MILPITAS PLANNING COMMISSION STAFF REPORT

May 6, 2026

APPLICATION: **DISTRICT LOT 3A AMENDMENT – 1320 McCANDLESS DRIVE – SITE DEVELOPMENT AMENDMENT (P-SA25-0002), VESTING TENTATIVE MAP (P-TM26-0001), CONDITIONAL USE PERMIT AMENDMENT (P-UA25-0003), DENSITY BONUS PERMIT (P-DB26-0001), and DEVELOPMENT AGREEMENT (DA26-0001):** A request for a major modification to Site Development No. P-SA20-0004 for the development of 109 townhomes and 10 Accessory Dwelling Units on a vacant 5.49-acre site located in the MXD2-Metro Zoning District at 1320 McCandless Drive. The application also includes a request for a Density Bonus Permit with concessions, Vesting Tentative Map No. P-TM26-0001, and a major modification to Conditional Use Permit No. P-UP15-0010, which allowed for the approved mixed-use development. Furthermore, the Project includes a tentative Development Agreement, including to identify the required minimum density and other applicable standards. The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan).

RECOMMENDATION: **Staff recommends that the Planning Commission adopt Resolution No. 26-010, recommending approval of Site Development Permit Amendment SA25-0002, Vesting Tentative Map (P-TM26-0001), Conditional Use Permit Amendment (P-UA25-0003), Density Bonus Permit (P-DB26-0001), and Development Agreement (DA26-0001) to the City Council, subject to the attached Conditions of Approval.**

LOCATION:
Address/APN: 1320 McCandless Drive (APN 086-33-112, -113, and -114)
Area of City: Southern portion of the City of Milpitas near the Great Mall

PEOPLE:
Project Applicant: Riley Paone, Lyon Living
Project Planner: Randy Baez, Associate Planner

LAND USE:
General Plan Designation: Milpitas Metro Specific Plan (MMSP)
Zoning District: Mixed Use (MXD2-Metro)

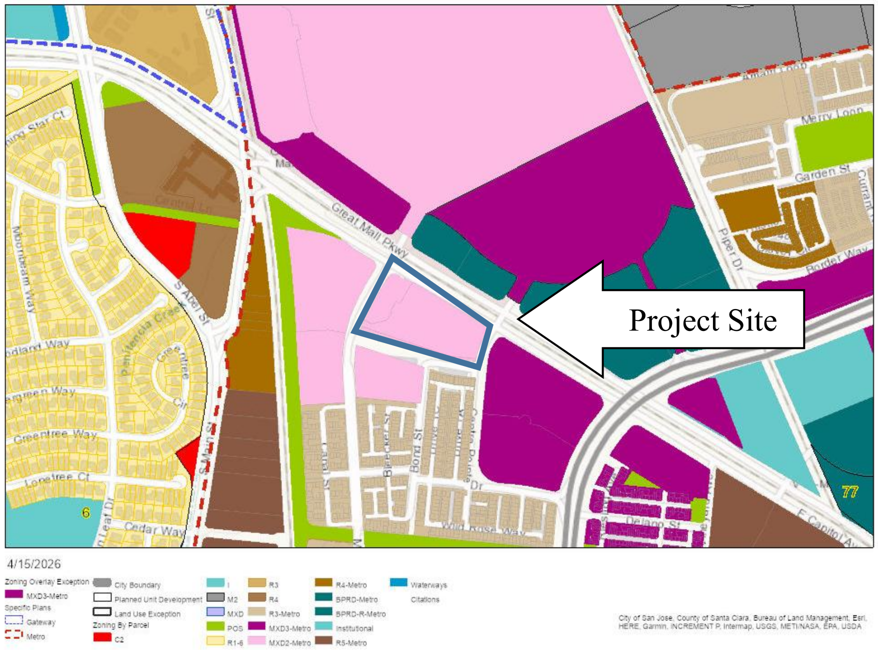
Site Area: 5.49 acres

ENVIRONMENTAL: The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15182 (Residential Projects Pursuant to a Specific Plan), and is consistent with the Transit Area Specific Plan (TASP) Environmental Impact Report (FEIR), June 2008 and Milpitas Metro Specific Plan Subsequent EIR (SCH#2006032091), approved by the City Council on February 7, 2023 (Resolution No. 9217).

Map 1 – Project Location

Map 2 - Zoning Map

1320 McCandless Zoning Map



RECOMMENDATION

Staff recommends that the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing;
3. Consider the CEQA determination in accordance with CEQA; and
4. Adopt Resolution No. 26-010, approving Amendment to Site Development Permit No. SD15-0006, Vesting Tentative Map No. P-TM26-0001, Conditional Use Permit No. UP15-0010, Density Bonus Permit No. P-DB25-0001, and Development Agreement DA26-0001, subject to the findings and attached Conditions of Approval.

BACKGROUND

History

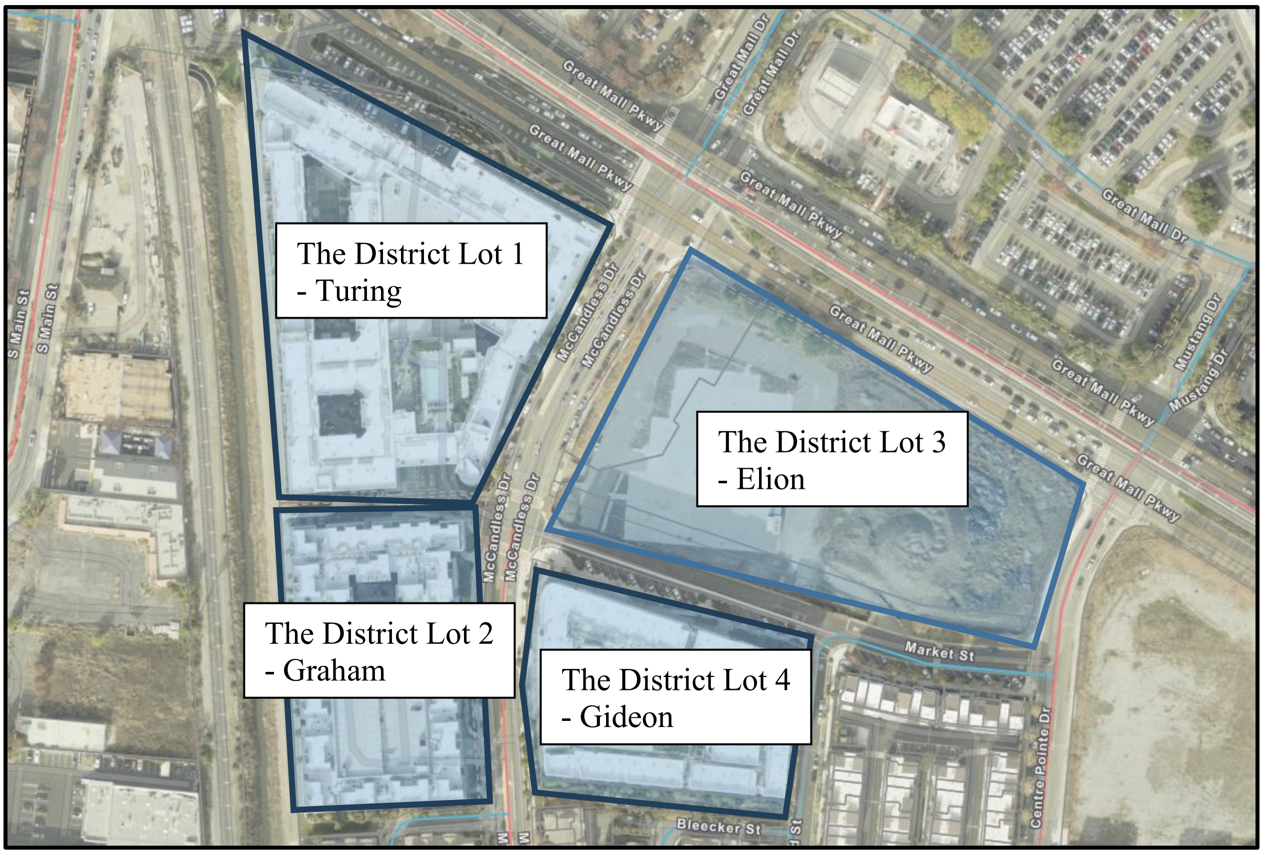
In 2008, the City Council adopted the Transit Area Specific Plan (TASP). The TASP area encompasses 437 acres and forecasts the development of approximately 7,109 residential dwelling units, 287,075 square feet of retail space, nearly one million square feet of office use and up to 350 hotel rooms. The TASP includes goals, policies, and development standards to guide construction within the area, which includes sub-districts in order to address the area's unique characteristics.

The McCandless/ Centre Pointe Sub-District is an area identified within the TASP as the best location for a successful retail mixed-use district, building off the established retail destination of the Great Mall and the visibility along Great Mall Parkway.

In 2011 Integral Communities submitted a master-planned mixed-use development within a portion of the McCandless/ Centre Point Sub-District through Site Development Permit No. SD11-0001, Conditional Use Permit No. UP11-0037, and Tentative Map No. TM11-0002. The development, called The District, includes multiple land areas for retail, commercial, and high-density residential development. Integral Communities eventually sold The District development to Lyon Living. Lyon Living is the current owner of the property and is completing the development of a portion of The District, also referred to as The Fields.

The Fields is comprised of four separate mixed-use areas located near the intersection of Great Mall Parkway and McCandless Drive. The City refers to these areas as The District – Lot 1, Lot 2, Lot 3, and Lot 4, which are also referred to as Turing, Graham, Elion, and Gideon, respectively. Figure 1 shows these lots below.

<u>Figure 1: The Fields/District Lots 1-4</u>



In November 2015, the City of Milpitas approved multiple entitlements that included a major portion of The Fields, including Site Development Permit No. SD15-0006 and Conditional Use Permit No. UP15-0010 for The District – Lot 3. The approved project included a mixed-use building with 423 residential units, 175 hotel rooms, 59,135 square feet of retail and office space, a 49,240 square-foot rooftop amenity deck, and a maximum building height of 130 feet for both the hotel and mixed-use buildings. The approvals also established the use of density averaging across the project area, allowing flexibility in the distribution of units among the various lots, provided the overall project met the minimum density requirements of the TASP.

In May 2018, June 2019, and March 2020, Lyon Living further modified project areas within The Fields. Through Minor Site Development Permit No. MS18-00442, Lyon Living received approval to decrease residential units and increase retail space for The District – Lot 2. Lyon Living also received approval to increase residential units and decrease retail space for The District – Lot 4 through Site Development Permit Amendment Nos. SA18-0006 and SA19-0006.

In 2021, the Planning Commission approved Site Development Permit Amendment No. SA20-0004 and an amendment to Conditional Use Permit No. UP15-0010 for The District – Lot 3. That amendment modified the previously approved development density uses, and architecture as follows:

- Decreased the total number of residential dwelling units from 423 to 357;
- Decreased the total number of hotel rooms from 175 to 162;
- Decreased the amount of retail/office space from 59,135 square feet to 25,179 square feet;
- Decreased the size of the rooftop amenity deck from 49,240 square feet to 18,225 square feet;
- Reduced the hotel building's maximum height from 130 feet 83 feet and the maximum height of the mixed-use building from 130 to 90 feet;
- Eliminated private open space from 71 residential units;
- Modified the architectural design and layout of the overall project, including the hotel and mixed-use building;
- Approved exceptions to the TASP retail area standard and private outdoor space standard pursuant to MMC Section XI-10-6.07, via the Conditional Use Permit amendment; and
- Approved development of infrastructure along Market Street to support a farmer's market and community gathering area as a public benefit.

The environmental assessment for SA20-0004 was conducted in accordance with CEQA (memorandum dated January 7, 2021) and found the project consistent with the Addendum to the TASP Final Environmental Impact Report (SCH#2006032091), approved by the Milpitas City Council on November 17, 2015 through Resolution No. 8509. As a separate and independent basis, the project was also found exempt under CEQA Guidelines Section 15183 and Section 15182.

On February 7, 2023, the Milpitas City Council adopted the Metro Plan, which superseded the Transit Area Specific Plan, originally adopted in 2008. The new Metro Plan expands the geographic area of the Plan from 437 acres to 510 acres and increases housing capacity by 7,000 additional units while addressing the need for greater commercial and employment development. The change to the Metro Plan was intended to be a response to current market conditions, regional housing needs, and the completion of the Milpitas Transit Center with BART and VTA connections. The Metro Plan reorganizes the original six TASP subdistricts into five Metro districts: Great Mall, McCandless, Tango, Piper, and Innovation District. It also expands commercial and employment opportunities, particularly through the new Innovation District focused on technology and research and development. The proposed Project is located within the McCandless District of the Metro Plan, which is characterized by high-density mixed-use development along larger, busier streets and by lower density townhouse development in the central area of The District.

The Application

The current application proposes a further amendment to Site Development Permit No. SD15-0006 and Conditional Use Permit (CUP) No. UP15-0010, as amended by SA20-0004. These changes include the following and are summarized in Table 1:

- Further reduce the total number of residential units from 357 to 109 townhomes and 10 ADUs;
- Eliminates the proposed hotel (previously 162 hotel rooms);
- Reduces the amount of retail/office space from 25,179 square feet to approximately 3,324 square feet of live/work space, split between nine units;
- Eliminates the rooftop amenity deck (previously 18,225 square feet);
- Reduces the proposed building height from 90 feet to no more than 49 feet; and
- Proposes 27,832 square feet of public open space in the form of a public urban plaza.

The original CUP (UP15-0010) was requested to deviate from certain Transit Area Specific Plan (TASP) standards as allowed by the TASP Section 5.2 (Zoning Regulations) standards as allowed by the TASP. These deviations included providing tandem parking, increasing the Floor Area Ratio (FAR), and exceptions for certain TASP standards such as setbacks, parking, ground floor retail space depth, and open space. Those same exemptions are not requested nor are they a part of the present application. The applicant is requesting an amendment to the CUP for a condominium subdivision as part of the Vesting Tentative Map per MMC Section XI-1-4.01-5.

Table 1: Summary of Lot 3 Entitlements

Element	Originally Approved (2015)	Amended by SA20-0004	Proposed
Residential Units	423 apartments	357 apartments	109 townhomes + 10 ADUs
Hotel Rooms	175	162	None
Retail/Office Space	59,135 square feet	25,179 square feet	3,324 square feet of live/work area (9 units total)
Rooftop Amenity Deck	49,240 square feet	18,225 square feet	None
Hotel Building Height	130 feet	83 feet	N/A
Mixed-Use or Residential Building Height	130 feet	90 feet	36 feet – 49 feet

The current application also requires the following entitlements:

- Vesting Tentative Map: The proposed Project includes the development of the site for for-sale townhome units, which requires a Vesting Tentative Map for the condominium subdivision of the lot per MMC Section XI-1-4.00 (Filing and Approval of Tentative Map).
- Density Bonus Permit: A density bonus is required to ensure compliance with State Density Bonus Law and ensure the project is eligible for certain concessions under State Density

Bonus Law. See MMC Sections XIII-C.12.010 et seq. (Density Bonus for Affordable Housing Developments).
- Development Agreement (DA): A DA is proposed to provide certainty as to what development standards apply to this Project, including to preserve the minimum residential density previously allowed for the subject property under the TASP (30 dwelling units per acre). See MMC Sections XIII-D.14.010 et seq. (Development Agreements).

PROJECT DESCRIPTION

Overview

The Project site is an undeveloped 5.49-acre parcel at the intersection of Great Mall Parkway and McCandless Drive within the McCandless District of the Metro Specific Plan. The property and some neighboring properties are zoned MXD2-Metro Mixed-Use. The Project site is located in the southern portion of the City, across the street from the Great Mall, and within a ½ mile from the Milpitas Transit Center. An aerial map of the subject site location is shown on Map 1.

Lyon Living (Applicant) submitted an application in July 2025 requesting a Site Development Permit Amendment to develop 109 multi-family townhomes and 10 Accessory Dwelling Units on a 5.49-acre vacant lot. The residences will each include an attached two-car garage, while nine of the townhome units along Market Street to the south will include live/work units, which include first floors that have been designed and will be deed restricted to function as commercial spaces. The live/work units have three different floor plans, all of which open onto the main floor of the unit and have access to ADA compliant bathrooms and an office area. The commercial component of the live/work units range from 336 to 401 square feet in size, for a total commercial floor area of 3,324 square feet. From the Market Street entrance, the live/work units will feature floor to ceiling windows and contemporary signage on the metal façade above each unit.

The proposed Project features 109 townhomes and 10 ADUs grouped into 17 buildings on the Project site. All 17 buildings range from three to four stories in height and feature contemporary architecture with a variety of building materials including stucco, siding, metal roof elements, and brick stone veneer. Although the site is surrounded by streets on all four sides, primary access to the site will be limited to one driveway along Market Street to the south in order to provide a more continuous facade and urban perspective from the other street frontages and surrounding area. Although this development does not propose on-site affordable housing, the applicant is providing 18 low-income and 4 very low-income rental apartments units at the adjacent Gideon building directly to the south of the site. These units would be provided within the larger footprint of the Fields project. Public improvements include refinished adjacent streets and new/updated sidewalks throughout the perimeter of the site, in addition to all required utility improvements. Lastly, the proposed Project includes a 27,832 square-foot publicly accessible urban plaza on the corner of Market Street and McCandless Drive.

Location and Context

The Project site is located near the intersection of Great Mall Parkway and McCandless Drive within the McCandless District of the Metro Plan. Properties adjacent to the Project site are zoned MXD2-Metro to the south and west and MXD3-Metro to the east. Two properties north of the

Project site are zoned BPRD-R-Metro, while the larger Great Mall property is zoned MXD2-Metro. The following table provides a summary of the Zoning and Land Uses surrounding the site:

Table 2: Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Use
Subject Site	Residential Retail High Density Mixed Use (RRMU)	Metro High Density Mixed Use (MXD2-Metro)	Vacant
North	Business Park/Research & Development (BPRD-R)	Metro Business Park Research and Development, Limited Residential (BPRD-R-Metro)	Drive-Through Restaurant and Gas Station
South	Residential Retail High Density Mixed Use (RRMU)	Metro High Density Mixed Use (MXD2-Metro)	Gideon Mixed-Use Building
East	BLVD Very High Density Mixed Use (BVMU)	Metro Very High Density Mixed Use (MXD3-Metro)	Vacant
West	Residential Retail High Density Mixed Use (RRMU)	Metro High Density Mixed Use (MXD2-Metro)	Turing Mixed-Use Building

PROJECT ANALYSIS

General Plan and Zoning Conformance

Milpitas General Plan 2040

The General Plan designation for the Project site is Milpitas Metro Specific Plan (MMSP). The Milpitas Metro Specific Plan (Metro Plan) classifies the Project site as Residential Retail High Density Mixed Use (RRMU) and details the goals, objectives and policies for the RRMU land use classification. The RRMU designation supports vertically mixed-use development that have ground floor retail and active uses with residential or office uses on upper floors. As a whole, the mixed-use designations of the Metro plan are intended to cluster pedestrian-oriented retail and personal services in proximity to high-density residential populations, as well as making them convenient to employment areas. The Project can be found in conformance with the policies and standards in the City's General Plan policies, as outlined in the following table:

Table 3: General Plan Consistency

Policy	Conformance
LU 1-4 *Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offer residents of all income levels, age*	**Consistent.** The Project provides 109 new multi-family townhome residences and 10 Accessory Dwelling Units (ADUs) on a currently vacant 5.49-acre parcel within the McCandless District of the Metro Specific Plan area. This variety of housing types — townhomes with attached two-

groups, and special needs sufficient housing opportunities and choices for locating in Milpitas.	car garages and ADUs — will meet the needs of individuals, families, and residents of all demographics and income levels. The townhome product type offers a family-sized housing option that is distinct from the higher-density stacked-flat apartment developments that predominate in the Metro Plan area, thereby diversifying the housing stock and providing additional choices for residents who may need more space for family, professional, or personal needs. Additionally, nine of the townhome units along Market Street will include live/work units, further expanding the variety of housing options available to residents who may wish to operate a home-based business.
LU 2-1 *Utilize Specific Plans to guide development within Milpitas's special planning areas. Properties located within Specific Plan areas shall conform to the underlying Specific Plan's land uses, zoning, and development standards.*	**Consistent.** The Project site is located within the Metro Specific Plan (Metro Plan) area and is zoned MXD2-Metro. The General Plan designates the Metro Plan as a walkable, transit-oriented area that encourages walking, biking, and public transit in order to minimize vehicle miles traveled (VMT). The Project, as proposed, conforms to the majority of development standards of the Metro Plan, as applicable; however some of these standards will be addressed through a separate Development Agreement. The inclusion of nine live/work units along Market Street to the south is also consistent with the Metro Plan's vision for active ground-floor uses along designated activity streets within the McCandless District.
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.*	**Consistent.** The Project site is located across the street from the Great Mall and within the McCandless District, an area that has steadily transitioned to a mixed-use, transit-oriented neighborhood over the last ten years or so. This Project will develop a currently vacant 5.49-acre parcel, thereby activating an underutilized site and contributing to the fabric of the area. The Project site design, with live/work units oriented toward public streets, will create an active street presence that integrates with the surrounding streetscape rather than creating an insular or self-contained development.
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 applicable height standards by proposing townhome buildings within the maximum height limit established for the MXD2-Metro zoning district. The building heights are proposed between 36 and 49 feet, which are consistent with the scale of nearby townhome developments within the Metro Plan area, while the maximum allowed building height is 85 feet.

CD 5-5 *For infill development, incorporate context-sensitive design elements that maintain compatibility and raise the quality of the area's architectural character.*	**Consistent.** The Project is an infill development on a vacant 5.49-acre parcel within the McCandless District of the Metro Plan. The Project incorporates context-sensitive design elements that maintain compatibility with the evolving architectural character of the Metro Plan area while raising the quality of the neighborhood. The townhome site design, with attached two-car garages, private entrances, and varied rooflines, provides a residential character that is compatible with the existing residential developments in the surrounding area. Furthermore, the inclusion of nine live/work units along Market Street introduces an active ground-floor element that conforms directly with the mixed-use character envisioned by the Metro Plan for the McCandless District.
CD 6-5 *Promote consistent development patterns along streets, particularly by how buildings relate to the street, to promote a sense of visual order, and provide attractive streetscapes.*	**Consistent.** The Project promotes consistent development patterns along Great Mall Parkway, McCandless Drive, and Market Street by orienting live/work units to face the public streets while maintaining landscaped setbacks that create an active and attractive streetscape. The proposed live/work units along Market Street further activate the street frontage and promote a sense of visual order consistent with the Metro Plan's vision for pedestrian-oriented activity streets. Furthermore, the Project includes separated sidewalks, street trees, and landscaping along the perimeter of the site, consistent with the Metro Plans' streetscape standards.

<u>Milpitas Metro Specific Plan</u>

The Vision Statement of the Milpitas Metro Specific Plan (Metro Plan) is "to create a complete and unique urban neighborhood". A complete neighborhood includes neighborhood services, a variety of retail, a balance of jobs and housing, with jobs near transit, affordable and market rate housing, safe and attractive multimodal connections, a variety of shared public spaces, and a strong sense of place with memorable architecture and landmarks. The proposed townhome project with live/work units contributes to the Metro Plan's vision of creating a complete neighborhood within the McCandless District. The Project develops a current vacant parcel, converting underutilized land into new housing that supports the transit-oriented neighborhood envisioned by the Metro Plan. The inclusion of nine live/work units along Market Street also introduces a mixed-use component that supports the Metro Plan's goal of providing neighborhood services and a balance of jobs and housing near transit. The Project's location within the McCandless District is consistent with the established pattern of townhome development in this subdistrict. Additional Metro Plan policy findings can be found in Table 4 below:

<u>Table 4: Metro Plan Policy Compliance</u>

Policy	Conformance
LU 1.1 *Establish the Land Use Classifications to identify areas appropriate for residential, commercial, mixed use, office, and industrial development. Retail commercial uses shall be concentrated in a pedestrian-oriented pattern.*	**Consistent.** The Project site is zoned MXD2-Metro, which includes "a mix of retail, restaurant, entertainment, and commercial services uses on the ground floor and residential or office uses on upper stories. The proposed 109-unit townhome development with nine live/work units along Market Street is consistent with the mixed-use character of the MXD2 designation by providing both residential and commercial uses.
LU 2.1 and 2.3 *"Arrange the highest density areas supported by strong pedestrian and bicycle access ways and along the major corridors and transit-adjacent areas" and "Establish a strong pedestrian and transit orientation throughout the Plan Area and limit development design that prioritizes automobile access to the detriment of pedestrian and bicycle access".*	**Consistent.** The Project is located at the intersection of Great Mall Parkway and McCandless Avenue, directly across from the Great Mall and within proximity to the VTA Great Mall light rail station. The Metro Plan identifies Great Mall Parkway as a major corridor where transit-oriented development is envisioned. The Project's location supports transit ridership by placing 109 new residential units and 10 ADUs within walking distance of light rail service.
LU 3.2 *Accommodate housing for a range of housing types, income levels, and rental and ownership models, including the following: Live/work units, Group housing, Co-living, Senior housing, Student housing".*	**Consistent.** The Project proposes 109 townhome units with 10 ADUs that provides transit-oriented housing within the McCandless District that diversifies the housing stock in the Metro Plan. The Project includes nine live/work units along Market Street, which is one of the housing types specifically listed in Policy LU 3.2. The townhome product type also adds variety to the Metro area's housing products, which includes higher-density apartment and condominium units. Furthermore, the Project will comply with the City's Inclusionary Housing Ordinance by providing 22 off-site affordable units at the nearby Gideon Apartments.
PPS 1.*7 Parks, Public Space, and Open Space: Locate parks and outdoor gathering spaces adjacent to higher density residential development to provide a visual and activity for housing, as well as to ensure safety through casual surveillance.*	**Consistent.** The Project is located approximately 1,000 feet away from McCandless Park, the largest park in the Metro area, which provides recreational amenities for the McCandless Subdistrict. The Project meets the minimum common open space requirement of 100 square feet per unit (10,900) with 27,832 square feet of public open space in the form of an urban plaza at the corner of Market Street and McCandless Avenue.

Development Standards

The site is located in the Metro High Density Mixed Use (MXD2-Metro) Zoning District. The purpose of the MXD2-Metro zoning district is to create and enhance areas with a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor and residential or office uses on upper stories, while maintaining a pedestrian-oriented streetscape. It is intended that the required active ground floor uses will ensure neighborhood-oriented retail and services are provided within walking distance of high-density residential development.

Per Milpitas Zoning Code Table B.12.030-A (Metro Zone Development Standards), the subject parcel is allowed a maximum density of 85 dwelling units per acre and a maximum Floor Area Ratio of 2.5. Table 4 demonstrates the Project's consistency with the applicable development standards of the MXD2-Metro zoning district, while Table 5 demonstrates the consistency with the Milpitas Metro Specific Plan.

Table 5: Summary of Metro Development Standards

Standards	MXD2-Metro	Proposed	Complies
Density Range (du/ gross acre)	40-85	20	No*
Active Use	Ground floor retail and active uses required on 80% of frontages on any one blockface along any Activity Street	9 Live/work units proposed along Market Street to the south	No**
Sidewalk Width (Activity Street)	18 feet	8-10 feet	No**
Front Setback	Min.: 0 feet Max.: 20 feet	5-15 feet along Great Mall Pkwy	Yes
Interior Side Yard Setback (Min.)	0 feet	1-foot along Market Street	Yes
Street Side Setback	Min.: 0 feet	14'4" feet along McCandless	Yes
Rear Setback	10 feet	N/A	Yes
FAR (Min.)	1.0	1.52	Yes
FAR (Max.)	2.5	1.52	Yes
Building Height (Maximum)	85 feet	36 – 49 feet	Yes
Usable Open Space Per Dwelling Per Site	Min. 100 sf per residential unit, which may be private or common open space Min. 5% of the total open space provided on-site must be publicly accessible	(109x100=10,900) Common open space: 7,273 SF Public open area (urban plaza): 27,832 SF	Yes
Long-Term Bicycle Storage	0.5 long-term spaces per bedroom	177 (354 bedrooms x 0.5)	Yes

Standards	MXD2-Metro	Proposed	Complies
Short-Term Bicycle Storage	0.1 short-term spaces per bedroom	None	Yes, per COA #19
*	Although the Project does not meet the density requirement of the MXD2-Metro zone, a Development Agreement is proposed to apply the minimum density in the TASP (30 du/ac), which the Project would meet.		
**	The Project includes a Density Bonus permit request to reduce the Active Use and Activity Street sidewalk width requirements of the MXD2-Metro zone.		

The residential density of the Project is approximately 20 dwelling units per acre (du/ac), which does not meet the allowed minimum density of 40 du/ac in the MXD2-Metro zoning district. However, previous approvals established the use of density averaging across The Fields/District development, allowing flexibility in the distribution of units among the various lots. The average density across this development with the proposed Project would be 31 du/ac. The proposed Development Agreement would preserve the minimum residential density of 30 du/ac previously allowed for the subject property under the Transit Area Specific Plan (TASP). Therefore, with density averaging across The Fields/District development, the Project would meet the TASP minimum density with 31 units per acre average.

Site & Architectural Design

The townhomes are grouped into 17 buildings, which are accessed by private streets and driveways. The are designed in a multi-story townhome format, generally three and four levels tall, maximizing vertical space with parking and entry at the ground level, main living areas on the second and third floors, and bonus or entertaining rooms opening onto large, covered terraces at the top level to take advantage of light and views. The building massing is articulated through projections and recesses at adjacent townhomes, as well as staggered balconies that help break up the length of the structures, while top-level terraces create a stepped-back effect that reduces the overall sense of verticality. Outdoor living is emphasized through balconies and top-level terraces featuring sleek black railings and warm wood soffits, while simple balcony columns frame views and reinforce the contemporary character. The roof design combines shed roofs, flat balcony and terrace roofs, and curved sloping roofs at prominent elements, creating a simple yet dynamic contemporary roofline. Large windows enhance natural light and provide expansive views throughout the development.

The project is designed in a Northwest Contemporary architectural style, incorporating modern design principles such as clean, boxy massing, flat and low-slope roofs, large black-framed windows, a mixed-material façade, and minimal ornamentation, with visual interest created through proportions, material contrasts, and balcony and roof projections. This style complements neighboring residential developments, which also reflect contemporary and modern design.

Exterior materials consist primarily of stucco with lap siding accents for added texture, while brick at the ground floor introduces a natural element that helps ground the modern aesthetic. The color palette draws from coastal tones, including whites, cool grays, blues, and green-blues, complemented by the warmer earth tones of the brick.

Traffic and Circulation

Vehicular access will be provided by a single driveway with direct ingress/egress from Market Street to the south. An internal private street and alley grid will provide access to the 17 buildings and 109 garages with a total of 218 covered vehicle parking spaces provided. One additional emergency access would be provided along McCandless to the west of the site. In addition, four guest parking spaces will be provided along the internal driveway labeled "Street G" in the attached Project Plans, including one ADA-compliant space. The Project has also been conditioned to provide one guest parking space as an EV charging space, per Building Code. Consistent with the intent of the Metro Area and The Fields development, pedestrian ingress and egress is provided throughout the site. New and improved sidewalks along the perimeter of the site will provide access for pedestrians around the Project site. Internal walkways also provide convenient access for pedestrians throughout the site and in between buildings, with primary public sidewalk accessed from two points along Great Mall Pkwy., one at Market Street, and another accessing the urban plaza park at the southwest corner of the site.

The proposed Project includes 109 townhomes with a total of 354 bedrooms. Per MMC Section XIII-C.6.100 (Bicycle Parking), this results in 177 required long-term bicycle spaces and 35 short-term bicycle spaces on-site. The 177 long-term bicycle spaces will be located within the proposed attached garages, with an average of two long-term bicycle spaces per garage. The Project is also conditioned to provide updated plans showing the location and design for all 35 short-term bicycle spaces on-site prior to Building permit issuance, per Condition of Approval #19. Furthermore, multifamily residential projects are required to provide a minimum of 0.5 parking spaces per unit, which would result in 55 parking spaces for this Project. However, the Project will provide a two-car attached garage per unit, as well as four guest parking spaces, resulting in a total of 222 parking spaces throughout the site.

Public Improvements

The proposed Project would require utility services including water, wastewater, storm drain, gas, electrical, and telecommunications. The proposed Project would connect to existing utilities via tie-ins along McCandless Drive to the west and Great Mall Parkway to the north. The Project site is currently undeveloped except for a building foundation from the previous entitlement that was never completed. Roofs, roads, concrete driveways and other infrastructure would result in 186,084 square feet of impervious area, which would be mitigated through eight separate drain management areas (DMAs). The three DMAs closest to Great Mall Parkway to the north will use UTS – Silva Cells, while the remaining five will use bioretention areas that will treat and handle stormwater flows prior to discharge to the City's stormwater drainage system.

As part of the proposed Project, the City's Public Works – Engineering Transportation team analyzed the proposal and is requiring that a Traffic Impact Analysis (TIA) be submitted to the City for review and approval. However, Public Works is requiring that the developer perform pavement restoration along the project frontage on McCandless Drive, Center Pointe Drive, and Great Mall Parkway per City Standards. In addition, the developer will also perform street lighting photometric analysis along the frontages of the Project to ensure there is ample amount of light when needed. The photometric plan will be reviewed and approved by the City during the construction plan phase.

The Project fronts Great Mall Parkway to the north, McCandless Avenue to the west, Market Street to the south, and Centre Pointe Drive to the east. Project frontage along Great Mall Parkway will have a new 10-foot sidewalk and 11 feet of landscaping. Project frontage along McCandless will maintain the existing 8-foot sidewalk and provide between 10 and 16 feet of landscaping. Project frontage along Market Street will have a new 8-foot sidewalk and 12 feet of landscaping. Lastly, frontage along Centre Pointe will have a new 8-foot sidewalk and approximately 12 feet of landscaping.

Landscaping

The proposed Project incorporates a combination of groundcovers, shrubs, and trees that are drought-tolerant and consistent with the City's approved plant palette. The vacant site currently has 15 trees, five of which are along McCandless Drive and will remain untouched, while 10 small trees along Great Mall Parkway will be removed. Although none of these removed trees are considered "protected" trees as measured from the width of the trunk, the Project will still mitigate the loss of trees and enhance the Project by planting five additional 24" box Crape Myrtle trees along McCandless Drive along the western edge of the site. 26 additional 24" box Crape Myrtle and Golden Rain Trees are also proposed along the other three street frontages, as well as 16 large, 24" box size Lacebark Elm trees along Great Mall Parkway to the north. Numerous other trees are proposed throughout the interior of the townhome development, including 23 36" box size 'Keith Davey' trees. A number of shrubs and groundcover are proposed throughout the project site such as cape rush shrubs, blush fringe flowers, and different various types of sage will assist the site in bioretention as well as erosion control while providing a harmonious view for the nearby residents.

Open Space

Per the Metro Specific Plan, private development must provide on-site open space at a rate of 100 square feet per unit, with at least 5% provided as publicly-accessible open space. This results in a minimum of 10,900 square feet of required open space on-site, 545 square feet of which must be publicly-accessible. The proposed Project exceeds this requirement by providing a 27,832 square-foot publicly-accessible urban plaza area, plus 7,273 square feet of public open space near public right of ways. The urban plaza features a semi-circular concrete seat wall facing a circular patch of lawn that can be used for active uses for the general public. A cantilevered trellis patio cover will overhang the seat wall to provide shade while maintaining an open feel to the urban plaza. Additional shade to the urban plaza will be provided by eight 24" box size accent trees such as red maples and Ginkgo Biloba trees. The Project will also provide 16,745 square feet of private common space in the form of exterior yards within the innermost portion of the site, particularly near Buildings 13, 14 and 17.

Objective Design Standards

The City of Milpitas adopted its Residential and Mixed-Use Objective Design Standards (ODS) to facilitate project designs by establishing objective development and design standards for all multi-family and mixed-use projects. The ODS are intended to bring consistency and clarity to project review and permitting while eliminating subjectivity to provide uniform language. The proposed Project includes 109 townhome units and 10 ADUs on a 5.49-acre site, which would be classified as a Large project type and a "Medium" building type. While compliance with the ODS is only required for projects seeking permit streamlining (i.e., ministerial review), all projects proposing two or more dwelling units must demonstrate how it meets the intent and purpose of the ODS.

Although the Project is not seeking ministerial review, Table 6 below shows how the Project is compliant with or meets the intent and purpose of (i.e., consistent with) the City's ODS.

Table 6: ODS Compliance/Consistency

Standard	Conformance
Section 2.1 - Block Structure / Maximum Block Length	**Consistent** - The ODS require that all projects have a maximum block length of 400 feet and a maximum perimeter length of 1,400 feet. Although the Project site exceeds both amounts, the size and shape of the lot is existing and will not be increased. Additionally, the block is broken up by private driveways and pedestrian paths along the perimeter. Therefore, the Project is consistent with the intent and purpose of this requirement to divide large blocks and create multiple buildings.
Section 2.3 - Shared / Publicly Accessible Open Space	**Compliant** – As a Large Site, the Project is required to provide shared publicly accessible open space in addition to minimum usable open space. For projects with an average building height less than 45 feet such as this one, publicly accessible open space shall be equal to or greater than 5% of the lot area, which is approximately 11,957 square feet. This Project meets this requirement through the Urban Plaza located at the intersection of Market Street and McCandless Avenue.
Section 3.1 - Sidewalk Design	**Consistent** - The ODS require that residential projects fronting a public street right-of-way provide a minimum effective sidewalk width of 12 feet, with a minimum 6-foot-wide pedestrian clear zone. The Project fronts Great Mall Parkway to the north, McCandless Avenue to the west, Market Street to the south, and Centre Pointe Drive to the east. Project frontage along Great Mall Parkway will have a 10-foot sidewalk and 11 feet of landscaping. Project frontage along McCandless will have an 8-foot sidewalk and between 10 and 16 feet of landscaping. Project frontage along Market Street will have an 8-foot sidewalk and 12 feet of landscaping. Lastly, frontage along Centre Pointe will have an 8-foot sidewalk and approximately 12 feet of landscaping.
Section 3.4 – Ground Floor Uses	**Consistent –** The ODS require that active frontages have a minimum interior depth of gross building area of 15 feet for live/work units. As proposed, the Project provides between 12 and 14 feet and 8 inches of depth. However, due to the limited right-of-way along Market Street, a 15-foot active frontage is infeasible. The provided frontage area is suitable for a narrow street like Market Street.

	The ODS also require floor-to-floor heights of live/work units to be 12 feet. While 10 feet of floor-to-floor heights are proposed, this still meets the intent of the ODS by providing floor-to-ceiling windows along Market Street to encourage pedestrian activity.
Section 3.9 – Standards for Special Conditions and Adjacencies	**Consistent –** The ODS require that all ground floor residential units shall be set back a minimum 40 feet from face-of-curb when adjacent to a Major Roadway, which is defined as a street with three or more travel lanes in each direction. Great Mall Parkway meets this definition and is directly north of the Project site. The Project proposes a building setback between 20 to 22 feet along Great Mall Parkway. However, the Project provides a number of large street trees along the Great Mall Parkway and approximately 10 feet of right-of-way dedication. The proposed height of the proposed buildings along Great Mall Parkway are also no more than 49 feet, which meets the intent of promoting gradual transitions from high density development to surrounding areas. Furthermore, no sound attenuation walls are proposed in order to lessen any potential noise impacts and maintain a pedestrian-friendly environment.
Section 5.1 - Ground Floor Design	**Compliant** - The ODS require that all ground floor residential units have an entry with direct access to the sidewalk, path, or open space. Ground floor residential facades must have a minimum 30% transparent glazing between 4 and 7.5 feet in height above finished floor, with transparent glazing that is maximum 50% reflective and with visible light transmittance greater than 80%. For the nine live/work units proposed along Market Street, the facades are required to have a minimum 50% transparent glazing between 3 and 7.5 feet in height above finished floor. This has been added as a condition of approval within the attached Resolution (COA #17).
Section 5.2 - Residential Unit Entry Types	**Compliant** – The ODS require that private entries into ground floor residential units shall be designed to provide human-scaled detailing, enhanced pedestrian experience, transition between public and private space, spaces for residents to gather and spend time outdoors, and resident privacy. The Project proposes Terrace entrances for all residential units, which are limited to 30 inches above the grade of the back of the adjacent sidewalk or accessway. Terrace entrances are also required to have a minimum path width of 42 inches and fences or walls have a maximum of 42 inches in height and have a minimum transparency of 40%. Although no fences are proposed at this time, the

	height maximum has been added as a condition of approval within the attached Resolution (COA #18).
Section 5.5 - Building Materials	**Compliant** – The ODS require building facades to include a variation in building materials, with primary materials covering between 55% and 65% of each exterior, excluding windows, doors, garage doors, and building trims. This Project accomplishes this by including metal-clad roofing materials, aluminum storefronts, and "Hartford" brick veneer, in addition to painted stucco and siding.
Section 6.2 - Usable Open Space/ Common Open Space	**Compliant** – The ODS require that Common Open Space be immediately adjacent to common spaces, hallways, or residential units, be accessible to all residents, and have a minimum width and length of 20 feet. The common open space must include a minimum of 20% landscaping, with a minimum of 20% area planted with ground cover/ shrubs, and a minimum of one tree planted per 400 square feet of open space area. Staff finds that the project is consistent with ODS Section 6.2 via the proposed urban plaza.

The ODS also requires a number of standards primarily related to development of apartment buildings, including ODS Sections 4.3.2 and 5.4.1. ODS Section 4.3.2 requires that buildings three stories or taller be designed to differentiate a defined base or ground floor, a middle or body, and a top, cornice or parapet cap. This Project meets the intent by providing contemporary architecture and varying building materials, including brick veneer, metal roof accents, and stucco and siding. ODS Section 5.4.1 requires that green roofs be required for all developments with a minimum net roof area of 5,000 square feet. Although the proposed Project meets the minimum roof area, the nature and shape of the townhome buildings are of a much narrower footprint than those of apartment buildings. The townhome buildings also feature sloped roofs to articulate building massing, which would drastically limit the feasibility of green roofs. However, the intent of increasing building performance will be met by providing solar panels.

Affordable Housing Ordinance

The City's Affordable Housing Ordinance (AHO), adopted in February 2022, applies to all new residential development projects of ten units or more designed and intended for permanent occupancy. The proposed Project consists of 109 market-rate dwelling units and 10 ADUs, for a total of 119 housing units. Although ADUs are specifically not counted towards the total number of affordable units, the 109 townhomes exceed the 10-unit threshold and is therefore subject to the AHO.

Pursuant to MMC Section XII-1-3.00, the applicant must reserve 15% of the total number of dwelling units within the development as affordable units. The City's AHO also states that if the project is a residential rental project, 100% of the required affordable units must be reserved for very low or low-income households. If the project is a residential ownership project, 100% of the affordable units must be reserved for very low, low, or moderate-low-income households. As the project proposes for-sale townhomes, all affordable units are required to be at the moderate-income level or lower. Applying the 15% requirement to the 109 market-rate townhomes yields an affordable housing obligation of approximately 16.35 moderate-income townhomes. Per the AHO, a fractional unit equal to 0.5 or greater is rounded up, resulting in a requirement of 17 on-site affordable units. However, in-lieu fees may be paid for requirements to construct fractional units of less than 0.5 units as outlined in MMC Section XII-1-3.00.

Although the City's AHO requires projects to construct 15% of the total number of dwelling units as affordable units on-site, some exceptions can be made. All exceptions to this requirement for ownership units shall require City Council approval, which must be obtained at or prior to the last discretionary approval for development of the Project. The AHO distinguishes between ownership and rental projects for purposes of the exception process. The City Council may allow an exception to the on-site requirement when the applicant contributes to the City's affordable housing needs through one of the alternatives found within Subsections XII-1-4.00 through XII-1-4.02, which include in-lieu fee payments, off-site construction, and land dedication.

The Project proposes 109 market-rate townhomes without any below-market-rate (BMR) units on site, which is inconsistent with the City's AHO. However, the Applicant is proposing to provide 22 below-market-rate (BMR) rental units by converting market-rate apartments in the adjacent mixed-use building to the south of the Project site, commonly known as Gideon. The Gideon building has 213 rental apartment units, all of which are currently rented at market-rate. The Applicant request that pursuant to Subsection XII-1-4.03 that Council approve this alternate method of compliance, which requires the City Council to find that such alternate method of compliance meets the purpose of the AHO. In addition, per Section 4 (Exceptions to On-Site Development of 15 Percent Affordable Units) of the AHO, all ownership projects proposing an alternative means of compliance must meet two findings:

1. The development as proposed with the exception as provided pursuant to this Section would further the City's low and/or moderate income housing goals as contained in the Housing Element; and

2. The development with the exception either (i) will result in at least two of the following;
    a. The development of a larger number of deed-restricted affordable units than would be created under the on-site requirement;
    b. The development of a larger number of deed-restricted affordable bedrooms than would be created under the on-site requirement;
    c. The development of a larger amount of deed restricted affordable living area than would be created under the on-site requirement;
    d. The development of deed-restricted affordable units at a lower average income target as compared to the affordable units that would be created under the on-site requirement;

    or (ii) will provide other community benefits that exceed the benefit of constructing on-site affordable units.

While the Project does not propose BMR units within the Project site (Lot 3), the Project site is one of the four sites within The Fields/District development, and the affordable units will be provided within the larger development of which this specific Project is a part. Therefore, under the unique circumstances of this particular project and method of compliance, the above findings can apply (and not necessarily the additional findings for off-site projects in Section XII-1-4.01).

The Project proposes to provide a larger number of deed-restricted affordable units (Finding 2.a) and some of those units at a lower income level (Finding 2.d) than would be created under the on-site requirement. Of the 22 BMR rental units, 18 would be at the low-income level and 4 would be at the very low-income level. Of the 18 low-income units, 15 are proposed as part of this alternative means of compliance with the AHO, and of the 4 very low-income units, 3 are proposed as part of this alternative means of compliance with the AHO. As such, the Project proposes an alternative means of compliance consisting of 18 instead of 17 BMR units, 3 of which would be at the very low- instead of low-income level. The Project proposes to reserve the remaining BMR units (3 low- and 1 very low-income) as a public benefit as part of the proposed Development Agreement. The Applicant requests that the City Council find that this alternate proposal is compliant with the AHO and provides a greater number of affordable units at a lower income level than what would otherwise be produced in the onsite development of the townhomes. The Applicant also points out that these affordable rental units are already constructed and can be made available to qualifying low- and very low-income households as they come open for lease, whereas the onsite construction of the townhomes project may take several years and therefore present a less immediate source of affordable housing.

The Project as proposed would also further the City's low and/or moderate income housing goals as contained in the Housing Element, which includes policies that prioritize the development of low- and very low-income levels. Additionally, the Housing Element Sites Inventory anticipated 357 market-rate units on this site based on the previous entitlement. While the Project would result in 238 fewer market-rate units than anticipated, it would provide 22 low-/very low-income units, which were not anticipated in the Sites Inventory for this site. Historically, the City has exceeded its Regional Housing Needs Allocation (RHNA) for market-rate but struggled to meet its RHNA for the low- and very low-income levels.

Furthermore, while the Project would provide smaller apartments instead of townhouse BMR units, these units would be at the low-/very low-income levels, providing greater rental savings for the Milpitas community relative to that of moderate-income units. The applicant has also demonstrated how the 18 low-/very-low apartments units are equivalent to or exceed the construction cost or value of 17.35 moderate townhomes. See the attached Affordable Housing Equivalency Analysis for more information.

Density Bonus Permit

State Density Bonus Law (Gov. Code § 65915 et seq.) incentivizes affordable housing by offering developers certain benefits. According to State Density Bonus Law (SDBL), developers that reserve "*at least 10 percent of the housing units restricted to lower income residents*" are entitled to waivers, concessions, and incentives (which include parking reductions). The city cannot deny a waiver, concession, or incentive unless it can demonstrate the exception will not *result in an identifiable cost reduction* for the project, *have a specific adverse impact upon public health and safety* (per Section 50052.5 of the California Health and Safety Code), *would be prohibited by CEQA* (Pub. Resources Code, § 21000 et seq.), or otherwise be *contrary to state or federal law*.

While the Project is not reserving at least 10 percent of the proposed housing units for lower income residents onsite, the State Density Bonus Law permits local jurisdictions to provide incentives or concessions allowed under the law even where a development may otherwise not be entitled to such incentives or concessions. As such, the City could allow the Applicant to request incentives or concessions for the Project through the DA. Therefore, the applicant is requesting the following incentives or concessions:

1. A reduction in the commercial requirement; and
2. A reduction in the sidewalk width requirement.

The MXD2-Metro zoning district requires ground floor retail and active uses on 80% of frontages on any one blockface along Activity Streets as identified in the Metro Plan. The Metro Plan identifies three of the Project site's frontages as Activity Streets, along the west, south, and east frontages. Since the Project only proposes active uses along Market Steet to the south, a waiver is required to reduce the commercial requirement for the Project accordingly. The Metro Plan also requires a minimum 18-foot-wide sidewalk along Activity Streets. However, the proposed sidewalks along the three Activity Streets range from 8 to 10 feet in width.

Both concessions are necessary to make the project economically feasible for the applicant to build since meeting the commercial requirement and minimum sidewalk width requirement would significantly increase the Project cost and affect the core townhomes project that the Applicant wishes to market. The Applicant has provided a project narrative stating why the incentives or concessions are needed and appropriate, as seen in Attachment F.

Development Agreement

A Development Agreement (DA) is needed to provide certainty regarding the applicable development standards. The California Legislature adopted the Development Agreement Statute (Section 65864 et seq. of the Government Code) to strengthen public planning, encourage private participation, and reduce development risks. This statute allows cities to enter binding agreements with property owners, establishing certainty as to the development standards and right for a particular project and thereby encouraging investment and redevelopment. On May 6, 1997, the City Council adopted Resolution No. 6642, which sets forth comprehensive procedures and requirements for the institution of development agreements.

The Project is eligible for a Development Agreement because it is a large-scale multifamily residential project and part of a multi-phased master-planned development requiring significant front-end investment and multiple years to complete construction, and otherwise requires long-term certainty on the part of the Applicant, at least for the three-year term (up to a seven-year term with options) of the currently proposed DA. This DA would provide certainty and direction for development to allow the completion of the last aspect of the District/Fields development.

Through the proposed Agreement, the landowner and City would preserve the minimum residential density previously allowed for the subject property under the TASP (30 dwelling units per acre), and thereby allow for the proposed development with additional construction and improvements only allowable through the benefit of this DA.

In consideration, the landowner shall provide the following offsetting public benefits to the City:

1. Payment of Four Hundred Thousand Dollars ($400,000) as a voluntary contribution to the City and community benefit to fund City services and infrastructure improvements at the discretion of the Council, payable at the time of issuance of final occupancy or after 3 years, whichever comes first; and
2. Conversion of 3 low- and 1 very low-income units within the adjacent Gideon development beyond the affordable units provided for AHO compliance, to be restricted to affordable rents prior to the issuance of building permits and rented to qualifying households within 2 years.

These community benefits are meant to offset the community impacts of the DA, which staff anticipates will at least include additional transportation and other programing or infrastructure required by locating additional residential units further away from this location and the extensive infrastructure and public/private amenities next to it, including the Great Mall and the Milpitas Transit Center.

The proposed DA allows redevelopment of an underutilized site, which has long been vacant as the rest of The Fields/District development has been constructed under the previous TASP standards. The Milpitas Metro Specific Plan, which was adopted in 2023 well after amendments to the previous entitlement for this site, increased the minimum density under the TASP from 30 to 40 dwelling units per acre, which is difficult to meet under current market conditions. The proposed DA will hold these standards open for a period of three (3) years, up to seven (7) years with options, should further redevelopment of the site be sought during this period. If changes are proposed beyond what is defined as "Insubstantial Modification" in the DA, the Project would need to be re-entitled in conformity with then current development standards.

No Net Loss Law

While the proposed DA with the reduced minimum density would result in fewer units to be built on the Project site than anticipated in the Housing Element Sites Inventory (119 vs. 357 units), the No Net Loss Law as codified in Government Code Section 65863 requires a jurisdiction to maintain adequate housing sites to accommodate its remaining unmet RHNA by each income category at all times throughout the entire planning period. If a jurisdiction approves a development of a site identified in its Housing Element Sites Inventory with fewer units than shown in the Housing Element, it must find that the remaining sites have sufficient capacity to accommodate the remaining unmet RHNA by each income level. For the above-moderate income level (i.e., market-rate), the Milpitas 2023-2031 Housing Element identified a total capacity of 4,089 units, which exceeds Milpitas' RHNA obligation of 2,346 units by 1,162 units. Although the Project would result in the loss of 238 market-rate units relative to the anticipated number of units identified in the Sites Inventory, the City currently has more than enough capacity to accommodate its remaining unmet RHNA in this income category. Furthermore, without the proposed DA, given current market conditions, the Project site would likely remain undeveloped beyond the current RHNA cycle (2023-2031), in which case the City would gain no residential units to help meet its RHNA obligations. Additionally, the proposed Project would result in 22 additional lower income units than anticipated in the Housing Element Sites Inventory, with 18 of those units being in the low-income level and 4 being in the very low-income level.

FINDINGS FOR APPROVAL (OR DENIAL)

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Based on substantial evidence in the public record, Staff has found that the proposed Project is consistent with the General Plan, Zoning Ordinance, and all required Findings.

Site Development Permit Findings (MMC Section XIII-D.4.020.F(1.a-d) for All Site Development Permits and MMC Section XIII-D.4.020.F(2.a-c) for Specific Projects)

1a. The proposed project is consistent with this Title.

The proposed Project provides 109 townhome residential units, 10 ADUs, nine live/work units, and 22 below-market-rate affordable rental units at an adjacent site, which is consistent with the intent of the MXD2-Metro zoning district. The Project's site design, including setbacks and building height is also consistent with the applicable zoning standards for the MXD2-Metro zone, as demonstrated in Table 4 above. Although the Project does not comply with the density and active commercial requirement of the MXD2-Metro zone, a Density Bonus permit and Development Agreement are proposed to meet the average minimum density of the District area and reduce the commercial requirement, respectively. Therefore, the proposed Project is consistent with this title.

1b. The proposed use and project are consistent with the goals and policies of the General Plan:

The proposed multi-family residential Project is consistent with the General Plan land use designation of Milpitas Metro Specific Plan, which encourages high-density, mixed-use, transit-oriented development, especially within the McCandless/Centre Pointe Sub-District. As shown in Table 3 of the staff report, the Project complies with General Plan policies LU 1-4, LU 2-1, LU 5-1, LU 5-3, CD 5-5, and CD 6-5. The townhome product type offers a family-sized housing option that is distinct from the higher-density stacked-flat apartment developments that predominate in the Metro Plan area, thereby diversifying the housing stock and providing additional choices for residents who may need more space for family, professional, or personal needs. This Project will develop a currently vacant 5.49-acre parcel, thereby activating an underutilized site and contributing to the fabric of the area. The Project site design, with live/work units oriented toward Market Street, which will provide a unique opportunity to homeowners and business owners, and will create an active ground-floor street presence that integrates with the surrounding streetscape rather than creating an insular or self-contained development. The proposed Project is a medium-density residential infill development that will complete The Fields/District development and neighborhood. Therefore, the proposed Project is consistent with the goals and policies of the General Plan.

1c. The project will not be detrimental to public health, safety, and general welfare:

The proposed townhome development is compatible with existing and planned land uses in the vicinity. The McCandless District of the Metro Plan is characterized by "high-density mixed-use development along larger, busier streets in the northern area and lower density townhouse development in the central area". The development is compatible with the surrounding mixed-use development within The Fields/District area and the broader McCandless/ Centre Pointe Sub-District. The Project will not create adverse impacts on adjacent properties with respect to noise, traffic, light, or other environmental factors beyond those previously analyzed and addressed in the original TASP Environmental Impact Report and subsequent Addendum. The site plan also demonstrates adequate internal circulation, emergency vehicle access, and pedestrian connectivity. A traffic analysis has been prepared demonstrating the Project's anticipated traffic generation can be accommodated by the existing street network. Transportation and Fire staff have also reviewed the Project plans and are requiring conditions of approval to ensure adequate emergency vehicle access and have confirmed that the internal private streets and driveways adequately serve the development. Therefore, the Project will not be detrimental to public health, safety, and general welfare.

1d. The proposed project is in compliance with the provisions of California Environmental Quality Act (CEQA):

The proposed Project includes the development of 109 multi-family residential units and 10 Accessory Dwelling Units within an urban and mixed-use zoned area. With the proposed Development Agreement and density bonus concessions, the proposed Project meets the Metro Specific Plan zoning regulations and is consistent with the policies established in the original TASP Environmental Impact Report as well as Metro Specific Plan Subsequent EIR (SCH#2006032091). The Project is also a residential development within and subject to a Specific Plan. Therefore, the Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan).

2a. The proposed use and project are consistent with the goals and policies of any Specific Plan, if applicable:

The proposed Project includes the development of 109 multi-family residential units and 10 Accessory Dwelling Units, which helps implement the range of uses and development standards as set forth in the Metro Specific Plan, particularly within the Residential Retail High Density Mixed Use (RRMU) Specific Plan land use designation. The RRMU classification allows residential-only development to have a density range between 40 to 85 units per acre; however, the proposed Development Agreement would preserve the minimum residential density of 31 units per acre previously allowed for the subject property under the Transit Area Specific Plan (TASP). The current Project is proposed at a residential density of approximately 20 units per acre, which is well below the minimum allowed density within the Metro Specific Plan; however, with density averaging across The Fields/District development, the Project meets the TASP minimum density of 31 units per acre average. Furthermore, the Project would contribute to the Metro Plan vision of creating a complete and unique urban neighborhood, which includes a mix of residential and retail uses, affordable housing, a variety of shared public spaces, and a strong sense of place with quality architecture and key landmarks. The Project would develop a currently vacant parcel into new housing, including affordable units, that supports the transit-oriented neighborhood envisioned by the Metro Plan. The inclusion of nine live/work units along Market Street also introduces a mixed-use component that supports the Metro Plan's goal of providing neighborhood services and a balance of jobs and housing near transit. The Project's location within the McCandless District is also consistent with the established pattern of townhome development in this subdistrict.

2b. The proposed siting, form, architectural style, materials, and other elements of multi-family residential and mixed-use developments are consistent with City Objective Design Standards:

The proposed Project is designed in a Northwest Contemporary architectural style, incorporating clean, boxy massing, flat and low-slope roofs, large black-framed windows, and a mixed-material façade. The building massing is articulated through projections and recesses at adjacent townhomes, as well as staggered balconies that help break up the length of the structures, while top-level terraces create a stepped-back effect that reduces the overall sense of verticality. The residences are arranged in a multi-story townhome format, generally three and four levels tall, maximizing vertical space with parking and entry at the ground level, main living areas on the second and third floors, and bonus or entertaining rooms opening onto large covered terraces at the top level to take advantage of light and views. The roof design combines shed roofs, flat balcony and terrace roofs, and curved sloping roofs at prominent elements, creating a dynamic contemporary roofline. Large windows enhance natural light and provide expansive views throughout the development. Exterior materials consist primarily of stucco with lap siding accents for added texture, while brick at the ground floor introduces a natural element that helps ground the modern aesthetic. The color palette draws from coastal tones, including whites, cool grays, blues, and green-blues, complemented by the warmer earth tones of the brick. The proposed architectural style complements the surrounding neighboring residential developments and meets the intent of the City's Objective Design Standards as shown in Table 5, thus meeting this finding.

2c. The proposed siting, form, and architectural style of single-family residential, commercial, and industrial developments are appropriate for the project site and surroundings and create a visually cohesive design, and are consistent with all applicable design standards in this Title:

The above finding is not applicable to the Project, which is a multi-family development.

Conditional Use Permit Findings (MMC Section XIII-D.4.030)

1. *The proposed use is consistent with the goals and policies of the General Plan;*

See Site Development Permit Finding 1.b above.

2. *The proposed use is consistent with the goals and policies of any Specific Plan if applicable;*

See Site Development Permit Finding 2.a above.

3. *The proposed use is appropriate for the zone in which it is located, is compatible with uses allowed in the zone, and complies with all other applicable provisions of this Title;*

The proposed residential townhome development will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The Project site is a vacant, undeveloped parcel located within the McCandless District of the Metro Specific Plan area, which is planned and zoned for high-density, transit-oriented residential development. The surrounding area includes existing residential and mixed-use developments to the west and south of the Project site, and a well-established commercial shopping center to the north across from Great Mall Parkway. Therefore, the Project will complete the neighborhood by contributing to and diversifying the existing housing mix with ADUs and live-work units. Moreover, the McCandless Subdistrict specifically calls out townhomes as part of the Metro Plan's vision. The residential units of the proposed Project are compatible with the neighboring commercial uses as residents will be able to shop nearby and/or using the Milpitas Transit Center to commute to work. Furthermore, with the density bonus concessions and Development Agreement, the Project complies with all applicable zoning and development standards in this Title. The Project has also been designed to comply with all applicable building, fire, and safety codes, and conditions of approval will be imposed to ensure ongoing compliance.

4. *The proposed use will not be materially detrimental to the health, safety, and welfare of the public or the property and residents in the vicinity;*

See Site Development Permit Finding 1.c above.

5. *The subject site is physically suitable for the use being proposed, including access and utilities;*

The proposed 5.49-acre Project is adequate in size and shape to accommodate the proposed 109 townhome units and 10 ADUs, including all required setbacks, parking, landscaping, and open space. The Project provides two-car garages for each residential townhome, an approximately 28,000 square-foot urban plaza to be used for public open space, and sufficient setbacks and public rights-of-way, which meet the applicable standards of the MXD2-Metro zone. The site plan also demonstrates adequate internal circulation, emergency vehicle access, and pedestrian connectivity. A traffic analysis has been prepared demonstrating the Project's anticipated traffic generation can be accommodated by the existing street network. Transportation and Fire staff have also reviewed the Project plans and are requiring conditions of approval to ensure adequate emergency vehicle access and have confirmed that the internal private streets and driveways adequately serve the development. The Project will connect to existing utilities via tie-ins along McCandless Drive to the west and Great Mall Parkway to the north.

6. *The design, location, size, and operating characteristics of the proposed use are compatible with existing and reasonably foreseeable future land use and circulation in the vicinity;*

The Project site is located at the intersection of Great Mall Parkway and McCandless Drive. Great Mall Parkway is an arterial street, while McCandless Drive is a collector street. The site is within half a mile of the Milpitas BART station and VTA light rail stations, providing excellent multi-modal transit access. A traffic analysis has been prepared demonstrating the Project's anticipated traffic generation can be accommodated by the existing street network. Furthermore, the Project would result in a significant decrease in the number of residential units from what was previously analyzed through the Environmental Impact Report for the Milpitas Metro area. Generally, a lower level of development results in fewer environmental impacts related to public services, utilities, natural resources, local vehicular traffic, and other impact categories. Therefore, the design, location, size, and operating characteristics of the Project are suitable for the Project site and compatible with the surrounding area. The Metro Specific Plan also envisions a mix of housing and pedestrian-oriented environment in this area, which the Project will help fulfill by introducing medium-density housing with ADUs, affordable housing, and live-work units to complete The Fields/District development.

7. *The proposed project is in compliance with the provisions of California Environmental Quality Act.*

The proposed Project includes the development of 109 multi-family residential units and 10 Accessory Dwelling Units within an urban and mixed-use zoned area. With the proposed Development Agreement and density bonus concessions, the proposed Project meets the Metro Specific Plan zoning regulations and is consistent with the policies established in the original TASP Environmental Impact Report and Metro Specific Plan Subsequent EIR (SCH#2006032091). The Project is also a residential development within and subject to a Specific Plan. Therefore, the Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan.

Density Bonus Findings (California Government Code Section 65915)

1. *The maximum allowable base density specified in the General Plan, including any other permitted increases to density.*

   The proposed Project includes 109 townhome units, equaling a residential density of approximately 20 dwelling units per acre (du/ac), which does not meet the allowed minimum density of 40 du/ac in the MXD2-Metro zoning district. However, previous approvals established the use of density averaging across The Fields/District development, allowing flexibility in the distribution of units among the various lots. Furthermore, the proposed Development Agreement would preserve the minimum residential density of 31 du/ac previously allowed for the subject property under the Transit Area Specific Plan (TASP). Therefore, with density averaging across The Fields/District development, the Project would meet the TASP minimum density of 31 units per acre average.

2. *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 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.*

The applicant has proposed to convert 22 existing apartment units from an adjacent mixed-use development from market-rate units to low- and very-low-income affordable units. As most units in the apartment are currently occupied, market-rate units can only be converted to BMR units once the units become vacant or available. The affordable unit sizes and bedroom counts will be identified and approved by the Office Housing Department as meeting the intent of the Affordable Housing Ordinance (AHO) prior to Building Permit Issuance. This has been added as Condition of Approval No. 25 within the attached Resolution. The development will need to have converted 22 existing apartment units to BMR units within the first two years of the Development Agreement's term. Prior to building permit issuance, and not later than one year into the Development Agreement's term, the applicant must execute an agreement with the City imposing appropriate ownership controls on the affordable units as required by the AHO.

Since the market-rate units to be converted to BMR units have already been constructed and are existing, the appearance, materials, and finished quality of BMR units will be the same as those of the remaining market-rate units.

3. *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 has been conditioned to provide an agreement to the City of Milpitas explaining the affordability requirements, processes and procedures, to the satisfaction of the Milpitas City Manager prior to the release of final Certificate of Occupancy.

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.*

   Prior to final building inspection and occupancy for the 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, including continue affordability for low- and very low-income households. The agreement shall be approved by the Milpitas City Manager prior to recordation.

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.*

   Although the Project proposes for-sale townhomes dwelling units for sale, the applicant proposes to convert 22 existing market-rate apartment units from the adjacent mixed-used development to 18 low- and 4 very low-income units to meet the City's Affordable Housing Ordinance through an alternative means of compliance, which requires City Council approval. The Project will be subject to an affordable housing agreement, which must be approved by the City and executed prior to the release of final Certificate of Occupancy. The agreement will require the low- and very low-income units to be available at a rent that does not exceed the maximum limits established in Section 50079.5 of the Health and Safety Code. As apartment units in the Gideon development become vacant or available, the applicant will be required to deed restrict and rent those units in compliance with the affordable housing agreement and in a manner that meets the intent of the City's Affordable Housing Ordinance.

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

   The applicant has identified and requested bonus concessions held within the State Density Bonus Law, and the Planning Department supports this request. As such, the applicant is requesting the following concessions: a decrease in required ground floor retail within the MXD2-Metro zoning district, and a decrease in the required Large Retail Storefront sidewalk, as stated within the Metro Plan. The MXD2-Metro zone requires that "ground floor retail and active uses" are required on 80% of frontages on any one blockface along Activity Streets as identified within the Metro Plan. The Metro Plan identifies three of the Project site's frontages as Activity Streets, along the west, south, and east frontages. Since the Project only proposes active uses along Market Street to the south, a concession is required for this standard. The Metro Plan also identifies Activity Streets as having a 18-foot sidewalk. Due to the nature of the townhome development and the size of the lot, this requirement would be infeasible to the developer, so a concession is requested for this as well.

Tentative Map Findings

1. *The tentative subdivision map is consistent with the General Plan.*
   The Vesting Tentative Map is necessary for the proposed multi-family residential Project, which is consistent with the General Plan land use designation of Milpitas Metro Specific Plan (Metro Plan), which encourages high-density, mixed-use, transit-oriented development within the McCandless/Centre Pointe Sub-District. As shown in Table 3 of the staff report, the Project complies with General Plan policies LU 1-4, LU 2-1, LU 5-1, LU 5-3, CD 5-5, and CD 6-5. The Vesting Tentative Map is also necessary for the development of a currently vacant 5.49-acre parcel, thereby activating an underutilized site and contributing to the existing neighborhood fabric of the area and complete The Fields/District development and neighborhood. Therefore, the Vesting Tentative Map is consistent with the goals and policies of the General Plan.

   Furthermore, the Project is consistent with the Milpitas General Plan as demonstrated and outlined in Table 3 above.

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

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

   The proposed Project includes 109 townhome units, equaling a residential density of approximately 20 dwelling units per acre (du/ac), which does not meet the allowed minimum density of 40 du/ac in the MXD2-Metro zoning district. However, previous approvals established the use of density averaging across The Fields/District development, allowing flexibility in the distribution of units among the various lots. Furthermore, the proposed Development Agreement would preserve the minimum residential density of 31 du/ac previously allowed for the subject property under the Transit Area Specific Plan (TASP). Therefore, with density averaging across The Fields/District development, the Project would meet the TASP minimum density of 31 units per acre average.

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

   The design and improvements of the Vesting Tentative Map are consistent with the General Plan in that it would allow for multifamily residential development with associated public improvements, which are consistent with the applicable General Plan goals and policies as described in Tentative Map Finding 1. The Project is also consistent with the policies associated with the Milpitas Metro Specific Plan (Metro Plan), as identified in Tables 4 and 5, except for the commercial component along Activity Streets, which is allowed per State Density Bonus Law. The Project site is located within the McCandless District of the Metro Plan, which is characterized by high-density mixed-use development along larger, busier streets in the northern area and lower density townhouse development in the central area of the District. The Vesting Tentative Map would allow for development that is compatible with and would complete the surrounding neighborhood consistent with the Metro Plan's vision for the McCandless District.

c. *The site is not physically suitable for the type of development.*

   The Project site is surrounded by property designated for mixed-use development under the City's General Plan and zoned for this type of development under the Metro Plan and MXD2-Metro zones. The proposed Project is also known as Lot 3 within the larger The Fields/ District development, which is nearly built-out and already developed with 762 residential units and over 71,000 square feet of commercial/retail space. The proposed Project will add 119 dwelling units with the included ADUs and will complete The Fields/District development. In addition, the site is suitable for the proposed townhome development based on the location and physical attributes of the site. The site is located in an urban context suitable for multifamily development and is approximately 5.49 acres in size, which is sufficient to accommodate the development. The Vesting Tentative Map includes the necessary infrastructure improvements to adequately serve the site from a transportation and utilities perspective.

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

The Project site is suitable for the proposed medium density townhome development based on the location and physical attributes of the site. The site is located in an urban context suitable for medium density multifamily development and is approximately 5.49 acres in size, which is sufficient to accommodate the proposed density of development. The Vesting Tentative Map includes the necessary infrastructure improvements to adequately serve a multifamily residential development at the proposed density.

e. *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, is located within a heavily urbanized area and is surrounded by a mixture of commercial and mixed-use development. Therefore, it will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

f. *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 designed in a manner that will not cause serious public health problems. The Project has been reviewed by the Building, Housing Fire, Land Development, Traffic, Public Works, and Solid Waste Departments. The Vesting Tentative Map includes various public improvements in the public rights-of-way related to transportation and utilities to ensure the Project will be adequately serviced and thereby preserve public health and wellness. Public improvements include utility services such as water, wastewater, storm drain, gas, electrical, and telecommunications. Pavement restoration along the project frontage on McCandless Drive, Center Pointe Drive, and Great Mall Parkway per City Standards will be required as part of the Project. Project frontage along Great Mall Parkway will have a new 10-foot sidewalk and 11 feet of landscaping. Project frontage along McCandless will maintain the existing 8-foot sidewalk and provide between 10 and 16 feet of landscaping. Project frontage along Market Street will have a new 8-foot sidewalk and 12 feet of landscaping. Lastly, frontage along Centre Pointe will have a new 8-foot sidewalk and approximately 12 feet of landscaping.

g. *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. Existing easements include public service utility easements throughout the perimeter of the site as well as a 20-foot PG&E easement that cuts through the middle of the site. All utility easements will be located within or near public rights-of-way and the 20-foot PG&E easement will be quitclaimed or removed as part of this development. Therefore, the proposed subdivision and relevant improvements will not conflict with easements or access to the property.

Development Agreement Findings (MMC Section XIII-D.14.050)

The proposed Project is considered to be eligible for a Development Agreement per City Council Resolution No. 6642 Sections 2.3(a) and 2.3(c), regarding acreage and general welfare of the community. Although the Project site is under 10 acres, The District encompasses multiple lots totaling over 20 acres. Furthermore, the public health, safety and general welfare of the citizens of City will best be served by accepting an Application for consideration by the Planning Commission and City Council. The Development Agreement will facilitate the final step in a large development that has taken many years to complete and activate an otherwise vacant lot that has remained underutilized during that time while establishing affordable housing close to public transportation and other infrastructure and amenities that will particularly benefit lower income households.

1. *The Development Agreement is consistent with the goals, policies, general land uses, and programs specified in the General Plan;*

   The proposed Development Agreement (DA) would further the General Plan goals and policies by allowing for the proposed Project with additional construction and improvements only allowable through the benefit of this DA. The Project would provide a mix of townhomes, accessory dwelling units, and live-work units in proximity to the Milpitas Transit Center, which is consistent with the General Plan's vision for the Metro Specific Plan area. Furthermore, as part of DA and as a public benefit, the Project would provide low- and very-income level units beyond what is required by the Affordable Housing Ordinance, which will help the City achieve its affordable housing goals in its Housing Element. Lastly, the DA also includes a voluntary $400,000 contribution to the City as a community benefit, which can be used to fund City services and public improvements identified in the General Plan.

2. *The Development Agreement is consistent with any Specific Plan, if applicable;*

   The proposed Project is located within the Milpitas Metro Specific Plan (Metro Plan, formerly TASP). The Metro Plan envisions the McCandless Subdistrict with high-density mixed-use development along larger streets and lower-density townhouse developments. The proposed DA would allow for the proposed Project, which includes a mix of housing types (townhomes, ADUs, and live-work units) that are aligned with the Metro Plan's vision for this subdistrict. The live-work units would also contribute to the pedestrian-oriented, vibrant atmosphere envisioned along Market Street. Lastly, the DA includes a public benefit of four low- and one very low-income units, which would provide lower-income affordable housing near public transit, which is another goal of the Metro Plan.

3. *The Development Agreement and accompanying development maps, plans, and other supporting information are compatible with the uses authorized in, and the performance and development standards prescribed for, the zone in which the subject parcel or site is located;*

   The DA would allow for the Project site to be developed with multifamily residential development, which is permitted by-right in and consistent with the intent of the MXD2-

Metro zoning district. The purpose of the MXD2-Metro zoning district is to create and enhance areas with a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor and residential or office uses on upper stories, while maintaining a pedestrian-oriented streetscape. Although the Project does not comply with the density and active commercial requirement of the MXD2-Metro zone, the DA would preserve the previously applicable minimum density in the TASP (30 du/ac), which the Project complies with once density averaging is applied throughout The Fields/District development. A waiver through the Density Bonus Permit would also reduce the commercial requirement for the Project, which is being met through the live-work units. Therefore, the proposed DA and accompanying development are compatible with the uses allowed in the applicable zoning district.

4. *The Development Agreement is in conformity with and will promote public convenience, general welfare, and good land use and development practices;*

   The proposed DA promotes public convenience and general welfare by providing affordable housing (four low- and one very low-income units) within walking distance of the Milpitas BART station and VTA light rail. These deed-restricted affordable units will not only provide rental savings over 55 years to the Milpitas community but also provide housing options near public transit for disadvantaged persons who are often dependent on public transit. Furthermore, the DA would allow for the proposed Project, which includes ADUs and live-work units. ADUs provide yet another affordable option for prospective tenants and allows homeowners to collect rental income by renting out their ADUs to tenants. Meanwhile, live-work units provide much-needed housing for artists, artisans, and small business owners and entrepreneurs in a convenient location.

5. *The Development Agreement shall be shown to be of greater benefit to the community than development absent the Development Agreement;*

   The proposed Development Agreement would provide a one-time voluntary $400,000 contribution and the conversion of 4 low-income and 1 very low-income apartment units within the adjacent Gideon development as a community benefit to offset the loss of market-rate units, which would result from preserving the lower minimum residential density previously allowed for the subject property under the TASP (30 du/ac) rather than applying the minimum density in the Metro Specific Plan (40 du/ac). While allowing a lower density Project through a DA would result in fewer units on the subject property, the Project would provide affordable units at a lower income level than would otherwise be provided, which provides a significant public benefit to the Milpitas community through rental savings for future tenants.

6. *The term or duration of the Development Agreement has a commensurate relationship to the benefit(s) provided;*

   The proposed DA has an initial term of three (3) years. Commencement of construction within 3 years from the Effective Date would vest the DA. "Commencement" would include the property owner/ applicant having been issued a building, demolition, and/or grading permit. Two 2-year extensions may be granted by the City provided that the property owner/ applicant is not in default of its obligations under the DA. The term of the DA is commensurate to the benefit provided in that the term is sufficient to allow for construction of the Project and implementation of the proposed public benefit.

7. *The Development Agreement contains the mandatory provisions specified in California Government Code Section 65865.2 and any other terms required by Council;*

   Government Code Section 65865.2 requires that a Development Agreement include the duration of the agreement, the permitted uses of the property, the density, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The proposed DA meets this requirement by including all of the aforementioned provisions.

8. *The Development Agreement complies with all other applicable requirements of California Government Code Section 65864 et seq.*

   The Planning Commission is scheduled for public hearing on May 6, 2026 and the City Council is scheduled to consider the Development Agreement and Project for approval on May 19, 2026.

ENVIRONMENTAL REVIEW

The City conducted an environmental assessment in accordance with the California Environmental Quality Act (CEQA) and determined that the proposed Project is categorically exempt from CEQA in accordance with CEQA Guidelines Section 15182 (Residential Projects Pursuant to a Specific Plan) and is consistent with the Addendum to the Transit Area Specific Plan (TASP) Final Environmental Impact Report (FEIR). CEQA Guidelines Section 15182 exempts further environmental review for a predominantly residential project that is generally in conformity with a specific plan, provided that an EIR was certified for the Specific Plan after January 1, 1980, the Project is a residential project (or predominantly residential in nature), that the Project is consistent with the Specific Plan, and that no events under CEQA Guidelines Section 15162 have occurred. The TASP EIR (SCH#2006032091) was certified by the Milpitas City Council on June 3, 2008, and was later updated by the Milpitas Metro Specific Plan Subsequent EIR, certified by the Milpitas City Council on February 7, 2023, both of which meet the time frame requirement. The proposed Project consists of 109 townhome dwelling units, 10 ADUs, and nine live/work units, which is considered predominantly residential in nature, meets the residential component of CEQA Guidelines Section 15182. The proposed Project is located within the Metro Plan, and the proposed townhome project with live/work units contributes to the Metro Plan's vision of creating a complete neighborhood within the McCandless District. The Project is found to be consistent with the goals, policies, and development standards of the Metro Plan, as seen in Table 5 above, which meets the Specific Plan component. Lastly, CEQA Guidelines Section 15162 refers to substantial changes proposed in the EIR area that would create significant or substantially more severe impacts. Since the proposed Project involves a decrease in units, decrease in building square footage, and decrease in building height, no instances of CEQA Guidelines Section 15162 could reasonably have been known. Therefore, this Project meets CEQA Guidelines Section 15182.

PUBLIC COMMENT/OUTREACH

Staff provided public notice for the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on April 24, 2026. In addition, 1,148 notices were sent to owners within 300 feet of the Project site. A public notice was also provided on the Project site, on the City's Website, www.milpitas.gov, and posted at City Hall.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing; and
3. Adopt Resolution No. 26-010, approving Amendment to Site Development Permit No. SD15-0006, Vesting Tentative Tract Map No. P-TM26-0001, Conditional Use Permit No. UP15-0010, and Density Bonus Permit No. P-DB25-0001, subject to the findings and attached Conditions of Approval.

ATTACHMENTS

A: Resolution 26-010
B: Project Plans
C: Draft Development Agreement
D: Site Development Permit No. SD15-0006 Planning Commission Staff Report
E: Financial Analysis Report
F: Concession Request Letter

RESOLUTION NO. 26-010

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING AND RECOMMENDING THAT THE CITY COUNCIL APPROVE SITE DEVELOPMENT PERMIT AMENDMENT SA25-0002, VESTING TENTATIVE MAP P-TM26-0001, CONDITIONAL USE PERMIT AMENDMENT P-UA25-0003, DENSITY BONUS PERMIT P-DB26-0001, AND DEVELOPMENT AGREEMENT (DA26-0001)FOR THE DISTRICT – LOT 3 (CENTRE POINTE SITE A) / THE FIELDS, GENERALLY LOCATED AT THE INTERSECTION OF GREAT MALL PARKWAY AND McCANDLESS DRIVE, WITHIN THE McCANDLESS / CENTRE POINTE SUB-DISTRICT OF THE MILPITAS METRO (APN: 086-33-112, -113, and -114**)**

WHEREAS, in 2008, the City Council adopted the Transit Area Specific Plan (TASP), which encompasses 437 acres and forecasts the development of approximately 7,109 residential dwelling units, 287,075 square feet of retail space, 993,843 square feet of office use, and up to 350 hotel rooms, and included goals, policies, and development standards to guide construction within the area, including sub-districts to address the TASP's unique characteristics; and

WHEREAS, in 2010, Integral Communities submitted a master-planned mixed-use development within a portion of the McCandless/Centre Pointe Sub-District, known as The District, which includes multiple land areas for retail, commercial, and high-density residential development; and

WHEREAS, Integral Communities subsequently sold The District project to Lyon Living, which is completing the development of a portion of The District, referred to as The Fields, comprised of four separate mixed-use areas located near the intersection of Great Mall Parkway and McCandless Drive, also referred to by the City as The District – Lot 1, Lot 2, Lot 3, and Lot 4, and by the applicant as Turing, Graham, Elion, and Gideon, respectively; and

WHEREAS, in November 2015, the City of Milpitas approved multiple entitlements for a major portion of The Fields, including Site Development Permit No. SD15-0006 and Conditional Use Permit No. UP15-0010, as part of a master-planned development comprised of six planning areas, each developed with a mix of multi-family residential and residential units, including:

- District Lot 2: A 218-unit multi-family residential development with approximately 3,480 square feet of retail and commercial uses, mapped pursuant to Tentative Map No. TM11-0002 approved March 20, 2012;
- District Lot 3: a 175-room hotel and associated uses as approved under SD15-0006 and UP15-0010;
- District Lot 4: A 173-unit multi-family residential development with approximately 13,941 square feet of retail, mapped pursuant to Tentative Map No. TM11-0002 approved on March 20, 2012; and

WHEREAS, in 2021, the Planning Commission approved Site Development Permit Amendment No. SA20-0004 and an amendment to Conditional Use Permit No. UP15-0010 on the Project site. That amendment modified the previously approved development density, uses, and architecture, including decreasing the total number of residential dwelling units from 423 to 357, decreasing the total number of hotel rooms from 175 to 162, decreasing the amount of commercial space from 59,135 square feet to 25,179 square feet, decreasing the size of the rooftop amenity deck from 49,240 square feet to 18,225 square feet, and reducing the building's height from 130 feet to 83 feet for the hotel and 90 feet for the mixed-use buildings; and

WHEREAS, in 2025, Lyon Living (the "Applicant") submitted an application requesting a Site Development Permit Amendment to develop 109 multi-family townhomes and 10 Accessory Dwelling units on a vacant 5.49-acre site located in the MXD2-Metro Zoning District at 1320 McCandless Avenue, generally located at the intersection of Great Mall Parkway and McCandless Drive. The application also included a request for a Density Bonus Permit with waivers and concessions, as well as a tentative Development Agreement to address the required minimum density in the Milpitas Metro Specific Plan and other applicable standards; and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the Project is exempt from CEQA review pursuant to Section 15182 (Projects Pursuant to a Specific Plan) of the CEQA Guidelines; and

WHEREAS, on May 6, 2026, the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on Project; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

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

SECTION 1: Recitals.

The Planning Commission 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: CEQA Finding

The City conducted an environmental assessment in accordance with the California Environmental Quality Act (CEQA) and determined that the proposed Project is categorically exempt from CEQA in accordance with CEQA Guidelines Section 15182 (Residential Projects Pursuant to a Specific Plan) and is consistent with the Addendum to the Transit Area Specific Plan (TASP) Final Environmental Impact Report (FEIR). CEQA Guidelines Section 15182 exempts further environmental review for a predominantly residential project that is generally in conformity with a specific plan, provided that an EIR was certified for the Specific Plan after January 1, 1980, the Project is a residential project (or predominantly residential in nature), that the Project is consistent with the Specific Plan, and that no events under CEQA Guidelines Section 15162 have occurred. The TASP EIR (SCH#2006032091) was certified by the Milpitas City Council on June 3, 2008, and was later updated by the Milpitas Metro Specific Plan Subsequent EIR, certified by the Milpitas City Council on February 7, 2023, both of which meet the time frame requirement. The proposed Project consists of 109 townhome dwelling units, 10 ADUs, and nine live/work units, which is considered predominantly residential in nature, meets the residential component of CEQA Guidelines Section 15182. The proposed Project is located within the Metro Plan, and the proposed townhome project with live/work units contributes to the Metro Plan's vision of creating a complete neighborhood within the McCandless District. The Project is found to be consistent with the goals, policies, and development standards of the Metro Plan, which meets the Specific Plan component. Lastly, CEQA Guidelines Section 15162 refers to substantial changes proposed in the EIR area that would create significant or substantially more severe impacts. Since the proposed Project involves a decrease in units, decrease in building square footage, and decrease in building height, no instances of CEQA Guidelines Section 15162 could reasonably have been known. Therefore, this Project meets CEQA Guidelines Section 15182.

SECTION 3: Site Development Permit Findings (*MMC Section XIII-D.4.020.F(1.a-d) for All Site Development Permits and MMC Section XIII-D.4.020.F(2.a-c) for Specific Projects*)) :

1a. The proposed project is consistent with this Title.

The proposed Project provides 109 townhome residential units, 10 ADUs, nine live/work units, and 22 below-market-rate affordable rental units at an adjacent site, which is consistent with the intent of the MXD2-Metro zoning district. The Project's site design, including setbacks and building height is also consistent with the applicable zoning standards for the MXD2-Metro zone, as demonstrated in Table 1 below. Although the Project does not comply with the density and active commercial requirement of the MXD2-Metro zone, a Density Bonus permit and Development Agreement are proposed to meet the average minimum density of the District area and reduce the commercial requirement, respectively. The residential density of the Project is approximately 20 dwelling units per acre (du/ac), which does not meet the allowed minimum density of 40 du/ac in the MXD2-Metro zoning district. However, previous approvals established the use of density averaging across The Fields/District development, allowing flexibility in the distribution of units among the various lots. The average density across this development with the proposed Project would be 31 du/ac. The proposed Development Agreement would preserve the minimum residential density of 30 du/ac previously allowed for the subject property under the Transit Area Specific Plan (TASP). Therefore, with density averaging across The Fields/District development, the Project would meet the TASP minimum density with 31 units per acre average. Therefore, the proposed Project is consistent with this title.

Table 1:
Summary of Metro Development Standards

Standards	MXD2-Metro	Proposed	Complies
Density Range (du/ gross acre)	40-85	20	No*
Active Use	Ground floor retail and active uses required on 80% of frontages on any one blockface along any Activity Street	9 Live/work units proposed along Market Street to the south	No*
Sidewalk Width (Activity Street)	18 feet	8-10 feet	No**
Front Setback	Min.: 0 feet Max.: 20 feet	5-15 feet along Great Mall Pkwy	Yes
Interior Side Yard Setback (Min.)	0 feet	1-foot along Market Street	Yes
Street Side Setback	Min.: 0 feet	14'4" feet along McCandless	Yes
Rear Setback	10 feet	N/A	Yes
FAR (Min.)	1.0	1.52	Yes
FAR (Max.)	2.5	1.52	Yes
Building Height (Maximum)	85 feet	36 – 49 feet	Yes
Usable Open Space Per Dwelling	Min. 100 sf per residential unit, which may be private or common open space	(109x100=10,900)	Yes

Per Site	Min. 5% of the total open space provided on-site must be publicly accessible	Common open space: 7,273 SF Public open area (urban plaza): 27,832 SF	
Long-Term Bicycle Storage	0.5 long-term spaces per bedroom	177 (354 bedrooms x 0.5)	Yes
Short-Term Bicycle Storage	0.1 short-term spaces per bedroom	None	Yes, per COA #19
*	Although the Project does not meet the density requirement of the MXD2-Metro zone, a Development Agreement is proposed to apply the minimum density in the TASP (30 du/ac), which the Project would meet.		
**	The Project includes a Density Bonus permit request to reduce the Active Use and Activity Street sidewalk width requirements of the MXD2-Metro zone		

Site & Architectural Design

The townhomes are grouped into 17 buildings, which are accessed by private streets and driveways. The are designed in a multi-story townhome format, generally three and four levels tall, maximizing vertical space with parking and entry at the ground level, main living areas on the second and third floors, and bonus or entertaining rooms opening onto large, covered terraces at the top level to take advantage of light and views. Outdoor living is emphasized through balconies and top-level terraces featuring sleek black railings and warm wood soffits, while simple balcony columns frame views and reinforce the contemporary character. The roof design combines shed roofs, flat balcony and terrace roofs, and curved sloping roofs at prominent elements, creating a simple yet dynamic contemporary roofline. Large windows enhance natural light and provide expansive views throughout the development.

Traffic and Circulation

Vehicular access will be provided by a single driveway with direct ingress/egress from Market Street to the south. An internal private street and alley grid will provide access to the 17 buildings and 109 garages with a total of 218 covered vehicle parking spaces provided. In addition, four guest parking spaces will be provided along the internal driveway labeled "Street G" in the attached Project Plans, including one ADA-compliant space. Consistent with the intent of the Metro Area and The Fields development, pedestrian ingress and egress is provided throughout the site. New and improved sidewalks along the perimeter of the site will provide access for pedestrians around the Project site. Internal walkways also provide convenient access for pedestrians throughout the site and in between buildings, with primary public sidewalk accessed from two points along Great Mall Pkwy., one at Market Street, and another accessing the urban plaza park at the southwest corner of the site.

Public Improvements

The proposed Project would require utility services including water, wastewater, storm drain, gas, electrical, and telecommunications. The proposed Project would connect to existing utilities via tie-ins along McCandless Drive to the west and Great Mall Parkway to the north. The Project site is currently undeveloped except for a building foundation from the previous entitlement that was never completed. The Project fronts Great Mall Parkway to the north, McCandless Avenue to the west, Market Street to the south, and Centre Pointe Drive to the east. Project frontage along Great Mall Parkway will have a new

10-foot sidewalk and 11 feet of landscaping. Project frontage along McCandless will maintain the existing 8-foot sidewalk and provide between 10 and 16 feet of landscaping. Project frontage along Market Street will have a new 8-foot sidewalk and 12 feet of landscaping. Lastly, frontage along Centre Pointe will have a new 8-foot sidewalk and approximately 12 feet of landscaping.

Open Space

The proposed Project meets and exceeds the public open space requirement by providing a 27,832 square-foot publicly-accessible urban plaza area, plus 7,273 square feet of public open space near public right of ways. The urban plaza features a semi-circular concrete seat wall facing a circular patch of lawn that can be used for active uses for the general public. The Project will also provide 16,745 square feet of private common space in the form of exterior yards within the innermost portion of the site, particularly near Buildings 13, 14 and 17.

1b. The proposed use and project are consistent with the goals and policies of the General Plan:

The proposed multi-family residential Project is consistent with the General Plan land use designation of Milpitas Metro Specific Plan, which encourages high-density, mixed-use, transit-oriented development, especially within the McCandless/Centre Pointe Sub-District. As shown in Table 2 below, the Project complies with General Plan policies LU 1-4, LU 2-1, LU 5-1, LU 5-3, CD 5-5, and CD 6-5. The townhome product type offers a family-sized housing option that is distinct from the higher-density stacked-flat apartment developments that predominate in the Metro Plan area, thereby diversifying the housing stock and providing additional choices for residents who may need more space for family, professional, or personal needs. This Project will develop a currently vacant 5.49-acre parcel, thereby activating an underutilized site and contributing to the fabric of the area. The Project site design, with live/work units oriented toward Market Street, which will provide a unique opportunity to homeowners and business owners, and will create an active ground-floor street presence that integrates with the surrounding streetscape rather than creating an insular or self-contained development. The proposed Project is a medium-density residential infill development that will complete The Fields/District development and neighborhood. Therefore, the proposed Project is consistent with the goals and policies of the General Plan, as outlined in the following table:

Table 2: General Plan Consistency

Policy	Conformance
LU 1-4 *Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offer residents of all income levels, age groups, and special needs sufficient housing opportunities and choices for locating in Milpitas.*	**Consistent.** The Project provides 109 new multi-family townhome residences and 10 Accessory Dwelling Units (ADUs) on a currently vacant 5.49-acre parcel within the McCandless District of the Metro Specific Plan area. This variety of housing types — townhomes with attached two-car garages and ADUs — will meet the needs of individuals, families, and residents of all demographics and income levels. The townhome product type offers a family-sized housing option that is distinct from the higher-density stacked-flat apartment developments that predominate in the Metro Plan area, thereby diversifying the housing stock and providing additional choices for residents who may need more space for family, professional, or personal needs. Additionally, nine of the townhome units along Market Street will include

	live/work units, further expanding the variety of housing options available to residents who may wish to operate a home-based business.
LU 2-1 *Utilize Specific Plans to guide development within Milpitas's special planning areas. Properties located within Specific Plan areas shall conform to the underlying Specific Plan's land uses, zoning, and development standards.*	**Consistent.** The Project site is located within the Metro Specific Plan (Metro Plan) area and is zoned MXD2-Metro. The General Plan designates the Metro Plan as a walkable, transit-oriented area that encourages walking, biking, and public transit in order to minimize vehicle miles traveled (VMT). The Project, as proposed, conforms to the majority of development standards of the Metro Plan, as applicable; however some of these standards will be addressed through a separate Development Agreement. The inclusion of nine live/work units along Market Street to the south is also consistent with the Metro Plan's vision for active ground-floor uses along designated activity streets within the McCandless District.
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.*	**Consistent.** The Project site is located across the street from the Great Mall and within the McCandless District, an area that has steadily transitioned to a mixed-use, transit-oriented neighborhood over the last ten years or so. This Project will develop a currently vacant 5.49-acre parcel, thereby activating an underutilized site and contributing to the fabric of the area. The Project site design, with live/work units oriented toward public streets, will create an active street presence that integrates with the surrounding streetscape rather than creating an insular or self-contained development.
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 applicable height standards by proposing townhome buildings within the maximum height limit established for the MXD2-Metro zoning district. The building heights are proposed between 36 and 49 feet, which are consistent with the scale of nearby townhome developments within the Metro Plan area, while the maximum allowed building height is 85 feet.
CD 5-5 *For infill development, incorporate context-sensitive design elements that maintain compatibility and raise the quality of the area's architectural character.*	**Consistent.** The Project is an infill development on a vacant 5.49-acre parcel within the McCandless District of the Metro Plan. The Project incorporates context-sensitive design elements that maintain compatibility with the evolving architectural character of the Metro Plan area while raising the quality of the neighborhood. The townhome site design, with attached two-car garages, private entrances, and varied rooflines, provides a residential character that is compatible with the existing residential developments in the surrounding area.

	Furthermore, the inclusion of nine live/work units along Market Street introduces an active ground-floor element that conforms directly with the mixed-use character envisioned by the Metro Plan for the McCandless District.
CD 6-5 *Promote consistent development patterns along streets, particularly by how buildings relate to the street, to promote a sense of visual order, and provide attractive streetscapes.*	**Consistent.** The Project promotes consistent development patterns along Great Mall Parkway, McCandless Drive, and Market Street by orienting live/work units to face the public streets while maintaining landscaped setbacks that create an active and attractive streetscape. The proposed live/work units along Market Street further activate the street frontage and promote a sense of visual order consistent with the Metro Plan's vision for pedestrian-oriented activity streets. Furthermore, the Project includes separated sidewalks, street trees, and landscaping along the perimeter of the site, consistent with the Metro Plans' streetscape standards.

1c. The project will not be detrimental to public health, safety, and general welfare:

The proposed townhome development is compatible with existing and planned land uses in the vicinity. The McCandless District of the Metro Plan is characterized by "high-density mixed-use development along larger, busier streets in the northern area and lower density townhouse development in the central area". The development is compatible with the surrounding mixed-use development within The Fields/District area and the broader McCandless/ Centre Pointe Sub-District. The Project will not create adverse impacts on adjacent properties with respect to noise, traffic, light, or other environmental factors beyond those previously analyzed and addressed in the original TASP Environmental Impact Report and subsequent Addendum. The site plan also demonstrates adequate internal circulation, emergency vehicle access, and pedestrian connectivity. A traffic analysis has been prepared demonstrating the Project's anticipated traffic generation can be accommodated by the existing street network. Transportation and Fire staff have also reviewed the Project plans and are requiring conditions of approval to ensure adequate emergency vehicle access and have confirmed that the internal private streets and driveways adequately serve the development. Therefore, the Project will not be detrimental to public health, safety, and general welfare.

1d. The proposed project is in compliance with the provisions of California Environmental Quality Act (CEQA):

The proposed Project includes the development of 109 multi-family residential units and 10 Accessory Dwelling Units within an urban and mixed-use zoned area. With the proposed Development Agreement and density bonus concessions, the proposed Project meets the Metro Specific Plan zoning regulations and is consistent with the policies established in the original TASP Environmental Impact Report (EIR) and Metro Specific Plan Subsequent EIR (SCH#2006032091). The Project is also a residential development within and subject to a Specific Plan. Therefore, the Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan).

2a. The proposed use and project are consistent with the goals and policies of any Specific Plan, if applicable:

The proposed Project includes the development of 109 multi-family residential units and 10 Accessory Dwelling Units, which helps implement the range of uses and development standards as set forth in the Metro Specific Plan, particularly within the Residential Retail High Density Mixed Use (RRMU) Specific Plan land use designation. The RRMU classification allows residential-only development to have a density range between 40 to 85 units per acre; however, the proposed Development Agreement would preserve the minimum residential density of 31 units per acre previously allowed for the subject property under the Transit Area Specific Plan (TASP). The current Project is proposed at a residential density of approximately 20 units per acre, which is well below the minimum allowed density within the Metro Specific Plan; however, with density averaging across The Fields/District development, the Project meets the TASP minimum density of 31 units per acre average. Furthermore, the Project would contribute to the Metro Plan vision of creating a complete and unique urban neighborhood, which includes a mix of residential and retail uses, affordable housing, a variety of shared public spaces, and a strong sense of place with quality architecture and key landmarks. The Project would develop a currently vacant parcel into new housing, including affordable units, that supports the transit-oriented neighborhood envisioned by the Metro Plan. The inclusion of nine live/work units along Market Street also introduces a mixed-use component that supports the Metro Plan's goal of providing neighborhood services and a balance of jobs and housing near transit. The Project's location within the McCandless District is also consistent with the established pattern of townhome development in this subdistrict. Additional Metro Plan policy findings can be found in Table 3 below:

Table 3: Metro Plan Policy Compliance

Policy	Conformance
LU 1.1 *Establish the Land Use Classifications to identify areas appropriate for residential, commercial, mixed use, office, and industrial development. Retail commercial uses shall be concentrated in a pedestrian-oriented pattern.*	**Consistent.** The Project site is zoned MXD2-Metro, which includes "a mix of retail, restaurant, entertainment, and commercial services uses on the ground floor and residential or office uses on upper stories. The proposed 109-unit townhome development with nine live/work units along Market Street is consistent with the mixed-use character of the MXD2 designation by providing both residential and commercial uses.
LU 2.1 and 2.3 *"Arrange the highest density areas supported by strong pedestrian and bicycle access ways and along the major corridors and transit-adjacent areas" and "Establish a strong pedestrian and transit orientation throughout the Plan Area and limit development design that prioritizes automobile access to the detriment of pedestrian and bicycle access"..*	**Consistent.** The Project is located at the intersection of Great Mall Parkway and McCandless Avenue, directly across from the Great Mall and within proximity to the VTA Great Mall light rail station. The Metro Plan identifies Great Mall Pkwy. As a major corridor where transit-oriented development is envisioned. The Project's location supports transit ridership by placing 109 new residential units and 10 ADUs within walking distance of light rail service.
LU 3.2 *Accommodate housing for a range of housing types, income levels, and rental and ownership models, including the following: Live/work units, Group housing,*	**Consistent.** The Project proposes 109 townhome units with 10 ADUs that provides transit-oriented housing within the McCandless District that diversifies the housing stock in the Metro Plan. The Project includes nine live/work units along Market Street, which is one of

Co-living, Senior housing, Student housing".	the housing types specifically listed in Policy LU 3.2. The townhome product type also adds variety to the Metro area's housing products, which includes higher-density apartment and condominium units. Furthermore, the Project will comply with the City's Inclusionary Housing Ordinance by providing 22 off-site affordable units at the nearby Gideon Apartments.
PPS 1.7 *Parks, Public Space, and Open Space: Locate parks and outdoor gathering spaces adjacent to higher density residential development to provide a visual and activity for housing, as well as to ensure safety through casual surveillance.*	**Consistent.** The Project is located approximately 1,000 feet away from McCandless Park, the largest park in the Metro area, which provides recreational amenities for the McCandless Subdistrict. The Project meets the minimum common open space requirement of 100 square feet per unit (10,900) with 27,832 square feet of public open space in the form of an urban plaza at the corner of Market Street and McCandless Avenue.

2b. The proposed siting, form, architectural style, materials, and other elements of multi-family residential and mixed-use developments are consistent with City Objective Design Standards:

The proposed Project is designed in a Northwest Contemporary architectural style, incorporating clean, boxy massing, flat and low-slope roofs, large black-framed windows, and a mixed-material façade. The building massing is articulated through projections and recesses at adjacent townhomes, as well as staggered balconies that help break up the length of the structures, while top-level terraces create a stepped-back effect that reduces the overall sense of verticality. The residences are arranged in a multi-story townhome format, generally three and four levels tall, maximizing vertical space with parking and entry at the ground level, main living areas on the second and third floors, and bonus or entertaining rooms opening onto large covered terraces at the top level to take advantage of light and views. The roof design combines shed roofs, flat balcony and terrace roofs, and curved sloping roofs at prominent elements, creating a dynamic contemporary roofline. Large windows enhance natural light and provide expansive views throughout the development. Exterior materials consist primarily of stucco with lap siding accents for added texture, while brick at the ground floor introduces a natural element that helps ground the modern aesthetic. The color palette draws from coastal tones, including whites, cool grays, blues, and green-blues, complemented by the warmer earth tones of the brick. The proposed architectural style complements the surrounding neighboring residential developments and meets the intent of the City's Objective Design Standards as shown in Table 4, thus meeting this finding.

<u>Table 4: Objective Design Standards</u>

Policy	Conformance
Section 2.1 - Block Structure / Maximum Block Length	**Consistent** - The ODS require that all projects have a maximum block length of 400 feet and a maximum perimeter length of 1,400 feet. Although the Project site exceeds both amounts, the size and shape of the lot is existing and will not be increased. Additionally, the block is broken up by private driveways and pedestrian paths along the perimeter. Therefore, the Project is consistent with the intent and

	purpose of this requirement to divide large blocks and create multiple buildings.
Section 2.3 - Shared / Publicly Accessible Open Space	**Compliant** – As a Large Site, the Project is required to provide shared publicly accessible open space in addition to minimum usable open space. For projects with an average building height less than 45 feet such as this one, publicly accessible open space shall be equal to or greater than 5% of the lot area, which is approximately 11,957 square feet. This Project meets this requirement through the Urban Plaza located at the intersection of Market Street and McCandless Avenue.
Section 3.1 - Sidewalk Design	**Consistent** - The ODS require that residential projects fronting a public street right-of-way provide a minimum effective sidewalk width of 12 feet, with a minimum 6-foot-wide pedestrian clear zone. The Project fronts Great Mall Parkway to the north, McCandless Avenue to the west, Market Street to the south, and Centre Pointe Drive to the east. Project frontage along Great Mall Parkway will have a 10-foot sidewalk and 11 feet of landscaping. Project frontage along McCandless will have an 8-foot sidewalk and between 10 and 16 feet of landscaping. Project frontage along Market Street will have an 8-foot sidewalk and 12 feet of landscaping. Lastly, frontage along Centre Pointe will have an 8-foot sidewalk and approximately 12 feet of landscaping.
Section 3.4 – Ground Floor Uses	**Consistent –** The ODS require that active frontages have a minimum interior depth of gross building area of 15 feet for live/work units. As proposed, the Project provides between 12 and 14 feet and 8 inches of depth. However, due to the limited right-of-way along Market Street, a 15-foot active frontage is infeasible. The provided frontage area is suitable for a narrow street like Market Street.
Section 3.9 – Standards for Special Conditions and Adjacencies	**Consistent –** The ODS require that all ground floor residential units shall be set back a minimum 40 feet from face-of-curb when adjacent to a Major Roadway, which is defined as a street with three or more travel lanes in each direction. Great Mall Parkway meets this definition and is directly north of the Project site. The Project proposes a building setback between 20 to 22 feet along Great Mall Parkway. However, the Project provides a number of large street trees along the Great Mall Parkway and approximately 10 feet of right-of-way dedication. The proposed height of the proposed buildings along Great Mall Parkway are also no more than 49 feet, which meets the intent of promoting gradual transitions from high density development to surrounding areas. Furthermore, no sound attenuation walls

	are proposed in order to lessen any potential noise impacts and maintain a pedestrian-friendly environment
Section 5.1 - Ground Floor Design	**Compliant** - The ODS require that all ground floor residential units have an entry with direct access to the sidewalk, path, or open space. Ground floor residential facades must have a minimum 30% transparent glazing between 4 and 7.5 feet in height above finished floor, with transparent glazing that is maximum 50% reflective and with visible light transmittance greater than 80%. For the nine live/work units proposed along Market Street, the facades are required to have a minimum 50% transparent glazing between 3 and 7.5 feet in height above finished floor. This has been added as a condition of approval within the attached Resolution (COA #17).
Section 5.2 - Residential Unit Entry Types	**Compliant** – The ODS require that private entries into ground floor residential units shall be designed to provide human-scaled detailing, enhanced pedestrian experience, transition between public and private space, spaces for residents to gather and spend time outdoors, and resident privacy. The Project proposes Terrace entrances for all residential units, which are limited to 30 inches above the grade of the back of the adjacent sidewalk or accessway. Terrace entrances are also required to have a minimum path width of 42 inches and fences or walls have a maximum of 42 inches in height and have a minimum transparency of 40%. Although no fences are proposed at this time, the height maximum has been added as a condition of approval within the attached Resolution (COA #18).
Section 5.5 - Building Materials	**Compliant** – The ODS require building facades to include a variation in building materials, with primary materials covering between 55% and 65% of each exterior, excluding windows, doors, garage doors, and building trims. This Project accomplishes this by including metal-clad roofing materials, aluminum storefronts, and "Hartford" brick veneer, in addition to painted stucco and siding.
Section 6.2 - Usable Open Space/ Common Open Space	**Compliant** – The ODS require that Common Open Space be immediately adjacent to common spaces, hallways, or residential units, be accessible to all residents, and have a minimum width and length of 20 feet. The common open space must include a minimum of 20% landscaping, with a minimum of 20% area planted with ground cover/ shrubs, and a minimum of one tree planted per 400 square feet of open space area. Staff finds that the project is consistent with ODS Section 6.2 via the proposed urban plaza.

2c. The proposed siting, form, and architectural style of single-family residential, commercial, and industrial developments are appropriate for the project site and surroundings and create a visually cohesive design, and are consistent with all applicable design standards in this Title:

The above finding is not applicable to the Project because it is a multi-family development.

SECTION 4: Conditional Use Permit Findings (MMC Section XIII-D.4.030)

1. *The proposed use is consistent with the goals and policies of the General Plan;*

   See Site Development Permit Finding 1.b above.

2. *The proposed use is consistent with the goals and polices of any Specific Plan if applicable;*

   See Site Development Permit Finding 2.a above.

3. *The proposed use is appropriate for the zone in which it is located, is compatible with uses in the zone, and complies with all other applicable provisions of this Title;*

   The proposed residential townhome development will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The Project site is a vacant, undeveloped parcel located within the McCandless District of the Metro Specific Plan area, which is planned and zoned for high-density, transit-oriented residential development. The surrounding area includes existing residential and mixed-use developments to the west and south of the Project site, and a well-established commercial shopping center to the north across from Great Mall Parkway. Therefore, the Project will complete the neighborhood by contributing to and diversifying the existing housing mix with ADUs and live-work units. Moreover, the McCandless Subdistrict specifically calls out townhomes as part of the Metro Plan's vision. The residential units of the proposed Project are compatible with the neighboring commercial uses as residents will be able to shop nearby and/or using the Milpitas Transit Center to commute to work. Furthermore, with the density bonus concessions and Development Agreement, the Project complies with all applicable zoning and development standards in this Title. The Project has also been designed to comply with all applicable building, fire, and safety codes, and conditions of approval will be imposed to ensure ongoing compliance.

4. *The proposed use will not be materially detrimental to the health, safety, and welfare of the public or the property and residents in the vicinity;*

   See Site Development Permit Finding 1.c above.

5. *The subject site is physically suitable for the use being proposed, including access and utilities;*

   The proposed 5.49-acre Project is adequate in size and shape to accommodate the proposed 109 townhome units and 10 ADUs, including all required setbacks, parking, landscaping, and open space. The Project provides two-car garages for each residential townhome, an approximately 28,000 square-foot urban plaza to be used for public open space, and sufficient setbacks and public rights-of-way, which meet the applicable standards of the MXD2-Metro zone. The site plan also demonstrates adequate internal circulation, emergency vehicle access, and pedestrian connectivity. A traffic analysis has been prepared demonstrating the Project's anticipated traffic generation can be accommodated by the existing street network. Transportation and Fire staff have also reviewed the Project plans and are requiring conditions of approval to ensure adequate emergency vehicle access and have confirmed that the internal private streets and driveways adequately serve the development. The Project will connect to existing utilities via tie-ins along McCandless Drive to the west and Great Mall Parkway to the north.

6. *The design, location, size, and operating characteristics of the proposed use are compatible with existing and reasonably foreseeable future land use and circulation in the vicinity;*

   The Project site is located at the intersection of Great Mall Parkway and McCandless Drive. Great Mall Parkway is an arterial street, while McCandless Drive is a collector street. The site is within half a mile of the Milpitas BART station and VTA light rail stations, providing excellent multi-modal transit access. A traffic analysis has been prepared demonstrating the Project's anticipated traffic generation can be accommodated by the existing street network. Furthermore, the Project would result in a significant decrease in the number of residential units from what was previously analyzed through the Environmental Impact Report for the Milpitas Metro area. Generally, a lower level of development results in fewer environmental impacts related to public services, utilities, natural resources, local vehicular traffic, and other impact categories. Therefore, the design, location, size, and operating characteristics of the Project are suitable for the Project site and compatible with the surrounding area. The Metro Specific Plan also envisions a mix of housing and pedestrian-oriented environment in this area, which the Project will help fulfill by introducing medium-density housing with ADUs, affordable housing, and live-work units to complete The Fields/District development.

7. *The proposed Project is in compliance with the provisions of California Environmental Quality Act.*

   The proposed Project includes the development of 109 multi-family residential units and 10 Accessory Dwelling Units within an urban and mixed-use zoned area. With the proposed Development Agreement and density bonus concessions, the proposed Project meets the Metro Specific Plan zoning regulations and is consistent with the policies established in the original TASP Environmental Impact Report and Metro Specific Plan Subsequent EIR (SCH#2006032091). The Project is also a residential development within and subject to a Specific Plan. Therefore, the Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan.

SECTION 5: Density Bonus Findings (California Government Code Section 65915)

1. *The maximum allowable base density specified in the General Plan, including any other permitted increases to density.*

   The proposed Project includes 109 townhome units, equaling a residential density of approximately 20 dwelling units per acre (du/ac), which does not meet the allowed minimum density of 40 du/ac in the MXD2-Metro zoning district. However, previous approvals established the use of density averaging across The Fields/District development, allowing flexibility in the distribution of units among the various lots. Furthermore, the proposed Development Agreement would preserve the minimum residential density of 31 du/ac previously allowed for the subject property under the Transit Area Specific Plan (TASP). Therefore, with density averaging across The Fields/District development, the Project would meet the TASP minimum density of 31 units per acre average.

2. 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 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.*

   The applicant has proposed to convert 22 existing apartment units from an adjacent mixed-use development from market-rate units to low- and very-low-income affordable units. As most units in the apartment are currently occupied, market-rate units can only be converted to BMR units once the units become vacant or available. The affordable unit sizes and bedroom counts will be identified and approved by the Office Housing Department as meeting the intent of the Affordable Housing Ordinance (AHO) prior to Building Permit Issuance. This has been added as Condition of Approval No. 25 within the attached Resolution. The development will need to have converted 22 existing apartment units to BMR units by first occupancy and half of the units being converted prior to June 30, 2027. Prior to occupancy, the applicant must execute an agreement with the City imposing appropriate ownership controls on the affordable units as required by the AHO. Since the market-rate units to be converted to BMR units have already been constructed and are existing, the appearance, materials, and finished quality of BMR units will be the same as those of the remaining market-rate units.

3. *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 has been conditioned to provide an agreement to the City of Milpitas explaining the affordability requirements, processes and procedures, to the satisfaction of the Milpitas City Manager prior to the release of final Certificate of Occupancy.

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.*

   Prior to final building inspection and occupancy for the 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, including continue affordability for low- and very low-income households. The agreement shall be approved by the Milpitas City Manager prior to recordation.

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.*

   Although the Project proposes for-sale townhomes dwelling units for sale, the applicant proposes to convert 22 existing market-rate apartment units from the adjacent mixed-used development to 18 low- and 4 very low-income units to meet the City's Affordable Housing Ordinance through an alternative means of compliance, which requires City Council approval. The Project will be subject to an affordable housing agreement, which must be approved by the City and executed prior to the release of final Certificate of Occupancy. The agreement will require the low- and very low-income units to be available at a rent that does not exceed the maximum limits established in Section 50079.5 of the Health and Safety Code. As apartment units in the Gideon development become vacant or available, the applicant will be required to deed restrict and rent those units in compliance with the affordable housing agreement and in a manner that meets the intent of the City's Affordable Housing Ordinance.

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

   The applicant has identified and requested bonus concessions held within the State Density Bonus Law, and the Planning Department supports this request. As such, the applicant is requesting the following concessions: a decrease in required ground floor retail within the MXD2-Metro zoning district, and a decrease in the required Large Retail Storefront sidewalk, as stated within the Metro Plan. The MXD2-Metro zone requires that "ground floor retail and active uses" are required on 80% of frontages on any one blockface along Activity Streets as identified within the Metro Plan. The Metro Plan identifies three of the Project site's frontages as Activity Streets, along the west, south, and east frontages. Since the Project only proposes active uses along Market Street to the south, a concession is required for this standard. The Metro Plan also identifies Activity Streets as having a 18-foot sidewalk. Due to the nature of the townhome development and the size of the lot, this requirement would be infeasible to the developer, so a concession is requested for this as well.

SECTION 6: Tentative Map Findings

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

   The Vesting Tentative Map is necessary for the proposed multi-family residential Project, which is consistent with the General Plan land use designation of Milpitas Metro Specific Plan (Metro Plan), which encourages high-density, mixed-use, transit-oriented development within the McCandless/Centre Pointe Sub-District. As shown in Table 3 of the staff report, the Project complies with General Plan policies LU 1-4, LU 2-1, LU 5-1, LU 5-3, CD 5-5, and CD 6-5. The Vesting Tentative Map is also necessary for the development of a currently vacant 5.49-acre parcel, thereby activating an underutilized site and contributing to the existing neighborhood fabric of the area and complete The Fields/District development and neighborhood. Therefore, the Vesting Tentative Map is consistent with the goals and policies of the General Plan.

   Furthermore, the Project is consistent with the Milpitas General Plan as demonstrated and outlined in Table 3 above.

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

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

      The proposed Project includes 109 townhome units, equaling a residential density of approximately 20 dwelling units per acre (du/ac), which does not meet the allowed minimum density of 40 du/ac in the MXD2-Metro zoning district. However, previous approvals established the use of density averaging across The Fields/District development, allowing flexibility in the distribution of units among the various lots. Furthermore, the proposed Development Agreement would preserve the minimum residential density of 31 du/ac previously allowed for the subject property under the Transit Area Specific Plan (TASP). Therefore, with density averaging across The Fields/District development, the Project would meet the TASP minimum density of 31 units per acre average.

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

      The design and improvements of the Vesting Tentative Map are consistent with the General Plan in that it would allow for multifamily residential development with associated public improvements, which are consistent with the applicable General Plan goals and policies as described in Tentative Map Finding 1. The Project is also consistent with the policies associated with the Milpitas Metro Specific Plan (Metro Plan), as identified in Tables 4 and 5, except for the commercial component along Activity Streets, which is allowed per State Density Bonus Law. The Project site is located within the McCandless District of the Metro Plan, which is characterized by high-density mixed-use development along larger, busier streets in the northern area and lower density townhouse development in the central area of the District. The Vesting Tentative Map would allow for development that is compatible with and would complete the surrounding neighborhood consistent with the Metro Plan's vision for the McCandless District.

c. *The site is not physically suitable for the type of development.*

The Project site is surrounded by property designated for mixed-use development under the City's General Plan and zoned for this type of development under the Metro Plan and MXD2-Metro zones. The proposed Project is also known as Lot 3 within the larger The Fields/ District development, which is nearly built-out and already developed with 762 residential units and over 71,000 square feet of commercial/retail space. The proposed Project will add 119 dwelling units with the included ADUs and will complete The Fields/District development. In addition, the site is suitable for the proposed townhome development based on the location and physical attributes of the site. The site is located in an urban context suitable for multifamily development and is approximately 5.49 acres in size, which is sufficient to accommodate the development. The Vesting Tentative Map includes the necessary infrastructure improvements to adequately serve the site from a transportation and utilities perspective.

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

The Project site is suitable for the proposed medium density townhome development based on the location and physical attributes of the site. The site is located in an urban context suitable for medium density multifamily development and is approximately 5.49 acres in size, which is sufficient to accommodate the proposed density of development. The Vesting Tentative Map includes the necessary infrastructure improvements to adequately serve a multifamily residential development at the proposed density.

e. *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, is located within a heavily urbanized area and is surrounded by a mixture of commercial and mixed-use development. Therefore, it will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

f. *The design of the subdivision and its associated improvements, has been designed in a manner that will not cause serious public health problems.*

The Project, including the subdivision and its associated improvements, has been designed in a manner that will not cause serious public health problems. The Project has been reviewed by the Building, Housing Fire, Land Development, Traffic, Public Works, and Solid Waste Departments. The Vesting Tentative Map includes various public improvements in the public rights-of-way related to transportation and utilities to ensure the Project will be adequately serviced and thereby preserve public health and wellness. Public improvements include utility services such as water, wastewater, storm drain, gas, electrical, and telecommunications. Pavement restoration along the project frontage on McCandless Drive, Center Pointe Drive, and Great Mall Parkway per City Standards will be required as part of the Project. Project frontage along Great Mall Parkway will have a new 10-foot sidewalk and 11 feet of landscaping. Project frontage along McCandless will maintain the existing 8-foot sidewalk and provide between 10 and 16 feet of landscaping. Project frontage along Market Street will have a new 8-foot sidewalk and 12 feet of landscaping. Lastly, frontage along Centre Pointe will have a new 8-foot sidewalk and approximately 12 feet of landscaping.

g. *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. Existing easements include public service utility easements throughout the perimeter of the site as well as a 20-foot PG&E easement that cuts through the middle of the site. All utility easements will be located within or near public rights-of-way and the 20-foot PG&E easement will be quitclaimed or removed as part of this development. Therefore, the proposed subdivision and relevant improvements will not conflict with easements or access to the property.

SECTION 7: Development Agreement Findings (MMC Section XIII-D.14.050)

The proposed Project is considered to be eligible for a Development Agreement per City Council Resolution No. 6642 Sections 2.3(a) and 2.3(c), regarding acreage and general welfare of the community. Although the Project site is under 10 acres, it is part of a larger development (The District), which encompasses multiple lots totaling over 20 acres. Furthermore, the public health, safety and general welfare of the citizens of City will best be served by accepting an Application for consideration by the Planning Commission and City Council. The Development Agreement will facilitate the final step in a large development that has taken many years to complete and activate an otherwise vacant lot that has remained underutilized during that time. The Project will establish affordable housing close to public transportation and other infrastructure and amenities that will particularly benefit lower income households. The Project is in a highly urbanized and developed area where the construction of such affordable housing may not otherwise be forthcoming.

1. *The Development Agreement is consistent with the goals, policies, general plan land uses, and programs specified in the General Plan;*

   The proposed Development Agreement (DA) would further the General Plan goals and policies by allowing for the proposed Project with additional construction and improvements only allowable through the benefit of this DA. The Project would provide a mix of townhomes, accessory dwelling units, and live-work units in proximity to the Milpitas Transit Center, which is consistent with the General Plan's vision for the Metro Specific Plan area. Furthermore, as part of DA and as a public benefit, the Project would provide low- and very-income level units beyond what is required by the Affordable Housing Ordinance, which will help the City achieve its affordable housing goals in its Housing Element. Lastly, the DA also includes a voluntary $400,000 contribution to the City as a community benefit, which can be used to fund City services and public improvements identified in the General Plan.

2. *The Development Agreement is consistent with any Specific Plan, if applicable;*

   The proposed Project is located within the Milpitas Metro Specific Plan (Metro Plan, formerly TASP). The Metro Plan envisions the McCandless Subdistrict with high-density mixed-use development along larger streets and lower-density townhouse developments. The proposed DA would allow for the proposed Project, which includes a mix of housing types (townhomes, ADUs, and live-work units) that are aligned with the Metro Plan's vision for this subdistrict. The live-work units would also contribute to the pedestrian-oriented, vibrant atmosphere envisioned along Market Street. Lastly, the DA includes a public benefit of four low- and one very low-income units, which would provide lower-income affordable housing near public transit, which is another goal of the Metro Plan.

3. *The Development Agreement and accompanying development maps, plans, and other supporting information are compatible with the uses authorized in, and the performance and development standards prescribed for, the zone in which the subject parcel or site is located;*

   The DA would allow for the Project site to be developed with multifamily residential development, which is permitted by-right in and consistent with the intent of the MXD2-Metro zoning district. The purpose of the MXD2-Metro zoning district is to create and enhance areas with a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor and residential or office uses on upper stories, while maintaining a pedestrian-oriented streetscape. Although the Project does not comply with the density and active commercial requirement of the MXD2-Metro zone, the DA would preserve the previously applicable minimum density in the TASP (30 du/ac), which the Project complies with once density averaging is applied throughout The Fields/District development. A waiver through the Density Bonus Permit would also reduce the commercial requirement for the Project, which is being met through the live-work units. Therefore, the proposed DA and accompanying development are compatible with the uses allowed in the applicable zoning district.

4. *The Development Agreement is in conformity with and will promote public convenience, general welfare, and good land use and development practices*

   The proposed DA promotes public convenience and general welfare by providing affordable housing (four low- and one very low-income units) within walking distance of the Milpitas BART station and VTA light rail. These deed-restricted affordable units will not only provide rental savings over 55 years to the Milpitas community but also provide housing options near public transit for disadvantaged persons who are often dependent on public transit. Furthermore, the DA would allow for the proposed Project, which includes ADUs and live-work units. ADUs provide yet another affordable option for prospective tenants and allows homeowners to collect rental income by renting out their ADUs to tenants. Meanwhile, live-work units provide much-needed housing for artists, artisans, and small business owners and entrepreneurs in a convenient location.

5. *The Development Agreement shall be shown to be of greater benefit to the community than development absent the Development Agreement*

   The proposed Development Agreement would provide a one-time voluntary $400,000 contribution and the conversion of 4 low-income and 1 very low-income apartment units within the adjacent Gideon development as a community benefit to offset the loss of market-rate units, which would result from preserving the lower minimum residential density previously allowed for the subject property under the TASP (30 du/ac) rather than applying the minimum density in the Metro Specific Plan (40 du/ac). While allowing a lower density Project through a DA would result in fewer units on the subject property, the Project would provide affordable units at a lower income level than would otherwise be provided, which provides a significant public benefit to the Milpitas community through rental savings for future tenants.

6. *The term or duration of the Development Agreement has a commensurate relationship to the benefit(s) provided;*

   The proposed DA has an initial term of three (3) years. Commencement of construction within 3 years from the Effective Date would vest the DA. “Commencement” would include the property owner/ applicant having been issued a building, demolition, and/or grading permit. Two 2-year extensions may be granted by the City provided that the property owner/ applicant is not in default of its obligations under the DA. The term of the DA is commensurate to the benefit provided in that the term is sufficient to allow for construction of the Project and implementation of the proposed public benefit.

7. *The Development Agreement contains the mandatory provisions specified in California Government Code Section 65865.2 and any other terms required by Council;*

   Government Code Section 65865.2 requires that a Development Agreement include the duration of the agreement, the permitted uses of the property, the density, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The proposed DA meets this requirement by including all of the aforementioned provisions.

8. *The Development Agreement complies with all other applicable requirements of California Government Code Section 65864 et seq;*

The Planning Commission is scheduled for public hearing on May 6, 2026 and the City Council is scheduled to consider the Development Agreement and Project for approval on May 19, 2026.

SECTION 8: No Net Loss Findings (Gov. Code, §§ 65863 and 66300)

The Project, as conditioned and approved, does not result in changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reduce the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation or zoning ordinances of the City in effect as of January 1, 2018, and is therefore approved in conformity with California Government Code Section 66300.

In conformity with California Government Code Section 65863, any reduction caused by the approval of this Project in the number of units anticipated for construction in the Housing Element Sites Inventory contained in the Housing Element of the General Plan is found to be consistent with the General Plan, together with the Housing Element, including because the Project would continue to contribute meaningfully to the development of housing at levels greater than or equal to the applicable residential density for the property at the time of the General Plan's adoption and moreover would allow and incentivize the development of a greater number of affordable units closer to transportation and other community resources than was otherwise anticipated in the Housing Element Sites Inventory. The Project's residential density is consistent with the Housing Element, and the remaining sites identified in the Housing Element remain unchanged and are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need pursuant to Section 65584. This finding demonstrates that the Project is not subject to Government Code Section 65583.2 and will still ensure that the City can accommodate the remaining share of the regional housing need pursuant to Section 65584.

SECTION 9: Affordable Housing Ordinance Exception

The City Council may allow an exception to the requirement to construct on-site affordable units for a residential ownership project when the applicant contributes to the City's affordable housing needs through one of the alternatives set forth in MMC Sections XII-1-4.00-XII-1-4.02. Pursuant to MMC XII-1-4.03, the City Council, at its discretion, may also approve other alternative methods of compliance with the AHO. The City Council may therefore approve the Applicant's request to develop the affordable units proposed through conversion of rental units at the Gideon property by adopting the following findings:

1. *Such alternative method meets the purpose of the AHO; and*

   The stated purpose of the AHO is to (a) enhance the public welfare and assure that further housing development contributes to the attainment of the City's housing goals by increasing the production of residential units affordable by households of very low, low and moderate income and (b) assure that the limited remaining developable land in the City's planning area is utilized in a manner consistent with the City's housing policies and needs. (MMC § XII-1-1.00.) The Project will establish affordable housing close to public transportation and other infrastructure and amenities that will particularly benefit lower income households. The Project will provide that affordable housing at lower income categories than would otherwise be provided by the on-site build requirement of the AHO and provide low- and very low-income housing that many other developers have been unwilling or unable to provide. The Project is in a highly urbanized and developed area where the construction of such affordable housing may not otherwise be forthcoming.

2. *The development as proposed with the exception as provided pursuant to this Section would further the City's low and/or moderate-income housing goals as contained in the Housing Element; and*

   The Project as proposed would also further the City's low and/or moderate income housing goals as contained in the Housing Element, which includes policies that prioritize the development of low- and very low-income levels. Additionally, the Housing Element Sites Inventory anticipated 357 market-rate units on this site based on the previous entitlement. While the Project would result in 238 fewer market-rate units than anticipated, it would provide 22 low-/very low-income units, which were not anticipated in the Sites Inventory for this site. Historically, the City has exceeded its Regional Housing Needs Allocation (RHNA) for market-rate but struggled to meet its RHNA for the low- and very low-income levels.

   Furthermore, while the Project would provide smaller apartment instead of townhouse BMR units, these units would be at the low-/very low-income levels, providing greater rental savings for the Milpitas community relative to that of moderate-income units. The applicant has also demonstrated how the 18 low-/very-low apartments units are equivalent to or exceed the construction cost or value of 17.35 moderate townhomes. See the attached Affordable Housing Equivalency Analysis for more information.

3. *The development with the exception either (i) will result in at least two of the following:*

   a) The development of a larger number of deed-restricted affordable units than would be created under the on-site requirement;
   b) The development of a larger number of deed-restricted affordable bedrooms than would be created under the on-site requirement;
   c) The development of a larger amount of deed restricted affordable living area than would be created under the on-site requirement;
   d) The development of deed-restricted affordable units at a lower average income target as compared to the affordable units that would be created under the on-site requirement;

or (ii) will provide other community benefits that exceed the benefit of constructing on-site affordable units.

Pursuant to MMC Section XII-1-3.00, the applicant must reserve 15% of the total number of dwelling units within the development as affordable units. The City's AHO also states that if the project is a residential rental project, 100% of the required affordable units must be reserved for very low or low-income households. If the project is a residential ownership project, 100% of the affordable units must be reserved for very low, low, or moderate-low-income households. As the project proposes for-sale townhomes, all affordable units are required to be at the moderate-income level or lower. Applying the 15% requirement to the 109 market-rate townhomes yields an affordable housing obligation of approximately 16.35 moderate-income townhomes. Per the AHO, a fractional unit equal to 0.5 or greater is rounded up, resulting in a requirement of 17 on-site affordable units. However, in-lieu fees may be paid for requirements to construct fractional units of less than 0.5 units as outlined in MMC Section XII-1-3.00.

The Project proposes to provide a larger number of deed-restricted affordable units (Finding 3.a) and some of those units at a lower income level (Finding 3.d) than would be created under the on-site requirement. Of the 22 BMR rental units, 18 would be at the low-income level and 4 would be at the very low-income level. Of the 18 low-income units, 15 are proposed as part of this alternative means of compliance with the AHO, and of the 4 very low-income units, 3 are proposed as part of this alternative means of compliance with the AHO. As such, the Project proposes an alternative means of compliance consisting of 18 instead of 17 BMR units, 3 of which would be at the very low- instead of low-income level. The Project proposes to reserve the remaining BMR units (3 low- and 1 very low-income) as a public benefit as part of the proposed

Development Agreement. The Development therefore provides a larger number of deed-restricted affordable units at a lower income target than would otherwise be created under the on-site requirement.

SECTION 10: Planning Commission Approval and Recommendation for Approval

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 26-010 and approves and recommends the City Council approve Amendment to Site Development Permit No. SD15-0006, Vesting Tentative Tract Map No. P-TM26-0001, Amendment to Conditional Use Permit No. UP15-0010, Density Bonus Permit No. P-DB25-0001, and Development Agreement No. DA26-0001, based on the above Findings and subject to the Conditions of Approval attached hereto and incorporated herein as **Exhibit 1**.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 6, 2026.

____
Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 6, 2026, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Parveen Gupta				
Michael Caulkins				
Dipak Awasthi				
Chia Ling Kong				
Olania Castillo				
Alexander Galang				
Dawn Brown				

EXHIBIT 1

SITE DEVELOPMENT PERMIT AMENDMENT (P-SA25-0002), VESTING TENTATIVE MAP (P-TM26-0001), CONDITIONAL USE PERMIT AMENDMENT (P-UA25-0003), DENSITY BONUS PERMIT (P-DB26-0001), and DEVELOPMENT AGREEMENT (DA26-0001)
DISTRICT LOT 3A – 1320 McCANDLESS DRIVE
(APN 086-33-112, -113, and -114)

The City of Milpitas Planning Commission and City Council approve the above entitlements ("Permit"), subject to and conditioned upon all applicable State and local laws and regulations and the Conditions of Approval outlined below, which will supersede those from Site Development Permit No. P-SD15-0006 and Conditional Use Permit No. P-UP15-0010 for the subject property only. This Permit is to allow the development of 109 townhome residential units and 10 Accessory Dwelling Units ("Project") on a vacant 5.49-acre site within the Metro Specific Plan at 1320 McCandless Ave. (APN: 086-33-112, -113, and -114), subject to all necessary reviews, approvals, studies, and inspections for the issuance of building permits and other required entitlements and approvals.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Site Development Permit Amendment SA25-0002, Vesting Tentative Map (P-TM26-0001), Conditional Use Permit Amendment (P-UA25-0003), Density Bonus Permit (P-DB26-0001), and Development Agreement (DA26-0001) ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and the Resolution of approval has been recorded by the Permittee with the Santa Clara County's Recorder Office. **(P)**

2. 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)**

3. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**

4. 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.

5. Permit Expiration. Pursuant to Section D.2.040.K of the Milpitas Comprehensive Zoning Update (CZU), this Permit shall become null and void if the development is not implemented within two (2) years, or for projects submitted with tentative maps, within the time limits of the tentative map. Pursuant to Section D.2.040.K.3 of the Comprehensive Zoning Update of the City of Milpitas, implementation is defined when: **(P)**

a. A permit or approval shall not be deemed implemented until the applicant has obtained a grading permit and/or building permit and commenced construction, or where no grading or building permit is required, has commenced the allowed use on the subject site in compliance with the approval; or
b. Construction shall be diligently pursued towards completion. If after construction commencement, work is discontinued for a minimum period of two years, the permit or approval shall expire and be deemed void; or
c. If a project is phased, each phase shall be subject to a time limit during which construction must commence. Each subsequent phase shall have the same length of time allowed for the previous phase. The time limit for a subsequent phase shall begin when the previous phase commences construction, unless otherwise specified in the permit of approval.
d. "Commence construction" shall mean any of the following, whichever occurs soonest:
    i. Completes a foundation associated with the project;
    ii. Dedicates any land or easement as required from the approval; or
    iii. Complies with all legal requirements necessary to commence the use or obtains a Certificate of Occupancy permit.

This permit shall become null and void if the work is added to, modified, or otherwise deviated from in any significant way from the approved site plan, building plan, floor plans, or other approved submittals as determined by the Planning Director or designee.

6. 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 applicant may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**

7. 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. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**

8. 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 Permittee is operating the project under the permits and approvals in this Resolution. **(P)**

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

10. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**

11. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to,

the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee’s construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City’s choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**

12. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section D.18.070 of the Milpitas Zoning Code. **(P)**

13. 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.

14. Conformance. Permittee shall develop the approved Project in conformance with the plans approved by the Planning Commission, and 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, Permittee 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)**

15. Response to Conditions of Approval. Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**

16. Prior to the issuance of a building permit, the owner or designee 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)**

Planning Department Special Conditions

17. The City’s Objective Design Standards (ODS) require that all ground floor residential units have an entry with direct access to the sidewalk, path, or open space. Ground floor residential facades must have a minimum 30% transparent glazing between 4 and 7.5 feet in height above finished floor, with transparent glazing that is maximum 50% reflective and with visible light transmittance greater than 80%. For the nine live/work units proposed along Market Street, the facades are required to have a minimum 50% transparent glazing between 3 and 7.5 feet in height above finished floor. (**P**)

18. The City’s ODS require that private entries into ground floor residential units shall be designed to provide human-scaled detailing, enhanced pedestrian experience, transition between public and private space, spaces for residents to gather and spend time outdoors, and resident privacy. The Project proposes Terrace entrances for all residential units, which are limited to 30 inches above the grade of the back of the adjacent sidewalk or accessway. Terrace entrances are also required to have a minimum path width of 42 inches and fences or walls have a maximum of 42 inches in height and have a minimum transparency of 40%. (**P**)

19. Prior to the issuance of a building permit, the owner or designee shall provide updated project plans clearly indicating the location and design of thirty-five (35) short-term bicycle spaces, as required per MMC Section XIII-C.6.100 (Bicycle Parking), acceptable to the Planning Director.

20. The Project shall demonstrate compliance with the Metro Specific Plan Subsequent EIR mitigation monitoring program.

Housing Department Conditions

The developer is requesting an exemption to XII-1-3.03 – Concurrent construction of affordable units of the AHO.

21. 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. The City Council has granted the following deviation from the City's AHO **(H)**:

    a. Permittee shall reserve 22 apartment units in the Gideon apartment complex for either low or very low-income households consisting of
        i. 18 low-income units
        ii. 4 very low-income units
    b. The location, bedroom mix, and dispersion of the proposed units in the Gideon property must be submitted to and approved by the Housing Department for compliance with the AHO.

22. In-Lieu Fee: As outlined in XII-1-3.00 - 15 Percent Affordability Requirement of the AHO, if the 15 percent calculation results in a fractional unit that is less than 0.5 (i.e., less than half a unit), the developer may pay an in-lieu fee for that fractional unit. As the 15% requirement for the 109 townhome project is 16.35, the developer will be required to pay an in-lieu fee.

23. XII-1-3.02 - Conditions of approval and XII-1-3.04 - Design and distribution of affordable units: The developer is required to provide the information outlined in these 2 sections, subject to approval by the Housing Department for compliance with the AHO. The information will be based on the apartment units to ensure the bedroom mix of the affordable units should be proportionate to the bedroom mix of market rate units in addition to other required similarities.

24. XII-1-6.00 Agreements: 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 and establish the affordability requirements for the affordable units for a period of not less than 55 years. The agreement shall be approved by the Milpitas City Attorney prior to recordation. **(H)**

25. Applicant shall clearly identify all affordable unit sizes and bedroom counts and submit to the Office of Housing for approval for meeting the intent of the Affordable Housing Ordinance (AHO) prior to Building Permit Issuance.

Building Department Conditions

26. Applicant shall provide revised Sheets A3.01 and A4.01 to accurately show exit travel distance prior to Building permit issuance.

27. Sheet A6.01 to A6.09: Exterior Wall Opening Calculations

    a. The site plans shall clearly identify the building types which correspond to the exterior wall opening calculations elevations. The exterior wall opening calculations for each building type provided shall be based on the most restrictive (least FSD) buildings shown on site plans and shall clearly identify which building no. on the building elevations where the calculation are provided corresponding to the FSD for that building.
    b. The exterior elevations shall specify the story height and length of the wall segments and opening dimensions for calculations of the wall and opening area.
    c. Applicant to verify the FSD specified on the calculations match the plans, e.g. Sheet A6.05 Right Elevation indicates Level 2 and 3 with FSD 15'-20', while Level 1 and 4 has FSD 10'-15'

28. Minimum 25% of guest parking spaces to be provided with Level 2 EV chargers per 2025 CalGreen Sec. 4.106.4.2.2(2).

Fire Department

29. The plans approved by the Planning Department process are not building plans and have not been reviewed nor approved for conformance to the California Building Code (CBC), California Fire Code (CFC) and the Milpitas Municipal Code (MMC). Do not consider this set of plans as final building plans approved by the Fire Department. Building plans ***must*** be submitted for review and approval before construction is to commence. The following notes are a general list of the applicable code requirements (2022) and are provided to assist with the building permit process. Please note that these are not all inclusive. All applicable Building, Fire and Municipal Code requirements must be met in advance of any building permit approvals or related construction. The notes listed below will apply to ALL building and site, unless specifically identify for one particular building or area. **(F)**

30. Technical Assistance: To determine the acceptability of technologies, processes, products, facilities, materials, and uses attending the design, operation or use of a building or premises subject to inspection by the Fire Code Official, the Fire Code Official is authorized to require the owner or agent to provide, without charge to the jurisdiction, a technical opinion(s), plan review(s) and/or report(s). CFC Section 104.8.2

31. Electronic Documents. The fire code official may require electronic base documents for all construction documents and operational permits. The fire code official shall designate the software base format for the electronic documents. CFC Section 106.1.1, added by MMC Section V-300-2.28

32. Fire Department Access. Fire Department apparatus and staff access shall be provided to all buildings and site. Detailed review will be done during construction permit process. The plans submitted appear to be in general conformance with the requirements. Final design shall meet the requirements listed below. CFC Section 503:

    a. Minimum Number of Fire Apparatus Access Points: A minimum of two independent and approved (approved by the Fire Code Official) means of fire apparatus access shall be provided for the site. Buildings or facilities exceeding 30 feet (9144mm), or three stories in height, or 50,000 square feet (5,760 meters squared) shall be provided with at least two means of fire apparatus access for each structure. CFC, Section D104.1, adopted and amended by MMC V-300-2.170

b. Fire Apparatus Clearance: Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. CFC, Appendix D, Sections D103.1 and D105.2, adopted and amended by Milpitas Municipal Code. MMC V-300-2.169 and 2.172

c. Fire Apparatus Proximity to the Building: One or more of the required access routes meeting this condition shall be located not less than 15 feet and not greater than 30 feet from the building and shall be positioned parallel to one entire side of the building. The side of the building on which the aerial apparatus access road is positioned shall be approved by the fire code official.

   Allowed 30 feet between buildings on the upper floors and minimum 35 feet at the first floor as demonstrated in the plans that an aerial apparatus can maneuver in the space.

   Street A and G being the aerial apparatus fire access road for the three-story buildings with access to the gable roofs that exceeds the 30 feet height, is acceptable being 26 feet wide. The proximity to the building is not fully compliant as the side of Street A are less than the minimum 15 feet (Buildings 12, 13, 14, 15, 16 & 17). While Street G side of the 3-story buildings are more than the maximum 30 feet (Buildings 12 & 15).
   The developer's current design does not fully comply and needs correction on building permit process

d. Fire Apparatus Access Road(s) Required: For multi-family residential projects having more than 50 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads. Section D106.1 of the CFC, adopted and amended by MMC V-300-2.173

e. Timing of Installation and Serviceability of Fire Protection Elements: When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed (paved). CFC Section 501.4

f. Fire Apparatus Access: Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided.

g. Turning Radius: Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (center). CFC Section 503.2.4

h. Adjacent Access Rights: No source of access from lands adjoining a property to be developed shall be considered fire apparatus access roads, unless there is obtained the irrevocable and unobstructed rights and recorded as an ingress/egress access easement with the Country of Santa Clara. CFC Section 503.7, added by MMC V-300-2.51

i. Fire Access Road Materials and Load Bearing Requirements: Fire access roads shall be paved (concrete and/or asphalt cement, or other concrete type pavement approved by the Fire Dept.). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. CFC Section 503.2.3

   Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds

j. Emergency Vehicle Access (EVA): EVA roads, when required, shall meet the fire department site access requirements. CFC Section 503

Entry to EVA shall be gates (swing type) for easy access.

k. Obstruction of Fire Access: Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Sections 500.2.1 and 503.2.2 shall be maintained at all times. Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4

l. Marking of Fire Access Roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE". CFC Section 503.3. Minimum marking shall be pole signage and red curb with "FIRE LANE" stencil. Signage and red curbs shall be done throughout and as needed to clearly identify the no parking zones.

m. Site Design Changes: The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC.

33. Fire Protection Water Supply (Hydrants, On-site and/or Public): An approved water supply (hydrants on-site and/or public) capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Water supply shall meet the Fire Code and the City of Milpitas Engineering Division water supply guidelines and the CFC Section 507, Appendix B and Appendix C, Milpitas Fire Code amendment. Note, the Civil drawings submitted under this Planning review are not approved for construction.
The note below applies only to the townhome condo development.
Per City direction, all onsite water systems will be public – no "main" backflow and fire sprinkler laterals are needed. The location of the FDC/PIV for reach building has been shown on Sheet C8.2

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

a. B105.2 Buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses. The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses shall be as specified in Tables B105.1(2) and B105.2.

Exceptions: [SFM] Group B, S-2 and U occupancies having a floor area not exceeding 1,000 square feet, primarily constructed of noncombustible exterior walls with wood or steel roof framing, having a Class A roof assembly, with uses limited to the following or similar uses:
1. California State Parks buildings of an accessory nature (restrooms)
2. Safety roadside rest areas (SSRA), public restrooms

3. Truck inspection facilities (TIF), CHP office space and vehicle inspection bays
4. Sand/salt storage buildings, storage of sand and salt

The maximum fire flow reduction for all commercial buildings greater than 30,000 square feet and residential podium buildings shall not exceed 25 percent of the fire flow specified in Table B105.1(2). The maximum fire flow reduction for all other buildings shall not exceed 50 percent of the fire flow specified in Table B105.1(2).

b. Fire Hydrant Location: The location and quantity of hydrants will be evaluated during the construction permit process. CFC Section 507.5

Hydrants shown on sheets TM-10 are not adequate and additional hydrants will be required based on the total building area and the type of construction.

c. Hydrant for Automatic Fire Sprinkler/Standpipe Systems: Buildings equipped with an automatic fire sprinkler system and/or a standpipe system installed in accordance with Section 903 and or 905 shall have a fire hydrant within 50 feet of the fire department connections. CFC Section 507.5.1.1, amended by MMC Section V-300-2.56

Additional hydrants will be required as buildings 2, 4, 5, 12, 15 and 16 distance to hydrant exceeds the minimum 50 feet requirement shown on Sheet TM-10.

d. Private Hydrant Requirements: Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color. CFC Section 507.5.7, added by MMC V-300-2.57

e. No Parking in Front of Hydrants: No parking is permitted in front of fire hydrants. Hydrants located on streets (Public or Private Street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514

35. Automatic Fire Sprinkler System for Structures:

a. Automatic Fire Sprinkler. The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 Standards. California Fire Code Section 903.

b. Sprinkler Valves: All valves controlling the water supply for the automatic sprinkler system shall be electrically supervised by a listed fire alarm control unit. CFC 903.4

c. Sprinkler Monitoring: Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an approved supervising station. CFC Section 903.4.1

d. Fire Riser Location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.73

e. Sprinkler Design. Hydraulic design for the automatic fire sprinkler system shall provide a minimum of 20% safety margin. CFC Section 903.3.5.6, MMC V-300-2.76

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

g. FDC/PIV (fire department connection/post indicating valve) Location(s). The location of the fire department FDCs/PIVs shall be at a readily visible and accessible location off the fire access road and approved by the Fire Code Official. FDCs/PIVs shall not be located behind parking stalls, trees, landscape structures, nor behind any other obstruction. Final review for location for the FDC's/PIV's will be conducted during the construction permit process. CFC Section 912.2

All FDCs and PIVs shall have fire department approved locking connection caps/locks. Knox key caps shall be provided. CFC Section 912.4.1

h. FDC/PIV Signage. A metal sign with raised letters at least 1 inch in size shall be mounted on all fire department connections. Signage shall be reflective, weather resistive and approved by the Fire Code Official. CFC Section 912.5

i. Backflow Protection. Potable water supply to the automatic sprinkler and/or the standpipe systems shall be protected against backflow as required by the Health and Safety Code section 13114.7 and the City of Milpitas Utilities Engineering Division. CFC Section 912.6

j. Water Drainage. All new installations of sprinkler systems shall preclude sprinkler test and system drain water from discharging into the storm drain; provisions to direct water to the sanitary sewer or landscape or other approved means shall be provided. Sprinkler system design shall include the proposed method for drainage of sprinkler system discharge. Storm Water Pollution Regulations

36. Fire Alarm System:

a. R-2 Occupancy: Fire alarm system and smoke alarm shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 and 907.2.9.2. CFC Section 907.2.9

b. Manual Fire Alarm System: A manual fire alarm system that activated the occupant notification system in accordance with Section 907.5 shall be installed in Group R-2 occupancies. CFC 907.2.9.1

c. Smoke Alarm, R-2 Occupancy: Listed single and multiple-station smoke alarms complying with UL217 shall be installed in accordance with Sections 907.2.11.1 through 907.2.11.7 and the NFPA 72. CFC Section 907.2.11

d. Fire Safety Functions: Automatic fire detectors utilized for the purpose of performing fire safety functions shall be connected to the building's fire alarm control unit where a fire alarm system is installed. CFC Section 907.3

e. Visual Alarm, R-2 Occupancy: In Group R-2 occupancies required by Section 907 to have a fire alarm system, all dwelling units and sleeping units shall be provide with the capability to support visible alarm notification appliances in accordance with NFPA 72. Such capability shall accommodate wired or wireless equipment. See the Code section for options. CFC 907.5.2.3.3

f. Fire Alarm Zones: Fire alarm system(s) shall be zoned as per the requirements of the CFC Sections 907.6.4

g. Fire Alarm Panel: Fire alarm panel (or fire alarm annunciator panel) shall be located in a readily accessible location and shall be provided with the necessary access and working clearance as required by the CA Electrical Code. CFC Section 907.6.4.1.1

h. Fire Alarm Monitoring: Fire alarm monitoring (approved supervising station - UL, or FM approved). Fire alarm systems required by the Fire Code or by the California Building Code shall be monitored by an approved supervising station in accordance with the NFPA 72. CFC Section 907.6.6

37. Building/Structure Other Requirements:

a. Roof stairs. When there are roof planes with vertical difference of more than 24" there shall be stairs or ship ladders (60 degrees max., approved by the fire dept.) for access between the different roof planes. The Fire Code Official shall determine the location for the stairs. CFC Section 102.9

b. Buildings with Courtyards. Fire access shall be provided to enclosed courts for firefighting and rescue operations. Each court shall be designed to provide readily accessible method of bringing a fire department ground ladder (36' long) into the courtyard. Please anticipate and accommodate personnel carrying the ladder. CFC Section 102.9

Planning and architectural features may need to be relocated at the terrace access points between buildings.

c. Premises Identification: New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505. The Fire Dept. may require the installation of address numbers at multiple building locations. CFC Section 102.9

   Master building address shall also be provided with the units on fronting the main street and visible from all direction of the fire access roads.

d. Solar Electrical Panels. Solar photovoltaic systems shall meet and comply with the CFC Section 1205 requirements.

e. Address Illumination: All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.55

f. Fire Department Emergency Key Box (aka: Knox Box, Knox Locks, Knox Electric Switches, etc.): The Fire Code Official is authorized to require a key box(es) to be installed in an approved location(s) if necessary for lifesaving or fire-fighting purposes. Quantity and location shall be as directed by the Fire Code Official. CFC Section 506. Locked mechanical closets, fire alarm closets, sprinkler riser closets, etc. will need a Fire Dept. approved lock or "Knox" key box

   Knox box location shall be by the FACU closet.

g. Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the fire code official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. CFC Section 504.6, added to the CFC by MMC Section V-300-2.54

   Means to deactivate the locking system shall be located in the fire command room or other location as directed by the fire department.

   In addition, all door lock control systems shall meet the requirements of the CFC Sections 1010.2.10, 1010.2.11 and 1010.2.12.

h. Fire Equipment ID signs. Fire protection equipment shall be identified in an approved manner. Rooms containing controls for air-conditioning, systems, sprinkler risers and valves, or other fire detection, suppression or control elements hall be identified for the use of the fire department. CA Fire Code Section 509

i. Portable Fire Extinguishers. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906

j. Fire Protection Service (CFC Section 901.6) All fire alarm systems, fire detection systems, automatic sprinkler or extinguishing systems, communication systems, and all other equipment, material or systems required by these regulations shall be maintained in an operable condition at all times in accordance with this code and California Code of Regulations, Title 19, Division 1. Upon disruption or diminishment of the fire protective qualities of such equipment, material or systems, immediate action shall be instituted to effect a reestablishment of such equipment, material or systems to their original normal and operational condition. California Code of Regulations, Title 19, Division 1, §1.14

38. Fire Safety: Fire safety during construction, alteration or demolition of the building shall meet the requirements of Chapter 33 of the California Fire Code and the Standards for Construction Site Fire Safety (un-024) by "unidocs" organization (http//:www.unidocs.org). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. CFC Chapter 33

39. Landscape sheets: Proposed landscaping may be impacted by the comments above and the requirements for fire access, fire systems and devices (such as apparatus access, hydrants, fire service lines, fire department connections valves, etc.). The Fire Dept. reserves the right to relocate, delete or change the proposed landscaping when in conflict with fire systems and devices. CFC 507.5.4

40. Plan Submittal: Complete plans and specifications for all aspects of fire protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2

Building Department

41. Compliance with Building Code of Regulations. The Project shall comply with the requirements of the Building Safety and Housing Department and the California Code of Regulations Title 24 and the Milpitas Municipal Code as adopted by the City. Building permits shall be submitted to and approved by the Building Safety and Housing Department prior to start of construction. All California Code of Regulations Title 24 and Milpitas Municipal Code requirements applicable at the time of building permit application must be met in advance of any building permit approvals or related construction. Changes to the site plan and/or building plan require review and approval by the Building Safety and Housing Department. **(B)**

42. Sheet A3.01 and A4.01: Exit travel distance
    a. Sheet A4.01: Plan 1 (4-story): The max exit travel distance shall be measured along the wall line and not at a diagonal path, which will exceed 125'.
    b. Sheet A4.01: Plan 2 (4-story): Based on the revised plan layout, the most remote point on Level 4 shall be measured from the lower right corner of the balcony.
    c. Sheet A4.01: Plan 3 (4-story): The max exit travel distance shall be measured along the wall line and not at a diagonal path, which will exceed 125'
    d. Sheet A4.01: Plan 4 (4-story): Based on the revised plan layout, the most remote point on Level 4 shall be measured from the lower right corner of the balcony. Note the max. travel distance will exceed 125'

43. Sheet A6.01 to A6.09: Exterior wall opening calculations
    a. The site plans shall clearly identify the building types which correspond to the exterior wall opening calculations elevations. The exterior wall opening calculations for each building type provided shall be based on the most restrictive (least FSD) buildings shown on site plans and shall clearly identify which building no. on the building elevations where the calculation are provided corresponding to the FSD for that building.
    b. The exterior elevations shall specify the story height and length of the wall segments and opening dimensions for calculations of the wall and opening area. Note that the story height at the top story shall be measured to the top of the ceiling joists. The wall area calculations for the top story seem to be including the area above the ceiling joist.

c. Verify the FSD specified on the calculations match the plans, e.g. Sheet A6.05 Right Elevation indicates Level 2 and 3 with FSD 15'-20', while Level 1 and 4 has FSD 10'-15'. However, the building plans show Level 2 and 3 project beyond Level 1 and 4. Check all calculations and correct as required.

Engineering Department

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)***

44. Modifications: The Site Development Plan dated April 15, 2026 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.

45. 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 Solid Waste Program. The 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, food waste, and yard trimmings shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; outreach and education to tenants/occupants, and procure sufficient service frequency based upon waste generation calculation volumes.

46. 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.

47. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Great Mall Parkway, McCandless Drive, and Centre Pointe Drive that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines.

48. 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.

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

50. 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 approved City fee schedule at the time of application submittal.

51. Coordination with other Projects: Permittee shall coordinate designs with Summerhill Apartments Phase 2 and the proposed VTA Great Mall TOD Project in advance prior to any plan submittal.

PRIOR TO FINAL MAP APPROVAL/ RECORDATION

The following conditions shall be addressed as part of the off-site improvement plan review 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)***

52. 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.

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

54. 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.

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

56. 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.

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

58. 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, etc. 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.

59. 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).

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

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

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

61. 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: https://www.milpitas.gov/317/Land-Development-Procedures-Guidelines
    b. Standard details and specifications: https://www.milpitas.gov/333/Standard-Details-Specifications
    c. Milpitas Metro (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.

62. 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.

63. 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.

64. 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.

65. 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 public (City-maintained) water and sewer mains within on-site private streets and public easements. Please ensure all horizontal and vertical separations meet the CCR title 22 requirements.
    b. Installation of separate water service laterals (domestic water, fire service) for each residential building.
    c. Installation of separate sewer service laterals for each residential building at minimum.
    d. Installation of separate recycled water irrigation water service laterals for the onsite and offsite irrigation systems.
    e. Installation of reduced-pressure backflow prevention assemblies for each water service commensurate to the hazard level of the project site.
    f. Installation of storm drain utility service laterals connecting the community's private storm drain system to the City's storm drain mains.
    g. 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.
    h. Installation of new public sidewalk and planted strip along the project street frontage on Great Mall Parkway. The sidewalk and planted strip designs shall comply with the Milpitas Metro Specific Plan design guidelines and other applicable City standards and details.

i. Repair/refurbishment of existing public sidewalk and installation of other sidewalk-area improvements, including any required street trees and street tree wells, along the project street frontage on McCandless Drive and Centre Point Drive. The repaired/refurbished sidewalk and other sidewalk area improvements shall comply with the Milpitas Metro Specific Plan design guidelines and other applicable City standards and details.
j. Install street lights and pedestrian scale lights along Centre Pointe Drive, Great Mall Parkway and McCandless Drive project frontages per TASP guidelines and standards. The developer shall procure an extra street light pole and deliver it to the Public Works Corporation Yard for storage.
k. Installation of new stormwater treatment facilities in available vegetated public right-of-way area(s) along the project frontage for the treatment of runoff for an equivalent area of offsite public improvements. The design of these stormwater treatment facilities shall comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program's Provision C.3 design standards.
l. Restoration of damaged and substandard pavement to the limits and methods determined by the City per the findings of the pavement condition surveys the Permittee is to conduct prior to and following construction.
m. Installation of offsite vehicular and pedestrian traffic improvements the City deems necessary per the findings of the Traffic Impact Assessment (TIA) report the Permittee is to submit to the City. Those improvements may include, but are not limited to: Left turn pocket lane from SB McCandless Drive to EB Market Street, pedestrian crosswalk flashing beacons (RRFB) at the McCandless Drive/Market Street intersection, and other signage and striping improvements.
n. Permittee shall work with City staff and PG&E to locate transformer pads behind public sidewalk and provide proper screening along Great Mall Parkway project frontage.
o. The City will be rehabilitating the existing asphalt concrete (AC) pavement along a segment of Great Mall Parkway that includes the portion fronting the project site (which currently has a failing Pavement Condition Index (PCI) of 30) under its Street Resurfacing 2026 program. As the City's public improvement design standards would have otherwise required the Permittee to complete this pavement rehabilitation work as part of this project's scope of offsite improvements, and the City will instead be completing it, Permittee, in lieu of the required work, shall instead perform AC pavement restoration at an alternate public street location of equivalent area and similar pavement condition (PCI $\approx$ 30), as designated by the City at a later date.

66. 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.

67. 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.

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

69. 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.

70. Pothole Encroachment Permit: Due to multiple new utility service connections on collector streets, Permittee shall pothole and verify all potential utility crossing conflict as part of the public improvement plan during the design stage.

71. Traffic Impact Assessment: Permittee shall submit a Traffic Impact Assessment (TIA) report to the City for review and approval prior to finalizing the offsite improvement plan as per the adopted Transportation Analysis Study (date May 8, 2021). The scope of the TIA study shall be reviewed and approved by the City.

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)***

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

73. 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.

74. 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).

75. 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.

76. 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.

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

78. 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.

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

80. 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.

81. 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.

82. 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.

83. Development Fees: Permittee shall pay the following development fees. The information listed in items "a" through "g" are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.

   a. Water connection fee at $1,164/unit for residential, based upon increased water usage.
   b. Sewer connection fee at $1,406/unit for residential, based upon increased average wastewater flow.
   c. 3.8% of applicable fees in accordance with City Resolution No. 8969 as Permitting Automation Fee.
   d. FEMA Floor Zone Designation Letter fee in the amount of $100.00 each.

84. 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.

85. Hazard Assessment Report: For any new back flow device proposed to be installed on an irrigation, domestic or fire service, the Permittee and its qualified cross-connection specialist shall complete and submit a City of Milpitas Hazard Assessment Report (CMP Hazard Assessment Report (Fillable) 2026). An existing Hazard Assessment Report may be submitted if completed in the last six (6) months, or submission of a new assessment if any of the following conditions have occurred: 1) Initial site hazard assessment is older than six (6) months, 2) Account change; 3) New connection; 4) Change in onsite activities or materials that may affect water safety; 5) If there has been cross-connection incident in the last six (6) months or if this work is requirement of the State Water Resource Control Board. The Hazard Assessment Report shall be submitted for review and approval by the City's Utility Engineering department prior to building permit issuance.

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)***

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

91. Pavement Condition Surveys: Permittee shall conduct pavement condition surveys both prior to and following construction along all project frontage streets to determine the appropriate pavement restoration measures and to establish the limits of any required grind and overlay. Pre- and post-construction pavement condition survey reports shall be submitted to the City for review and approval prior to the commencement of any pavement restoration work.

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.*

92. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to onsite public utility mains and appurtenances, and frontage improvements along Centre Pointe Drive, Great Mall Parkway, and McCandless Drive, as shown on City approved plans.

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

94. Elevation Certificate: Permittee's civil engineer shall submit an Elevation Certificate for the lowest finished floor elevation of each building for City record.

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

96. Certificate of Cross-Connection: Permittee shall ensure that a certified cross-connection control specialist administer a cross-connection test and complete the required Recycled Water Cross connection Test Form, cross connection test results and any special forms as required by the South Bay Recycling Program https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/water-utilities/recycled-water/retail-customer-information and forward them to the City.

97. Record Drawings: Permittee shall submit record drawings in Full size hard copy, 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.

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

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

NOTICE OF RIGHT TO PROTEST

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

AGREEMENT

Permittee/Property Owner

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

Dated: _________________ ______________________________________
Signature of Permittee

RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
City of Milpitas
City Clerk's Office
455 Calaveras Boulevard
Milpitas, CA 95035

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

BETWEEN CITY OF MILPITAS,

a California municipal corporation,

AND

MILPITAS - DISTRICT 2 ASSOCIATES, LLC,

a Delaware limited liability company; and

FIELDS CH OWNER, LLC,

a Delaware limited liability company

TABLE OF CONTENTS

<u>EXHIBITS</u>

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between CITY OF MILPITAS ("City"), a California municipal corporation, and MILPITAS - DISTRICT 2 ASSOCIATES, LLC, a Delaware limited liability company, as well as FIELDS CH OWNER, LLC, a Delaware limited liability company (collectively "Developer"), (collectively the "Parties" and individually and interchangeably "Party") and is effective on the date set forth in Recital R.

RECITALS

Developer and City enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

A. Sections 65864 through 65869.5 of the California Government Code authorize City to establish procedures to enter into binding development agreements with persons having legal or equitable interests in real property located within City for development of property.

B. The Milpitas Municipal Code ("MMC"), Title XIII, Chapter D.14, commencing with Section D.14.010 and following, as well as Milpitas City Council Resolution No. 6642 ("Resolution 6642"), establishes the authority and procedure for review and approval of proposed development agreements.

C. Developer is currently the legal owner of the property ("Property") governed by this Agreement. The Property consists of three parcels (APNs 086-33-112, -113, and -114) totaling 5.49 acres, as further described in **Exhibit "1"**, attached hereto and incorporated by this reference.

D. In 2010, Integral Communities Inc. submitted a master-planned mixed-use development within a portion of the McCandless/Centre Pointe Sub-District, which included the Property and was known as The District. That project included multiple land areas for retail, commercial, and high-density residential development and included the Property.

E. Integral Communities Inc. subsequently sold The District project to Developer, who completed the development of a portion of The District, sometimes referred to as The Fields, and which comprises of four separate mixed-use areas located on multiple parcels totaling over 23.04 acres of developed property near the intersection of Great Mall Parkway and McCandless Drive, also referred to by the City as The District – Lot 1, Lot 2, Lot 3, and Lot 4, and by the Developer as Turing, Graham, Elion, and Gideon, respectively. The Property was part of that larger project and was designated therein as Lot 3 or Elion.

F. In November 2015, the City approved multiple entitlements for a major portion of The Fields, including Site Development Permit No. SD15-0006 and Conditional Use Permit No. UP15-0010, as part of a master-planned development comprised of six planning areas, each developed with a mix of multi-family residential and residential units, including:

District Lot 2: A 218-unit multi-family residential development with approximately 3,480 square feet of retail and commercial uses, mapped pursuant to Tentative Map No. TM11-0002 approved March 20, 2012;

District Lot 3: a 175-room hotel and associated uses as approved under SD15-0006 and UP15-0010; and

District Lot 4: A 173-unit multi-family residential development with approximately 13,941 square feet of retail, mapped pursuant to Tentative Map No. TM11-0002 approved on March 20, 2012.

G. In 2021, the Planning Commission approved Site Development Permit Amendment No. SA20-0004 and an amendment to Conditional Use Permit No. UP15-0010. That amendment modified the previously approved development density, uses, and architecture, including decreasing the total number of residential dwelling units from 423 to 357, decreasing the total number of hotel rooms from 175 to 162, decreasing the amount of commercial space from 59,135 square feet to 25,179 square feet, decreasing the size of the rooftop amenity deck from 49,240 square feet to 18,225 square feet, and reducing the building's height from 130 feet to 83 feet for the hotel and 90 feet for the mixed-use buildings.

H. Developer has presently submitted the following pending application(s) to City for development of the Property, which represent further proposed amendments to what was previously approved: Amendment to Site Development Permit No. SD15-0006, Vesting Tentative Map No. P-TM26-0001, Conditional Use Permit No. UP15-0010, and Density Bonus Permit No. P-DB25-0001. The application(s) request that Developer be allowed to develop the 5.49-acre Property with a multi-family housing development consisting of 109 multi-family townhomes and 10 Accessory Dwelling Units (collectively, the "Project"). As part of this Project, it is contemplated that Developer will rent restrict 22 units in the completed apartment complex in the Gideon property for affordable housing, with 18 of those units being restricted to affordable housing costs for low income households and 4 of those units being restricted for very-low income households, as those affordable housing costs and income limits are defined and determined by Health & Safety Code Sections 50079.5 and 50105, the Milpitas Affordable Housing Ordinance ("AHO") (MMC §§ XII-1-1.00 et seq.), and Title 25, Chapter 6.5, Section 6932 of the California Code of Regulations.

I. The Project, including but not limited to the buildings, access and parking facilities, landscaping, and infrastructure improvements, are all more particularly shown on the Development Plan ("Development Plan") consisting of __________ sheets of plans submitted by __________ Architects dated __________. Sheets __________ of the Development Plan are described in **Exhibit "2"** attached hereto and incorporated by this reference.

J. Through this Agreement, the Parties intend for the duration of this Agreement to (i) preserve the minimum residential density permitted for the Property at the time of the original entitlement of The Fields under the Milpitas Transit Area Specific Plan

("TASP") in order to facilitate the Project, (ii) recognize the Developer's commitment and right to otherwise develop the Property with the Project under currently applicable standards, including the presently applicable Milpitas Metro Specific Plan ("Metro Plan"), and (iii) afford Developer the incentives and concessions allowed under the State Density Bonus Law (Gov. Code, §§ 65915 et seq.) ("Density Bonus" or "DBL").

K. City and Developer each acknowledge that development and construction of the Project, particularly in the context of the larger development of which it has historically been a part, is a large-scale undertaking involving major investments by Developer and City, and assurances that the Project can be developed and used in accordance with the terms and conditions set forth herein and the existing rules governing development of the Property will benefit both Developer and City.

L. City is willing to enter into this Agreement for public benefit, including but not limited to: (i) strengthening the public planning process, (ii) encouraging private participation in comprehensive planning by providing a greater degree of certainty, (iii) reducing the economic costs of development, (iv) allowing for orderly planning of public improvements and services and the allocation of costs in order to achieve the maximum utilization of public and private resources in the development process, (v) ensuring that appropriate measures to enhance and protect the environment are achieved, and (vi) ensuring that all conditions of approval, including the construction of off-site improvement made necessary by land development, will proceed in an orderly and economical fashion to the benefit of City.

M. Developer acknowledges and recognizes that material inducements for City to enter into this Agreement are: (i) an opportunity to create the Project on an otherwise presently vacant lot; (ii) the prompt occupancy of the Property by residential tenants within the City and the consequential housing provided thereby; (iii) the rental restriction of affordable units in the Gideon property and the occupancy thereby of qualifying low and very low income households ; and (iv) the contributions provided by Developer as recognized and established by this Agreement, including $400,000 of contributions that could be used for transportation improvements and/or other community benefits by the City.

N. Developer proposes to enter into this Agreement in order (i) to obtain assurances from City that the Property may be developed, constructed, completed and used pursuant to this Agreement, and in accordance with existing policies, rules and regulations of City, subject to the exceptions and limitations expressed herein and the term of this Agreement; and (ii) to provide for a coordinated and systematic approach to funding the cost of certain public improvements and facilities planned by City, and to establish the timing and extent of contributions required from Developer for these purposes.

O. Developer requested that City enter into a Development Agreement ("Development Agreement"), and proceedings have been taken in accordance with state law, as set forth below.

P. On __________, the Milpitas Planning Commission ("Planning Commission") held a duly noticed public hearing on the Development Agreement and based on the findings contained within Planning Commission Resolution No. ______ (i) determined that consideration of this Agreement complies in all respects with California Environmental Quality Act ("CEQA"); (ii) determined that this Agreement is consistent with City's General Plan; and (iii) recommended approval of this Agreement to the Milpitas City Council.

Q. On __________, the Milpitas City Council ("City Council") held a duly noticed public hearing on the Development Agreement and (i) determined that consideration of this Agreement based on CEQA Guidelines Section 15182 (Cal. Code Regs., tit. 14, § 15182) complies in all respects with CEQA; (ii) determined that this Agreement is consistent with City's General Plan; and (iii) introduced Ordinance No. __________, approving this Agreement.

R. On __________, the City Council adopted Ordinance No. __________, enacting this Agreement, and the Ordinance became effective thirty (30) days later on __________ ("Effective Date").

S. Certain improvements as set forth in the conditions of approval ("Conditions of Approval"), which are outlined in **Exhibit "3",** attached hereto and incorporated herein by this reference, are necessary to provide infrastructure support for the Project.

T. Developer plans to develop the Project in one phase, which is outlined in more detail in the Development Plan and Conditions of Approval. Any modification to the content and/or sequencing of development phases must comply with Section 12.1 of this Agreement.

U. On __________, the City Council adopted Resolution No. __________, and together with the findings in Ordinance No. __________ found, among other things, that this Agreement and the Approvals are consistent with the General Plan, any applicable Specific Plan, and the MMC, including the Milpitas Zoning Code. Such findings are incorporated herein by this reference.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in California Government Code Section 65864 and following, MMC Section XIII-D.14.010 and following, and Resolution 6642, and in consideration of the mutual representations, covenants and promises of the Parties, the Parties hereto agree as follows:

1. TERM

1.1 Effective Date. The term ("Term") of this Agreement shall commence on the later of: (a) the Effective Date as set forth in Recital R above, or (b) the effective date of Ordinance No. __________ approving this Agreement. The Term of this Agreement shall be tolled from the commencement of any legal challenge or the filing of any referenda challenging the Approvals until the time such legal challenge or referenda is finally resolved in favor of the Approvals. Final resolution in the case of legal challenge shall be the date final judgment is entered, with the time for any appeal expired, and in the case of referenda shall be the date the vote is certified. The Term of this Agreement shall continue for an initial period of three (3) years from the Effective Date, unless sooner terminated or extended as hereinafter provided.

1.2 Option to Extend. Provided that Owner is not in default of its obligations under this Agreement, Owner shall have the option to extend this Agreement twice, with each extension being for a period of two (2) years, for a total possible seven (7) year Term of this Agreement. To exercise these two options, Owner shall provide notice to the City of its exercise of each option at least ninety (90) calendar days prior to the otherwise applicable expiration of this Agreement.

1.3 Expiration. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City.

2. DEVELOPMENT OF THE PROPERTY

2.1 Property. The Property that is the subject of this Agreement is that certain real property described in **Exhibit "1"**, attached hereto.

2.2 Binding Covenants. It is intended and agreed that the provisions of this Agreement shall constitute covenants that shall run with the Property for the Term of this Agreement, as such Term may be extended, and the benefits and burdens hereof shall bind and inure to all successors in interest to the Parties hereto.

2.3 Life of Approvals. Pursuant to Government Code Section 66452.6(a) and this Agreement, the life of the Project approvals, including but not limited to Amendment to Site Development Permit No. SD15-0006, Vesting Tentative Map No. P-TM26-0001, Conditional Use Permit No. UP15-0010, and Density Bonus Permit No. P-DB25-0001 (collectively, "Approvals") shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement, as such Term may be extended; or (2) the end of the term or life of the Approvals. Notwithstanding the foregoing, the vested elements secured by Developer under this Agreement shall have a life no greater than the Term of this Agreement, and any extension thereof.

2.4 Vested Elements. For the purposes of this Project only, the Approvals, the Project, and the permitted uses of the Property, the maximum density and intensity of use, the maximum heights, locations, numbers and gross square footage of the proposed buildings, the provisions for vehicular access and parking, reservation or dedication of land for public purposes or fees in-lieu thereof, provision for construction of public improvements and/or required fees associated with the Project as provided in, and limited by, this Agreement, shall be vested and are hereby vested and referred to as vested elements (collectively, the "Vested Elements"). In addition to the foregoing Vested Elements, other terms and conditions of development applicable to the Project are set forth in the following documents as they exist as of the Effective Date to the extent not in conflict with this Agreement:

a. The General Plan of City of Milpitas, current as of the Effective Date, the terms and conditions of which are incorporated herein by this reference;

b. The Metro Specific Plan, current as of the Effective Date;

c. MMC, current as of the Effective Date;

d. The Metro High Density Mixed Use Zone (MXD2-Metro) Zoning District and the Residential Retail High Density Mixed Use (RRMU) General Plan Land Use Designation and the Conditions of Approval imposed thereon;

e. The Development Plan, defined in Recital I, herein;

f. The AHO, current as of the Effective Date;

g. All other applicable City plans, policies, programs, regulations, ordinances and resolutions of City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement ("Other Regulations");

h. Any permits and/or subsequent approvals, including but not limited to additional subdivision maps or lot line adjustments, if any, final maps, site and architectural review, demolition permits, building permits, grading permits, and infrastructure improvement plans processed in accordance with the terms of this Agreement. Upon approval, such subsequent approvals shall be incorporated into this Agreement and vested hereby; and,

i. In the event this Project includes a subdivision as defined by Government Code § 66473.7, the tentative map for this Project will comply with the provisions of § 66473.7, as it may be amended from time-to-time.

2.5 <u>Minimum Density</u>. The Project may be developed at the minimum residential density allowed for development of the Property at the time of the original entitlement of The Fields under the TASP.

2.6 <u>Density Bonus</u>. The State DBL permits local jurisdiction to provide incentives or concessions allowed under that law even where a development may otherwise not be entitled to such incentives or concessions, and to further reduce the cost of developing the affordable housing contemplated in the Project, the City is willing to grant two (2) incentives or concessions for the Project.

2.7 <u>Permitted Uses</u>. The permitted uses for the Project are as established by applicable law as of the Effective Date.

2.8 <u>Design of On-Site and Off-Site Improvements</u>. Development of the Property shall be subject to final architectural and design review by City pursuant to the policies, regulations and ordinances in effect as of the Effective Date, and subject to the Development Plan and the Conditions of Approval. The Approvals, Development Plan, and Conditions of Approval, and all improvement plans prepared in accordance with same, shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property, including all street widths and dedications.

2.9 Developer's Obligation to Develop the Site. In consideration for City entering into this Agreement, Developer agrees to perform all of its obligations contained in this Agreement, including, but not limited to planning and designing the Project on the site within the times, and in substantially the same size and density, as proposed and approved.

2.10 Present Right to Develop. Subject to Developer's fulfillment of the provisions of this Agreement, the Development Plan and the Conditions of Approval, City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by, and in accordance with, the Approvals, this Agreement and the Vested Elements, including in particular the terms of the Development Plan. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of City's General Plan, MMC, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including developable square footage), or amount of development of the portions of the Project to be built; or (ii) impose fees, exactions or conditions upon development, occupancy or use of the Property other than as provided in the Development Plan or Conditions of Approval or pursuant to this Agreement, shall apply to the Project during the Term of this Agreement; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting and applying any fees or land use regulations or amendments thereto, expressly permitted herein, or prevent or preclude Developer, at its election, from waiving such protections in writing and accepting the application of all such later-adopted laws, policies, and regulations effective as of the date of such waiver.

2.11 Timing of Improvements. If Developer implements the Development Plan in phases, as described herein or as outlined in the Development Plan, the phasing set forth in the Development Plan is the approved phasing as of the Effective Date. It is the Parties' specific intent that this Agreement shall prevail over any later-adopted initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project and that Developer shall have the right to develop the Project at such time as Developer has specified in the Development Plan and no annual (or other) limit, moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or building permits which may be obtained, shall apply to the Project.

2.12 Agreement and Comprehensive Development Plan. The Parties acknowledge that, except as specifically set forth herein, this Agreement, the Development Plan, the Mitigation Monitoring and Reporting Program (described in **Exhibit "4"**, attached hereto) and the Conditions of Approval set forth a comprehensive schedule of all development terms and conditions, development mitigation measures and fees, special assessments, special taxes, exactions, fees in-lieu, charges and dedications required in the public interest to be contributed, paid or constructed due to development of the Property as defined in the Development Plan. All fees referred to herein may be subject to an annual increase until paid, but only if such increase is applied equally to similarly situated projects on a citywide or area-wide basis.

2.13 Design of On-Site and Off-Site Improvements. Development of the Property shall be subject to final architectural and design review by City pursuant to the policies, regulations and ordinances in effect as of the Effective Date, and subject to the Development Plan, the Conditions of Approval, Mitigation Monitoring and Reporting Program, and this Agreement. No such architectural and design review shall, without Developer's consent, require development of the Property inconsistent with the Approvals, the Development Plan, the Conditions of Approval, the Mitigation Monitoring and Reporting Program, and this Agreement, unless City determines it is necessary to protect against conditions which create a risk to the physical health or safety of residents or users of the Project or the affected surrounding region. The Approvals, the Development Plan, Mitigation Monitoring and Reporting Program, and Conditions of Approval, and all improvement plans prepared in accordance thereof, shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property.

2.14 Development of the Site. In consideration for City entering into this Agreement, Developer agrees to perform all of its obligations contained in this Agreement in the time and manner set forth in this Agreement and the Development Plan, any Mitigation Monitoring and Reporting Program, and Conditions of Approval.

2.15 Single Integrated Development. City and Developer acknowledge that the Project is, and shall be considered, a single, integrated development project, and that each component of the Project is dependent upon the completion and occupancy of all other components. The viability of each component of the Project is and shall be dependent upon completion and occupancy of all other components and the full performance of this Development Agreement. It is the intention of the Parties that, if construction on one component of the Project is commenced, any additional development of the Property will adhere to the Development Plan.

2.16 Building Standards. Developer hereby agrees to employ all reasonable efforts such that the Project will be built to the then applicable building standards for each phase of development.

3. EFFECT OF AGREEMENT

3.1 Subsequent State or Federal Laws or Regulations. As provided in California Government Code § 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are required by changes in county, regional, state or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more material provisions of this Agreement, Developer may request that such material provisions be modified or suspended, or performance delayed, as may be necessary to comply with Changes in the Law, and City may take such action as it deems necessary to be consistent with the intent of this Agreement.

3.2 Changes to Existing Regulations. Except as otherwise specifically provided, only the following changes to the Vested Elements, including such changes adopted by the electorate through the powers of initiative, or otherwise, shall apply to the development of the Property for the duration of this Agreement:

a. Citywide regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date that are not in conflict with the Vested Elements and the terms and conditions for development of the Property established by this Agreement, or otherwise applicable regulations existing as of the Effective Date. Changes to the General Plan, MMC or Other Regulations shall be deemed to conflict with the approvals and this Agreement ("Conflicting City Law") if such changes prevent development of the Project on the Property in substantial accordance with the Approvals; require significant changes in the development of the Project from what is contemplated by the Approvals; significantly delay, ration or impose a moratorium on development of the Project; or require the issuance of discretionary or nondiscretionary permits or approvals by City other than those required as of the Effective Date.

b. Any law, regulation or policy that would otherwise be Conflicting City Law, but through this Agreement or by later separate document, application to the Property has been consented to in writing by the Developer.

3.3 Further Reviews. Developer acknowledges that existing land use regulations, the Vested Elements and this Agreement contemplate the possibility of further reviews of elements or portions of the Project by City including potential CEQA analysis, if required. Nothing in this Agreement shall be deemed to limit the legal authority of City with respect to these reviews as provided by and otherwise consistent with, this Agreement. In no event shall such further review by City revisit the Development Plan, Conditions of Approval, or the Approvals or be conditioned on or require any change in the Project except as may be contemplated by the Development Plan, Conditions of Approval or this Agreement.

3.4 Local Rules. Future development on the Property shall be subject to all the official rules, regulations and policies (collectively "Local Rules") of City which govern uses, architectural design, landscaping, public improvements and construction standards, and which are contained in the Development Plan or are in effect as of the Effective Date, with the exception that revisions or amendments to the Local Rules necessitated by reasonable public health or fire and life-safety considerations shall apply as though the rules were in effect as of the Effective Date. Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, City shall retain the authority to take the following actions, so long as such action is applied on a citywide basis to similarly situated projects:

a. Adopt and apply property transfer taxes and/or excise taxes;

b. Adopt updates to building and/or fire codes;

c. Maintain the right of voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with any vested rights acquired by the Developer in this Agreement; except that this Agreement itself is subject to referendum; and,

d. Take other actions not expressly prohibited by the terms or provisions of this Agreement.

3.5 Future Exercise of Discretion by City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or, except as provided herein, to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by City or any of its officers or officials. Except as provided, this Agreement shall not prevent City from applying new rules, regulations and policies, or from conditioning future Project development approval applications on new rules, regulations and policies that do not conflict with the terms of the Approvals, Project, Development Plan, or this Agreement.

4. DEVELOPMENT FEES, EXACTIONS AND DEDICATIONS.

4.1 Development Fees, Exactions and Dedications. The fees, special assessments, special taxes, exactions and dedications (collectively "Fees") payable to City due to the development, build out, occupancy and use of the Property pursuant to this Agreement shall be exclusively those in effect as of the Effective Date, including as set forth in the Conditions of Approval and the Development Plan and as specified in this Agreement. City may apply new or increased fees if the fees apply citywide or area-wide and are of the type of cost recovery fees typically imposed by cities.

4.2 Processing Fees. Developer shall be responsible for the costs to City of processing any Developer requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City ("Processing Fees"). Processing Fees may be increased if the increase is applicable citywide and reflects the reasonable cost to City of performing the administrative processing or other service for which the particular Processing Fee is charged. City shall impose those funding requirements needed to ensure that the processing costs to City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners or City may hire a full or part-time employee(s). If City hires additional contractors or consultants, then Developer shall reimburse City the cost of hiring additional contractors or consultants, plus 10 percent (10%). If City hires a full or part-time employee(s), then Developer shall reimburse City for a pro rata share of the total cost of the employee(s).

4.3 New Processing Fees. New processing fees may be imposed by City if such new fees apply to all similarly situated projects or works within City and if the application of these Processing Fees to the Property is prospective only. Processing Fees shall be due and payable on a phase-by-phase basis, so that only those fees applicable to the actual construction of each phase shall be paid upon the issuance of the appropriate permits for that phase. Developer shall pay the costs associated with the planning, processing and environmental review process for the Project, provided that such costs shall be limited to (i) reasonable costs directly associated with the planning, processing and environmental review process; (ii) fees ordinarily charged by City for processing land use applications and permits, provided that such fees and costs are applied to Developer in the same manner as other similarly situated applicants seeking similar land use approvals and are not limited in applicability to the Project or to related uses; and (iii) fees associated with third-party permit plan checking, if applicable, above those normally charged by City. Developer shall reimburse City for reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime expenses are reasonably necessary for the completion of the Project in accordance with Developer's schedule.

4.4 Development Agreement Fee. Developer agrees to pay the City the sum of four hundred thousand dollars ($400,000) prior to the City's issuance of the Project's final certificate of occupancy ("Development Agreement Fee") but in no event later than the date that is three (3) years from the Effective Date. If this Agreement is tolled pursuant to Section 1.1, this period for payment shall also be tolled.

4.5 Monetary Exaction. Developer and City acknowledge that it is difficult to calculate the exact impact of the Project upon City infrastructure and City services. Developer acknowledges that the Project will have a direct impact by creating a greater demand upon City, including for residential and other development that may have to be located elsewhere in the City and further away from transportation and other infrastructure previously planned for and developed by the City in the vicinity of the Project. Property taxes or any other impact fee paid by the Project does not offset this increased demand. Consequently, Developer agrees to pay and provide the Development Agreement Fee, community benefits, and other sums and fees contemplated by this Agreement, and City shall accept such payments to the extent not otherwise required by applicable law as payment in full for impacts to City services caused by this Agreement. Unless otherwise indicated herein, such fees, sums, and benefits shall be paid and provided no later than the date of issuance of the Final Certificate of Occupancy for the Project.

4.6 Dedications. Developer shall offer to dedicate to City, upon request by City, all portions of the Property designated in the Conditions of Approval for public easements, streets or public areas and/or other improvements.

4.7 Contribution to Costs of Facilities and Services. Developer agrees to contribute to the costs of public facilities and services as required herein to mitigate impacts of the development of the Property, and City agrees to assure that Developer may proceed and complete development of the Property in accordance with the terms of this Agreement. City and Developer recognize and agree that but for Developer's contributions to mitigate the impacts arising as a result of development entitlement granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon and in consideration of Developer's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property.

4.8 Sewer Facilities, Storm Drains and Runoff. This Agreement does not affect the Developer's obligations to pay for or construct improvements in the storm drain system required to implement the Project, nor does it affect the Developer's obligations to meet any applicable federal, state and local discharge limits and requirements pertaining to sewer facilities, storm drains or runoff.

4.9 Limited Effect on Right to Tax, Assess, or Levy Fees or Charges. Except as expressly provided herein, this Agreement does not limit the power and right of City to impose the same taxes, levy the same assessments, or require the payment of the same permit fees and charges by the Developer as City requires for all other residential development or property on a citywide basis. The Developer shall be required to pay all development impact fees in effect on the Effective Date.

4.10 No Limit on Right of City to Adopt and Modify Uniform Codes. This Agreement does not limit the right of City, to the extent permitted by state law, to adopt Building, Plumbing, Electrical, Fire and similar uniform construction codes, and to adopt local modifications of those codes, from time to time.

4.11 California Environmental Quality Act Compliance ("CEQA"). City determined that the Project is exempt from further environmental review pursuant to CEQA under CEQA Guidelines Section 15182 (Cal. Code Regs., tit. 14, § 15182). This Agreement does not limit City's duty to comply with the provisions of CEQA and the associated Guidelines, as they may be amended from time to time, that comply with the provisions of § 21082 of CEQA. However, City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a subsequent approval or other discretionary action, it shall be in accordance with §§ 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

4.12 No General Limitation on Future Exercise of Police Power. City retains its right to exercise its general police power except when such exercise would conflict with this Agreement. The police powers so retained and enforceable under this Agreement shall include, but are not limited to, the enactment of regulations that apply generally to City concerning the disposition of construction and demolition materials. The police powers so retained and enforceable under this Agreement shall also include, but are not limited to, the modification or suspension the provision of this Agreement if the City determines that the failure of the City to do so would place residents in a condition dangerous to their health or safety, or both.

4.13 Mitigations. Developer agrees to contribute to the costs of public facilities and services in the amounts set forth in this Agreement, the Development Plan, Mitigation Monitoring and Reporting Program and Conditions of Approval, as required to mitigate impacts of the development of the Property ("Mitigations"). City and Developer recognize and agree that but for Developer's contributions to mitigate the impacts arising as a result of the entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon, and in consideration of, Developer's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property.

4.14 Affordable Housing Development. As a community benefit and Mitigation to establish more affordable housing closer to greater public transportation resources, and as a material inducement to the City's willingness to enter into this Agreement, Developer agrees to develop more affordable units than it would otherwise be required to develop, including more affordable units than it would otherwise be required to develop under the AHO. Developer agrees to impose rent restrictions for a period of not less than 55 years upon 22 units in the Gideon property such that 18 of those units are restricted to low-income households and 4 of those units are restricted to very low-income households in conformity with the AHO. In a form acceptable to the City Attorney, Developer shall record a regulatory agreement against the Gideon property that runs with the land and binds the owners and successors to that property to restrict the rents for those units consistent with the AHO and this Agreement. This regulatory agreement must be recorded by the earlier of (a) the issuance of the Project's first vertical building permit; or (b) the date that is one (1) year from the Effective Date. That regulatory agreement shall require the owner of the affordable units to ensure that the units are occupied by tenants whose monthly income levels do not exceed very low- or low-income levels, as the case may be, and shall preclude tenants from subletting or subleasing the unit. The regulatory agreement shall also require the owner of the affordable units to submit an annual report to the City Manager, in a format approved by the City. The report shall include, but not be limited to the following information: an identification of the affordable units within the project; the monthly rents charged and proposed to be charged; vacancy information for the prior year; and the monthly income for tenants of each affordable unit throughout the prior year. Prior to lease or release of the affordable units, the regulatory agreement shall require the owner of the affordable units to provide a marketing plan, to be approved by the City, and income certifications, to be approved by the City, and in all other material respects comply with the AHO and the program requirements of the City below market rate housing program. That regulatory agreement shall also require that the affordable units be rented to qualifying and approved low- and very low-income households no later than two (2) years from the Effective Date. If this Agreement is tolled pursuant to Section 1.1, then the periods to record the regulatory agreement and rent the affordable units to qualifying households shall also be tolled.

4.15 Transportation and Other Improvements. Developer shall pay the Development Agreement Fee in the sum of Four Hundred Thousand Dollars ($400,000.00) to City for transportation and other improvements or programs deemed necessary by the City, including as Mitigation for public services that may need to be further developed elsewhere in the City as a result of the Project and the standards and conditions of development allowed by this Agreement, to be paid as specified in Section 4.4.

5. STANDARD OF REVIEW OF PERMITS

5.1 Standard of Review of Permits. All permits ("Permits") required by Developer to develop the Property, excepting the rezoning, but including (i) road construction permits, (ii) grading permits, (iii) building permits, (iv) fire permits, and (v) certificates of occupancy, shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

a. The application is complete; and,

b. The application demonstrates that Developer has complied with this Agreement, the Development Plan, the Mitigation Monitoring and Reporting Program, the Conditions of Approval and the applicable Local Rules.

5.2 Construction Codes. Developer shall be subject to the California Building Code and all other state-adopted construction, fire and other codes and the applicable version or revision of the codes by local City Action (collectively referred to as "Construction Codes") in place at the time that a plan check application for a building, grading or other permit subject to Construction Codes is submitted to City for approval, provided that the Construction Codes have been adopted by City and are in effect on a citywide basis.

6. PRIORITY

6.1 Priority. In the event of conflict between the General Plan, the Metro Specific Plan, this Agreement, MMC, Other Regulations and Local Rules, all as they exist on the Effective Date, the Parties agree that the following sequence establishes the relative priority of each item: (1) the General Plan, as existing on the Effective Date; (2) any applicable Specific Plan, as existing on the Effective Date; (3) this Agreement; (4) the Development Plan; (5) Mitigation Monitoring and Reporting Program; (6) the Approvals; and (7) MMC, Other Regulations and Local Rules.

7. COOPERATION IN IMPLEMENTATION

7.1 Cooperation in Implementation. Upon Developer's satisfactory completion of all required preliminary actions provided in the Development Plan, and payment of required fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Development Plan, including the following actions:

a. Scheduling all required public hearings by the Planning Commission and City Council; and,

b. Processing and checking all maps, plans, land use and architectural review permits, permits, building plans and specifications and other plans relating to development of the Property filed by Developer as necessary for complete development of the Property. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the Development Plan and the terms hereof. At Developer's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits, needed for development of the Project or any other on or offsite improvements.

8. PERIODIC REVIEW

8.1 Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date.

8.2 Developer's Submittal. At least sixty (60) days before each anniversary of the Effective Date, Developer shall submit a compliance letter ("Compliance Letter") to the Director of the Planning Department ("Director"), along with a copy directed to the City Attorney, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the Compliance Letter is submitted to City pursuant to the requirements of Government Code § 65865.1, this Agreement, and MMC.

8.3 City's Findings. Within thirty (30) days after receipt of the Compliance Letter, the Director shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the Director finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within thirty (30) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the Director shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review. Developer may record the certificate with the Santa Clara County Recorder's Office. If the Director initially determines the Compliance Letter to be inadequate in any respect, he/she shall provide notice to that effect to Developer. If, after a duly noticed public hearing thereon, the Council finds and determines based on substantial evidence that Developer has not complied substantially in good faith with the terms of this Agreement for the year under review, the Director shall give written notice thereof to Developer specifying the noncompliance and such notice shall serve as a notice of default under Section 9.1. If Developer fails to cure the noncompliance within a reasonable period of time as established by the Director, the Council, in its discretion, may (i) grant additional time for compliance by Developer, or (ii) following the hearing described in Resolution 6642, modify this Agreement to the extent necessary to remedy or mitigate the noncompliance, or (iii) terminate this Agreement. Except as affected by the terms hereof, the terms of Resolution 6642, shall govern City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement. If the Council does not hold a hearing and make its determination within one hundred and twenty (120) days after delivery of the Compliance Letter for a given year, then it shall be deemed conclusive that Developer has complied in good faith with the terms and conditions of this Agreement during the period under review.

9. REIMBURSEMENTS

9.1 Reimbursements. The Parties agree that Developer shall not be entitled to any reimbursement for the construction of any private or public improvement required by this Agreement, unless explicitly provided by this Agreement or the Conditions of Approval.

10. INSURANCE

10.1 Insurance. During the term of this Agreement, Developer shall maintain in full force and effect the following insurance policies:

a. a commercial general liability policy ("CGL") (bodily injury and property damage);
b. a worker's compensation/employer's liability policy; and
c. a comprehensive automobile liability insurance policy.

These policies shall be maintained with coverage amounts, required endorsements, certificates of insurance and coverage verifications included, as defined in **Exhibit "5"**, attached hereto and incorporated by this reference.

11. DEFAULT AND REMEDIES

11.1 Default. Failure by either Party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default gave the other Party advance written notice of the default and thirty (30) days to cure the condition, or, if the nature of the default is such that it cannot be cured within thirty (30) days, the Party receiving notice shall not be in default if the Party commences performance of its obligations within the thirty (30) day period and diligently completes that performance. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.

11.2 Remedies. It is acknowledged by the Parties that City and Developer would not have entered into this Agreement if City were to be liable in damages under, or with respect to, this Agreement or the application thereof. City and Developer shall not be liable in damages to one another, or to any assignee, transferee or any other person, and Developer covenants not to sue for or claim damages. Each Party shall have the right to (i) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (ii) bring any action at law or in equity as may be permitted by law or this Agreement. The Parties acknowledge that monetary damages and remedies at law generally are inadequate upon the occurrence of a default. Therefore, specific performance or other extraordinary equitable relief (such as injunction) is an appropriate remedy for the enforcement of this Agreement, other remedies at law being inadequate under all the circumstances pertaining as of the Effective Date of this Agreement and any such equitable remedy shall be available to the Parties.

11.3 Default by Developer/Withholding of Building Permit. City may, without submitting to mediation, refuse to issue a building permit for any structure within the Property if City, in its reasonable discretion, determines Developer has materially failed and refused to complete any requirement that is a Condition of Approval, or that is applicable to the building permit requested. In addition, where City has determined that Developer is in default as described above, City may also refuse to issue the Developer any permit or entitlement for any structure or property located within the Project. This remedy shall be in addition to any other remedies provided for by this Agreement.

12. AMENDMENT OR TERMINATION

12.1 Development Plan. City and Developer anticipate that the Project will be implemented in accordance with the Approvals, the Development Plan, Mitigation Monitoring and Reporting Program, and the Conditions of Approval. The foregoing actions and other necessary or convenient implementation actions shall not require an amendment to this Agreement. Any subsequent amendment or modification of the Development Plan shall be done pursuant to a Development Agreement Amendment pursuant to applicable Government Code provisions, MMC Section XIII-D.14.010 and following, and Section 24.1 herein.

a. Insubstantial Modifications and Operating Memoranda. The Parties acknowledge that refinements and further development of the Project may demonstrate that minor changes or clarifications are appropriate with respect to the details of the Project development and the performance of the parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement, and thus desire to provide a streamlined method of approving insubstantial modifications to, or clarifications of the Parties responsibilities and obligations under this Agreement. Therefore, to the extent allowed by applicable law, any minor modification or clarification to this Agreement which does not modify (i) the Term of this Agreement; (ii) permitted uses of the Property, (iii) maximum density or intensity of use, (iv) the approved floor area, number or type of dwelling units, or building height, (v) provisions for the reservation or dedication of land, (vi) conditions, terms, restrictions or requirements for subsequent discretionary actions, (vii) monetary obligations of Developer, or (viii) the original findings and Conditions of Approval for the Project and (ix) would not result in any threat to the public health, safety, or welfare or any new or detrimental effects from the Project (hereinafter an "Insubstantial Modification"), and that can be processed under CEQA as exempt from CEQA, and that do not require a notice of amendment and/or hearing, including pursuant to Government Code Section 65868, shall not require a public hearing or City Council approval prior to the Parties executing a modification to this Agreement. Upon receiving a written request from the Developer for an Insubstantial Modification, the City Manager or a designated representative will evaluate the request, considering: (1) whether the requested modification falls under the definition of an "Insubstantial Modification"; and (2) whether the requested modification aligns with the objectives of this Agreement. The City Manager will not unreasonably withhold a decision, but will also ensure the City's interests are adequately protected. If the City Manager or designee determines that the requested modification is an "Insubstantial Modification" that is consistent with the Approvals and this Agreement and tends to promote the goals of the Approvals and this Agreement, the proposed modification may be approved by the City Manager as an Insubstantial Modification, and a written modification will be executed by the Parties and attached to this Agreement as an operating memorandum ("Operating Memorandum").

12.2 Termination upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, or when the Property has been fully developed and all of the Developer's obligations are satisfied as determined by City. Upon termination of this Agreement, City may record a Notice of Termination in a form satisfactory to the City Attorney.

12.3 Effect of Termination Upon Developer Obligations. Termination of this Agreement as to the Developer shall not affect any of the Developer's obligations to comply with City General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlement approved with respect to the Project, nor shall it affect any other covenants or development requirements in this Agreement specified to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

12.4 Effect of Termination Upon City. Upon any termination of this Agreement as to the Developer, the entitlement, conditions of development, and all other terms and conditions of this Agreement shall no longer be vested with respect to the Property and City shall no longer be limited by this Agreement, to make any changes or modifications to the entitlement, conditions or fees applicable to the Property.

12.5 Elements of Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the Term;
(b) Entry after all appeals have been exhausted of a final court judgment or issuance of a final court order directed to City to set aside, withdraw, or abrogate the Approvals, the City's approval of this Agreement or any material part thereof; or
(c) The effective date of a Party's election to terminate the Agreement as provided in this Agreement.

13. MORTGAGEE PROTECTION: CERTAIN RIGHTS OF CURE

13.1 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum thereof is recorded, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in-lieu-of foreclosure, voluntary transfer or otherwise.

13.2 Mortgagee Obligations. City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such Property by such Mortgagee. The foreclosing Mortgagee shall have the right to find a substitute developer to assume the obligations of Developer, which substitute shall be considered for approval by City pursuant to Section 13 of this Agreement, but shall not, itself, be required to comply with all of the provisions of this Agreement.

13.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by City that Developer has defaulted hereunder. If City determines that Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice.

14. ASSIGNABILITY

14.1 Assignment. Except as provided in Section 13, neither Party shall convey, assign or transfer ("Transfer") any of its interests, rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. In no event shall the obligations conferred upon Developer under this Agreement be transferred except through a Transfer of all or a portion of the Property. Should Developer Transfer any of its interests, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements, provision of affordable housing, and payment of fees, unless the transferee executes an Assumption Agreement in a form reasonably acceptable to City whereby the transferee agrees to be bound by the relevant Terms of the Agreement, including the obligations for installation of public improvements, provision of affordable housing, and payment of fees. During the Term, Developer shall provide City with written notice of a request to Transfer any interest in this Agreement sixty (60) days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information that substantiates, to City's reasonable satisfaction, that the proposed transferee has the capability to assume the rights and fulfill the obligations of this Agreement. Any transferee (including parents and subsidiary entities) shall have a net worth, valuation, or liquidity (including debt capacity), of not less than $50,000,000.00 Dollars. The City Manager shall have sole discretion to find and determine that transferees with a net worth, valuation, or liquidity (including debt capacity) of less than $50,000,000.00 Dollars are otherwise eligible transferees under this Agreement. Within thirty (30) days of such a request and delivery of information, the Milpitas City Manager shall make a determination, in his or her reasonable discretion, as to whether the Transfer shall be permitted or whether such Transfer necessitates an Amendment to this Agreement, subject to approval by the Council. The Milpitas City Manager's approval of a proposed Transfer shall not be unreasonably withheld provided that the terms of this Section 14.1 are met. Each successor-in-interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal representatives. Developer or its successor shall record notice of such approved Transfers in the Santa Clara County Recorder's Office promptly upon execution by each of the Parties.

14.2 Covenants Run With The Land. The terms of this Agreement are legislative in nature, and apply to the Property as regulatory ordinances. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof and any interest therein, whether by sale, operation of law or other manner, and shall inure to the benefit of the Parties and their respective successors.

14.3 Foreclosure. Nothing contained in this Section 14 shall prevent a Transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a building permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to City.

15. CONTROLLING LAW

15.1 Controlling Law. This Agreement shall be governed by the laws of the State of California, and the exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara. Developer shall comply with all requirements of state and federal law, in addition to the requirements of this Agreement, including, without limitation, the payment of prevailing wages, if required. In any event, Developer shall pay prevailing wages for all work on off-site public improvements related to the Project.

16. GENERAL

16.1 Construction of Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.

16.2 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon the other Party's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by either Party of any of the covenants or conditions to be performed by Developer or City shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions.

16.3 Agreement is Entire Agreement. This Agreement and all exhibits attached hereto or incorporated herein, together with the Development Plan, Mitigation Monitoring and Reporting Program, and the Conditions of Approval, are the sole and entire Agreement between the Parties concerning the Property. The Parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other. To the extent that there is any conflict between the approved Development Plan and this Agreement, the approved Development Plan shall govern the Parties' respective rights and obligations.

16.4 Estoppel Certificate. Either Party from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (iii) the requesting Party does not have knowledge of default in the performance of its obligations under this Agreement, or if in known default, describing therein the nature and monetary amount, if any, of the default. A Party receiving such a request shall execute and return the certificate within thirty (30) days after receipt thereof. City Manager shall have the right to execute the certificates requested by Developer. At the request of Developer, the certificates provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and Developer shall have the right to record the certificate for the affected portion of the Property at its cost.

16.5 Severability. Each provision of this Agreement which is adjudged by a court of competent jurisdiction to be invalid, void or illegal shall in no way shall affect, impair or invalidate any other provisions, and the other provisions shall remain in full force and effect.

16.6 Further Documents. Each Party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement.

16.7 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

16.8 Defense, Indemnification and Hold-Harmless Provisions. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees (the "Indemnified Parties") harmless from any liability for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether the actions be by the Developer or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractor's. Developer shall indemnify and defend Indemnified Parties from any suit or actions at law or in equity for damages caused, or alleged to have been caused, by reason of the operations and Developer shall pay all reasonable attorneys' fees and costs that City may incur. City does not, and shall not waive any rights against Developer that it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of City.

16.9 Third-Party Challenge. Developer agrees to defend the Indemnified Parties from any challenge to the validity of this Agreement, environmental review for the Project, entitlements, or anything related to the passage of the Agreement by City.

16.10 Construction. This Agreement has been reviewed and revised by legal counsel for both City and Developer and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

16.11 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

17. NOTICES

17.1 Notices. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified U.S. mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by U.S. mail. Notices shall be sent to the addresses below for the respective Parties; provided, however, that either Party may change its address for purposes of this section by giving written notice to the other Party. These addresses may be used for service of process:

<u>City:</u>
City of Milpitas
Attn: City Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035

<u>With copy to:</u>
City of Milpitas
Attn: City Attorney
455 E. Calaveras Blvd.
Milpitas, CA 95035

<u>Developer:</u>
Lyon Living
Attn: Mike Barmettler
4901 Birch St.
Newport Beach, CA 92660

<u>With copy to:</u>
Pete Zak
3 Corporate Plaza Drive, Suite 230
Newport Beach, CA 92660

<u>And:</u>
Cox, Castle & Nicholson LLP
Attn: Sean Matsler
3121 Michelson Drive, Suite 200
Irvine, CA 92612

The provisions of this section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this section.

18. RELATIONSHIP BETWEEN CITY AND DEVELOPER

18.1 <u>Developer is an Independent Contractor</u>. Developer is not an agent or employee of City, but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed or utilized by Developer in connection with this Agreement are employees or contractors of Developer and shall not be considered employees of City in any respect.

19. PROJECT AS A PRIVATE UNDERTAKING

19.1 <u>Project as a Private Undertaking</u>. It is specifically understood and agreed that the Project is a private development. No partnership, joint venture or other association of any kind between City and Developer is formed by this Agreement.

20. NONDISCRIMINATION

20.1 Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.

21. FORCE MAJEURE.

21.1 Force Majeure. Performance by either Party hereto shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of other governmental entities or enactment of conflicting state or federal laws or regulations.

22. THIRD PARTIES

22.1 Third Parties. If any person or entity not a Party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Approvals, the Parties shall reasonably cooperate in defending such action. Developer shall bear its own costs of defense as a real Party in interest in any such action, and shall reimburse City for all reasonable costs and attorneys' fees expended by City in defense of any such action or other proceedings.

23. AMENDMENTS

23.1 Amendments. No alterations or changes to the Terms of this Agreement shall be valid unless made in writing and signed by both Parties, and completed in compliance with the procedures listed in MMC and/or the Government Code for Development Agreement Amendments.

24. NO THIRD-PARTY BENEFICIARY

24.1 No Third-Party Beneficiary. This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third-party or Parties, and no third-party or Parties shall have any claim or right of action hereunder for any cause whatsoever.

25. DISPUTE RESOLUTION

25.1 Mediation. Any controversies between Developer and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

25.2 Mediator Selection/Length of Mediation. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

25.3 Mediation Costs. The costs of the mediator shall be borne by the Parties equally; however, each Party shall bear its own attorney, consultant, staff and miscellaneous fees and costs.

25.4 Exhaustion of Mediation As A Remedy. Mediation under this Section is a condition precedent to filing an action in any court, but it is not a condition precedent to City's refusal to issue a building permit or any other entitlement under Section 5.

26. CONSENT

26.1 Consent. Where consent or approval of a Party is required or necessary under this Agreement, the consent or Agreement shall not be unreasonably withheld or delayed.

27. COVENANT OF GOOD FAITH AND FAIR DEALING

27.1 Covenant of Good Faith and Fair Dealing. Neither Party to this Agreement shall do anything which shall have the effect of harming or injuring the right of the other Party to receive benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and, each Party shall do everything which this Agreement contemplates to accomplish the objectives and purpose of this Agreement.

28. AUTHORITY TO EXECUTE

28.1 Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of Developer, and further represent that they have the authority to bind Developer to the performance of its obligations in this Agreement.

29. COUNTERPARTS

29.1 Counterparts. This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

SIGNATURES FOLLOW ON PAGE 26

CITY OF MILPITAS, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

______________________________	______________________________
CHRISTIAN CURTIS City Attorney	JARED HERNANDEZ Acting City Manager 455 E. Calaveras Blvd. Milpitas, CA 95035

ATTEST:

____
SUZANNE GUZZETTA
City Clerk
"CITY"

DEVELOPER
CHOOSE ONE: CORPORATION/PARTNERSHIP/INDIVIDUAL

By: ______________________________
Signature of Person executing the Agreement on behalf of Developer

Name: ______________________________

Title: ______________________________

Local Address: ______________________________

____

Telephone ( ) ______________________________

Facsimile: ( ) ______________________________

Exhibit "1" Legal Description

Exhibit "2" Selected Pages of Development Plan

Exhibit "3" Conditions of Approval

Exhibit "4" Mitigation and Monitoring Plan

Exhibit "5" Insurance Requirements

DEVELOPMENT AGREEMENT
BETWEEN CITY OF MILPITAS,
a California municipal corporation,

AND

MILPITAS - DISTRICT 2 ASSOCIATES, LLC,
a Delaware limited liability company; and

FIELDS CH OWNER, LLC,
a Delaware limited liability company

EXHIBIT 1

<u>LEGAL PROPERTY DESCRIPTION</u>

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MILPITAS,
a California municipal corporation,**

AND

**MILPITAS - DISTRICT 2 ASSOCIATES, LLC,
a Delaware limited liability company; and**

**FIELDS CH OWNER, LLC,
a Delaware limited liability company**

EXHIBIT 2

SELECTED PAGES OF DEVELOPMENT PLAN

DEVELOPMENT AGREEMENT
BETWEEN CITY OF MILPITAS,
a California municipal corporation,

AND

MILPITAS - DISTRICT 2 ASSOCIATES, LLC,
a Delaware limited liability company; and

FIELDS CH OWNER, LLC,
a Delaware limited liability company

EXHIBIT 3

CONDITIONS OF APPROVAL

DEVELOPMENT AGREEMENT
BETWEEN CITY OF MILPITAS,
a California municipal corporation,

AND

MILPITAS - DISTRICT 2 ASSOCIATES, LLC,
a Delaware limited liability company; and

FIELDS CH OWNER, LLC,
a Delaware limited liability company

EXHIBIT 4

MITIGATION MONITORING AND REPORTING PROGRAM

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MILPITAS,
a California municipal corporation,**

AND

**MILPITAS - DISTRICT 2 ASSOCIATES, LLC,
a Delaware limited liability company; and**

**FIELDS CH OWNER, LLC,
a Delaware limited liability company**

EXHIBIT 5

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Developer shall purchase and maintain the insurance policies set forth below at its sole cost and expense. Such policies shall be maintained for the full Term of this Agreement. The term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Milpitas, California, individually or collectively ("City").

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

On or before the commencement of the Term of this Agreement, Developer shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Exhibit. These certificates, which do not limit Developer's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to City by certified mail, "Attention: City Manager." Endorsements naming City as additional insured shall be submitted with the insurance certificates. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to City:

(a) **Workers' Compensation**:

Statutory coverage as required by the State of California.

(b) **Liability**:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	$1,000,000 each occurrence
	$10,000,000 aggregate - all other
Property Damage:	$1,000,000 each occurrence
	$10,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of $10,000,000 will be considered equivalent to the required minimum limits shown above.

(c) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury:	$1,000,000 each occurrence
Property Damage:	$1,000,000 each occurrence
	or
Combined Single Limit:	$2,000,000 each occurrence

2. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise agreed to by the Risk Management Division of the City in writing.

3. DEDUCTIBLES AND SELF-INSURED RETENTIONS ("SIR")

Any deductibles self-insured retentions must be declared to and approved by City. The City may require Developer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The initial Developer to this Agreement has disclosed a two hundred and fifty thousand dollar ($250,000) self-insured retention upon applicable policies as part of the negotiation of this Agreement, which is hereby deemed approved by the City.

All SIRs must be disclosed to the City's Risk Management Division for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

4. FAILURE TO COMPLY

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

5. SUBROGATION WAIVER

Developer agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Developer shall look solely to its insurance for recovery. Developer hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Developer or City with respect to the actions of Developer herein, a waiver of any right to subrogation, which any insurer of the Developer may acquire against City by virtue of the payment of any loss under the insurance.

6. ABSENCE OF INSURANCE COVERAGE

City may direct Developer to immediately cease all activities with respect to this Agreement if it determines that Developer fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this lease. Any delays or expense caused due to stopping of work and change of insurance shall be considered Developer's delay and expense. At City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Developer.

7. NOTICE OF CANCELLATION, SUSPENSION OR OTHERWISE VOIDING

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

8. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION

Developer shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements prior to the commencement of this Agreement and annually thereafter for the Term of this Agreement. Developer shall furnish City with copies of original endorsements affecting coverage as herein required. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before the Term of the Agreement commences. City has the right to require Developer's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement. Should any required policy of insurance be modified, canceled, not renewed or otherwise change, Developer shall provide the City promptly with notice of that change, at least 30 days prior to any contemplated change, and thereafter provide compliant certificates of insurance, endorsements, policies, and such information as reasonably requested by the City for approval and determination of continuing compliance with these insurance requirements.

The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal of insurance shall be mailed to:

City of Milpitas
Attn: Finance Department, Risk Management Division
455 E. Calaveras Blvd.
Milpitas, CA 95035

AGENDA ITEM: IX-3

MILPITAS PLANNING COMMISSION
STAFF REPORT

October 28, 2015

APPLICATION:

THE DISTRICT LOTS 2, 3, 4 AMENDMENT AND CENTRE POINTE LOT 3A, B AND C, AND HOURET COURT 1 AND 2 DEVELOPMENT PROPOSAL – GP15-0002; RZ15-0005; ST15-0001; EA15-0005; SD15-0006; MT15-0006, MT15-0007, MT15-0008, MT15-0009; UP15-0010 – A request for a General Plan Amendment and Transit Area Specific Plan Amendment to change the land use designation from Residential-Retail High Density Mixed (RRMU) to High Density Transit Oriented Residential (HDTOR), and a Rezone from MXD2-TOD to R3-TOD for a portion Centre Pointe Lot B.

A request for a Site Development Permit, Major Tentative Maps and a Conditional Use Permit for the construction of a 175-room hotel, a 423 dwelling unit building with 66,421 square feet of retail on a portion of the District Lot 3, and 355 for sale units on Centre Pointe Drive and Houret Court parcels, and associated site improvements on 26.65 acres ("Project").

A request for an amendment to the previously approved District One, Lots 2, 3 and 4 Site Development Permit and Conditional Use Permit to eliminate Lot 3 (mixed-use building with approximately 169 dwelling units and 27,187 of commercial-retail space) from the District 1 Project, and replace the two approximately 400,000 square foot mixed-use buildings on Lots 2 and 4 totaling 392 residential units and approximately 6,000 square feet of commercial-retail space with two five-story mixed-use buildings consisting of 391 residential units and 17,421 square feet of ground floor retail and office space on the District Lots 2 (186,386 square feet) and District Lot 4 (148,371 square feet).

RECOMMENDATION:

Staff recommends that the Planning Commission:

Conduct the public hearing and adopt Resolution No. 15-035 recommending the City Council approve an Addendum to the Certified Environmental Impact Report Prepared for the Transit Area Specific Plan (State Clearinghouse No. 2006032091) in support of the Centre Pointe and Houret Court Project located at 1310-1360, 1400-1460, and 1415-1475 McCandless Drive, 1463, 1501, 1507, 1515, 1536-1567, and

1577 – 1601 Centre Pointe Drive, and 231, 247-269, 274, and 1147 Houret Court; and

Adopt Resolution No. 15-036 recommending the City Council approve General Plan Amendment GP15-0002, Rezone RZ15-0005, Specific Plan Amendment ST15-0001, Site Development Permit SD15-0006, Use Permit UP15-0010, and Major Tentative Maps MT15-0006, -0007, -0008, -0009:

1. **Adopt a General Plan Amendment and Transit Area Specific Plan Amendment to change the land use designation from Residential-Retail High Density Mixed (RRMU) to High Density Transit Oriented Residential (HDTOR), and a Rezone from MXD2 to R3 for a portion Centre Pointe Lot B; and**

2. **Approve a Site Development Permit, Major Tentative Maps and a Conditional Use Permit for the construction of a 175 room hotel, a 423 dwelling unit building with 66,421 square feet of retail on a portion of the District Lot 3, and 355 for sale units on Centre Pointe Drive and Houret Court parcels, and associated site improvements on 26.65 acres; and**

3. **Eliminate Lot 3 (mixed-use building with approximately 169 dwelling units and 27,187 of retail square footage) from District 1 Project, and replace two approximately 400,000 square foot mixed-use buildings on Lots 2 and 4 totaling 392 residential units and approximately 6,000 square feet of commercial-retail space with two 460,000 square foot, five-story, mixed-use buildings consisting of 391 residential units and 17,421 square feet of ground floor retail and office space on the District Lots 2 and 4.**

LOCATION:

Address/APN:	1415 - 1475 McCandless Dr. (APN: 86-33-093) 1310 – 1360 McCandless Dr and 1400 – 1460 McCandless Dr. (APN: 086-33-101) 1463 Centre Pointe Dr. (APN: 086-33-086) 1501, 1507, 1515 Centre Pointe Dr. (APN: 086-33-087) 1536 – 1567 Centre Pointe Dr. (APN: 086-33-088) 1577 – 1601 Centre Pointe Dr. (APN: 086-33-089) 231 Houret Ct. (APN: 086-41-034) 247 – 269 Houret Ct. (APN: 086-41-033) 271 Houret Ct. (APN: 086-41-032) 1147 Houret Ct. (APN: 086-41-009)

Area of City:	Transit Area Specific Plan (TASP) area – McCandless/Centre Pointe and Montague Corridor sub-districts
PEOPLE:	
Project Applicant:	Peter Zak, Lyon Communities
Consultant(s):	Jorge Duran, RJA Civil Engineers
Property Owners:	The Great Mall Parkway Project, LLC Jaime Chahine Integral Milpitas Partner, LLC, Jaime Chahine The Milpitas Project Owner, LP Integral Communities McCandless, LLC KPMW Integral, LLC CP Land, LLC IPCP Investor, LLC The Houret Project Owner, LLC Integral Communities Houret Partners, LLC
Project Planner:	Adam Petersen/Bill Ekern
LAND USE:	
General Plan Designations:	Residential Retail High Density Mixed Use (RRMU); Multi-Family Residential High Density (MFH); and Boulevard Very High Density, Mixed Use (BVHDMU)
Zoning District:	High Density Mixed Use (MXD2); Multi-Family High Density Residential (R3); Mixed Use, Very High Density (MXD3)
Overlay District:	Transit Oriented Development (TOD) and Site and Architectural Overlay (S)
ENVIRONMENTAL:	In accordance with Section 15164 of the California Environmental Quality Act (CEQA), and Environmental Impact Assessment No. EA15-0005, an addendum has been prepared to the Transit Area Specific Plan Environmental Impact Report (EIR) (State Clearinghouse No. 2006032091) certified by the City Council on June 3, 2008 (Resolution No. 7759). (Please access the TASP FEIR through these links.) http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_draft.pdf http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_final.pdf

EXECUTIVE SUMMARY

The Project consists of a master-planned development comprised of six distinct planning areas – each of which will be developed with a mix of multi-family residential and retail uses, or residential for sale units with loft and townhouse product types.

The applicant is requesting a General Plan Map Amendment, Specific Plan Amendment, Zoning Map Amendment, Site Development Permit, Conditional Use Permit and four Vesting Tentative Maps to allow the development of 814 Multi-Family units (mapped as condos, but operated for rent), 355 3-story for sale flats and loft split units for a total of 1,169 dwelling units; 83,842 sf of retail and commercial uses, and a 175-room, 9-story hotel.

The project is a master-planned development consisting of six separate subareas, as follows:

- District Lot 2 is a 218 rental unit multi-family residential development with approximately 3,480 sf of retail/commercial uses. District Lot 2 has been mapped for residential uses pursuant to Vesting Tentative Map No. TM11-0002 approved by the City on March 20, 2012. This Vesting Tentative Map was determined to be in substantial conformance with the revised site plan reflected in the Site Development Permit applied for with this project.

- District Lot 4 is a multi-family residential development consisting of 173 rental units with approximately 13,941 square feet of retail. District Lot 4 has been mapped for residential uses pursuant to Vesting Tentative Map No. TM11-0002 approved by the City on March 20, 2012. This Vesting Tentative Map was determined to be in substantial conformance with the revised site plan reflected in the Site Development Permit applied for with this project.

- Centre Pointe Site A/District Lot 3 consists of a 175-room hotel, 66,421 square feet of retail, and 423 multifamily rental units. The Project includes an application for a Vesting Tentative Map No. MT15-0009.

- Centre Pointe Site B consists of 105 for sale, three and four story dwelling units. The Project includes an application for a Vesting Tentative Map No. MT15-0006.

- Centre Pointe Site C consists of 136 for sale, three and four story dwelling units. The Project includes an application for a Vesting Tentative Map No. MT15-0007.

- Houret consists of 114 for sale, three and four story townhome units. The Project includes an application for a Vesting Tentative Map No. MT15-0008.

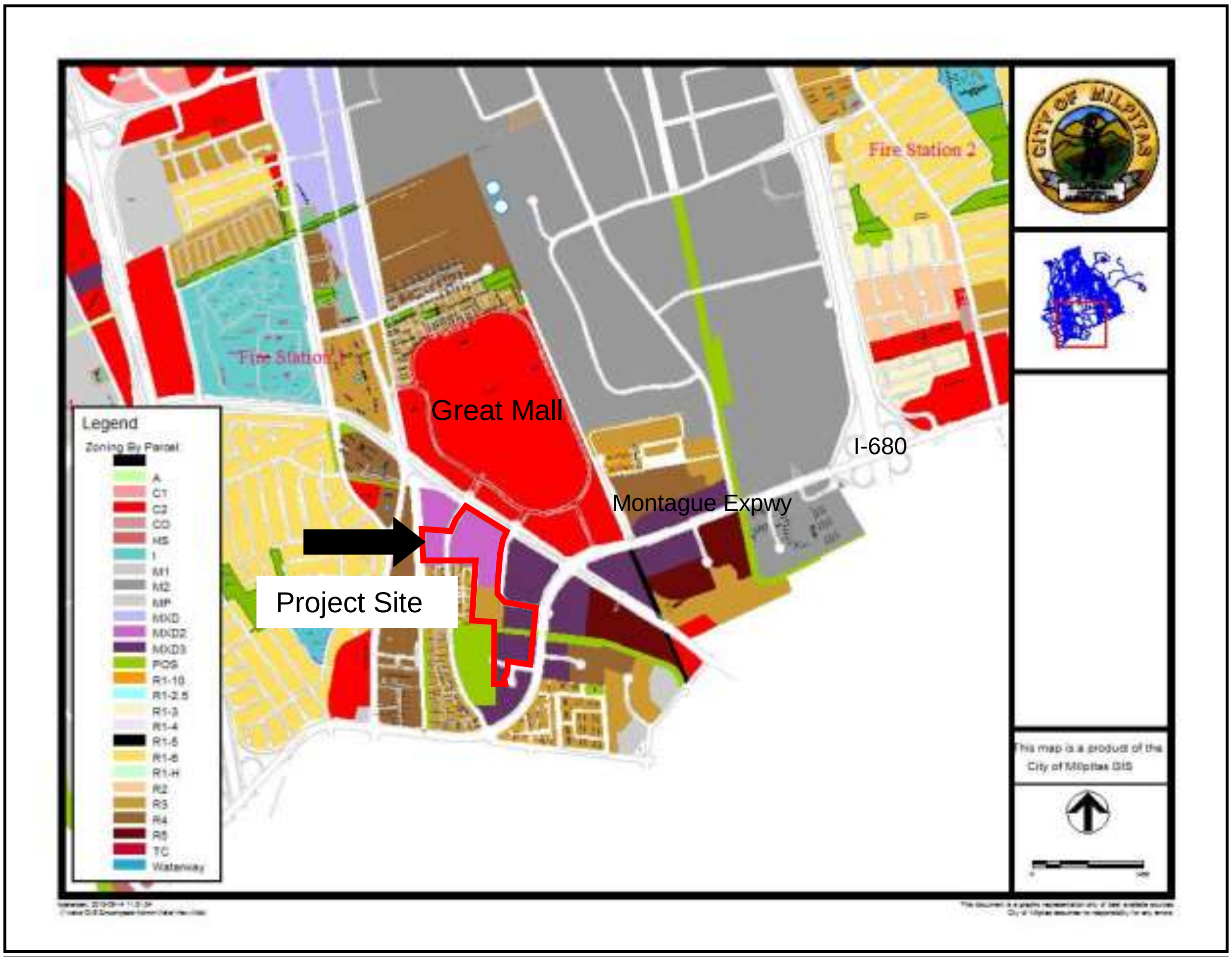
To ensure overall project consistency, the applicant has also applied for a Site Development Permit that encompasses all six subareas, and a Conditional Use Permit to address a limited number of deviations from the development standards set forth in the TASP.

Amendments to the General Plan land use map, the TASP zoning map and City zoning map are requested to change the land use designation of a portion of Centre Pointe B subarea from MXD-2-TOD to R3-TOD to ensure that the entire Centre Pointe B subarea can be developed for three and four story flats consistent with the adjacent Centre Pointe B subarea.

The project would also include the development of a public plaza area at the corner of Market Street and McCandless Drive, on-site parking, on-street parking, landscaping and other associated landscape improvements. The project also proposes the construction of Market Street as a two-way street, Bond Street, and Centre Pointe Drive, as well as pedestrian walkways, paseos and recreational trails along the north and south banks of East Penitencia Creek. The project provides an approximately 1,700 square feet at the intersection of Montague Expressway and East Penitencia Creek to accommodate a landing area for a proposed Pedestrian Bridge over Montague Expressway.

The developer proposes a series of public benefits as required by the TASP when a Conditional Use Permit is requested. The significant benefits proposed include a rapid response vehicle for the Fire Department (valued at approximately $500,000); a contribution to the construction of a pedestrian bridge over Penitencia Creek (valued at approximately $250,000), and a commitment to operate a public shuttle bus system linking the proposed hotel to BART, VTA light rail, and the Great Mall (valued at approximately $150,000/year).

Map 1
Project Vicinity Map



Map 2
Project Zoning Map

Map 3
Site Aerial

* Aerial photo is not a current image.

BACKGROUND

History

On June 3, 2008, the City Council adopted the Transit Area Specific Plan. The Plan encompasses 437 acres and envisions the development of 7,109 dwelling units, 287,075 square feet of retail space, 993,843 square feet of office space and industrial. The plan includes development standards, goals and policies guiding development within the plan area. Because of the physical characteristics of the area, including major streets, railroads and creeks, the plan also established sub-districts with specific goals and policies to accommodate those unique characteristics.

The District and Centre Pointe History

- **2010: McCandless/The District Tentative Map Entitlements – 8 High-Density Mixed-Use Buildings**

In 2010, the Integral Communities received approvals from the Planning Commission and City Council for a tentative map and conditional use permit to construct eight high-density residential buildings along McCandless Drive with significant retail and commercial space in the first two buildings along Great Mall Parkway. The project included a maximum of 1,328 dwelling units and 75,000 square feet of retail/commercial space. The project also included an Owner Participation Agreement (OPA) that was approved by the City Council on August 3, 2010.

- **2012: "The District" - Mixed-use "Santana Row" style buildings and townhouse units Entitlements.**

In 2012, the project applicant received City Council and Planning Commission approval to amend the 2010 entitlements to replace four of the eight large buildings along McCandless Drive with a 200-unit townhouse project. The project included a Site Development Permit (SD11-0001) to review the architecture of the buildings, Conditional Use Permit (UP11-0037) to allow a grocery store on Lot 1 and Major Tentative Map (MT11-0002) to create 27 townhouse building lots and associated common areas. The approved changes resulted in a net decrease of 226 dwelling units from District 2 and net increase of 6,000 square feet of ground floor retail for Lots 2 and 4.

- **2014: "The District" and "Centre Pointe" – Mixed-Use and Condominium Project**

In November 2014, the Planning reviewed a proposal for the subject site, which consisted of the following requests:

- *Site Development Permit (SD13-0010 and SD13-0013):* To allow an amendment to Lots 2 and 4 changing them from large high-density mixed-use residential buildings to townhouse units resulting in a net decrease of 284 units, a net decrease of approximately 6,000 square feet of ground floor retail, relocation of the Urban Plaza from Lot 4 to Lot 3 and removing Lot 3 from the District project to the adjacent Centre Pointe project resulting in the elimination of a high-density mixed-used building on Lot 3 and eliminating approximately

169 residential units and 27,000 square feet of retail/commercial space entirely from the District project; and proposing a 362 apartment unit, 55,431 square foot of commercial space in a mixed use building and approximately 241 condominium/townhouse.

- *Major Tentative Map (MT13-0005 and MT13-0007):* To amend the original Tentative Map relocating the Urban Plaza to Lot 3 and the creation of 18 townhouse-building lots, associated common lots on Lots 2 and 4 and removal of Lot 3 from the map.
- *Conditional Use Permit (UP13-0009 and UP13-0013):* To amend the original Conditional Use Permit pertaining to Lots 2 and 4 to allow change from mixed use to townhouses, to allow tandem garage spaces and to allow reduction in TASP-required setbacks.

The Planning Commission voted to deny the requested entitlements in 2014, and the application was subsequently withdrawn.

PROJECT DESCRIPTION

The project consists of a master-planned development comprised of six distinct planning areas that will be developed with a mixture of hotel, multi-family residential, retail uses, and residential for-sale units with loft and townhouse product types. The project covers approximately 26.65 acres.

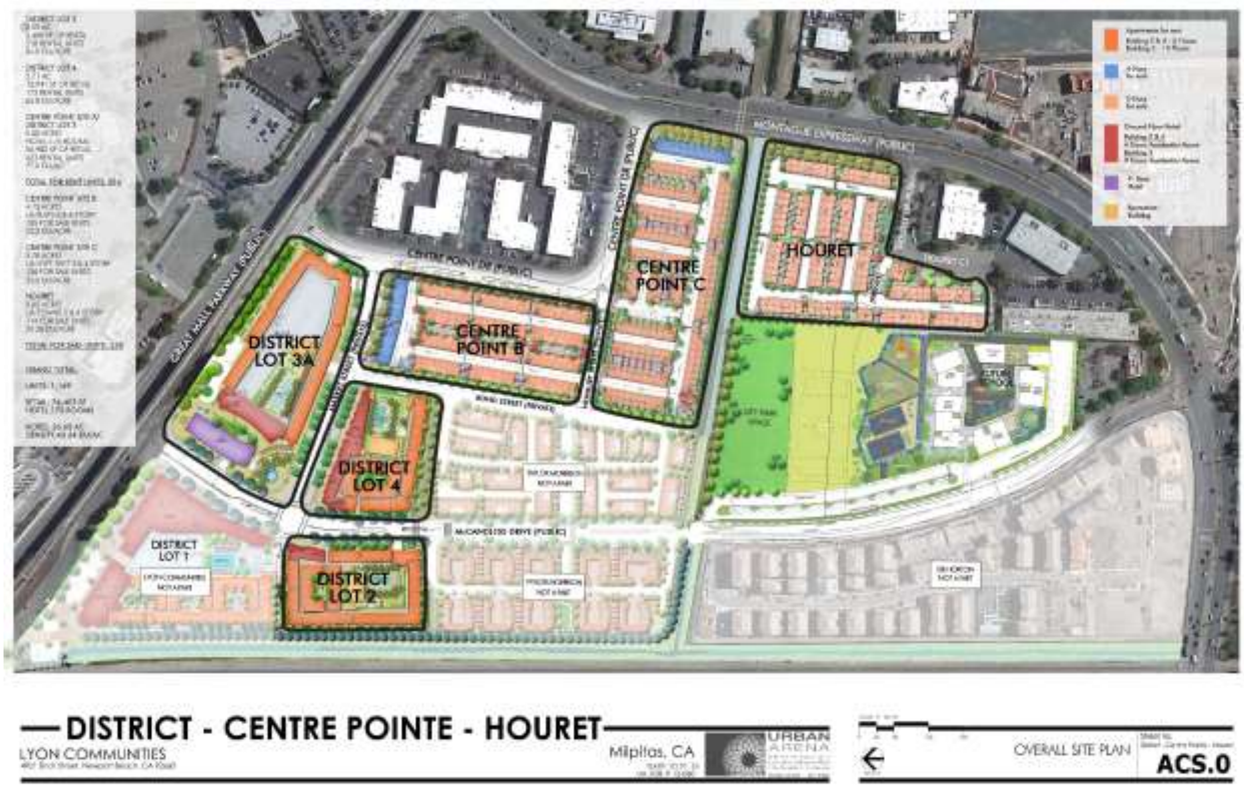
The applicant requests approval of a General Plan Amendment, Specific Plan Amendment, Rezone, Site Development Permit, Use Permit and Tentative Maps for the project. The project is generally bordered by Great Mall Parkway to the north, Montague Expressway to the east, Penitencia Creek to the west and Houret Drive to the south. Table 1 below summarizes the areas of the project, and Map 4 illustrates the proposed project.

Table 1
Project Summary

	Planning Area	APN	Acreage	Density	Product Type
1	District Lot 2	86-33-093	2.585 acres	218 du (84.3 du/ac) 3,480 sf ground floor retail	5-story Multi-family Rental
2	District Lot 4	Portion of 86-33-101	2.68 acres	173 du (64.5 du/ac) 13,941 sf ground floor retail	5-story Multi-family Rental
3	District Lot 3 / Centre Pointe Site A	Portions of 86-33-101 and 86-33-086	5.49 acres	175 room hotel w/ground floor retail (7,286 sq. ft.) 9-story hotel 66,421 sq. ft. retail 423 du (77 du/ac) 4-9 floors rental above ground floor retail 10 floor rental	4-9 floors rental above ground floor retail 10 floor rental 9-story hotel
4	Centre Pointe Site B	Portions of 86-33-86; -087; -088	4.72 acres	105 du (22.2 du/ac)	3 and 4-story for sale units Loft Split 4 story Split Loft

	Planning Area	APN	Acreage	Density	Product Type
5	Centre Pointe Site C	Portion of 86-33-088 and all of 86-33-089	5.81 acres	136 du (23.4 du/ac)	3 and 4-story for sale units Loft Split 4 story Split Loft
6	Houret	86-41-032; -033; -034; 86-41-009	5.30 acres	114 units (21.5 du/ac)	3 and 4-story for sale units
	Total			Multi-Family: 814 units (mapped as condos, but operated for rent) For Sale: 355 units SF retail: 83,842 Hotel rooms: 175 rooms	

Map 4
Project Proposal



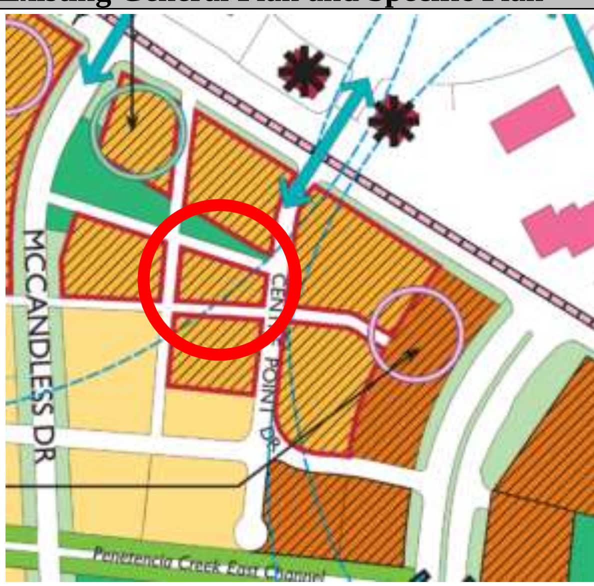
General Plan Amendment, Specific Plan Amendment and Rezone

The project includes a request for a General Plan and Specific Plan Amendment to change the land use designation on a portion of Centre Pointe Lot B. The General Plan land use designation would change from Residential Retail High Density Mixed-Use (RRMU) to High Density Transit Oriented Residential (HDTOR). Map 5 below illustrates the area of the proposed General Plan and Specific Plan Amendment. The requested amendment would alter TASP Figure 5-1 (Street Design and Character), removing the retail mixed use designation from a portion of the development along western portion of Centre Pointe Drive, from Market Street to Newbury Street. The requested amendment also requires an amendment to Figure 3-1 in TASP to clarify the zoning change that eliminates the retail requirement from the Centre Pointe B property.

Accompanying the General Plan and Specific Plan Amendment is a request to rezone the same areas from High Density Mixed Use (MXD2) to Multi-Family High Density Residential (R3). Map 6 illustrates the existing and proposed Rezone.

The requested General Plan and Specific Plan Amendment, and Rezone would affect parcels 86-33-086 and 86-33-087, totaling approximately 3.287 acres.

Map 5
Existing and Proposed General Plan Land Use Designation

<table>
<tr><th>Existing General Plan and Specific Plan</th><th>Proposed General Plan and Specific Plan</th></tr>
<tr><td>
</td><td>
</td></tr>
</table>

Map 6
Existing and Proposed Zoning

Existing Zoning	Proposed Zoning

Site Development Permit, Tentative Subdivision Maps and Conditional Use Permit

District Lot 2 and 4:
The proposed District Lots 2 and 4 would supersede the approved Site Development Permit for these lots. The project proposes one less unit than the entitled project, and the design of the buildings would be modified. The project proposes two buildings comprised of 5-story, multifamily rental apartments in a "wrap" configuration with the residential units surrounding an interior parking structure. Recreational amenities include a pool and lounge area. District Lot 2 is approximately 2.585 acres and located west of McCandless Drive and adjacent to proposed residential development being constructed by Lyon Communities to the north, and Taylor Morrison to the south. District Lot 4 is approximately 2.68 acres and located between McCandless Drive, Bond Street, Market Street, and a proposed residential development to be constructed by Taylor Morrison. Ground floor, neighborhood serving retail will be developed in conjunction with these multi-family developments. The average density of development of District Lot 2 is approximately 84.3 du/acre and approximately 64.5 du/acre for District Lot 4.

District / Centre Pointe Lot 3A:
District Lot 3/Centre Pointe A proposes to contain a 9-story hotel with ground floor retail on the western edge of the site, adjacent to McCandless Drive. The hotel will be flanked by a 10-story multi-family building with 423 dwelling units above 66,421 square feet of retail on the ground

38077.00500\20804885.1

floor. The retail uses will front on Market Street and Great Mall Parkway. Parking is provided in a structure located in the center of the development, which is surrounded by the residential, commercial and hotel uses. District Lot 3/Centre Pointe A is adjacent to the Great Mall Parkway and between Centre Pointe Drive and McCandless Drive with Market Street to the south. The average density of the multi-family development proposed on Centre Point A is approximately 77 du/acres, and will be developed as 9 floors above ground floor retail that will surround a 10-story multifamily building.

Centre Pointe Lot B and C:
Centre Pointe B, located between Centre Pointe Drive, Bond Street, Market Street and Newbury Street is proposed to be developed with 105 for sale 3- and 4-story units at a density of 22.2 du/acre on this 4.72 acre site.

Centre Pointe C is approximately 5.81 acres located between Bond Street, Newbury Street, Montague Expressway and the Penitencia Creek, and is proposed to be developed with 4-story for-sale units adjacent to Montague Expressway, and 3-story for-sale units on the remainder of the site. Approximately 136 for-sale loft type units are proposed at a density of 23.4 du/acre.

Houret:
The Houret area is located south of Penitencia Creek, west of Montague Expressway, and north of Houret Court and west of Houret Court and east of a future school site. This area will have a similar product mix as Centre Pointe C with 83 4-story for-sale units adjacent to Montague Expressway and 31 3-story for-sale units on the remainder of the site. Houret is 5.30 acres, and has a density of 21.5 dwelling units per acre.

Circulation and Infrastructure Improvements
The Project will provide landscaping on the southern side of Newbury Street and will stripe a new four-way stop at the intersection of Newbury Street, Centre Point Drive, and “Drive G” (a new proposed street between Newbury Street and Penitencia Creek). The Project will also provide landscaping and on-street parking along Market Street. The Project will also provide improvements to Centre Pointe Drive by removing the existing curb.

The project will provide improvements and landscaping to the portions of McCandless Drive and Bond Street that border the Project area.

Finally, the Project will provide land to accommodate the alignment of one pedestrian bridge over Penitencia Creek and provide sufficient land to accommodate a landing area for a pedestrian bridge over Montague Expressway.

Because the Project site is located within the 100-year flood zone, the Project will be graded to ensure that all residential and commercial development pads are raised above the flood zone. Market Street and Newbury Street will be designed and constructed to provide flood paths in the event of a 100-year storm.

The Project will also provide all necessary infrastructure for water and sewer.

Parking
Parking for District Lots 2, 3, 4 and Centre Pointe Site A will be provided through parking structures located in the interior of each planning area, with additional street parking provided on Market Street.

Parking for the for-sale units in Centre Pointe Site B, Site C and Houret will be provided in street level garages associated with each unit.

PROJECT ANALYSIS

General Plan Amendment, Specific Plan Amendment

The Project proposes to amend a portion of the General Plan and Specific Plan Land Use Designation from Residential Retail High Density Mixed-Use (RRMU) to High Density Transit Oriented Residential (HDTOR). The amendment is proposed for one parcel and a portion of another parcel. Table 2 lists the proposed General Plan/Specific Plan Amendment that affects the following parcels:

Table 2
General Plan and Specific Plan Amendment

<table>
<tr><th>Lot</th><th>APN</th><th>Existing General Plan (GP) / Specific Plan (SP) Designations</th><th>Proposed General Plan / Specific Plan Designations</th></tr>
<tr><td rowspan="4">Centre Pointe Site B</td><td rowspan="2">0.625 acre portion of 86-33-086</td><td>GP: Residential Retail High Density Mixed Use (RRMU)</td><td>GP: Multi-Family Residential High Density (MFH)</td></tr>
<tr><td>SP: Residential Retail High Density Mixed Use (RRMU)</td><td>SP: High Density Transit Oriented Residential (HDTOD)</td></tr>
<tr><td rowspan="2">86-33-087</td><td>GP: Residential Retail High Density Mixed Use (RRMU)</td><td>GP: Multi-Family Residential High Density (MFH)</td></tr>
<tr><td>SP: Residential Retail High Density Mixed Use (RRMU)</td><td>SP: High Density Transit Oriented Residential (HDTOD)</td></tr>
</table>

The proposed amendments are consistent with the intent of the requested General Plan and Specific Plan Multi-Family Residential High Density and High Density Transit Oriented Residential land use designation. The General Plan and Specific Plan describe the High Density Transit Oriented Residential land use as intended for medium-density residential neighborhoods further from BART at the interior of the sub-district neighborhoods. The proposed amendment area is located approximately seven-tenths of a mile from the Milpitas BART Station and along the western area of the TASP. Further, it is located interior to the proposed District project. The site is bordered by other medium density residential uses to the south and to the west. High-density uses along Centre Pointe Drive also form a buffer for the site from Montague Expressway. Amending TASP Figure 5-1 to remove the retail mixed-use street design requirements for this area would maintain consistency with the High Density Residential land use designations because these designations do not have a retail requirement. Given these conditions, the requested land use designation and change to TASP Figure 5-1 is consistent with the intent of high density residential land use description, and is therefore consistent with the General Plan and Specific Plan.

Rezone

The Project proposes to amend the zoning designation for the same sites from High Density Mixed-Use (MXD2) to Multi-Family High Density Residential (R3). The project is consistent with this Zone because it proposes high-density residential units for sale. The R3 zone and intensity of the land use is the same as land uses located to the south and the west of the Project site. Further, the requested R3 zone is consistent with and implements the HDTOR General Plan and Specific Plan land use designation. Therefore, the requested Zone change implements the purpose and intent of the R3 zone, is consistent with adjacent uses, and is consistent with the City's General Plan.

General Plan Conformance

Table 3 presents the multiple General Plan Designations, required density and general description of each sub area in the project:

Table 3
General Plan Descriptions

	Planning Area	General Plan Land Use Designation	Minimum Density Requirement	General Description
1	District Lot 2	Residential-Retail High Density Mixed-Use	31 – 50 du/ac	A mixed use area with retail, restaurants, and services on the ground floor, and residential, hotel, or office uses on floors above or horizontally mixed.
2	District Lot 4	Residential-Retail High Density Mixed-Use	31 – 50 du/ac	
3	District Lot 3 / Centre Pointe Site A	Residential-Retail High Density Mixed-Use	31 – 50 du/ac	
4	Centre Pointe Site B	Residential Retail High Density Mixed Use changed to: High Density Transit Oriented Residential	21 – 40 du/ac	These properties are intended for medium-density residential neighborhoods further from BART, at the interior of subdistrict neighborhoods.
5	Centre Pointe Site C	Multi-Family High Density Residential and Boulevard Very High Density Mixed Use	21 – 40 du/ac and 41 – 60 du/ac	This designation is intended to provide high-density housing, retail, and employment along Montague Expressway which has a landscaped boulevard character.
6	Houret	Boulevard Very High Density Mixed Use	41 – 60 du/ac	These properties are intended for medium-density residential neighborhoods further from BART, at the interior of subdistrict neighborhoods.

These designations were identified as appropriate land uses during the development of the TASP because of the proximity to the existing VTA station and future BART station. The future BART station is approximately seven-tenths of a mile from the residential uses, and the residential uses are located interior to the project site, away from major roadways. These designations require a range of densities from 21 dwelling units per acre to 60 dwelling units per acre. As shown in the Specific Plan Analysis section, the overall density of project falls within the mid-range density. Further, the mixed-use designations on the District Lots 2, 4, and 3 allow for retail space at the ground floor, and the project provides this use. The proposed project is consistent with the General Plan and TASP land use designations and densities.

Specific Plan Conformance

The entire District project falls within the mid-range density prescribed by the TASP. The project locates the majority of the density around McCandless Drive and Great Mall Parkway on the District Lots 2, 3, and 4, while the Centre Pointe and Houret sites provide townhouse style densities. The TASP permits this type of development pursuant to Policy 3.8, and the overall project density is within the average mid-range density. Therefore, the project is consistent with the Specific Plan. Table 4 presents a summary of the density analysis:

Table 4
TASP Density Analysis

Site	**Density**			
	Required	**Units**	**Acres**	**Proposed Density DU/AC**
Lot 2	31 – 50 du/ac	218	2.55	85.49 du/ac
Lot 4	31 – 50 du/ac	173	2.71	63.83 du/ac
Lot 3	31 – 50 du/ac	423	5.49	77.05 du/ac
Centre Pointe Lot B	21 – 40 du/ac	105	4.72	22.2 du/ac
Centre Pointe Lot C	21 – 40 du/ac and 41 – 60 du/ac	136	5.78	23.5 du/ac
Houret	41 – 60 du/ac	114	5.30	21.5 du/ac
Average	**37 – 59 du/ac**	1,169 du	26.6 ac	**43.9 du/ac**

The Specific Plan Land Use Designation for the District Lots 2, 3 and 4 contains a requirement for commercial and retail space. The proposed project exceeds this commercial requirement, as demonstrated in Table 5. Therefore, the project is consistent with the TASP commercial requirement.

Table 5
TASP Retail Requirement

Site	Floor Area			
	Min Density	Requirement	Area Required	Area Provided
Lot 2	31 du/ac	200 sq. ft. per unit based on minimum density	15,810 sq. ft.	3,480 sq. ft.
Lot 4	31 du/ac		16,802 sq. ft.	13,941 sq. ft.
Lot 3	31 du/ac		34,038 sq. ft.	66,421 sq. ft.
Centre Pointe Lot B	--	0 sq. ft. per unit	0 sq. ft.	--
Centre Pointe Lot C	--	0 sq. ft. per unit	0 sq. ft.	--
Houret	--	0 sq. ft. per unit	0 sq. ft.	--
Total	--	--	**66,650 sq. ft.**	**83,842 sq. ft.**

As demonstrated by Table 5, the project exceeds the commercial retail space requirements. The minimum TASP standards generate a demand for 66,650 square feet of commercial space, while the project provides 83,842 square feet. This amount exceed the commercial requirement by approximately 17,000 square feet. This will benefit the City with additional jobs and sales tax revenue. Therefore, the project satisfies the TASP requirements for commercial space.

The TASP divides the areas into subdistricts, and each subdistrict contains specific policies that guide development. The District project is divided between the McCandless/Centre Pointe subdistrict and the Montague Expressway subdistrict. Table 6 provides an analysis of the project's consistency with applicable policies from the two subdistricts and other policies from the TASP:

Table 6
Consistency with Transit Area Specific Plan Policies

Policy	Complies?
Policy 3.4: Provide a variety of housing types for different types of households, different income levels, different age groups, and different life-styles.	**Yes.** The project includes high-density residential units in mixed-use buildings and townhouse units.
Policy 3.6: Encourage creativity in high-density residential design. Allow housing types, such as live/work lofts that are not currently developed in the city.	**Yes.** The project includes high-density residential units in mixed-use buildings and townhouse units
Policy 3.17: New streets shall be located as generally shown on the Street System Map, Figure 3-2.	**Yes.** The street have been located in a pattern consistent with the TASP.
Policy 3.18: New development must dedicate land for new public streets and pay for their construction.	**Yes.** The project will dedicate land for Newbury and Bond Streets and for the improvement of Centre Pointe Drive.
Policy 3.54: Include a network of trails along Penitencia Creek and railroad right of ways.	**Yes.** The project proposes a trail network along Penitencia Creek.

Policy	Complies?
Policy 3.56: Connections shall be created across Montague Expressway with overhead bridges or undercrossings to create a continuous trail network; allow pedestrians and bicyclists to cross safely; and connect neighborhoods, schools, and parks.	**Yes.** The project proposes a landing area for the pedestrian crossing over Montague Expressway on Centre Pointe Lot C. Additionally, the project provides a pedestrian bridge from Centre Pointe Lot C to the proposed City park site and school.
Policy 3.57: All properties along the trail network will need to set aside land for the trails. This land will count towards the required public park land dedication requirement. Refer to Figure 3-7 for required dimensions. If trail easements already exist or are acquired within the rail line or flood control right of ways, these easements may be used in lieu of land on development sites.	**Yes.** The project provides a 12 ft. wide trail along Penitencia East Creek Channel.
Policy 3.59: Create a 45-foot deep continuous landscaped setback on Montague Expressway.	**Yes.** The project provides a 45 ft. deep setback along Centre Pointe Lot C and the Houret Site.
Policy 4.2 (MON): New curb cuts and auto access onto Montague Expressway are strongly discouraged, unless specifically indicated on the Plan map.	**Yes.** The project does not propose curb cuts along Montague Expressway. The project utilizes the existing Houret Drive access.
Policy 4.4 (MON): A 45-foot wide, landscaped setback is required from the future right of way line of Montague Expressway.	**Yes.** The project provides a 45 ft. deep setback along Centre Pointe Lot C and the Houret Site.
Policy 4.5 (MON): New development along Montague Expressway must dedicate land, such that a total of 79 feet from the roadway centerline is provided, to accommodate the future Montague Expressway widening project.	**Yes.** The project provides a setback of 79 ft. from the centerline of Montague Expressway.
Policy 4.6 (MON): Buildings will be designed with facades facing Montague Expressway.	**Yes.** Building in Centre Pointe Lot C and Houret are designed with facades facing Montague Expressway.
Policy 4.63 (MC-C): Create three street connections between McCandless Drive and Centre Point Drive. However, a public pedestrian pathway can be substituted for one of the streets.	**Yes.** The project proposes Market Street and Newbury Road from McCandless Drive to Centre Pointe Drive. The third connection is a pedestrian pathway through Centre Pointe Lot B from McCandless Drive to Centre Pointe Drive.
Policy 4.64 (MC-C): Create a new north/south street parallel to McCandless Drive and Centre Point Drive to provide access to parking as well as service and loading functions.	**Yes.** The project proposes Bond Street as a new north/south parallel street.
Policy 4.69 (MC-C): Create a mixed-use area with retail, restaurant, and personal service uses in the area closest to Great Mall Parkway.	**Yes.** The project provides over 80,000 square feet of commercial space, over 800 units adjacent to Great Mall Parkway, and a

Policy	Complies?
	175-room hotel.
Policy 4.70 (MC-C): Create a high-density residential neighborhood at the interior of the sub-district, centered along McCandless Drive.	**Yes.** The project proposes over 800 units at the interior of the subdistrict centered on McCandless Drive and Bond Street.
Policy 4.73 (MC-C): Create a plaza or other type of public space in the retail mixed use district, located as shown in the Plan Map.	**Yes.** The project provides a commercial promenade at the southeast corner of McCandless Drive and the proposed Market Street. This promenade is 0.83 acres and is the same size as the plaza proposed in the TASP.
Policy 4.74 (MC-C): Create a trail along the Penitencia Creek East Channel.	**Yes.** The project provides a 12 ft. wide trail along Penitencia East Creek Channel.

Vesting Tentative Maps

The application includes four Vesting Tentative Maps for District/Centre Point Lot 3, Centre Pointe Lots B and C and Houret. The uses and residential densities of the proposed maps are consistent with the General Plan and zoning as amended. Pursuant to Milpitas Municipal Code Section XI-1-4.06(a), an approved tentative map is valid for twenty-four (24) months from date of approval or conditional approval. Pursuant to Milpitas Municipal Code Section XI-10-64.06(b), the Subdivider shall have the right to request an extension of the map for one year. Subdivider has submitted an application for an extension for Vesting Tentative Map Nos. 15-0006, 15-0007, 15-0008, and 15-0009 and has requested that the extension be granted after the Council adopts Resolution 15-036 approving the four Vesting Tentative Maps, thus providing for an initial term of the vesting tentative maps of twenty-four (24) months, followed by an extension of twelve months, for a total approved term of thirty-six months from the date of approval of Resolution 15-036.

The application also carries forward prior Vesting Tentative Map No. TM11-0002 for District Lots 2 and 4, which were mapped for residential uses and approved by the City on March 20, 2012. This map is consistent with the District Lot 2 and District Lot 4 site plans in the Site Development Permit application, SD 15-0006.

Site Development Permit

Development Standards

The following tables demonstrate the project's consistency with the applicable development standards of the Very High Density Mixed-Use Zone (MXD3), High Density Mixed-Use Zone (MXD2), and Multi-Family High Density Residential (R3). As is allowed by the TASP, the applicant has requested a use permit where the project does not comply with the minimum setback requirements or other development standards. In addition, the project in its entirety falls within the range of averaged minimum and maximum densities required of all of the six subareas, though each subarea does not necessarily comply with the given minimum and maximum density range assigned to it. This density averaging principle is permitted by TASP Policy 3.8, provided each subarea is conditioned to ensure that project-wide densities do not end up above or below the project-wide minimum and maximum densities.

Table 7
District Building Lot 2 Development Standard Analysis

MXD2-TOD	Minimum Standard	Proposed	Complies?
Setbacks (Minimum) **Front (McCandless Dr.)** **Interior (North)** **Interior (South)** **Rear** ○ **Creek Setback**	 8-15 feet 10 feet 10 feet 10 feet ○ 25 Feet	 26 feet 30 feet 10 feet 18 feet ○ 25 feet	 Yes Yes Yes Yes
Building Height (Maximum)	6 stories or 75 feet	6 stories	Yes
Parking (Minimum)	287 residential + 43guest + 9 retail = 339	351	Yes
FAR	1.88	2.03*	Yes, with a Use Permit
Block Size	Minimum 2 acres Maximum 4 acres	2.55 acres	Yes
Open Space	Min 40 sq. ft. for balconies and Min of 50 sq. ft. for patios	No balconies for 17 studio units*	Yes, with a Use Permit
Groundfloor elevation	Maximum 2' above sidewalk	2.6'-5.0'	No**
* Indicates a Conditional Use Permit is required to allow the proposed deviations. ** Required to meet FEMA flood requirements			

Table 8
District Building Lot 4 Development Standard Analysis

MXD2-TOD	Minimum Standard	Proposed	Complies?
Setbacks (Minimum) **Front (McCandless Dr)** **Street Side (Market St)** **Interior (South)** **Rear (Bond)**	 8-15 feet 10 feet 10 feet 10 feet	 17 feet 15 feet 14 feet 30 feet	 Yes Yes Yes Yes
Building Height (Maximum)	6 stories or 75 feet	6 stories	Yes
Parking (Minimum)	226 residential + 50 guest + 45 retail = 321	343	Yes
Block Size	Minimum 2 acres Maximum 4 acres	2.71 acres	Yes
Open Space	Min 40 sq. ft. for balconies and Min of 50 sq. ft. for patios	All units have min size balconies or patios	Yes
Ground Floor Retail Space Depth	75 feet typical 60 feet minimum	31 feet to 58 feet*	Yes, with a Use Permit
FAR	1.88 Maximum	1.73	Yes
Groundfloor elevation	Maximum 2' above sidewalk	1.7'-5.5'	No**
* Indicates a Conditional Use Permit is required to allow the proposed deviations. ** Required to meet FEMA flood requirements			

Table 9
District / Centre Pointe Building 3 Development Standard Analysis

MXD2-TOD	Standard	Proposed	Complies?
Setbacks (Minimum) **Front (Great Mall Parkway)** **Street Side (McCandless)** **Street Side (Centre Pointe)** **Rear (Market Street)**	 8-15 feet 10 feet 15 feet 15 feet	 45 feet 29 feet 15.5 feet 15.5 feet	 Yes Yes Yes Yes
Building Height (Maximum)	12 stories or 150 feet	11 stories	Yes
Floor Area Ration (Maximum)	Up to 1.88	2.35	Yes
Parking (Minimum)	578 residential + 87 guest + 182 retail + 140 hotel = 988	1,080 (97 tandem spaces*)	Yes
Curb Cuts	Maximum two per lot per street frontage	Market – 2 Great Mall Pkwy – 1 McCandless – 1 Centre Pointe – 1	Yes
Block Size	Minimum 2 acres Maximum 4 acres	5.50 acres*	Yes, with a Use Permit
Block Dimension	Maximum of 500 feet between publicly accessible paths of travel	390 feet	Yes
Open Space	Min 40 sq. ft. for balconies and Min of 50 sq. ft. for patios	Unit S1 balconies are 33 sq. ft. for 55 studios* Unit B1 for 30 two three bedroom units*	Yes, with a Use Permit
Ground Floor Retail Space Depth	75 feet typical 60 feet minimum	35 feet to 105 feet*	Yes, with a Use Permit
Groundfloor elevation	Maximum 2' above sidewalk	2'-6'	No**
* Indicates a Conditional Use Permit is required to allow the proposed deviations. ** Required to meet FEMA flood requirements			

Table 10
Centre Pointe Lot B

R3-TOD	Standard	Proposed	Complies?
Density	21 – 40 du/ac	22.25 du/ac	Yes
Setbacks (Minimum) **Bond Street (west)** **Centre Pointe Drive (east)** **Newbury Street (south)** **Market Street (north)**	 8 feet 8 feet 8 feet 10 feet	 7 feet* 8 feet* 13 feet 7 feet to 14 feet	 Yes, with a Use Permit Yes, Yes Yes
Building Height (Maximum)	75 feet	38 feet to 46 feet	Yes
Yard Projections	6 feet into required yards	3 feet	Yes
Parking (Minimum)	168 garage spaces + 21 guest spaces = 189 required	210 garage spaces (27% tandem garages) 8 guest spaces on site 13 guest spaces on street out of 70 on street spaces*	Yes, with a Use Permit
Block Size	Minimum 2 acres Maximum 4 acres	Two 2.34 acres pieces (4.685 acres)	Yes
Block Dimension	Maximum of 500 feet between publicly accessible paths of travel	323 feet	Yes
* Indicates a Conditional Use Permit is required to allow the proposed deviations.			

Table 11
Centre Pointe Lot C

R3-TOD	Standard	Proposed	Complies?
Density	41 – 75 du/ac	23.53	Yes, consistent with TASP Policy 3.8
Setbacks (Minimum) **Centre Pointe/Newbury (north)** **Bond Street (west)** **Penitencia Creek (south)** **Montague Expressway (east)**	15 feet 8 feet Minimum of 25 feet from top of bank 45 feet	15 feet 10 feet 45 feet from top of bank 45 feet	Yes Yes, Yes Yes
Building Height (Maximum)	75 feet	38 feet to 46 feet	Yes
Yard Projections	6 feet into required yards	2.67 feet	Yes
Parking (Minimum)	218 garage spaces + 28 guest spaces = 246 required	272 garage (32 tandem; 24%) 26 guest on site 2 guest spaces out of 48 on street spaces*	Yes, with a Use Permit
Block Size	Minimum 2 acres Maximum 4 acres	5.95 acres = two 2.92 acre pieces	Yes
Block Dimension	Maximum of 500 feet between publicly accessible paths of travel	475 feet	Yes
* Indicates a Conditional Use Permit is required to allow the proposed deviations.			

Centre Pointe Lot C

MXD3-TOD	Standard	Proposed	Complies?
Density	41 – 75 du/ac	23.53	Yes, consistent with TASP Policy 3.8
Setbacks (Minimum) **Centre Pointe/Newbury (north)** **Bond Street (west)** **Penitencia Creek (south)** **Montague Expressway (east)**	 15 feet 7 feet Minimum of 25 feet from top of bank 45 feet	 15 feet 5 feet* 45 feet from top of bank 45 feet	 Yes Yes, with a Use Permit Yes Yes
Building Height (Maximum)	12 stories	38 feet to 46 feet	Yes
Yard Projections	6 feet into required yards	2.67 feet	Yes
Parking (Minimum)	Numbers included in chart above	Numbers included in chart above	Yes, with a Use Permit
Block Size	Minimum 2 acres Maximum 4 acres	5.95 acres = two 2.92 acre pieces	Yes
Block Dimension	Maximum of 500 feet between publicly accessible paths of travel	475 feet	Yes
* Indicates a Conditional Use Permit is required to allow the proposed deviations.			

Table 12
Houret

R3-TOD	Standard	Proposed	Complies?
Density	41 – 75 du/ac	20.20	Yes, consistent with TASP Policy 3.8
Setbacks (Minimum) **South** **Park (west)** **Penitencia Creek (north)** **Montague Expressway (east)**	 10 feet 10 feet Minimum of 25 feet from top of bank 45 feet	 12.8 feet 19 feet 61 feet from top of bank 45 feet	 Yes Yes Yes Yes
Building Height (Maximum)	75 feet	38 feet to 46 feet	Yes
Yard Projections	6 feet into required yards	2.5 feet	Yes
Parking (Minimum)	183 garage spaces + 23 guest spaces = 206 required	228 garage (0 tandem spaces) + 28 Guest Spaces = 256 total	Yes
Block Size	Minimum 2 acres Maximum 4 acres	2.6 acres average for Houret 1 and Houret 2	Yes
Block Dimension	Maximum of 500 feet between publicly accessible paths of travel	Houret 1 = 482 feet Houret 2 = 175 feet	Yes
* Indicates a Conditional Use Permit is required to allow the proposed deviations.			

Access & Circulation

TASP Policy 3.17 generally requires that new streets within the TASP should be located as shown in the TASP Street System Map (Figure 3-2). However, it also provides that "[n]ew local streets may shift location to take into account more detailed survey information, to better align them evenly along property boundaries, or to facilitate a better, more efficient development project." (TASP, 3-23, discussing Policy 3.17.) The project proposes multiple improvements to the street network that would serve the various subdistricts.

Great Mall Parkway, McCandless Drive, Centre Pointe Drive and Houret Drive from Montague Expressway provide access to the Project site. The applicant proposes Market Street to run between McCandless Drive on the west and Centre Pointe Drive to the east. A new left turn pocket would be installed on McCandless Drive to facilitate left turn movements onto Market Street. Market Street is proposed to be a private street and will be lined with retail uses on the north side of the street, and divided between retail and residential uses on the southern half of the street. The combination of the retail and residential uses activates the street space and creates a lively retail environment.

The applicant proposes to extend Bond Street from the high-density residential townhomes located to the south of the project, north to the District Lot 3 / Centre Pointe Site A. Bond Street would intersect the proposed Market Street. The proposed extension would be a private street and maintained jointly by the District Lot 4 and Centre Pointe Site B.

The project proposes three modifications to the street network from what is shown on Figure 3-1 as the overall conceptual layout of streets in TASP. The first involves Newbury Street. The applicant would extend Newbury Street from McCandless Drive to Centre Pointe Drive. Newbury Street will be offset as it crosses Bond Street. The Fire Department has indicated that this offset is acceptable.) The second improvement would bring Centre Pointe Drive to TASP standards. In its existing condition, the street curves from the north and bends to the east where it ultimately intersects Montague Expressway. The developer of Centre Pointe Lots B and C would be required to construct a four-way intersection at Newbury Street and Centre Pointe Drive. The project also proposes to remove the retail street requirement from Centre Pointe Lot B along the western portion of Centre Pointe Drive. Lastly, the project would involve vacating the cul-de-sac at the end of Houret Drive. The area would be vacated by the City in favor of the Milpitas Unified School District. This proposal would create a seamless row of houses along western border of the project that would lend to a cohesive design theme and provide a better interface with the future school.

The street sections proposed for the project conform to TASP standards, and play a critical role in conveyance of floodwaters. The streets are designed to serve as the drainage channels in the event of flood events. The locations of the various streets differ from the TASP concepts because of the specifics of the proposed project. Overall, staff believes that the proposed street design is in keeping with the requirements of the TASP policies.

Landscaping & Open Space Design

The proposed project locates the open space area to the north side of Market Street, consistent with the TASP. The TASP requires that a 0.83-acre urban plaza be provided along the north side of Market Street. The project includes a 0.83-acre urban plaza and elevated retail promenade. These spaces activate the retail uses and provide the urban plaza intended by TASP. In addition, most units will provide private balconies; except for a few units located on the larger buildings (see CUP discussion below).

The District area of the project incorporates roof top decks with patios and pools. District Lot 3 / Centre Pointe Site A proposes a 49,240 square roof top deck with pool and a 19,920 square foot clubhouse that is publicly accessible private open space. The District Lots 2 and 4 include exterior courtyards and roof top recreation decks as well. The Centre Pointe and Houret areas include pedestrian pathways and open space areas incorporated into the site design. Centre Pointe Lot C and Houret include pedestrian walking trails along the north and south side of Penitencia Creek.

The proposed project site will result in the removal of several existing trees. The following tally summarizes the trees that are proposed to be removed:

Table 13
Existing and New Tree Inventory

Project Area	Trees To Be Removed	New Trees
District	167	151
Centre Pointe	260	476
Houret	30	235
TOTAL	457	862

The landscape improvements will establish the pedestrian realm along Montague Expressway, Bond Street, Newbury Street, Houret Court and Centre Pointe Drive. The landscape improvements will enhance the pedestrian realm along these streets by adding planter beds, wide sidewalks and street trees.

Site & Architectural Design
The project proposes a consistent and cohesive design theme throughout the development that is consistent with the design guidelines of the TASP. The various elements of the project represent a contemporary architectural style, which blends with the approved District 1 building, while also distinguishing itself from the surrounding townhouses. For example, the large protruding bay elements provide a modern industrial feel when combined with the contrasting color palate and stone materials. The colors and materials provide a base to each building and create a pedestrian-oriented feel at the street level. The hotel establishes a distinct corner element at McCandless Drive and Great Mall Parkway. It will serve as a key entryway into the McCandless/Centre Pointe subdistrict. Further, the project is consistent with the following design requirements of the TASP:

- Block lengths do not exceed 500 feet between publicly accessible pathways. In Centre Pointe Lot B, this has taken the form of a pedestrian access-way with walkways.
- Residential buildings reinforce streets and pedestrian connections to the transit stations by being oriented toward the streets.
- Building facades are designed to include street–facing entries, windows, special corner treatment, and other articulation.
- For the District Lots 2, 4 and District Lot 3/Centre Pointe Site A, the service alleys or auto courts are incorporated into the design of the garages.
- Buildings maintain a strong relationship to the streets with entrances oriented towards the streets. The massing of the buildings is parallel with the street system, as well.
- The colors are muted and light in tone.
- The material are high quality, durable, and consist of stucco, tile, and other long lasting composites.
- Ground floor residential units have direct access to the streets.

Urgency Ordinance (240.2) Exception Request
On August 26, 2014, the City Council adopted Urgency Ordinance No. 240.2, which implemented water use restrictions. Specifically, as it relates to this project, the Urgency

Ordinance prohibited the use of potable water for the installation of new landscape unless it is served by Reclaimed Water (Section 5.07). Section 5.08 of the Urgency Ordinance allows the City Council to grant exceptions as needed. The subject site will connect to reclaimed water in Centre Pointe Drive. These lines will serve Centre Pointe Sites B and C. Reclaimed water lines in McCandless Drive will serve the District Lots 2 and 4, and District Lot 3 / Centre Pointe Site A. The project will extend the reclaimed water lines from Great Mall Parkway south to Houret Drive to serve the Houret Drive and Court sites. Reclaimed water is not allowed in the swimming pools proposed in the District Lot 2 and 4, and District Lot 3 / Centre Pointe Site A. Staff is in support of the requested exception. These amenities are consistent with the Water Efficient Landscape Ordinance.

The Urgency Ordinance also prohibits the use of potable water for the construction of new swimming pools (Section 5.03). The project proposes new rooftop pools on District Lot 2 and 4, and District Lot 3/ Centre Pointe Site A. Section 5.08 of the Urgency Ordinance allows the City Council to grant exceptions as needed. The proposed exceptions can be considered for approval as the potable water use will be for rooftop pools which is an attractive amenity for the hotel, as well as for the residents of the high density project proposed in District Lots 2 and 4. The provision of recreational amenities at the hotel will make it an attractive destination for visitors and business travelers staying in Milpitas.

Grading, Drainage and Stormwater

The proposed project will require grading to allow for the construction of the garage, streets and building pads. Site drainage will be treated through a combination of Low Impact Development (LID) measures, which include bio-treatment planters and some mechanical filtration units. These are allowed for projects with higher densities located near mass transit.

Utilities

The site will be served by City water and sewer and San Jose reclaimed water. All other utilities will be placed either underground or relocated to accommodate new utilities or site improvements.

Solid Waste

The project proposes an alternative solid waste collection system. The District Lots 2 and 4 will collect solid waste in the garage. These bins will be transported by a cart or electric vehicle to curb side staging areas along McCandless Drive and Bond Street. Garbage trucks will then collect the waste from these bins, and they will be returned to the garage for storage. This plan has been reviewed by both the current garbage service provider and city staff.

Public Art

The project includes numerous retaining walls that serve to elevate the various development areas out of the floodplain. The applicant has proposed to meet its public art requirement by incorporating art into these walls. The City's Art Commission will review the public art at a future date.

Climate Action Plan Conformance
The project helps implement the City's Climate Action Plan (CAP) through consistency with the following Goals in the CAP:

Goal 5: *Provide an economically sustainable mixed-use community focused on high-density development around central urban plazas and gathering places.*

Consistent with Measure 5.1, the project is a high density, mixed-use development that provides a central urban plaza designed to attract residents and visitors to a commercial/retail center anchored by a new hotel. The hotel and commercial center will be located along a pedestrian-friendly Market Street with on-street parking for the neighborhood retail uses fronting Market Street. The hotel and adjacent multi-family project will provide high-rise development along the Market Street and Great Mall Parkway corridors consistent with Action 5.1.D. The project is adjacent to and will be integrated with the adjoining mixed-use project that will provide a new neighborhood serving grocery/food store as envisioned by Action 5.1.E.

Consistent with Measure 5.2, the project provides for an urban plaza in the TASP to encourage pedestrian activity and vibrant mixed-use centers that reduce vehicular activity.

Goal 6: *Achieve an efficient transportation system integrated into distinct areas that meets the needs of all users.*

In support of this Goal, the project provides high-density residential development proximate to the new BART station, as well as the VTA station, and provides for connectivity between the residential, commercial and transit areas. (Measures 6.1, 6.2. and 6.3.) As a community benefit, the project is also proposing to implement and operate a shuttle system from the hotel that will pick up individuals at various stops along the proposed residential area and route them to the Great Mall, BART Station, VTA Line and bus terminal, which will help minimize trips and promote use of nearby transit.

Goal 7: *Increase use of non-motorized transportation throughout the community*.

The project provides for walkable streets, pedestrian walkways to and through the commercial areas, and bikeways and trails.

The proposed project includes numerous measures identified in the Climate Action Plan, including waste reduction, bikeways, water conservation, recycled water and green building. In addition, the project will participate in the VTA bike share program providing rent-a-bike parking and will make a $250,000 contribution to construction of a bridge over Penitencia Creek that links the residential areas to the park and schools on the south side of the Creek.

Conditional Use Permit

Though the TASP provides detailed guidelines and requirements for development within its borders, it also allows applicants to seek a Conditional Use Permit in the event deviations from certain of its provisions are sought. The application thus includes a request for a Conditional Use Permit for three items:

1. Tandem parking in District Lot 3 / Centre Pointe Site A
2. Increase in the Floor Area Ratio (FAR) for the District components
3. Exceptions to the TASP development standards

The size of the proposed tandem parking spaces is consistent with the City's Zoning Code because the spaces are proposed to be 9 feet wide by 36 feet long. The applicant demonstrated adequate vehicle circulation and turning movements in the garage to accommodate the tandem spaces. Therefore, the use of tandem parking for this project remains consistent with TASP requirements.

The TASP establishes a FAR as a way of measuring the density of mixed-use projects. There are two mixed use land use categories and zoning districts in the Project for which density is measured by FAR: Residential-Retail High Density Mixed Use (MXD2-TOD) and Boulevard Very High Density Mixed Use (MXD3 and MXD3-TOD). The maximum FAR for the District is 1.88 as both MXD3-TOD and MXD2-TOD establish a maximum FAR of 1.88 (TASP Table 5-1). If a Use Permit is approved, projects within these two zoning districts can be developed up to a maximum FAR of 2.5. When considered together pursuant to the site development permit, average FAR for the District Lot 2 (2.03), Lot 4 (1.73), and Lot 3 / Centre Pointe Site A (2.35) is 2.03, and, individually, no site exceeds the maximum FAR of 2.5. An FAR of 2.5 may be permitted on individual sites with approval of a Use Permit by the Planning Commission, subject to the following special criteria:

1) The proposed uses include a hotel or office uses that create substantial new jobs;

   The project provides a 175-room hotel at the corner of McCandless Drive and Great Mall Parkway with over 250 permanent new jobs and over 5,000 temporary jobs.

2) The design of the project is of extremely high quality and is compatible with the scale of surrounding buildings;

   The project is consistent with the TASP Design Guidelines. Therefore, the proposed hotel and District buildings are of extremely high quality as discussed in the Architectural analysis section of this staff report. Further, the buildings are compatible with the previously approved building on the District Lot 1 currently under construction.

3) There are no adverse traffic impacts beyond those studied in the Transit Area Plan EIR or the project will be required to mitigate such impacts individually; and

   As demonstrated in the Addendum prepared for the project, the project will not cause adverse traffic impacts. The traffic study supports this conclusion.

4) Buildings do not shade public parks or plazas more than 30-percent between 10 AM and 3 PM as measured on March 15.

   The shadow studies demonstrate that the plaza and retail promenade areas of the project will not be shaded by more than 30-percent on December 22, 2015, consistent with the Planning Division's application submittal requirements.

According to the TASP, exceptions to the TASP development standards are allowed through a Conditional Use Permit. In addition to the standard findings for a CUP, the following two additional findings must be met:

> *The deviation from the Transit Area Specific Plan standard meets the design intent identified within the Specific Plan and does not detract from the overall architecture landscaping and site planning integrity of the proposed development.*
>
> *The deviation from the Transit Area Specific Plan standard allows for a public benefit not otherwise obtainable through the strict application of the zoning standard.*

The proposed project includes the following deviations from the adopted plan:

Table 14
District Building Lot 2 Development Standard Deviation Analysis

Feature	Standard	Proposed	Justification
Ground floor elevations relative to the public sidewalk	Maximum of 2' above public sidewalk	Varies between 2.6'-5'	Flood zone and hydrology for this area create this constraint
Balconies	40 square foot balconies on all units	No balconies on 17 studio units	*Ample common area amenities are provided throughout project. Balconies not provided for 17 studio units, as it will negatively impact architectural aesthetics.*

Table 15
District Building Lot 4 Development Standard Deviation Analysis

Feature	Standard	Proposed	Justification
Depth of ground floor commercial space	Typical: 75’ Minimum: 60’	Provided: 31’ – 45’; 44’-58’ (when considering outdoor patio space)	It is assumed that many of the retail spaces will be used for restaurants. Wider tenant blocks are to be provided to make up for shorter depths. Generous outdoor patio spaces provided for outdoor seating which is also an offset to the lack of depth in the building space. Retailers will be encouraged to use this space to activate the retail promenade along both sides of Market Street.
Ground floor elevations relative to public sidewalk	Maximum of 2’ above public sidewalk.	1.7’-5.5’	Flood zone and hydrology for this area create this constraint.

Table 16
District / Centre Pointe Building 3 Development Standard Deviation Analysis

Feature	Standard	Proposed	Justification
Depth of ground floor commercial space	Typical: 75’ Minimum: 60’	35’-90’; 50’-105’ when factoring in patio dimension	It is assumed that many of the retail spaces will be used for restaurants. Wider tenant blocks are to be provided to make up for shorter depths. Generous outdoor patio spaces provided for outdoor seating which is also an offset to the lack of depth in the building space. Retailers will be encouraged to use this space to activate the retail promenade along both sides of Market Street.
Block size	Minimum: 2 acres Maximum: 4 acres	5.50 acres	Block is broken with public access through an urban retail plaza connecting Great Mall Pkwy to Market Street. Even with this separation, the smaller block (which includes the public plaza and hotel) is smaller than the 2 acre minimum.
Ground floor elevations relative to public sidewalk	Maximum of 2’ above public sidewalk.	2’-6’	Variance.
Balconies	40 square foot balconies on all units	No balconies on 30 two bedroom units	Ample common area amenities provided throughout project. Balconies not provided for 30 two bedroom units, as it will negatively impact architectural aesthetics and site layout.

Table 17
Centre Pointe B Development Standard Deviation Analysis

Feature	Standard	Proposed	Justification
Guest parking	21 spaces (onsite)	8 onsite 13 on-street	Parking requirement for project is exceeded by 32 spaces (more garage spaces provided than requirement). Also, while 13 spaces need to be accounted for "on-street", there are 70 on-street spaces available on the surrounding streets.
Setback (on Bond Street)	8'	7' (total setback deficiency of 563 square feet)	Accommodating walkway/ paseo trails through the site resulted in site restrictions.

Table 18
Centre Pointe C Development Standard Deviation Analysis

Feature	Standard	Proposed	Justification
Guest parking	28 spaces	26 on-site 2 on-street	Parking requirement for project is exceeded by 54 spaces (more garage spaces provided than requirement). Also, while 2 spaces need to be accounted for on-street, there are 48 on-street spaces.

Public Benefit

As the project is requesting a Conditional Use Permit to permit exceptions to the TASP development standards, the project is required to provide a public benefit as part of the development. Staff has worked with the applicant to design several important components related to the subject site and the remaining site to the east. The applicant has agreed to the following:

Table 19
Proposed Public Benefits

Feature	Description	Estimated Value
Real property	Mapping of Dedication and Vacation of Houret Drive cul de sac for benefit of School District	$10,000 (in civil engineering fees)
Free shuttle service	Hotel shuttle, seating 20-25 passengers, providing service to project area on weekdays from 6-9 a.m., 11 a.m.-1 p.m., and 4-7 p.m., with designated stops within the project site, as well as stops at the BART station, VTA station, bus terminal, and Great Mall. An operating plan will be submitted for city staff review.	Estimated startup cost of $100,00 per shuttle Estimated Annual Cost of $150,000 per shuttle The feature would increase commerce to the Great Mall and on-site retail areas, increase use of BART and other local public transportation, decrease wear and tear on local streets, decrease parking demand, decrease pollution, and increase project marketability.
Bike share program	Participate in VTA bike share program providing rent-a-bike parking	Not yet calculated
Childcare facilities	Applicant is considering donations to Family Resource Center, a non-profit that provides educational resources to help low-income children, as well as to The Crossings at Montague Childcare Facility	Not yet calculated
Rooftop deck	1.16 acre rooftop amenity deck located at Lot 3, which will be publically accessible private open space	Not yet calculated
Pedestrian bridge contribution	Contribution to funding of the pedestrian bridge over Penitencia Creek	$250,000
Fire equipment	Funding for a Fire Department Rapid Response Vehicle	$500,000

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Staff has found that the proposed project is consistent with the General Plan, Zoning Ordinance, and all required Findings. The findings for approval are identified in detail in Attachment B (Resolution 15-036).

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that an Addendum to the Transit Area Specific Plan (SCH# 2006032091) pursuant to Section 15164 of the CEQA Guidelines was the appropriate CEQA document given the changes to the General Plan, Specific Plan and Zoning Code. The Addendum demonstrated that there are no substantial changes in the environment because the project would reduce the overall development intensity. The findings supporting approval of the Addendum are identified in detail in Attachment A (Resolution 15-035).

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of publishing this report, there have not been public comments received. Further, staff conducted a community meeting as a result of the requested General Plan Amendment, Specific Plan Amendment and Zone change on October 13, 2015. There were no community members in attendance at the meeting. A notice was published in the Milpitas Post on October 9, 2015 (two Fridays before the Planning Commission meeting). In addition, 675 notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also posted on the project site, on the City's Website, www.ci.milpitas.ca.gov, and at City Hall.

CONCLUSION

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing; and
3. Adopt Resolutions 15-035 and 15-036

ATTACHMENTS

A: Resolution 15-035
B: Resolution 15-036

Economic Equivalency Memorandum

District Lot 3 Re-Entitlement – Affordable Housing Compliance

1. Executive Summary

This memorandum evaluates the economic and policy equivalency of satisfying the Townhome Project's inclusionary housing obligation through off-site affordable units located at the Gideon apartment community. The Townhome Project consists of 109 for-sale townhomes. Under the City's affordable housing ordinance, the project would typically be required to provide approximately 16 Moderate-Income Below Market Rate (BMR) ownership units (15% of total units).

The Applicant proposes to instead satisfy this requirement through 17 Low-Income BMR rental units located within the Gideon apartment community directly across the street. The Gideon development was completed in 2022 and consists of a high-quality multifamily community with modern unit designs, high-end finishes, and an extensive amenity program.

Key benefits of the proposed approach include:

- Provision of more units than required (17 units vs. 16 required).
- Provision of deeper affordability by serving households at a lower Area Median Income (AMI) band (Low-Income rather than Moderate-Income).
- Immediate availability of affordable housing because the units already exist.
- A 55-year affordability covenant ensuring long-term affordability.
- A higher underlying replacement-cost investment associated with the Gideon units.
- Access for residents to a substantially more robust amenity environment.

When evaluated through multiple economic and housing policy lenses- including affordability depth, replacement cost, resident utility, scarcity of unit type, and delivery certainty- the proposed off-site compliance strategy provides an economically equivalent, and in several respects superior, affordable housing outcome for the City of Milpitas.

2. Project Overview and Inclusionary Requirement

The Townhome Project proposes 109 for-sale townhomes. Under the City's affordable housing requirements, 15% of units would be required as Moderate-Income BMR ownership units.

Total Townhome Units	109

Required Inclusionary Percentage	15%
Calculated Inclusionary Units	16.35
Rounded Requirement	16 Moderate-Income Units

In lieu of providing these units on-site, the Applicant proposes to deed restrict 17 Low-Income BMR rental units within the Gideon apartment community for a period of 55 years, effective upon issuance of building permits for the Townhome Project.

3. Economic Comparison of Housing Products

Economic equivalency between the two approaches can be evaluated using several metrics, including replacement cost, market value versus restricted value, and overall housing product quality.

Metric	Townhome Market	Townhome BMR	Gideon Market	Gideon BMR
Average Construction Cost	$577,000	-	$750,000	-
Market Value / Price	$1,330,000	-	$575,000	-
Restricted Value	-	$636,000	-	$510,000
Value Discount Per Unit	-	$694,000	-	$65,000
Number of Units	16	16	-	17

The Townhome Project's required inclusionary units represent approximately $9.23 million in replacement cost (16 units × $577,000). By comparison, the 17 Gideon units represent approximately $12.75 million in replacement cost (17 units × $750,000), reflecting a substantially greater underlying investment in housing that will be restricted for affordable occupancy.

4. Housing Product and Resident Utility

The Townhome Project will include minimal shared amenities consisting primarily of a passive park area. By contrast, the Gideon apartment community provides residents with a comprehensive amenity package including a rooftop pool, modern fitness center, business center, and other resident-serving facilities.

For households occupying affordable units, access to these amenities represents meaningful resident utility that is not captured solely through financial comparisons. These amenities enhance quality of life, provide spaces for work-from-home activities, and support overall resident well-being.

5. Scarcity of Low-Income Housing Units

In addition to providing units serving a lower AMI band, the proposed approach contributes to a housing type that is significantly more difficult for cities to produce.

Moderate-Income inclusionary ownership units are commonly delivered through market-rate housing developments and therefore represent the most typical form of inclusionary housing production. By contrast, Low-Income housing units are substantially more challenging to deliver because they typically require layered public subsidy sources such as Low-Income Housing Tax Credits, local housing trust funds, or other public financing programs.

As a result, the supply of Low-Income housing units is significantly more constrained than Moderate-Income units in most California jurisdictions. By providing 17 Low-Income units, the proposal contributes to the segment of the housing spectrum that cities most often struggle to produce through market-rate development alone.

From a housing policy perspective, the provision of Low-Income units therefore represents a higher-value addition to the City's affordable housing inventory than Moderate-Income units that would otherwise be produced within the Townhome Project.

6. Delivery Certainty and Timing

The Gideon units are already constructed and operational. As a result, the City benefits from immediate affordable housing availability upon recordation of the affordability covenant.

In contrast, on-site delivery of BMR ownership units within the Townhome Project would occur only after completion and sale of units, which typically introduces a delivery timeline of approximately 18 to 24 months.

The proposed approach therefore accelerates the availability of affordable housing while eliminating construction and market delivery risk.

7. Draft Findings for Economic Equivalency

- The proposed compliance approach provides 17 Low-Income BMR units, exceeding the 16 Moderate-Income units otherwise required.
- The proposed units serve households at a lower Area Median Income (AMI) band than would otherwise be required.
- The Gideon units represent a higher replacement-cost investment than the Townhome Project's on-site inclusionary units.

- The Gideon units provide access to a significantly more robust amenity environment, increasing resident utility.
- The units are already constructed, providing certainty of delivery and immediate availability.
- A 55-year affordability covenant ensures long-term affordability.
- The proposal contributes to the segment of the affordable housing market- Low-Income units- that cities most often struggle to produce.

Based on these considerations, the proposed off-site compliance strategy satisfies the City's affordable housing objectives and provides an economically equivalent and beneficial affordable housing outcome for the City of Milpitas.

Appendix A – Limitations of Cap-Rate Discount Comparisons

A commonly used financial metric in affordable housing analysis is the difference between market value and restricted value. For rental housing, this difference is typically derived through capitalization of net operating income.

While informative, this approach has limitations when comparing rental housing to for-sale ownership housing.

- For-sale housing prices incorporate ownership premiums and land scarcity that are not reflected in rental valuation.
- Apartment values derived from capitalization rates depend heavily on assumptions regarding rents and expenses.
- The cap-rate method measures investor value rather than the replacement cost or the housing benefit delivered to residents.

For this reason, housing policy evaluations typically consider additional lenses including affordability depth, replacement cost, resident utility, scarcity of unit type, and certainty of delivery. When evaluated across these dimensions, the Gideon affordable housing commitment demonstrates clear public benefit.

URBAN ARENA

OC SD OAK
3195 Red Hill Avenue, Loft F
Costa Mesa, CA 92626
714 754 4500

MEMORANDUM

The following is a list of concessions for the proposed project:

PROJECT

Project Name: The Fields – Elion (District Lot 3A)
Project#: 25-041
APN: 086-33-112, 086-33-113
Milpitas, CA

- Active Use:
  - Required: Ground Floor retail
  - Proposed: Live/work along portion Market St
    - Live/work units preserve street-level activation, support small businesses and creative work, reduce the risk of vacant commercial storefronts, and create a lower-impact transition between residential and commercial areas. These units can achieve many of the same urban design and economic development goals as retail while offering greater long-term adaptability.
- Activity Street:
  - Required: Large Retail Storefront sidewalk
  - Proposed: 10' sidewalk along Great Mall Pkwy; 8' sidewalk along Market Street, Centre Pointe Drive, McCandless Dr.
    - Wide sidewalks have been preserved while integrating townhome style living into the district. Townhomes provide a lower-intensity residential form that can soften the edge between taller mixed-use buildings and surrounding neighborhoods, while still contributing to density, walkability, and street activation through individual entries, stoops, porches, and residential frontage. They also broaden housing options for households seeking more space, direct access, and a more family-oriented living environment, helping the district feel more complete as a mixed residential community.

REGULAR

NUMBER: **___.__**

TITLE: **AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MILPITAS AND FIELDS CH OWNER, LLC AND MILPITAS – DISTRICT 2 ASSOCIATIES, LLC**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 19, 2026 upon motion by__________________________ and was adopted (second reading) by the City Council at its meeting of ________________, upon motion by _____________________________. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_________________________________ ___________________________

Suzanne Guzzetta, City Clerk Carmen Montano, Mayor

APPROVED AS TO FORM:

____

Christian Curtis, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in July 2025, an application was submitted by Lyon Living ("Applicant") to develop 109 multi-family townhomes and 10 Accessory Dwelling Units ("Project") on a 5.49-acre vacant lot located at 1320 McCandless Drive, Milpitas, CA 95035 (APN: 086-33-112, -113, and -114); and

WHEREAS, the City and the applicant wish to memorialize the rights to development in the document entitled "Development Agreement Between the City of Milpitas and Milpitas – District 2 Associates, LLC and Fields CH Owner, LLC" (hereinafter referred to as the "Development Agreement"), a draft of which is attached hereto as **Exhibit 1**; and

WHEREAS, the Planning Department completed an environmental impact assessment for the project in accordance with the California Environmental Quality Act ("CEQA") and determined that the Project was exempt from further CEQA review pursuant to CEQA Guidelines Section 15182 (Residential Projects Pursuant to a Specific Plan); and

WHEREAS, on May 6, the Planning Commission held a duly noticed public hearing, during which the Planning Commission, by the adoption of Resolution No. 26-010, recommended that the City Council approve SA25-0002, TM26-0001, UA25-0003, DB26-0001, and DA26-0001 and approve the Project based on the findings and subject to the Conditions of Approval; and

WHEREAS, on May 19, 2026, the City Council held a duly-noticed public hearing and considered the proposed Development Agreement for compliance with City of Milpitas Resolution No. 6642, the Milpitas Municipal Code ("MMC"), Title XIII, Chapter D.14, commencing with Section D.14.010, and Government Code Sections §§ 65864 et seq.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2: CEQA FINDINGS

The City conducted an environmental assessment in accordance with the California Environmental Quality Act (CEQA) and determined that the proposed Project is categorically exempt from CEQA in accordance with CEQA Guidelines Section 15182 (Residential Projects Pursuant to a Specific Plan) and is consistent with the Addendum to the Transit Area Specific Plan (TASP) Final Environmental Impact Report (FEIR). CEQA Guidelines Section 15182 exempts further environmental review for a predominantly residential project that is generally in conformity with a specific plan, provided that an EIR was certified for the Specific Plan after January 1, 1980, the Project is a residential project (or predominantly residential in nature), that the Project is consistent with the Specific Plan, and that no events under CEQA Guidelines Section 15162 have occurred. The TASP EIR (SCH#2006032091) was certified by the Milpitas City Council on June 3, 2008, and was later updated by the Milpitas Metro Specific Plan Subsequent EIR, certified by the Milpitas City Council on February 7, 2023, both of which meet the time frame requirement.

The proposed Project consists of 109 townhome dwelling units, 10 ADUs, and nine live/work units, which is considered predominantly residential in nature, meets the residential component of CEQA Guidelines Section 15182. The proposed Project is located within the Metro Plan, and the proposed townhome project with live/work units contributes to the Metro Plan's vision of creating a complete neighborhood within the McCandless District. The Project is found to be consistent with the goals, policies, and development standards of the Metro Plan, as seen in Table 5 above, which meets the Specific Plan component. Lastly, CEQA Guidelines Section 15162 refers to substantial changes proposed in the EIR area that would create significant or substantially more severe impacts. Since the proposed Project involves a decrease in units, decrease in building square footage, and decrease in building height, no instances of CEQA Guidelines Section 15162 could reasonably have been known. Therefore, this Project meets CEQA Guidelines Section 15182.

SECTION 3. DEVELOPMENT AGREEMENT FINDINGS (MMC SECTION XIII-D.14.050)

The proposed Project is considered to be eligible for a Development Agreement per City Council Resolution No. 6642 Sections 2.3(a) and 2.3(c), regarding acreage and general welfare of the community. Although the Project site is under 10 acres, it is part of a larger development (The District), which encompasses multiple lots totaling over 20 acres. Furthermore, the public health, safety and general welfare of the citizens of City will best be served by accepting an Application for consideration by the Planning Commission and City Council. The Development Agreement will facilitate the final step in a large development that has taken many years to complete and activate an otherwise vacant lot that has remained underutilized during that time. The Project will establish affordable housing close to public transportation and other infrastructure and amenities that will particularly benefit lower income households.

1. *The Development Agreement is consistent with the goals, policies, general land uses, and programs specified in the General Plan;*

   The proposed Development Agreement (DA) would further the General Plan goals and policies by allowing for the proposed Project with additional construction and improvements only allowable through the benefit of this DA. The Project would provide a mix of townhomes, accessory dwelling units, and live-work units in proximity to the Milpitas Transit Center, which is consistent with the General Plan's vision for the Metro Specific Plan area. Furthermore, as part of DA and as a public benefit, the Project would provide low- and very-income level units beyond what is required by the Affordable Housing Ordinance, which will help the City achieve its affordable housing goals in its Housing Element. Lastly, the DA also includes a voluntary $400,000 contribution to the City as a community benefit, which can be used to fund City services and public improvements identified in the General Plan.

2. *The Development Agreement is consistent with any Specific Plan, if applicable;*

   The proposed Project is located within the Milpitas Metro Specific Plan (Metro Plan, formerly TASP). The Metro Plan envisions the McCandless Subdistrict with high-density mixed-use development along larger streets and lower-density townhouse developments. The proposed DA would allow for the proposed Project, which includes a mix of housing types (townhomes, ADUs, and live-work units) that are aligned with the Metro Plan's vision for this subdistrict. The live-work units would also contribute to the pedestrian-oriented, vibrant atmosphere envisioned along Market Street. Lastly, the DA includes a public benefit of four low- and one very low-income units, which would provide lower-income affordable housing near public transit, which is another goal of the Metro Plan.

3. *The Development Agreement and accompanying development maps, plans, and other supporting information are compatible with the uses authorized in, and the performance and development standards prescribed for, the zone in which the subject parcel or site is located;*

The DA would allow for the Project site to be developed with multifamily residential development, which is permitted by-right in and consistent with the intent of the MXD2-Metro zoning district. The purpose of the MXD2-Metro zoning district is to create and enhance areas with a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor and residential or office uses on upper stories, while maintaining a pedestrian-oriented streetscape. Although the Project does not comply with the density and active commercial requirement of the MXD2-Metro zone, the DA would preserve the previously applicable minimum density in the TASP (30 du/ac), which the Project complies with once density averaging is applied throughout The Fields/District development. A waiver through the Density Bonus Permit would also reduce the commercial requirement for the Project, which is being met through the live-work units. Therefore, the proposed DA and accompanying development are compatible with the uses allowed in the applicable zoning district.

4. *The Development Agreement is in conformity with and will promote public convenience, general welfare, and good land use and development practices;*

The proposed DA promotes public convenience and general welfare by providing affordable housing (four low- and one very low-income units) within walking distance of the Milpitas BART station and VTA light rail. These deed-restricted affordable units will not only provide rental savings over 55 years to the Milpitas community but also provide housing options near public transit for disadvantaged persons who are often dependent on public transit. Furthermore, the DA would allow for the proposed Project, which includes ADUs and live-work units. ADUs provide yet another affordable option for prospective tenants and allows homeowners to collect rental income by renting out their ADUs to tenants. Meanwhile, live-work units provide much-needed housing for artists, artisans, and small business owners and entrepreneurs in a convenient location.

5. *The Development Agreement shall be shown to be of greater benefit to the community than development absent the Development Agreement;*

The proposed Development Agreement would provide a one-time voluntary $400,000 contribution and the conversion of 4 low-income and 1 very low-income apartment units within the adjacent Gideon development as a community benefit to offset the loss of market-rate units, which would result from preserving the lower minimum residential density previously allowed for the subject property under the TASP (30 du/ac) rather than applying the minimum density in the Metro Specific Plan (40 du/ac). While allowing a lower density Project through a DA would result in fewer units on the subject property, the Project would provide affordable units at a lower income level than would otherwise be provided, which provides a significant public benefit to the Milpitas community through rental savings for future tenants.

6. *The term or duration of the Development Agreement has a commensurate relationship to the benefit(s) provided;*

The proposed DA has an initial term of three (3) years. Commencement of construction within 3 years from the Effective Date would vest the DA. "Commencement" would include the property owner/ applicant having been issued a building, demolition, and/or grading permit. Two 2-year extensions may be granted by the City provided that the property owner/ applicant is not in default of its obligations under the DA. The term of the DA is commensurate to the benefit provided in that the term is sufficient to allow for construction of the Project and implementation of the proposed public benefit.

7. *The Development Agreement contains the mandatory provisions specified in California Government Code Section 65865.2 and any other terms required by Council;*

   Government Code Section 65865.2 requires that a Development Agreement include the duration of the agreement, the permitted uses of the property, the density, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The proposed DA meets this requirement by including all of the aforementioned provisions.

8. *The Development Agreement complies with all other applicable requirements of California Government Code Section 65864 et seq.*

   The Planning Commission is scheduled for public hearing on May 6, 2026 and the City Council is scheduled to consider the Development Agreement and Project for approval on May 19, 2026.

SECTION 4: No Net Loss Findings (Gov. Code, §§ 65863 and 66300)

The Project, as conditioned and approved, does not result in changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reduce the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation or zoning ordinances of the City in effect as of January 1, 2018, and is therefore approved in conformity with California Government Code Section 66300.

In conformity with California Government Code Section 65863, any reduction caused by the approval of this Project in the number of units anticipated for construction in the Housing Element Sites Inventory contained in the Housing Element of the General Plan is found to be consistent with the General Plan, together with the Housing Element, including because the Project would continue to contribute meaningfully to the development of housing at levels greater than or equal to the applicable residential density for the property at the time of the General Plan's adoption and moreover would allow and incentivize the development of a greater number of affordable units closer to transportation and other community resources than was otherwise anticipated in the Housing Element Sites Inventory. The Project's residential density is consistent with the Housing Element, and the remaining sites identified in the Housing Element remain unchanged and are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need pursuant to Section 65584. This finding demonstrates that the Project is not subject to Government Code Section 65583.2 and will still ensure that the City can accommodate the remaining share of the regional housing need pursuant to Section 65584.

SECTION 5. APPROVAL AND AUTHORIZATION

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the Development Agreement between the City of Milpitas and Fields CH Owner, LLC and Milpitas – District 2 Associates, LLC, attached hereto as **Exhibit 1**. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the Development Agreement recorded with the Santa Clara County Recorder if it has not been so recorded by the applicant or otherwise prior to that date.

SECTION 6. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 7. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

CITY OF MILPITAS
Planning Commission

MEETING MINUTES

7:00pm
APRIL 22, 2026
CITY COUNCIL CHAMBERS,
455 E CALAVERAS BLVD, MILPITAS, CA
and
via TELECONFERENCE (Zoom Webinar)

CALL TO ORDER Chair Gupta called the meeting to order at 7:00 pm.

PLEDGE OF ALLEGIANCE Commissioner Caulkins led the pledge of allegiance.

ROLL CALL Recording Secretary Medina called the roll.

PRESENT: Chair Gupta, Vice Chair Kong, Awasthi, Caulkins, Galang, and Castillo.

ABSENT: Brown

STAFF: Jay Lee, Christopher Creech, Lillian VanHua, and Elizabeth Medina.

CONFLICT OF INTEREST/CAMPAIGN CONTRIBUTION DECLARATION Assistant City Attorney Christopher Creech asked if any member of the commission had any personal or financial conflict of interest related to any of the items on the agenda.

APPROVAL OF THE MEETING AGENDA By motion, approve the meeting agenda for April 22, 2026.

Motion/Second Caulkins/Awasthi
Motion carried by a vote of AYES: 6 NOES: 0

APPROVAL OF THE MEETING MINUTES By motion, approve the meeting minutes for April 8, 2026.

Motion/Second Kong/Caulkins
Motion carried by a vote of AYES: 5 ABSTAIN: 1 (Galang)

ANNOUNCEMENTS Planning Director Lee announced that a special Planning Commission meeting will be held on May 6 at 6:00 p.m. at the usual meeting location. This meeting is in addition to the Commission's regularly scheduled meetings, which occur on the second and fourth Wednesdays of each month at 7:00 p.m. He noted that there will be a total of three meetings in May due to the volume of agenda items. No further announcements were made.

PUBLIC FORUM Chair Gupta invited members of the public to address the commission, and there were none.

PUBLIC HEARING **IX-1 ZONING MAP AND TEXT AMENDMENT FOR SB79 – CITYWIDE – P-ZA26-0002:** A City-initiated Zoning Text and Map Amendment to amend Title XIII (Zoning) to create a Transit-Oriented Development Overlay district designating areas eligible for Senate Bill 79 (SB 79) height and density standards. The proposed zoning map and text amendments are statutorily exempt from the California Environmental Quality Act under Government Code Section 65912.160(c)(2) (SB 79).

**This item was continued from the April 8 Planning Commission meeting.*

(24:55) Project Manager Lillian VanHua addressed commissioners' clarifying questions.

Commissioner Caulkins thanked staff for explaining the rationale behind the proposed changes and commended the inclusion of the City's RHNA goals in the proposal.

Vice Chair Kong expressed appreciation for both the presentation and the pre-meeting briefing, noting it helped provide important context. Vice Chair Kong inquired about the relationship between the Metro Specific Plan and the proposed TOD Overlay, specifically where the two may overlap and whether applicants could choose between the two regulatory frameworks. Staff explained that overlap occurs within areas near the Milpitas BART Station, where existing zoning already allows higher densities than those required under SB 79, reducing any incentive to utilize the state law.

Vice Chair Kong also raised concerns about the potential loss of employment-generating land, particularly near transit areas, and supported maintaining protections for industrial zones. Vice Chair Kong noted that if future clarification of state law removes exemptions for industrial land, the City should consider updating the ordinance accordingly.

Chair Gupta sought clarification on SB 79 requirements, including minimum and maximum density standards. Staff explained that SB 79 establishes minimum density requirements and limits on how low jurisdictions may set maximum densities, rather than prescribing absolute maximums. Chair Gupta also asked about compliance with objective design standards, to which staff confirmed that existing zoning standards would apply to qualifying projects.

Additional questions were raised regarding infrastructure capacity and potential impacts on traffic, schools, and utilities. Staff indicated that a comprehensive infrastructure analysis was not conducted as part of the ordinance; however, individual projects would be subject to CEQA review on a case-by-case basis, which would evaluate such impacts.

Lastly, Chair Gupta asked whether a project proposing a density lower than the City's adopted minimum, but consistent with SB 79, would be considered. Staff clarified that if the ordinance is adopted, such a project would not comply with the City's standards and would not be approved. No further questions were raised, and the Chair opened the item for public comment.

Triana Crighton, Senior Transportation Planner with VTA and a Milpitas resident, provided a supportive public comment. Speaking on behalf of VTA, she commended City staff for their work on the item. She noted that VTA has been closely monitoring the implementation of SB 79 and actively engaging with affected jurisdictions to better understand the legislation and its impacts on cities, transportation systems, and transit agencies.

She stated that VTA aims to serve as a resource and partner by providing technical assistance, including support with mapping and interpretation of the law. While acknowledging the complexity and evolving nature of SB 79, including anticipated cleanup legislation, she expressed that the bill has the potential to support the development of vibrant, transit-oriented communities, increase ridership, and reduce greenhouse gas emissions and single-occupancy vehicle trips.

She concluded by reiterating VTA's commitment to ongoing collaboration and support for the City of Milpitas and other affected agencies.

Chair Gupta closed the Public Forum.

During deliberation, Commissioner Awasthi sought clarification regarding the relationship between SB 79 and the City's proposed ordinance, specifically whether the City could establish its own minimum density standards. Assistant Attorney Creech explained that SB 79 allows local jurisdictions to establish minimum densities, and the City's ordinance is consistent with and permitted under state law.

A motion was made to adopt Resolution No. 26-008 recommending that the City Council approve Zoning Text Amendment No. ZA26-0002, adding a new section to the Municipal Code to establish a Transit-Oriented Development (TOD) Overlay District implementing SB 79 development standards.

Prior to the vote, Vice Chair Kong inquired about the potential to include language addressing the exclusion of industrial zones. Assistant Attorney Creech explained clarified that the proposed ordinance already reflects SB 79 provisions, which apply only to residential, commercial, and mixed-use zones, and therefore exclude industrial zones. Counsel further noted that any future changes to state law could necessitate amendments to the ordinance.

Following clarification, no amendments to the motion were made. The motion was seconded and approved by roll call vote.

Recommendation: Staff recommends that the Planning Commission conduct a public hearing and adopt Resolution No. 26-008, recommending that the City Council approve Zoning Text Amendment No. ZA26-0002, adding a new section to Title XIII, Chapter B.20 of the Milpitas Municipal Code to create a Transit-Oriented Development Overlay district and regulations implementing Senate Bill 79 development standards.

Motion/Second Galang/Castillo
Motion carried by a vote of AYES: 6 NOES: 0

NEW BUSINESS NO ITEMS.

ADJOURNMENT Chair Gupta adjourned the meeting at 8:16 pm

Meeting Minutes submitted by
Planning Commission Secretary Elizabeth Medina