

**RESOLUTION NO.
A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING A DEVELOPMENT PERMIT FOR A SEVEN (7) UNIT
TOWNHOME DEVELOPMENT LOCATED AT 10046 BIANCHI WAY (APN:
359-07-021)**

SECTION I: PROJECT DESCRIPTION

Application No.: DP-2023-001
Applicant: Leon Hu of Top Mission Realty & Investment, Inc.
Location: 22690 Stevens Creek Boulevard;
APN: 359-07-021

SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:

WHEREAS, the City of Cupertino received an application for a Development Permit (Application No. DP-2023-001) as described in Section I of this resolution; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq.) ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) ("CEQA Guidelines"), the project has been determined exempt under Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects); and

WHEREAS, on December 12, 2023, at a public hearing, the Planning Commission adopted resolutions recommending on a 3-1-1 vote (No: Madhhipatla, Absent: Mistry) that the City Council approve the Development Permit (DP-2023-001) in substantially similar form to the Resolution presented (Resolution No. 23-20), approve the Architectural and Site Approval Permit (ASA-2023-002) (Resolution No. 23-21), approve the Tentative Final Map (TM-2023-001) (Resolution No. 23-22) and approve the Tree Removal Permit (TR-2023-008) (Resolution No. 23-23), in substantially the similar form as presented, except as may be further amended by conditions in this resolution; and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and on January 17, 2024, the City Council held a public hearing to consider the Development Permit; 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.

WHEREAS, the City Council finds:

1. 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 current neighborhood character is a predominant pattern of residential use. Bianchi Way is accessed from Steven's Creek Blvd. and is an approximately .06-mile cul-de-sac with ten parcel frontages along Bianchi Way. Of the ten parcels, eight are one-hundred percent residential use. The current residential uses are of similar densities, and blend of ownership and rental properties. The two remaining lots are commercial use with frontages on both Bianchi Way and Stevens Creek Blvd; both site's parking lots are accessed from Stevens Creek Blvd and avoid Bianchi Way. The project scope has been determined to fall within Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects). The incorporated conditions of approval into the project will further mitigate potential impacts and therefore 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 proposed development will be located and conducted in a manner in accord with the Cupertino Comprehensive 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 residential use for townhome development is consistent with the General Plan. Further, the subject property is zoned as Planned General Commercial/Residential Site. The proposed development has met the applicable development standards of the Heart of the City Specific Plan and is requesting a density bonus and density bonus waivers for certain general plan and Heart of the City development standards as permitted in the City of Cupertino's Municipal Code Chapter 19.56 Density Bonus. Therefore, the proposed development is consistent with the purpose of the City's zoning ordinance.

3. The applicant has requested a density bonus. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that includes a request for density bonus, incentive, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a. A finding that the residential project is eligible for the density bonus and any incentives, parking reductions or waivers requested.

The application is a for a density bonus project that provides for approximately 20% of its base density as Below Market Rate Housing. As 20% of the units on-site will be limited to median/moderate Income residents, it is eligible for a 15% density bonus.

RESOLUTION NO.

Page 3

- b. A finding that any requested incentive will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.

The applicant has requested a concession to remove tree #9 – a 38.5-inch Coast Live Oak tree. However, the application includes a tree removal permit to remove all trees on site. Removal of the tree meets finding 14.18.180(1) and replacement standards per 14.18.160(B)(3) in-lieu tree replacement fee. Additionally, the applicant in attachment 6, outlines that the retention of tree #9 would result in an approximate loss of \$6 million to the applicant due to the loss of three units. Payment of the in-lieu tree replacement fee would not have the effect of physically precluding the Project; and would result in an approximately 5.9-million-dollar cost savings for the applicant, plus any costs necessary to build infrastructure that would protect the tree during construction. While the applicant does not need an incentive from the City to allow removal of this tree, the City is required to approve this incentive under State Density Bonus law.

- c. If the density bonus is based all or in part on donation of land, a finding that all requirements included Section 19.56.030C have been met.

The density bonus is not based on the donation of land, so the finding is not applicable.

- d. If the density bonus is based all or in part on the inclusion of a childcare facility, a finding that all requirements included in Section 19.56.030 (D) have been met.

The density bonus is not based on the inclusion of a childcare facility, so the finding is not applicable.

- e. If the density bonus or incentive is based on a condominium conversion, a finding that all the requirements included in Section 19.56.030 (E) have been met.

The project site is currently developed with two single story residential structures. The four-unit development is a rental property operating on a month-to-month lease agreement and is currently occupied by renters. The rental property is not registered in the city's below market rate (BMR) program, and not operated as rent controlled or income-restricted units. Therefore, the rental dwelling units vacated or demolished preceding this application is not subject to replacement of affordable units in accordance with Government Code Section 65915(c)(3).

- f. Since the applicable findings required above can be made, the decision-making body may deny an application for a waiver only if one of the following written findings as applicable to each type of application, supported by substantial evidence:

- g. That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or

There are no affected Historic Resources in the vicinity.

h. That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or

The project scope has been determined to fall within Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects). There exists no significant, quantifiable, direct, and unavoidable impacts, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential Project was deemed complete.

i. That the incentive or concession, or waiver is contrary to state or federal law.

The requested waivers are not contrary to state or federal law.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and subject to the conditions which are enumerated in this Resolution beginning on PAGE 5 thereof, and those contained in all other Resolutions approved for this Project, the City Council hereby:

Approves the application for Development Permit, Application No. DP-2023-001, and that the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no. DP-2023-001 as set forth in the Minutes of the City Council Special Meeting of January 17, 2024, and are incorporated by reference as thoroughly set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT.

1. APPROVED EXHIBITS

Approval is based on the plan set entitled "Leon Townhouse, 10046 Bianchi Way Cupertino, CA 95014" consisting of thirty-five sheets labeled A0.0 – A10.0, L1-L1 and C3.1-C7.1 drawn by Tectonic Builders Corp., 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. ASA-2023-002, TM-2023-001 & TR-2023-008

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. **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.

6. **DEVELOPMENT ALLOCATION**

The applicant shall receive an allocation of seven (7) of the residential unit allocations for the Citywide housing allocation.

7. **FENCES**

Fencing shall not be constructed between individual townhome units to create private yards. Fences shall comply with Chapter 19.48 Fences, of the Cupertino Municipal Code, and must be reviewed and approved prior to issuance of building permits.

8. **DENSITY BONUS**

Pursuant to Government Code Section 65915(f) the project is granted Density Bonus.

9. **DENSITY WAIVERS**

The project is granted six density bonus waivers as follows:

- i. Front setback. Building B would be 6 feet from the new property line at the second story level but at least 9-feet at the first and third floor levels.
- ii. Rear Setback. Building A would provide a 12-foot setback from the rear property line at the second story level but at least 15-feet at the first and third floor levels.
- iii. Side Setback. Building A would have reduced side setbacks of 10 feet on both sides, where 15 feet is required. Building B would have a reduced left (north) side setback of 10 feet, where 15 feet is required.

- iv. Building Form. A waiver from the standard that buildings adjacent to residentially developed parcels, be stepped back or terraced at 1.5:1 to height ratio if minimum setback cannot be provided for Building A.
- v. Common Open Space. A waiver from Heart of the City Common Open Space, Common Open Space Hardscape and Landscape standards.
- vi. Service Access: A waiver for this proposed project to provide service access from rear parking areas.

10. **PARKING REDUCTION**

The project is granted a parking reduction of six (6) parking stalls. The project must retain fourteen (14) on site parking spaces for the life of the development unless permitted otherwise by the Director of Community Development.

11. **INCENTIVE**

The project is granted a concession to remove tree #9 – a 38.5-inch Coast Live Oak tree. Subject to the conditions of approval further outlined in TR-2023-008

12. **REFUSE COLLECTION STREET SIGNAGE**

Prior to issuance of building permits the applicant shall provide for review to the satisfaction of the Public Works Department, street signage restricting parking on trash collection day(s) as subject to the “refuse and truck delivery plan” further detailed in Public Works Condition of Approval #25.

13. **BELOW MARKET RATE HOUSING PROGRAM**

The applicant shall participate in the City’s Below Market Rate (BMR) Housing Program by dedicating 20% of the units, i.e., one of the units, as a BMR unit. The unit shall be made available to median income levels in compliance with the City’s BMR Manual. The applicant shall record a covenant, which shall be subject to review and approval by the City Attorney, to be recorded prior to the issuance of building permits.

14. **BMR UNIT DESIGN REQUIREMENTS**

The Applicant shall detail how the following requirements shall be met prior to building permit issuance:

- a. BMR units shall be comparable to market-rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- b. Interior features and finishes in the affordable units shall be durable, of good quality and consistent with the contemporary standards of new housing.

15. BMR AGREEMENT

Prior to the recordation of a final map or issuance of any building permit, an affordable housing agreement shall be recorded against the property. The affordable housing agreement shall include, but not be limited to the following:

- a. Total number of BMR units, type, location (site map), square footage, number of bedrooms, and construction scheduling of market-rate and BMR units;
- b. Provisions to ensure concurrent construction and completion of BMR units and market-rate units;
- c. Affordability levels for each BMR unit;
- d. Provisions for income certification and screening of potential occupants of BMR units;
- e. Restriction control mechanisms;
- f. Financing of ongoing administrative and monitoring costs;
- g. Other reasonably required provisions to implement the Affordable Housing Plan.

16. BMR UNIT TERMS OF AFFORDABILITY:

Prior to occupancy, the proposed project shall record covenants that require the units to be occupied at rents that are affordable to median income level households for a period not less than 99 years from the date of first occupancy of the unit.

17. PUBLIC ART REQUIREMENT

Public art shall be provided for the project in accordance with General Plan Policy 2-66 and the City's Public Art Ordinance (Chapter 19.148 of the Cupertino Municipal Code). The minimum expenditure for the artwork, including, but not limited to design, fabrication, and installation is one (1) percent of the construction valuation for the first \$100 million on construction valuation, or 0.9% of construction valuation for valuation in excess of \$100 million. The project pro forma shall be provided to the City to confirm the project budget. The public art plans shall be reviewed and approved by the Arts and Culture Commission prior of final occupancy. Once approved by the Arts and Culture Commission, the public artwork shall be installed to the satisfaction of the City prior to certificates of occupancy being issued on more than 50% of the units in each of the two buildings – i.e., no more than 1 unit in Building B and no more than 2 units in Building A. In the event the developer or property owner determines that the placement of artwork on a particular property may not be feasible, the developer or property owner may apply to the City for an in-lieu payment alternative as indicated in Chapter 19.148 of the Cupertino Municipal Code, subject to review of

the Arts and Culture Commission and the City Council. The in lieu payment shall be 1.25% of the construction valuation.

18. DEMOLITION REQUIREMENTS

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials were recycled prior to occupancy.

19. FORMATION OF A PROPERTY OWNER'S ASSOCIATION

A Property Owner's Association shall be formed to maintain the common areas of the property. The Conditions, Covenants and Restrictions (CC&Rs) shall be reviewed and approved by the City Attorney and the Director of Community Development prior to recordation. The following terms shall be incorporated into the Association's Conditions, Covenants and Restrictions:

- The members/board shall meet at a minimum of once/year
- The Association dues shall cover:
 - Maintenance of common area on the property in compliance with the approved project conditions of approval, including hardscaping, parking, landscaping and accessory facilities and amenities, such as trash bins/areas, common amenity areas, tree grates, outside trash bins, fences, Public Art, etc,
 - Building and site repair on a regular schedule, or as otherwise necessary, and building renovation and replacement as necessary to ensure that the property is maintained.
 - Permits, including tree removal permits, required for maintenance and repair of facilities in the common areas
- Any changes to the exterior of the development must be reviewed by the Property Owner's Association.
- CC&R's shall ensure that private open space is kept tidy and free of clutter and visual blight.
- Any changes to the CC&R's must be reviewed and approved by the City in writing.
- Disbanding of the Association shall require an amendment to the permit.

20. PRE-CONSTRUCTION MEETING & CONSTRUCTION MANAGEMENT PLAN

A demolition and construction management plan shall be submitted and reviewed prior to building permit issuance. Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (Building, Planning, and Public Works) to review the prepared construction management plan, to ensure that construction complies

with the conditions of approval, staging of construction equipment is appropriate, tree protection measures are in place, public access routes are identified, and noise and dust control measures are established. The plan shall include but not be limited to the following:

- a. Compliance with Arborist Report Mitigation Measures
- b. Appropriate construction staging area
- c. Hours of construction
- d. Compliance with the City noise ordinance
- e. Best management practices
- f. Staging of construction equipment shall not occur within 25 feet of any residential property.
- g. Any other measures as determined to be appropriate by the Director of Community Development

21. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

The applicant shall indicate compliance with the following grading and construction hours and noise limit requirements on all demolition, construction and grading permits, and in the construction management plan(s), unless otherwise indicated.

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Nighttime construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

22. ACOUSTIC STUDY AND REDUCTION OF INTERIOR NOISE LEVELS

Prior to the issuance of building permits, the project applicant shall submit an acoustic study to the satisfaction of the City's Community Development Director to demonstrate that unit interiors meet an interior noise level due to exterior noise of 45 dBA CNEL, consistent with State and local noise standards. The study shall be based on precise grading and architectural plans including specific construction method details and materials to calculate the necessary exterior to interior noise reduction of approximately 30 dBA to achieve 45 dBA CNEL. The precise exterior to interior reduction would be determined in the acoustical study when precise grading plans with building elevations, footprints and architectural plans are available. The applicant will be required to incorporate into the project design all required noise insulation features and techniques necessary to reduce interior noise levels to achieve the interior noise standard. To achieve the required interior noise levels, features such as upgraded exterior wall and roof assemblies, upgraded windows, and exterior doors may be required. In addition, a "windows closed" condition will be required with minimum supply of fresh air per UBC requirements.

23. GREEN BUILDING

The project shall be constructed in accordance with the City's Green Building Ordinance (Chapter 16.58 of the Cupertino Municipal Code). The applicant shall obtain LEED Silver certification or an alternative reference standard in accordance with the ordinance since the building size is over 50,000 square feet. Third party LEED certification or alternative reference standard is required per the ordinance criteria.

24. BUILDING AND FIRE CODE

The applicant shall apply for and obtain building permits to allow the construction of the approved project. The applicant shall provide information and plans to allow the Building Official and the Fire Marshall or their designee that the proposed plans comply with Building and Fire Codes in effect at the time of application for a building permit.

25. TRASH AND DELIVERY ACTIVITIES

A detailed refuse and truck delivery plan shall be prepared by the applicant. The plan shall specify locations of trash facilities, refuse pick up schedules and truck delivery schedules and routes. All trash facilities must be screened and enclosed to the satisfaction of the Public Works Department. The final plan shall be submitted to the City for review and approval prior to issuance of building permits.

26. EXTERIOR BUILDING MATERIALS/TREATMENTS

The final building exterior plan shall closely resemble the details shown on the original approved plans. Final building exterior treatment plan (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.

Future changes to the exterior building materials/treatments must be reviewed and approved by the Property Owner's Association. As a Planned Unit Development, the exterior finishes of each of the units (including garage doors and exterior doors and windows) must remain harmonious with the same/coordinated materials used across both buildings.

27. DARK SKY COMPLIANCE AND/OR BIRD SAFE COMPLIANCE

Prior to issuance of Building Permits, the applicant/property owner shall submit final plans in compliance with the approved lighting plans to comply with development standards of Cupertino Municipal Code Section 19.102.030 Bird-Safe Development Requirements and/or Section 19.102.040 Outdoor Lighting Requirements. In the event changes are proposed from the approved plans, said changes must be reviewed and approved by the Director of Community Development or their designee. The applicant shall provide all documentation required to determine compliance with the Municipal Code. The final lighting plan (including a detailed photometric plan) shall be reviewed and approved by the Director of Community Development prior to building permit issuance. A report from a licensed lighting engineer may be required to confirm all exterior lighting throughout the site complies with the City's Ordinance.

28. ROOFTOP EQUIPMENT SCREENING

All mechanical and other equipment on the building or on the site shall be screened and/or integrated into the building structures so they are not visible from public street areas or adjoining developments. If approved, the height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. A line of sight plan may be required to demonstrate that the equipment will not be visible from any public right-of-way. The location of the equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

29. SITE IMPROVEMENTS

All proposed site improvements shall be completed prior to final occupancy of any structures approved in conjunction with the project.

30. NOISE LEVELS AND ABATEMENT

Project uses and all equipment installed on the site shall comply with the City's Community Noise Control Ordinance at all times. Installation of any mechanical or other equipment shall be evaluated to determine that the installation meets the City's Community Noise Control Ordinance. Any documentation or studies required to determine this shall be provided by the applicant as his/her sole expense. Should the project exceed any of the stipulated maximum noise levels outlined in the City's Community Noise Control Ordinance, an acoustical engineer may be required to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

31. INGRESS/EGRESS EASEMENT

The applicant shall record an appropriate deed restriction and covenant running with the land, subject to approval of the City Attorney, for all parcels that share a common private drive or private roadway with one or more other parcels. The deed restriction shall provide for necessary reciprocal ingress and egress easement to and from the affected parcels. The easements shall be recorded at such time as interest in one or more of the affected parcels is initially sold or transferred to another party.

32. FUGITIVE DUST CONTROL

Prior to issuance of the any demolition, grading, or building permit, include on all permit plans, the full text of each of the Bay Area Air Quality Management District's Basic Control Measures from the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter PM2.5 and PM10) during demolition, ground disturbing activities and/or construction.

33. VOLATILE ORGANIC COMPOUND EMISSIONS FROM PAINT

Prior to issuance of the first building permit, the Applicant shall include a note on all plans where paint specifications or other design specifications are listed, that the project design will incorporate only low-VOC paint (i.e., 50 grams per liter [g/L] or less) for interior and exterior wall architectural coatings.

34. AVOID NESTING BIRDS DURING CONSTRUCTION

Prior to issuance of the any demolition, grading and building permit, indicate the following on all construction plans:

- a. Demolition, construction, ground-disturbing, and tree removal/pruning activities shall be scheduled to be completed prior to nesting season (February 1 through August 31), if feasible.
- b. If demolition, construction, ground-disturbing, or tree removal/pruning activities occur during the nesting season (February 1 and August 31), preconstruction surveys shall be conducted as follows:
 - i. No more than 7 days prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities, in order to identify any active nests with eggs or young birds on the site and surrounding area within 100 feet of construction or tree removal activities.
 - ii. Preconstruction surveys shall be repeated at 14-day intervals until demolition, construction, ground-disturbing, or tree removal/pruning activities have been initiated in the area, after which surveys can be stopped. As part of the preconstruction survey(s), the surveyor shall inspect all trees and other possible nesting habitats in, and immediately adjacent to, the construction areas for active nests, while ensuring that they do not disturb the nests as follows:
 1. For projects that require the demolition or construction one single-family residence, ground disturbing activities affecting areas of up to 500 square feet, or the removal of up to three trees, the property owner or a tree removal contractor, if necessary, is permitted to conduct the preconstruction surveys to identify if there are any active nests. If any active nests with eggs or young birds are identified, the project applicant shall retain a qualified ornithologist or biologist to identify protective measures.
 2. For any other demolition, construction and ground disturbing activity or the removal of four or more trees, a qualified

ornithologist or biologist shall be retained by the project applicant to conduct the preconstruction surveys.

- iii. If the preconstruction survey does not identify any active nests with eggs or young birds that would be affected by demolition, construction, ground-disturbing or tree removal/pruning activities, no further mitigating action is required. If an active nest containing eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented, and the qualified ornithologist or biologist shall identify protective measures to be implemented under their direction until the nests no longer contain eggs or young birds.
- iv. Protective measures may include, but are not limited to, establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist or biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified ornithologist or biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified ornithologist or biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.
- v. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be prepared by the qualified ornithologist or biologist and submitted to the Director of Community Development or his or her designee, through the appropriate permit review process (e.g., demolition, construction, tree removal, etc.), and be completed to the satisfaction of the Community

Development Director prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities.

35. **ARCHAEOLOGICAL RESOURCES AND TRIBAL CULTURAL RESOURCES**

Prior to the issuance of any demolition, grading or building permit involving soil disturbance, the project applicant shall provide written verification, including the materials provided to contractors and construction crews, to the City confirming that contractors and construction crews have been notified of basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources as follows:

- a. Basic archaeological site indicators that may include, but are not limited to, darker than surrounding soils of a friable nature; evidence of fires (ash, charcoal, fire affected rock or earth); concentrations of stone, bone, or shellfish; artifacts of stone, bone, or shellfish; evidence of living surfaces (e.g., floors); and burials, either human or animal.
- b. The potential for undiscovered archaeological resources or tribal cultural resources on site.
- c. The laws protecting these resources and associated penalties, including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052.
- d. The protection procedures to follow should construction crews discover cultural resources during project-related earthwork, include the following:
 - i. All soil disturbing work within 25 feet of the find shall cease.
 - ii. The project applicant shall retain a qualified archaeologist to provide and implement a plan for survey, subsurface investigation, as needed, to define the deposit, and assessment of the remainder of the site within the project area to determine whether the resource is significant and would be affected by the project.
 - iii. Any potential archaeological or tribal cultural resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation forms by a qualified archaeologist. If the resource is a tribal cultural resource, the consulting archaeologist shall consult with the appropriate tribe, as determined by the Native American Heritage Commission, to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project

design, costs, and other considerations. The archeologist shall perform this evaluation in consultation with the tribe.

36. **HUMAN REMAINS AND NATIVE AMERICAN BURIALS**

Prior to issuance of the any demolition, grading and building permits that involve soil disturbance, include on plans a note that, during project construction, the project applicant shall comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

- a. In the event of discovering human remains during construction activities, there shall be no further excavation or disturbance of the site within a 100-foot radius of the remains, or any nearby area reasonably suspected to overlie adjacent remains.
- b. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are Native American.
- c. If the Santa Clara County Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission (NAHC) within 24 hours.
- d. The NAHC shall attempt to identify descendants (Most Likely Descendant) of the deceased Native American.
- e. The Most Likely Descendant has 48 hours following access to the project site to make recommendations or preferences regarding the disposition of the remains. If the Most Likely Descendant does not make recommendations within 48 hours after being allowed access to the project site, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance and provide documentation about this determination and the location of the remains to the NAHC and the City of Cupertino. Alternatively, if the owner does not accept the Most Likely Descendant's recommendations, the owner or the descendent may request mediation by the NAHC. Construction shall halt until the mediation has concluded.

37. **NOISE AND VIBRATION NOTICE**

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall send notices of the planned activity by first class mail as follows:

- a. For projects on sites that are more than 0.5 acres or **four or more residential units** the notices shall be sent to off-site businesses and residents within 500 feet of the project site;

- b. For projects on sites between 0.25 to 0.5 acres, or two or three residential units (not including Accessory Dwelling Units) notices shall be sent to off-site businesses and residents within 250 feet of the project site; or
- c. For projects on sites less than 0.25 acres or one residential unit, the notices shall be sent to off-site businesses and residents within 100 feet of the project site.

The notification shall include a brief description of the project, the activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification should include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The City will provide mailing addresses for the Applicant's use. The project applicant shall provide the City with evidence of mailing of the notice, upon request. If pile driving, see additional noticing requirements below.

38. **NOISE AND VIBRATION SIGNAGE**

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall ensure that a sign measuring at least two feet by three feet shall be posted on construction fencing at the entrance(s) to the job site, clearly visible to the public, and include the following:

- a. Permitted construction days and hours;
- b. A description of proposed construction activities;
- c. Telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint; and
- d. Contact information for City's and contractor's authorized representatives that are assigned to respond in the event of a complaint related to fugitive dust, pursuant to the requirements for compliance with [BAAQMD's CEQA Air Quality Guidelines](#).

If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the complaint and the action taken to the City within three business days of receiving the complaint.

39. **NOISE DURING CONSTRUCTION**

Prior to issuance of any demolition, grading or building permit, include on plans a note that, during project construction, the project applicant shall incorporate the following measures to reduce noise during construction and demolition activity:

- a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for

review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.

- b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
- c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- d. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

40. PALEONTOLOGICAL RESOURCES

Prior to issuance of the any demolition, grading or building permit, include on plans a note that, during project construction, the project applicant shall implement the following measures:

- a. If paleontological resources are encountered during ground disturbing and/or other construction activities, all construction shall be temporarily halted or redirected to allow a qualified paleontologist, which shall be retained by the project applicant, to assess the find for significance and the Applicant shall notify the City.
- b. If paleontological resources are found to be significant, the paleontological monitor shall determine appropriate actions, in coordination with a

qualified paleontologist, City staff, and property owner. Appropriate actions may include, but are not limited to, a mitigation plan formulated pursuant to guidelines developed by the Society of Vertebrate Paleontology and implemented to appropriately protect the significance of the resource by preservation, documentation, and/or removal, prior to recommencing activities. Measures may include, but are not limited to, salvage of unearthed fossil remains and/or traces (e.g., tracks, trails, burrows); screen washing to recover small specimens; preparation of salvaged fossils to a point of being ready for curation (e.g., removal of enclosing matrix, stabilization and repair of specimens, and construction of reinforced support cradles); and identification, cataloging, curation, and provision for repository storage of prepared fossil specimens.

41. 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.

42. 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.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

1. EXISTING PG&E AND PT&T EASEMENT

Developer shall work directly with PG&E and PT&T to obtain approval from each respective utility company for the proposed vacation of the existing 20' PG&E and PT&T easement. The easement may be vacated with the final map or quitclaimed by a separate instrument. The quitclaim shall be approved and recorded by PG&E and PT&T prior to Final Map recordation or issuance of building permits.

2. RESTRICTED PARKING SIGNS

Developer shall install signs for restricted parking on trash collection days along the project frontage to the satisfaction of the Director of Public Works.

If the project will be subject to Covenants, Conditions, and Restrictions (CC&Rs) and a Homeowners Association (HOA), the CC&Rs must also include language pertaining to the restricted on-street parking.

3. **STREET IMPROVEMENTS & DEDICATION**

Roadway dedication in fee title and street improvements along the project frontage will be required to the satisfaction of the Director of Public Works. Street improvements, grading and drainage plans must be completed and approved prior to Final Map approval.

Street improvements may include, but not be limited to, new curb and gutter, attached sidewalk, driveway, storm drain lateral, street tree installations, and/or street light. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

Additional comments will be provided and shall be incorporated prior to Final Map approval.

4. **ACCEPTANCE OF PROPERTY RIGHTS**

The Public Works Director, or his/her designee, shall have the authority to accept all offers of dedications, easements, quitclaims and other property rights and interests on behalf of the City.

5. **CURB AND GUTTER IMPROVEMENTS**

Curbs and gutters, sidewalks and related structures shall be installed in accordance with grades and standards as specified by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

6. **PEDESTRIAN AND BICYCLE IMPROVEMENTS**

Developer shall provide pedestrian and bicycle related improvements (e.g. walkway and bicycle racks, etc.) consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Plan, and as approved by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

7. **STREET LIGHTING INSTALLATION**

Street lighting shall be installed and shall be as approved by the Director of Public Works. Lighting fixtures shall be positioned so as to preclude glare and other forms of visual interference to adjoining properties, and shall be no higher than the maximum height permitted by the zone in which the site is located.

8. **GRADING**

Grading shall be as approved and required by the Director of Public Works in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required. Please contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

9. **DRAINAGE**

Drainage shall be provided to the satisfaction of the Director of Public Works and satisfy any requirements from the environmental analysis. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, retention systems or other approved systems and improvements) as necessary to avoid an increase of the ten percent flood water surface elevation to the satisfaction of the Director of Public Works. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

All storm drain inlets shall be clearly marked with the words “No Dumping – Flows to Creek” using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

Additional comments will be provided and shall be incorporated prior to Final Map approval.

10. **C.3 REQUIREMENTS**

C.3 regulated improvements are required for all projects creating and/or replacing 5,000 S.F. or more of impervious surface, collectively over the entire project site (if project receives entitlement after June 30, 2023). The developer shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the Director of Public Works.

The developer must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan and a Storm Water Facilities Operation, Maintenance and Easement Agreement,

and certification of ongoing operation and maintenance of treatment BMPs are each required.

All storm water management plans are required to obtain certification from a City approved third party reviewer.

If the project will be subject to Covenants, Conditions, and Restrictions (CC&Rs) and a Homeowners Association (HOA), the CC&Rs must also include language pertaining to the stormwater treatment measures.

11. SUBDIVISION IMPROVEMENT AGREEMENT

The project developer shall enter into a Subdivision Improvement Agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, transportation impact fees, park dedication fees and fees for under grounding of utilities. Said agreement and fees shall be executed and paid prior to Final Map approval.

Fees:

- a. Checking & Inspection Fees: Per current fee schedule (\$4,947 or 5% of improvement costs)
- b. Grading Permit: Per current fee schedule (\$3,683 or 6% of improvement costs)
- c. Tract Map Fee: Per current fee schedule (\$12,306)
- d. Storm Drainage Fee: Per current fee schedule (\$4,250 per AC + \$322 per unit)
- e. Transportation Impact Fee: Per current fee schedule: (\$4,215 per new DU)
- f. Encroachment Permit Fee: Per current fee schedule (\$3,304 or 5% of improvement costs)
- g. Park Fees: Per current fee schedule: (\$60,000 per new DU)
- h. Storm Management Plan Fee: Per current fee schedule (\$1,670)
- i. Street Tree Fee: By Developer or Per current fee schedule: \$481 per tree
- j. Bonds: Faithful Performance Bond: 100% of Off-site and On-site Improvements
- k. Labor & Material Bond: 100% of Off-site and On-site Improvement
- l. On-site Grading Bond: 100% of site improvements.

- The fees described above are imposed based upon the current fee schedule adopted by the City Council. However, the fees imposed herein may be modified at the time of recordation of a final map or issuance of

a building permit in the event of said change or changes, the fees changed at that time will reflect the then current fee schedule.

12. **FINAL MAP**

A final map will be subject to City Council approval and shall be recorded prior to issuance of building permits. Existing buildings must be demolished prior to recordation of the final map as building(s) cannot straddle between lot lines.

13. **TRANSPORTATION**

The Project is subject to the payment of Transportation Impact Fees under City's Transportation Impact Fee Program (Chapter 14.02 of the Cupertino Municipal Code).

The Project may also be subject to a Vehicle Miles Traveled (VMT) analysis as part of environmental review per Chapter 17 of the Cupertino Municipal Code. Project shall provide mitigation measure as results of the transportation analysis.

14. **PARKS**

The residential units are subject to the payment of parkland fees in-lieu of parkland dedication per Chapter 13.08 and Chapter 18.24 of the Cupertino Municipal Code.

The Below Market Rate (BMR) program manual, which was last amended by City Council on May 19, 2020 per Resolution 20-055, authorizes the waiver of park fees for BMR units. Pursuant to Resolution 20-055, parkland dedication in-lieu fees for the 1 BMR unit proposed for this project are hereby waived.

15. **SURVEYS**

A Boundary Survey and a horizontal control plan will be required for all new construction to ensure the proposed building will be set based on the boundary survey and setback requirements.

16. **TRASH, RECYCLING AND COMPOST ENCLOSURES**

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines posted at www.cupertino.org/nowaste, and to the satisfaction of the Environmental Programs Manager. Clearance by the Public Works Department is required prior to obtaining a building permit. (CMC 9.18.210 H & K)

Applicant shall enter into an agreement with the City that indemnifies and holds harmless both the City and the refuse and recycling collection company (Recology) from and against any harm, damage or maintenance that may occur or become necessary to onsite paving stone driveway surfaces.

17. OPERATIONS & MAINTENANCE AGREEMENT

Developer shall enter into an Operations & Maintenance Agreement with the City prior to Final Map approval. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, landscaping, street trees, sidewalk, pavers, and street lights.

18. UNDERGROUND UTILITIES

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the Director of Public Works.

19. TRANSFORMERS & CABINETS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

20. WATER BACKFLOW PREVENTERS

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be placed away from the public right of way and site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

21. BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

22. NPDES CONSTRUCTION GENERAL PERMIT

When and where it is required by the State Water Resources Control Board (SWRCB), the developer must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan

(SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance.

23. **EROSION CONTROL PLAN**

Developer must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

24. **WORK SCHEDULE**

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this project.

25. **TRAFFIC CONTROL PLAN**

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

26. **STREET TREES**

Street trees shall be planted within the Public Right of Way to the satisfaction of the Director of Public Works and shall be of a type approved by the City in accordance with Ordinance No. 125.

27. **FIRE PROTECTION**

Fire sprinklers shall be installed in any new construction to the approval of the City.

28. **SANTA CLARA COUNTY FIRE DEPARTMENT**

A letter of clearance for the project shall be obtained from the Santa Clara County Fire Department prior to issuance of building permits. Clearance should include written approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

29. **FIRE HYDRANT**

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

30. **CALIFORNIA WATER SERVICE COMPANY CLEARANCE**

A letter of clearance shall be obtained from California Water Service Company prior to Final Map approval. The letter shall include their review and approval of the water connection, service capability, location and layout of water lines and backflow preventers, and any additional public service easements necessary to service the project.

31. **DEDICATION OF UNDERGROUND WATER RIGHTS**

Developer shall “quit claim” to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

32. **SANITARY DISTRICT**

A letter of clearance or sign off of street improvement plans for the project shall be obtained from the Cupertino Sanitary District prior to Final Map approval.

33. **UTILITY EASEMENTS**

Clearance approval letters from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required prior to Final Map approval. Their letters shall include their review and approval of any easement(s) to be vacated and/or quitclaimed, which include proposed private structures and utilities within the existing easement(s).

SECTION V: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT

1. **CALIFORNIA FIRE CODE**

The California Fire (CFC) & Building (CBC) Code, 2019 edition, as adopted by the City of Cupertino Municipal Code (CMC) and California Code of Regulations (CCR).

2. **APPROVAL**

Review of this Developmental proposal is limited to acceptability of site access, water supply and may include specific additional requirements as they pertain to fire department operations and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

3. **FIRE SPRINKLERS REQUIRED:**

(As noted on Sheet A0.0) Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.18 whichever is the more restrictive. For the purposes of this section, firewalls used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations. NOTE: The owner(s), occupant(s) and any contractor(s) or subcontractor(s) are responsible for consulting with the water purveyor of record in order to determine if any modification or upgrade of the existing water service is required. A State of California licensed (C-16) Fire Protection Contractor shall submit plans, calculations, a completed permit application and appropriate fees to this department for review and approval prior to beginning their work. CFC Sec. 903.2. NFPA 13 will be installed.

4. **FIRE ALARM REQUIREMENTS**

(As Noted on Sheet A0.0) Refer to CFC Sec. 907 and the currently adopted edition of NFPA 72. Submit shop drawings (3 sets) and a permit application to the SCCFD for approval before installing or altering any system.

5. **REQUIRED FIRE FLOW**

(Letter received) The minimum require fireflow for this project is 1000 Gallons Per Minute (GPM) at 20 psi residual pressure. This fireflow assumes installation of automatic fire sprinklers per CFC[903.3.1.3]

6. **BUILDINGS AND FACILITIES ACCESS**

(As noted on Sheet A2.5) Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or with the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. [CFC, Section 503.1.1].

7. **GROUND LADDER ACCESS**

(As noted on Sheet A2.5) Ground-ladder rescue from second and third floor rooms with egress windows, shall be made possible for fire department operations. With the climbing angle of seventy-five degrees maintained, an approximate walkway width along either side of the building shall be no less than seven feet clear. Landscaping shall not be allowed to interfere with the required access. CFC Sec. 503 and 1030 NFPA 1932 Sec. 5.1.8 through 5.1.9.2. Ladder access (one for each emergency egress window) of an all-weather supportive surface along with an

approved access walkway leading from the fire apparatus access road to them, shall be provided.

8. **FIRE DEPARTMENT CONNECTION**

(As noted on Sheet A2.5) The fire department connection (FDC) shall be installed at the street on the street address side of the building. It shall be located within 100 feet of a public fire hydrant and within ten (10) feet of the main PIV (unless otherwise approved by the Chief due to practical difficulties). FDC's shall be equipped with a minimum of two (2), two-and-one-half (2- 1/2") inch national standard threaded inlet couplings. Orientation of the FDC shall be such that hose lines may be readily and conveniently attached to the inlets without interference. FDC's shall be painted safety yellow. [SCCFD, SP-2 Standard].

9. **CONSTRUCTION SITE FIRE SAFETY**

All construction sites must comply with applicable provisions of the CFC Chapter 33 and our Standard Detail and Specification S1-7. Provide appropriate notations on subsequent plan submittals, as appropriate to the project. CFC Chp. 33.

10. **WATER SUPPLY REQUIREMENTS**

Potable water supplies shall be protected from contamination caused by fire protection water supplies. It is the responsibility of the applicant and any contractors and subcontractors to contact the water purveyor supplying the site of such project, and to comply with the requirements of that purveyor. Such requirements shall be incorporated into the design of any water-based fire protection systems, and/or fire suppression water supply systems or storage containers that may be physically connected in any manner to an appliance capable of causing contamination of the potable water supply of the purveyor of record. Final approval of the system(s) under consideration will not be granted by this office until compliance with the requirements of the water purveyor of record are documented by that purveyor as having been met by the applicant(s). 2019 CFC Sec. 903.3.5 and Health and Safety Code 13114.7.

11. **ADDRESS 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. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and

the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained. CFC Sec. 505.1

12. FIRE DEPARTMENT (ENGINE) ROADWAY TURNAROUND REQUIRED

(As noted on Sheet A2.5) Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus. Provide an approved fire department engine driveway turnaround with a minimum radius of 36 feet outside and 23 feet inside. Maximum grade in any direction shall be 5%. Installations shall conform with Fire Department Standard Details and Specifications A-1. [CFC Section 503.2.5].

13. FIRE LANES REQUIRED

(As noted on Sheet A2.5) The minimum clear width of fire department access roads shall be 20 feet. Fire apparatus access roads shall be designated and marked as a fire lane as set forth in Section 22500.1 of the California Vehicle Code.

SECTION VI: CONDITIONS ADMINISTERED BY THE OFFICE OF COMMUNITY DEVELOPMENT – BUILDING DIVISION

1. ELECTRIC BUILDINGS

Buildings shall be all Electric per Cupertino Muni Code section 16.54.100. No gas is allowed for the Buildings.

2. CALIFORNIA BUILDING CODE:

Buildings with 3 or more Units are subject to Chapter 11A of the 2022 California Building Code, as stated in section R320 of the 2022 California Residential Code.

SECTION VII: CONDITIONS ADMINISTERED BY THE CUPERTINO SANITARY DISTRICT

1. District will require developer/owner to enter into an Installer's Agreement. The Installer's Agreement will be required for approval during the Building Permit phase.
2. Connection permit fees, Sewer Development Fees, & Treatment Plant Capacity Fees will be required for the proposed work during the Building Permit Phase and will be required as part of the Installer's Agreement.
3. New lateral connection, inspection, administration, & engineering fees will be required during the Building Permit Phase.
4. Sewer Development Fees & Treatment Plant Capacity Fees will be required for the proposed work during the Building Permit Phase.

RESOLUTION NO.

Page 31

5. The District is currently in the process of drafting up a District Wide Inflow and Infiltration Reduction program. Additional fees for this projects Inflow & Infiltration reduction may be required during the Building Phase.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 17th day of January 2024 by the following vote:

Vote Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Sheila Mohan, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date