

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT FOR A
PROPOSED RESIDENTIAL DEVELOPMENT WITH 51 TOWNHOME STYLE
CONDOMINIUM UNITS AND THE REMOVAL AND REPLACEMENT OF 8
PROTECTED TREES LOCATED AT 10857, 10867, 10877, AND 10887 LINDA VISTA
DRIVE (APNS: 356-06-001, -002, -003, AND -004)**

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2024-015
Applicant: SummerHill Homes, LLC
Location: 10857, 10867, 10877, and 10887 Linda Vista Drive
(APNs: 356-06-001, -002, -003, and -004)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

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

WHEREAS, the project is determined to be statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(1) of the CEQA Guidelines and Section 21080.66 of the Public Resources Code; and

WHEREAS, on February 24, 2026 the Planning Commission recommended on a 3-2 vote that the City Council approve the approve the Vesting Tentative Map (TM-2024-009), in substantially similar form to the Resolution presented (Resolution No. 2026-08), approve the Architectural and Site Approval Permit (ASA-2024-015) in substantially similar form to the Resolution presented (Resolution No. 2026-09), and approve the Tree Removal Permit (TR-2024-044) in substantially similar form to the Resolution presented (Resolution No. 2026-10); and

WHEREAS, on March 17, 2026, the City Council held a duly noticed public hearing to receive staff's presentation and public testimony, and to consider the information contained in the CEQA Exemption Memorandum prepared by David J Powers & Associates, dated February 18, 2026, along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing; and

WHEREAS, all necessary public notices having been given as required by the City of Cupertino Municipal Code and the Government Code, and the City Council held at least one public hearing in regard to this application; 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 an Architectural and Site Approval Permit; 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;

The project is consistent with the relevant land use designations in the General Plan and Zoning Ordinance. It has been designed to be compatible with adjoining land uses, including but not limited to having wider building setbacks from the single-family residences to the south and north of the subject property, as well as providing landscaping along the building frontages to help offset any potential building massing impacts and to ensure compatibility with the existing streetscape. The project is conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code Chapter 17.04. In addition, the proposed project is considered statutorily exempt under State CEQA Guidelines Section 15061(b)(1) because the proposed project would meet the requirements of the Public Resources Code (PRC) Section 21080.66 (as further documented in the memorandum prepared by the City's environmental consultant, David J. Powers & Associates). The project has been reviewed by the City's Building Department and the Santa Clara County Fire Department and must meet all Fire and Building Code requirements, which will be further reviewed prior to issuance of building permits. 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.

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 the redevelopment of four residential properties with four existing single-family residences. The adjacent residences immediately to the north and south of the property are two-story structures with varying design styles. The proposed townhome buildings are approximately 10 to 15 feet taller than the existing two-story residences. The applicant has requested a waiver for the 30-foot height limitation to allow for buildings up to 41 feet in height. Additionally, the townhomes are set back from the public street and

have vegetation and trees planted along Linda Vista Drive and Evulich Court for visual screening. Landscaping is also proposed at the perimeter of the property, which will help reduce the apparent mass and bulk of the proposed buildings.

- b) In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and with the future character of the neighborhood 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 quality of the development is consistent with the high-quality standards encouraged by City Staff. The buildings meet the design qualities of a contemporary Spanish, or Mediterranean style development. The architectural style is consistent throughout the development and is consistent with the design styles that are encouraged through the City's Single-Family Design Guidelines. Utility installation has been designed to be screened by landscaping and/or incorporated into the building design. The lighting for the development will be reviewed as part of the project construction documents to ensure that they meet safety requirements while avoiding spill-over light to adjacent properties and meet applicable Dark Sky standards. The proposed windows are consistent with the City's bird-safe ordinance as well.

- 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

No signage is proposed as part of this project.

- 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 development's lighting design has been reviewed to ensure that light intrusion onto neighboring properties is avoided and will be further reviewed prior to issuance of building permits to verify lighting requirements are met. The townhome buildings are not expected

to result in an incompatible noise intrusion as the development consists of exclusively residential uses within a residential area. Both permanent and temporary noise impacts from the development have been evaluated through an Environmental Noise Assessment that concluded that the project is not expected to exceed any of the City's adopted sound level thresholds. Further, the project incorporates evergreen trees along the side property lines to provide privacy screening and a larger setback between the buildings closest to the adjacent single-family residential properties. Finally, the project design incorporates the formal expansion of Evulich Court and places all proposed driveways off of the cul-de-sac, thereby reducing the number of driveways exiting directly onto Linda Vista Drive.

3. When a project complies with objective standards, the HAA allows a city to disapprove the project or to impose a condition that the project be developed at a lower density only if the city finds both of the following, supported by a preponderance of the evidence in the record:
 - a. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
 - b. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.

The project, as proposed, meets all applicable objective zoning, General Plan, and subdivision standards. Based on the record, including the findings in the Categorical Exemption memorandum, staff does not believe the above findings can be made with respect to the proposed project.

4. The remaining sites identified in the Housing Element are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need. (Findings required by Government Code Section 65863(b)(2).)

The remaining sites in the housing element inventory are not adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional lower-income and moderate-income housing need. The Priority Housing sites in the inventory are not adequate to accommodate the City's share of the regional lower income housing need. Consistent with the City's BMR requirements, the project includes only 10 Moderate and zero Lower Income units, resulting in a shortfall of 8 Moderate income units and 31 Lower Income units. While the City is unable to identify additional sites to accommodate its RHNA concurrently with this project's approval, it is working toward being compliant with State law in a timely manner.

5. The applicant has requested Density Bonus concessions and waivers. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that

includes a request for density bonus, concession, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a. That the residential project is eligible for the density bonus and any concessions, parking reductions or waivers requested.

The project includes 10 Below Market Rate (BMR) units or 19.6% of the total number of units proposed. Five of the twelve BMR units will be affordable to median-income households (100-120% of Area Median Income) and the other five will be affordable to moderate-income households (80-100% of Area Median Income) in compliance with the City's BMR Program. As a density bonus project with at least 10% of units reserved for sale to moderate-income households as defined by state law (80-120% of Area Median Income), the applicant may request up to one concession and an unlimited number of waivers.

- b. That any requested concession will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.

This finding is superseded by the requirements of State Density Bonus Law, Government Code Section 65915 which restricts a city's ability to deny certain requests for concessions to the findings outlined in section 4 below. The project applicant has indicated that the application of requirements to provide a mix of types of BMR units would result in a significant financial burden and may impact the number of units provided.

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

No density bonus is proposed; therefore, the finding is not applicable.

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

No density bonus is proposed; therefore, the finding is not applicable.

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

No density bonus is proposed; therefore, the finding is not applicable.

- f. If the incentive includes mixed-use development, that all requirements including in Section 19.56.40 (B) (2) have been met.

The project is not a mixed-use development; therefore, the finding is not applicable.

- g. If a waiver is requested, that that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted.

The development standards for height, setbacks, floor area, parking design, and park land dedication requirements would physically preclude the development as proposed. These development standard limitations could affect the project by the loss of units or unit sizes, which may include those designated as affordable.

- h. That all the applicable requirements in Section 19.56.040C have been met, if a reduction in off-street parking standards for an eligible housing development is requested.

No reduction in off-street parking requirements is being requested; therefore, the finding is not applicable.

- 6. Since the above applicable findings can be made, the decision-making body may only deny an application for a waiver or concession if one of the following written findings can be made, supported by substantial evidence:

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

No property on the site or near it is listed in the California Register of Historic Resources.

- b. 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

Both the Fire and Building departments have preliminary reviewed the plans and not found conditions proposed which would create a "specific, adverse impact." In addition, the project is conditioned to ensure compliance with both Fire and Building Code, prior to issuance of building permits. The project is also conditioned to comply with the Environmental Protection Standards of the Cupertino Municipal Code Chapter 17.04. Further, under the CEQA Guidelines section 15332 (Infill Development Projects), the project has been found to be exempt from CEQA as further documented in the memorandum prepared by the City's environmental consultant, David J. Powers & Associates. Therefore, the proposed development, incorporating the proposed concessions and waivers, is not expected to have a specific, adverse impact upon public health or safety or the physical environment.

- c. That the incentive or concession, or waiver is contrary to state or federal law.
The requested concessions and 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, subject to the conditions which are enumerated in this Resolution, beginning on PAGE 4 herein, and subject to the conditions contained in all other Resolutions approved for this Project.

The application for an Architectural and Site Approval, Application No. ASA-2024-015, 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-2024-015 as set forth in the Minutes of the City Council Meeting of March 17, 2026 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 entitled "10857 Linda Vista Drive" dated January 12, 2026 consisting of 105 sheets labeled as, A01– A24, C1.0 – C7.0, L1.1 – L10.1, INT1-INT4, PrSL1, PrSL2, PS-1, and TM1.0, drawn by SDG Architects Inc., R3 Studios, Giacalone Design Services, Inc., Associated Lighting Representatives, Inc., and Carlson, Barbee & Gibson, Inc., except as may be amended by conditions in this resolution.

2. PRIVACY PLANTING

The applicant shall consider the addition of privacy hedges between the proposed units with views as defined under Section 19.28.120 of the Municipal Code and abutting properties, in consultation with staff and the neighbors. Landscape plans may be modified, subject to staff review, to address this consideration.

3. 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.

4. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. TM-2024-009 and TR-2024-044 shall be applicable to this approval.

5. 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.

6. TRAIL CONNECTION REQUIREMENTS

The applicant shall be responsible for the design and construction of a pedestrian and bicycle trail connection from the project site to the Stevens Creek Trail. At the time of building permit application, the construction plans shall include a design substantially consistent with the Trail Connection Exhibit subject to review and approval by the Community Development Director and City Engineer. The cost of design and construction of the trail connection shall be verified by the City's third-party consultant, at the expense of the applicant.

In-Lieu Fee Credit

The applicant shall receive a pro rata credit toward the in-lieu Parkland Dedication fees for each unit. Credit towards the Parkland in-lieu fees shall not exceed \$377,000. The final credit amount shall be based on verified costs and reconciled accordingly. If the verified costs are less than the credited amount, the applicant shall pay the difference to the City prior to Final Map approval.

Public Access

Prior to issuance of the certificate of occupancy for the first residence, the applicant shall grant a public access easement to the City between the public right-of-way and the trail connection, substantially consistent with the Trail Connection Exhibit. The trail connection shall be open from dawn to dusk in accordance with standard park operating hours.

Maintenance

Prior to issuance of the final Building Permit, the developer shall enter into an Operations and Maintenance Agreement with the City, in a form approved by the City Attorney.

The Agreement shall, at a minimum, require the property owner (or successor in interest) to:

1. Maintain the trail connection and all associated improvements in a safe, clean, and operable condition at all times.
2. Be responsible for ongoing repair, replacement, and upkeep of all non-standard improvements associated with the trail connection, which may include, but are not limited to: landscaping, irrigation systems, sidewalk, specialty pavers, lighting,

signage, striping, furnishings, drainage improvements, and related appurtenances.

3. Promptly repair any damage, deterioration, vandalism, or hazardous condition.
4. Maintain landscaping in a healthy and attractive condition, including regular pruning, weeding, litter removal, irrigation management, and replacement of dead or diseased plant materials.
5. Maintain lighting and other safety features in good working order.

The Agreement shall run with the land and shall be binding on all successors and assigns. Failure to maintain the improvements in accordance with the Agreement may result in the City performing necessary maintenance and recovering costs from the property owner, as provided in the Agreement.

Timing of Completion

The trail connection shall be completed prior to the issuance of the final Certificate of Occupancy for the 51st unit.

Condition Precedent

If the City Council does not authorize the requested credit to the in-lieu Parkland Dedication Fees, the project shall not be required to provide the pedestrian and bicycle trail connection, and payment of the full in-lieu fee shall satisfy all parkland dedication requirements.

7. COMMON OPEN SPACE

The residential common open space shall provide amenities for passive and/or active recreation, as shown on plans, including but not limited to play structures, barbeque areas, picnic tables etc. and shall not be retained as or converted to only a passive hardscaped or landscaped area.

8. SETBACK AND LANDSCAPE AREAS

Pursuant to the geotechnical peer review, the applicant shall maintain a 25-foot structural setback from the top of the western slope.

Approved setback and landscaped areas shall remain free and clear of any accessory structures that have not been approved as part of this project. This includes any private side yard areas approved as part of this project.

9. 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.

10. CONSULTATION WITH OTHER DEPARTMENTS

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

11. DEVELOPMENT APPROVAL

The project is granted approval to construct:

- a. 51 townhomes, subject to affordability requirements of Condition #11, with a maximum floor area as identified on approved plans;
- b. 102 parking spaces;
- c. 51 private bicycle spaces;
- d. 12 shared bicycle racks;
- e. Landscaping in designated locations with the use of native and drought tolerant plants;
- f. Vegetated stormwater treatment facilities with the use of native plants;
- g. 11,728 square feet of private open space across all units;
- h. 30,132 square feet of common open space;
- i. Screened mechanical equipment; and
- j. Three new fences along the northern, southern, and western property lines

12. AFFORDABLE UNITS

The project shall include 5 units affordable to median-income households and 5 units affordable to moderate-income households as determined by the City's BMR Mitigation Manual, unless modified through the replacement requirements outlined in Condition 12 below.

13. TENANCY VERIFICATION AND REPLACEMENT REQUIREMENTS

Prior to issuance of any demolition, grading, or building permit for the project, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the project complies with the replacement housing requirements of California Government Code Section 65915 subsection (c)(3). The applicant shall submit a written replacement housing plan identifying any dwelling units on the project site that, within five (5) years prior to the application for the density bonus, were subject to recorded affordability restrictions, rent or

price control ordinances, or occupied by lower- or very low-income households, or otherwise qualify as protected units under state law. The plan shall specify the number, bedroom count, affordability level, and tenure (rental or ownership) of all such units and shall demonstrate that the project replaces those units on a one-for-one basis with units of equivalent size and at the same or lower income category, consistent with state law. Replacement ownership units shall be subject to resale controls and an initial occupancy requirement by income-qualified households at an affordable housing cost, all as defined by state law.

The Applicant shall execute and record an Affordable Housing Agreement, in a form approved by the City Attorney, memorializing the replacement obligations, affordability terms, monitoring requirements, and enforcement provisions prior to issuance of the first building permit. No certificate of occupancy shall be issued for any market-rate unit until the required replacement units are constructed and made available for occupancy, unless an alternative phasing plan ensuring no net loss of protected units is approved by the Director of Community Development in compliance with state law.

14. DENSITY BONUS WAIVERS AND CONCESSIONS

As allowed through the state's Density Bonus law, the project is granted one concession and five waivers as requested and indicated on the approved project plans as follows:

- a. Concession to address different unit type for BMR units;
- b. Waiver to increase the maximum height of buildings;
- c. Waiver for reduced street side and interior side setbacks;
- d. Waiver to reduce private outdoor space dimensions;
- e. Waiver to increase the maximum floor area ratio; and
- f. Waiver for reduced parking space dimensions.

15. BICYCLE PARKING

The applicant shall provide bicycle parking and bike racks for the proposed project in accordance with the approved plans and with the City's Parking Regulations under Chapter 19.124 of the Cupertino Municipal Code.

16. BMR UNIT DESIGN REQUIREMENTS

Prior to building permit issuance, the Applicant shall detail how the following requirements are met:

- a. The BMR units shall be comparable to market-rate units in terms of number of bedrooms per unit, quality of exterior appearance and overall quality of construction.

- b. The BMR unit size should generally be representative of the unit sizes within the market-rate portion of the residential project.
- c. Interior features and finishes in the affordable units shall be durable, of good quality and consistent with the contemporary standards of new housing.

17. BMR AGREEMENT

Prior to the recordation of a final map or issuance of any residential 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, in compliance with the BMR Housing Mitigation Manual:

- 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. Prices for BMR units as provided for in the BMR mitigation manual;
- e. Provisions for income certification and screening of potential occupants of BMR units;
- f. Restriction control mechanisms;
- g. Financing of ongoing administrative and monitoring costs;
- h. Other reasonably required provisions to implement the Affordable Housing Plan.

18. BMR UNIT TERMS OF AFFORDABILITY

Prior to occupancy, the proposed project shall record covenants that require the units to be sold at prices that are affordable to moderate and median levels for a period not less than 99 years from the date of first occupancy of the unit.

19. 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 (including location and design) shall be reviewed by the Fine Arts Commission during the building permit stage, in advance of final occupancy. Once approved by the Fine Arts Commission, the public artwork shall be installed to the satisfaction of the City prior to final occupancy.

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

20. PUBLIC ART MAINTENANCE REQUIREMENT

In accordance with the requirements of Municipal Code Chapter 19.128, the property owner shall maintain approved public artwork in good condition continuously after its installation, as determined appropriate by the City. Maintenance shall include all related landscaping, lighting, and upkeep, including the identification plaque. Artwork required or approved cannot be removed, except for required maintenance or repair, unless approved by the City; at which time the City may require replacement or relocation of the artwork. In the event that the artwork is relocated in the public right-of-way, a maintenance agreement with the City shall be required.

21. TRIBAL CONSULTATION CONDITIONS

Prior to issuance of any demolition, grading, or building permit, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the project complies with the requirements of Public Resources Code Section 21080.66. Compliance with this condition shall be ongoing throughout all ground-disturbing and restoration activities.

As requested by a California Native American tribe traditionally and culturally affiliated with the project area, the Applicant shall retain and fund tribal monitoring during all ground-disturbing activities. The designated tribal monitor shall be selected by the tribe and shall comply with the applicant's site access and workplace safety requirements. The applicant shall compensate the tribal monitor at a reasonable rate, determined in good faith, that aligns with customary compensation for cultural resource monitoring, taking into account factors such as the scope and duration of the project.

Tribal cultural resources shall be avoided where feasible, in accordance with subdivision (a) of Section 21084.3. In furtherance of this requirement, where feasible, the project applicant shall provide deference to tribal preferences regarding access to spiritual, ceremonial, and burial sites, and incorporate tribal traditional knowledge in the protection and sustainable use of tribal cultural resources and landscapes.

All identification, treatment, and documentation of tribal cultural resources shall be conducted in a culturally appropriate manner consistent with Public Resources Code Section 21083.9.

Prior to permit issuance, the Applicant shall complete a California Historical Resources Information System (CHRIS) archaeological records search and a tribal cultural records search for the project site and shall submit a Sacred Lands Inventory request to the Native American Heritage Commission.

The project shall comply with California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98, including immediate cessation of work in the event of the discovery of human remains or burial resources and treatment in accordance with applicable law and consultation with the appropriate California Native American tribe.

Where applicable to the environmental context of the site, the applicant shall incorporate tribal ecological knowledge into any habitat restoration or landscape management measures associated with the project.

22. SOIL MANAGEMENT PLAN

If any unanticipated structure or evidence of contamination is discovered during construction activities on-site, the project shall halt work in the area of the discovery and a qualified professional shall prepare a Soil Management Plan. The Soil Management Plan (if required) shall be subject to review and approval by the City's third-party consultant, at the expense of the applicant.

23. GEOLOGIC AND GEOTECHNICAL CONDITIONS

- a. Structural Plans – Prior to Building Permit issuance, structural plans shall be developed that incorporate the recommendations of the geotechnical consultant.
- b. Geotechnical Plan Review - Prior to Building Permit issuance, the Project Geotechnical Consultant shall review and approve all geotechnical aspects of the development plans (i.e., site preparation and grading, drainage improvements, design parameters for foundations, and retaining walls) to ensure that their recommendations have been incorporated.

The Structural Plans and Geotechnical Plan Review shall be submitted to the City for review by the City staff and City Geotechnical Consultant prior to issuance of building permits.

- c. The following shall be performed prior to final (as-built) project approval:
 - i. Geotechnical Construction Inspections - The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project

construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and retaining walls prior to placement of steel and concrete.

- ii. Geotechnical Inspection Final Report - The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to final (as-built) project approval.

24. LANDSCAPE INSTALLATION REPORT

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit shall be conducted by a certified landscape professional after the landscaping and irrigation system have been installed. The findings of the assessment shall be consolidated into a landscape installation report.

The landscape installation report shall include but is not limited to: inspection to confirm that the landscaping and irrigation system are installed as specified in the landscape and irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

25. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the Landscape Ordinance (CMC, Chapter 14.15), a maintenance schedule shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package, with the landscape installation report, or any time before the landscape installation report is submitted.

- a. Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b. Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.

- c. Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

26. RESIDENTIAL SCREENING COVENANT

The property owner shall record a covenant on this property to inform future property owners of the residential screening measures and tree protection requirements consistent with the approved plans and reference these in the Property Owner Association documentation. The precise language will be subject to approval by the Director of Community Development. Proof of recordation must be submitted to the Community Development Department prior to final occupancy of the residence.

27. LANDSCAPE PROJECT SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, for projects with landscape area 500 square feet or more or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C for projects with landscape area between 500 square feet and 2,500 square feet. The Landscape Documentation Package or Prescriptive Compliance Application shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

28. LANDSCAPE AND IRRIGATION PLANS

The applicant shall submit detailed landscape and irrigation plans to be reviewed and approved by Community Development prior to issuance of building permits. The landscape plan shall include water conservation and pesticide reduction measures in conformance with Chapter 14.15, Landscape Ordinance, and the pesticide control measures referenced in Chapter 9.18, Stormwater Pollution Prevention and Watershed Protection, of the Cupertino Municipal Code.

29. SITE IMPROVEMENTS

All proposed site improvements shall be completed prior to final occupancy of any structures approved in conjunction with the project, unless an alternative phasing plan is approved by the Director of Community Development and City Engineer.

30. 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 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. However, any changes to the building materials that do not match the approved materials shall require an amendment to this permit or a new permit.

31. 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 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.

32. TRANSFORMERS

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.

33. UTILITY STRUCTURE PLAN

Prior to issuance of building permits, the applicant shall work with staff to provide a detailed utility plan to demonstrate screening or undergrounding of all new

utility structures [including, but not limited to backflow preventers (BFP), fire department connections (FDC), post-indicator valves (PIV), and gas meters] to the satisfaction of the Director of Community Development, Public Works, Fire Department, and applicable utility agencies.

34. 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 and costs associated with third-party review shall be paid by the applicant.

35. EQUIPMENT SCREENING

All mechanical and other equipment on the building or on the site shall be screened so they are not visible from public street areas or adjoining developments. 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.

36. TITLE 17 REQUIREMENTS

At the time of application for Building Permits, the applicant shall demonstrate, to the satisfaction of the Director of Community Development, that the project is and will be consistent with the requirements for construction outlined in Cupertino Municipal Code Chapter 17.04.

37. 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.

38. 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.

39. 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.

40. 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.

41. AVOID NESTING BIRDS DURING CONSTRUCTION

Prior to issuance of 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. EXCESSIVE NOISE AND VIBRATIONS

Per General Plan Policy HS-8.3, construction contractors shall use the best available technology to minimize excessive noise and vibration from construction equipment such as pile drivers, jack hammers, and vibratory rollers during construction.

47. PRE-CONSTRUCTION MEETING AND 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. Appropriate construction staging area
- b. Hours of construction
- c. Compliance with the City noise ordinance
- d. Best management practices

- e. Staging of construction equipment shall not occur within ____ feet of any residential property.
- f. Any other measures as determined to be appropriate by the Director of Community Development

48. 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.

49. 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.

50. PROPERTY OWNERS' 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, 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 and changes must be considered in the context of the development as a whole, and not on a unit-by-unit basis.
- 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
- Disbanding of the Association shall require an amendment to this permit to be reviewed and approved by the original approval authority.

51. 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.

52. 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.

53. 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

54. 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 detached sidewalk, driveways, curb and gutter, remove/replace existing driveway cuts, utility mains/laterals, street tree installations, and street light installation. 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.

55. 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.

56. 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.

57. 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 Guidelines, 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.

58. 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.

59. 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.

60. 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 based on the 10-year storm event 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.

61. 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. 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 project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the Post-Construction Hydromodification Management requirements which entail

HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.

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 is subject to (Covenants, Conditions, and Restrictions (CC&R) and Homeowners Association (HOA), CC&R must also include languages pertaining to the stormwater treatment measures.

62. 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 (\$6,203 or 5% of improvement costs)
- b. Grading Permit: Per current fee schedule (\$5,365 or 6% of improvement costs)
- c. Tract Map Fee: Per current fee schedule (\$15,013)
- d. Storm Drainage Fee: Per current fee schedule (\$4,548 per AC + \$345 per unit)
- e. Transportation Impact Fee: Per current fee schedule: (\$4,215 per new unit) credit for 4 existing units
- f. Encroachment Permit Fee: Per current fee schedule (\$3,895 or 5% of improvement costs)
- g. Park Fees: Per current fee schedule: (\$54,000 per new unit) \$1,794,000 for 41 new units, 10 BMR units waived, credit for 4 existing units
- h. Storm Management Plan Fee Per current fee schedule (\$2,432)
- i. Street Tree Fee: By Developer or Per current fee schedule: \$562 per tree

Bonds:

- a. Faithful Performance Bond: 100% of Off-site and On-site Improvements
- b. Labor & Material Bond: 100% of Off-site and On-site Improvement
- c. 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.

63. FINAL MAP

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

64. 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).

65. PARKS

The residential units are subject to the Park Land Dedication (for units 50 or more) or the payment of parkland fees in-lieu of parkland dedication per Chapter 13.08 and Chapter 18.24 of the Cupertino Municipal Code. The City Council has the ultimate discretion to require parkland dedication or accept park in-lieu fees. (for units 50 or more)

The Below Market Rate (BMR) program manual, which was last amended by City Council on July 2, 2024 per Resolution 24-067, authorizes the waiver of park fees for BMR units. Pursuant to Resolution 24-067, parkland dedication in-lieu fees for the 10 BMR units proposed for this project are hereby waived.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. FIRE PROTECTION

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

79. 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).

80. FIRE HYDRANT

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

81. SAN JOSE WATER SERVICE COMPANY CLEARANCE

Provide San Jose Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers prior to Final Map approval.

82. 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.

83. 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.

84. UTILITY EASEMENTS

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and San Jose Water Company, and/or equivalent agencies) will be required prior to Final Map approval.

85. TRUCK RESTRICTIONS

In addition to the restrictions of Municipal Code Section 11.32.055, project related truck traffic shall not occur between the hours of 7:30 a.m. and 9:30 a.m. in the morning and the hours of 2:00 p.m. and 4:00 p.m. in the afternoon Monday through Friday, on the following roadway segments:

- i. McClellan Road, between Stelling Road and Linda Vista Drive;
- ii. Linda Vista Drive;
- iii. Bubb Road, between McClellan Road and Columbus Avenue; and
- iv. Hyannisport Drive, between Bubb Road and Linda Vista Drive.

SECTION V: CONDITIONS ADMINISTERED BY THE CUPERTINO SANITARY DISTRICT

1. CUPERTINO SANITARY DISTRICT

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to Final Map approval. The letter shall include their review and approval of any existing sanitary sewer easements to be quitclaimed and the creation of any new sanitary sewer easements.

2. INSTALLERS AGREEMENT

The property owner shall enter into an Installer's Agreement with the District for the construction of the proposed sewer infrastructure prior to issuance of Building Permits.

3. PAYMENT OF FEES

The property owner shall pay all required New Lateral, Sewer Development, Treatment Plant Capacity, plan check, and permit fees to the District prior to issuance of Building Permits.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 17th day of March, 2026, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Kitty Moore, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Lauren Sapudar, City Clerk	 _____ Date