

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

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
APPROVAL OF A USE PERMIT  
FOR A PROPOSED MIXED-USE DEVELOPMENT WITH 34  
RESIDENTIAL UNITS, 7,595 SQ. FT. COMMERCIAL SPACE, AND  
THE REMOVAL AND REPLACEMENT OF 51 DEVELOPMENT  
TREES. LOCATED AT 1655 S. DE ANZA BLVD. (APN: 366-10-061, -126)**

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SECTION I: PROJECT DESCRIPTION

Application No.: U-2021-001  
Applicant: Carlson Chan (Prospect Venture LLC)  
Property Owner: Prospect Venture, LLC  
Location: 1655 S. De Anza Blvd. (APNs 366-10-061, -126)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the City of Cupertino received an application for a Use Permit as described in Section I of this resolution; and

WHEREAS, the proposed project, including the Use Permit, is fully described and analyzed in the Initial Study and proposed Mitigated Negative Declaration (State Clearinghouse No. 2022100314) ("IS/MND") for the Project; and

WHEREAS, on May 23, 2023 the Planning Commission recommended on a 5-0 vote that the City Council adopt the Mitigated Negative Declaration (EA-2022-005) and approve the Development Permit (DP-2021-002) in substantially similar form to the Resolution presented (Resolution Nos. 2023-08, -09), approve the Architectural and Site Approval Permit (ASA-2021-004) in substantially similar form to the Resolution presented (Resolution No. 2023-10), approve the Tree Removal Permit (TR-2022-006) in substantially similar form to the Resolution presented (Resolution No. 2023-13), approve the Use Permit (U-2021-001) in substantially similar form to the Resolution presented (Resolution No. 2023-012), and approve the Vesting Tentative Map (TM-2021-003), in substantially similar form to the Resolution presented (Resolution No. 2023-011); and

WHEREAS, all necessary public notices having been given as required by the City of Cupertino Municipal Code and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and

WHEREAS, on June 21, 2023, the City Council held a public hearing to consider the Project; and

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

WHEREAS, the applicant has met the burden of proof required to support the application for a Development Permit.; and

WHEREAS, on \_\_\_\_\_, 2023, the City Council adopted Resolution No. 23-\_\_\_\_\_ adopting the Mitigated Negative Declaration for the proposed project, adopting and incorporating into the Project, and implementing as conditions of approval all of the mitigation measures for the project that are identified in the Final Initial Study/Mitigated Negative Declaration, and adopting the Mitigation Monitoring and Reporting Program for the Project and Resolution No. 23-\_\_\_\_\_ approving the Development Permit for the proposed project; and

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

WHEREAS, the applicant has met the burden of proof required to support the application for a Use Permit; and

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

- a) The proposed development, 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;

*The project is consistent with the land use designations in the General Plan, Zoning Ordinance, and the South Saratoga-Sunnyvale Road Conceptual Zoning Plan. It has been designed to be compatible with and respectful of adjoining land uses, including but not limited to wide setbacks from the single-family residences on the western property line, as well as providing landscaping along the building frontages to help mitigate any massing impacts. Further, the City's environmental consultant, Place Works, prepared an Initial Study, titled "1655 South De Anza Boulevard Mixed-Use Project Initial Study, October 2022," which determined that any significant impacts can be reduced to less than significant levels through the inclusion of mitigation measures. Pursuant to this determination, a Mitigated Negative Declaration (MND) was prepared, finding that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04) being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, and Noise. The MND further identifies project specific mitigation measures in the areas of Noise and Transportation, to reduce the potential environmental impacts of the project to less than significant levels. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

- b) The proposed development will be located and conducted in a manner in accord with the Cupertino General Plan and the purpose of the City's zoning ordinances.

*The General Plan land use designation for the property is Commercial/Office/Residential. The proposed use is consistent with the General Plan in terms of use, density and slope line setback. The applicant is requesting waivers for height and setback, as well as an alternate parking standard as allowed per the Density Bonus Ordinance (CMC 19.56). The proposed development has met the applicable development standards of the South Saratoga-Sunnyvale Road Conceptual Zoning Plan, including rear setbacks adjacent to single-family residential uses. The City's environmental consultant, Place Works, prepared an Initial Study titled, "1655 South De Anza Boulevard Mixed-Use Project Initial Study, October 2022," which determined that any significant impacts can be reduced to less than significant levels. Pursuant to this determination, a Mitigated Negative Declaration (MND) was prepared, finding that the City can rely on the adopted Environmental Protection Standards (Chapter 17.04) being applied as Conditions of Approval to minimize any impacts in several areas such as Biological Resources, Cultural Resources, Noise.. The MND further identifies project specific mitigation measures in the in the areas of Noise and Transportation, to reduce the potential environmental impacts of the project to less than significant levels.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Addendum, subject to the conditions which are enumerated in this Resolution beginning on PAGE 7 thereof, and those contained in all other Resolutions approved for this Project.

The application for a Use Permit, Application No. U-2021-002, is hereby approved, and that the conclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. U-2021-002 as set forth in the Minutes of the City Council Meeting of June 21, 2023 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 dated July 19, 2022 consisting of 72 sheets labeled as 1655 S De Anza Boulevard, A.1– A.46, C1.0 – C10.0, L1 – L5, and E.000-E.103, drawn by Dahlin Group, Sandis, Ripley Design Group, FTF Engineering, and

Emerald City Engineers, 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. EA-2022-005, TR-2022-006, TM-2021-003, DP-2021-002, and ASA-2021-004 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. USE APPROVAL AND PROJECT AMENDMENTS

Approval is hereby granted to allow a residential use in a Planned Development zone that was not allocated units as a Priority Housing Site. The Planning Commission shall review amendments to the project considered major by the Director of Community Development.

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

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "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 related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The

indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel 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. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

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 at a special meeting of the City Council of the City of Cupertino this 21<sup>st</sup> day of June, 2023, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Hung Wei, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	  _____ Date