	Appropriations Account	Revenue/Reserve	Expense
261 – Supplemental Law Enforcement Services	712 - Personnel & Training	State Contributions - Police	$128,220.02	
		Police - Equipment, Supplies, and Training		$128,220
			$128,220.02	$128,220.02

FISCAL IMPACT:
The City would receive $128,220.02 in grant funding to be applied to the Supplemental Law Enforcement Services Fund. There is no match requirement or leveraging of funds required.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):
This action is a fiscal or administrative activity of the City government that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378. The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378. Even is a project, the action is exempt from further CEQA review pursuant to Cal. Code Regs., tit. 14, § 15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

ATTACHMENT(S):
(a) COPS 2025 Spending Plan (Council approved February 18, 2025)

MEMORANDUM

Milpitas Police Department

DATE: February 18, 2025

TO: Honorable Mayor and City Council

THROUGH: Ned Thomas, City Manager

FROM: Jared Hernandez, Chief of Police

SUBJECT: **FY 2025 Citizen Options for Public Safety (COPS) Grant**

The City of Milpitas anticipates receiving FY 2025 Citizens Option for Public Safety (COPS) funds from the state pursuant to Government Code 30061-30063, in the amount of $126,280. These funds must be used to support front-line law enforcement services and must supplement and not supplant existing funding for front-line law enforcement services. No City matching funds are required.

These funds shall be appropriated pursuant to written request from the Chief of Police of the law enforcement agency that provides police services for the city. The request shall specify the front-line law enforcement needs of the requesting entity including the personnel, equipment, and programs that are necessary to meet those needs.

Below are the recommended approximate expenditures for COPS grant monies for fiscal year 2025:

1.	**Community Engagement and Recruitment Supplies**	**$22,000**
2.	**Safety Equipment**	**$52,000**
3.	**Community Safety and Security Equipment**	**$30,000**
4.	**Training**	**$11,280**
5.	**Logistics and Technological Equipment**	**$11,000**
	Total:	**$126,280**

Details on these spending areas are as follows:

1. **Community Engagement and Recruitment Supplies**
Recruitment continues to be a priority in the Police Department; the department attends various recruitment events throughout the year where high-quality recruitment supplies and materials (banners, MPD swag, recruitment website, etc.) are essential in effectively attracting and engaging with potential job applicants. In addition, the Police Department hosts and participates in a variety of community events throughout the year to consistently build and maintain positive relationships with our community. For example, the Police Department conducts crime prevention presentations, produces

crime prevention media, and deploys equipment and technology to deter and prevent criminal activity. Therefore, the purchase of additional supplies, materials, and equipment is needed to continue to fulfill the department's community engagement and recruitment efforts.

2. **Safety Equipment**
   The purchase of equipment designed for rapid deployment in the field will protect officers and citizens during critical incidents. Protective equipment such as ballistic helmets will ensure officers are properly equipped and trained for potential critical and/or violent encounters.

3. **Community Safety and Security Equipment**
   The Police Department's existing stationary security camera system is aging and in need of software upgrade, to ensure functionality and higher quality results. Such equipment will ensure officers and detectives are properly equipped to maintain low response times to calls for service, preserve life, and protect public safety.

4. **Training**
   Continuous employee training is critical to the success of the Police Department. The purchase of in-person or virtual training, conferences, and/or new training software will aid department staff in maintaining high standards and equip them with the skills and knowledge needed to maintain and enhance operations. In addition, such training will enable the department to continue to meet state mandates.

5. **Logistics and Technological Equipment**
   The Police Department routinely responds to various critical, emergency operations and investigates in-depth cases that require pertinent information be shared among department staff. The purchase of smart technology equipment will ensure department staff are properly equipped with reliable tools to collect, share, and preserve sensitive information effectively, efficiently, and securely.

RECOMMENDATION:

Allocate the 2025 COPS grant funds ($126,280) to the above program areas.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Accept the FY 2026 Citizens' Option for Public Safety (COPS) for Front-Line Law Enforcement Services and Approve the Appropriation of Funds (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)**
Category:	Consent Calendar-Public Safety
Meeting Date:	1/13/2026
Recommendation:	(1) Accept the FY 2026 Citizens' Option for Public Safety (COPS) Grant in the Amount of $125,185.00 for Front-Line Law Enforcement Services; and (2) Approve the Appropriation of Funds in the Total Amount of $125,185 to the Police Department's FY2025-26 Operating Budget.

BACKGROUND:
The Citizens' Option for Public Safety (COPS) program was originally adopted in Assembly Bill 3229 (Brulte) 1996 with funding from the state general fund. The COPS grant program provides funding for front-line law enforcement (municipal police, county sheriffs, and police protection districts); county jails; district attorneys for prosecution; and local juvenile justice programs (since FY 2001).

In FY 2001, the law was amended to provide a minimum front-line law enforcement allocation of $100,000 to any local agency receiving funding under the program. This funding must supplement existing services and may not be used to supplant any existing funding for law enforcement services.

The City of Milpitas' FY 2026 COPS Grant award is $125,185. The Police Department has proposed a grant funding spending plan, as outlined below.

ANALYSIS:
The City of Milpitas is not required to provide matching funds. California Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services and shall be appropriated pursuant to a written request from the Chief of Police (included as Attachment A). The Milpitas Police Department recommends the following front-line municipal police services to be purchased with the FY 2026 COPS Grant:

1. Community Engagement and Recruitment Supplies
2. Safety Equipment
3. Community Safety and Security Equipment
4. Training Expenses
5. Logistics and Technological Equipment

POLICY ALTERNATIVE(S):

Alternative 1: Refuse the FY 2026 Citizen's Option for Public Safety (COPS) grant award.
Pros: There are no identified benefits to this alternative.
Cons: The Police Department would not be able to purchase the needed equipment and training, or the purchase of the equipment/training would be delayed.
Reason for Not Recommending: The FY 2026 COPS grant award does not require matching funds nor are there any requirements that result in a negative impact.

PROJECT SCHEDULE/KEY MILESTONES
Upon approval and appropriation, this funding will be utilized as soon as feasible and no later than the grant deadline of June 30, 2028.

BUDGET REFERENCE:
The table below identifies the fund and appropriation accounts to fund the actions recommended in this Agenda Report.

Fund	Function	Appropriations Account	Revenue/Reserve	Expense
261 – Supplemental Law Enforcement Services	712 - Personnel & Training	State Contributions - Police	$125,185	
		Police - Equipment, Supplies, and Training		$125,185
			$125,185	$125,185

FISCAL IMPACT:
The City would receive $125,185 in grant funding to be applied to the Supplemental Law Enforcement Services Fund. There is no match requirement or leveraging of funds required.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):
This action is a fiscal or administrative activity of the City government that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378. The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378. Even is a project, the action is exempt from further CEQA review pursuant to Cal. Code Regs., tit. 14, § 15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

ATTACHMENT(S):
(a) COPS 2026 Spending Plan

MEMORANDUM

Milpitas Police Department

DATE: January 13, 2026

TO: Honorable Mayor and City Council

THROUGH: Matt Cano, Acting City Manager

FROM: Jared Hernandez, Chief of Police

SUBJECT: **FY 2026 Citizen Options for Public Safety (COPS) Grant**

The City of Milpitas anticipates receiving FY 2026 Citizens Option for Public Safety (COPS) funds from the state pursuant to Government Code 30061-30063, in the amount of $125,185. These funds must be used to support front-line law enforcement services and must supplement and not supplant existing funding for front-line law enforcement services. No City matching funds are required.

These funds shall be appropriated pursuant to written request from the Chief of Police of the law enforcement agency that provides police services for the city. The request shall specify the front-line law enforcement needs of the requesting entity including the personnel, equipment, and programs that are necessary to meet those needs.

Below are the recommended approximate expenditures for COPS grant monies for fiscal year 2026:

1.	**Community Engagement and Recruitment Supplies**	**$20,000**
2.	**Safety Equipment and Storage**	**$30,000**
3.	**Community Safety and Security Equipment**	**$30,000**
4.	**Training Expenses**	**$25,000**
5.	**Logistics and Technological Equipment**	**$20,185**
	Total:	**$125,185**

Details on these spending areas are as follows:

1. **Community Engagement and Recruitment Supplies**
The Police Department hosts and participates in community events and outreach throughout the year to consistently build and maintain positive relationships with our community, such as hosting crime prevention presentations, producing crime prevention media/materials, and deploying equipment and technology to deter and prevent criminal activity. In addition, recruitment continues to be a priority in the Police Department, thus these funds will also be utilized to purchase various recruitment supplies, materials, and event registrations that are essential in effectively attracting potential job applicants.

2. **Safety Equipment**
   The purchase of safety and protective equipment designed for rapid deployment in the field will protect officers and citizens during critical incidents. In addition, the purchase and/or replacement of firearms, less-lethal devices, less-lethal ammunition, firearms accessories, and related safety equipment will maintain the firearm program inventory and ensure officers are equipped with appropriate equipment for de-escalation techniques.

3. **Community Safety and Security Equipment**
   A police canine with basic and specialized training courses will be purchased, due to the upcoming retirement of one of the department's existing police canines. Such equipment and resources will support the department's canine unit and enhance public safety, providing the department with the ability to perform specialized public safety tasks, such as missing person tracking, narcotics detection, etc. that officers otherwise could not accomplish.

4. **Training Expenses**
   Continuous employee training, above and beyond required courses, is critical to the success of the Police Department. The purchase of in-person or virtual training and conferences, such as specialized training for the department's polygraph unit, will aid in succession planning efforts and equip department staff with the skills and knowledge needed to maintain and enhance operations. In addition, such training will enable the department to continue to meet state mandates.

5. **Logistics and Technological Equipment**
   The purchase of technological equipment, such as dispatch monitors, will ensure department staff are properly equipped with up-to-date and reliable tools to collect, share, and preserve sensitive information effectively, efficiently, and securely.

RECOMMENDATION:

Allocate the 2026 COPS grant funds ($125,185) to the above program areas.