

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
 APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT TO ALLOW  
 THE CONSTRUCTION OF A NEW 5-STORY, 185 ROOM HOTEL WITH ASSOCIATED  
 SITE AND LANDSCAPING IMPROVEMENTS LOCATED AT 10801 AND 10805  
 NORTH WOLFE ROAD (APN: 316-45-017 AND 316-05-56)

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SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2017-09  
 Applicant: Kimco Realty (Michael Strahs)  
 Property Owner: Cupertino Village, LP  
 Location: 10801 and 10805 North Wolfe Road (APN: 316-45-017 and 316-05-56)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an Architectural and Site Approval as described in Section I. of this resolution; and

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance, Chapter 19.12 of the City of Cupertino’s Municipal Code, and the Planning Commission has held at least one public hearing in regard to this application; and

WHEREAS, the City of Cupertino’s Environmental Review Committee at its December 13, 2018 meeting reviewed the Draft Mitigated Negative Declaration (“Draft IS/MND”), received public comments, and recommended adoption of a Mitigated Negative Declaration on a 5-0 vote with minor modifications, and provided measures that ensure the least impactful development of the proposed hotel; and

WHEREAS, on June 11, 2019, the Planning Commission, after considering the administrative record and the public hearing, exercised its independent judgment and recommended adoption of the Final Draft IS/MND (EA-2017-06) for the Project on a 4-0-1 vote, which incorporated all the identified mitigation measures as conditions of approval for the Project prior to taking final action on the Project; and

WHEREAS, on June 11, 2019 the Planning Commission recommended on a 4-0-1 vote that the City Council approve the General Plan Amendment (GPA-2017-05), in substantially similar form to the Resolution presented (Resolution no. 6876), approve the Development Permit (DP-2018-04) in substantially similar form to the Resolution presented (Resolution No. 6877), approve the Architectural and Site Approval Permit (ASA-2017-09) in

substantially similar form to the Resolution presented (Resolution No. 6879), approve a Use Permit (U-2018-03) in substantially similar form to the Resolution presented (Resolution No. 6881), approve the Tree Removal Permit (TR-2017-46) in substantially similar form to the Resolution presented (Resolution no. 6880) and approve a Development Agreement (DA-2017-01) in substantially similar form to the Ordinance presented (Resolution No. 6878); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, on July 16, 2019, upon due notice, the City Council held a public hearing to consider the Architectural and Site Approval; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on July 16, 2019, the City Council exercised its independent judgment and adopted Resolution No. [####] adopting the Final IS/MND, Resolution No. [####] adopting the General Plan Amendment, Resolution No. [####] approving a Development Permit, Resolution No. [####] approving a Use Permit, and Resolution No. [####] approving a Tree Removal Permit; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The proposal, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*Given that the project is consistent with the General Plan and Zoning Ordinance; has been designed to be compatible with and respectful of adjoining land uses; and that relevant mitigation measures will be incorporated as part of the CEQA review process to mitigate potential impacts to a less than significant level, the project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:
  - a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

*The proposed project is a redevelopment of a commercial site with a new five (5)-story building. The project will provide for a new building design that incorporates new building requirements, provide high quality architecture, and updated frontage improvements (furniture and landscaping) aimed at increasing pedestrian friendliness. The project avoids abrupt changes and provides transition by observing height and setback requirements detailed in the General Plan, including a 1:1: slope line from North Wolfe Road and a building height less than 60'.*

- b) In order to preserve design harmony between new and existing building and in order to preserve and enhance property values, the materials, textures and colors of new building should harmonize with adjacent development by being consistent or compatible with design and color schemes with the future character of the neighborhoods and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners.

*The design and proposed improvements have been designed to harmonize with adjacent development by providing update increased setbacks from the adjacent residential use, updated landscaping throughout the project site, and active uses (restaurant, meeting rooms, and rooftop lounge) away from the residential areas. Unsightly uses such as loading and trash pickup have been placed within the building away from view of neighboring uses. Utility installation have been designed to be screened by landscaping and or incorporated into the building design. Additionally, a preliminary photometric plan (lighting) has been provided on the site, and the final lighting for the development will be reviewed with construction documents to meet safety requirements while preserving spill-over light to adjacent properties.*

- c) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development; and

*Signage approval is not included in this application.*

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and

visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

*The project has increased setbacks from the existing residential development. The project has been designed to maintain trees along the western property line and keep the active hotel use more than 90 feet from neighboring residential area.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project (EA-2017-01), subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, and those contained in all other Resolutions approved for this Project,

The application for an Architectural and Site Approval, Application No. ASA-2017-04, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. ASA-2017-09 as set forth in the Minutes of the City Council Meeting of July 16, 2019 Meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set received November 8, 2018 consisting of 48 sheets labeled as Planning Submittal, Table of Contents, 3-43, C1.1, C2.1, C2.2, C3.1, and C.24 drawn by Hornberger + Worstell and Keir & Wright Civil Engineers & Surveyors, Inc, except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. GPA-2017-05, DP-2018-04, DA-2017-01, U-2018-03, TR-2017-46, and EA-2017-06 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

5. FINAL ARCHITECTURAL DETAILS AND EXTERIOR BUILDING MATERIALS

The final building exterior plan shall closely resemble the details shown on the original approved plans. The final building design and exterior treatment plans (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits and through an in-field mock-up of colors prior to application to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

6. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

7. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City.

8. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may 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), has begun. 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.

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PASSED AND ADOPTED this 16<sup>th</sup> day of July 2019, at a Regular Meeting of the City Council of the City of Cupertino, State of California, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST:  _____ Grace Schmidt, City Clerk	_____ Date