

RESOLUTION NO. ____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT TO
CONSTRUCT A NEW STORAGE FACILITY AND ASSOCIATED SITE AND
LANDSCAPE IMPROVEMENTS LOCATED AT 10655 MARY AVE (APN 326-06-050)**

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2019-05
Applicant: Emilia Samudio (Jordan Architects)
Property Owner: Bass Cupertino, LLC
Property Address: 10655 Mary Avenue (APN: 326-06-050)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

WHEREAS, the City Council of the City of Cupertino received an application for a Development Permit as described in Section I. of 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 the Planning Commission held at least one public hearing in regard to this application, and on January 18, 2022, the City Council held a public hearing to consider the Development Permit; and

WHEREAS, on December 14, 2021 the Planning Commission recommended on a X-X vote that the City Council approve the Development Permit (DP-2019-05) in substantially similar form to the Resolution presented (Resolution No. 6944), approve the Architectural and Site Approval Permit (ASA-2019-05) in substantially similar form to the Resolution presented (Resolution No. 6945), approve the Fence Exception Permit (EXC-2019-04) in substantially similar form to the Resolution presented (Resolution No. 6946), approve the Tree Removal Permit (TR-2019-048) in substantially similar form to the Resolution presented (Resolution No. 6947); and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15332, and the exemption in CEQA Guidelines section 15183, for the reasons set forth in the staff report dated January 18, 2022 and incorporated herein; and

WHEREAS, the applicant has met the burden of proof required to support said application; 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 proposed project is a redevelopment of an existing Public Storage facility. The redevelopment allows for continued operation and expansion of the existing use. The project will provide for a new building design that meets new building requirements, provided high quality architecture, and improvements in the vicinity, such as the 20-foot easement along the east side of the property for a multi-use trail. The project will also provide increase landscaping and tree canopy coverage along the frontage. Therefore, the proposal will not be detrimental or injurious to property or improvements in the vicinity.

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 complies with the primary building height of 30 feet listed in the General Plan: Community Vision 2015-2040. Further, the project is located far from existing residences to the south, and bounded Interstate 280 to the north. The buildings take use of various building material, architectural features, and setbacks to help avoid abrupt changes in building scale and make the project compatible with the existing and future developments.

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

specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners.

The design quality of the development is consistent with the high-quality standards encouraged by City Staff. The architectural style is consistent throughout the development. The applicant has additionally updated the existing structure to remain with the same color and materials of the proposed structures. Further, the planting plan provides extensive ground cover and canopy throughout the project frontage, and provides planting screening from the future trail. Utility installation has been designed to be screened by landscaping and or incorporated into the building design. The final lighting for the development will be reviewed as part of the review of the project construction documents to ensure that they meet safety requirements and ensure consistency with the City's lighting regulations.

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

Signage approval is not included in this application.

- d) With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.

The project is located approximately 120 feet from the nearest residential property. The project is bounded by Interstate 280 to the north, and the City's Corporation yard to the south. The has incorporated improvements to the area adjacent to Mary Avenue to buffer the project. Additionally, the project will be required to meet the City's noise and lighting regulation to avoid any intrusive effects.

NOW, THEREFORE, BE IT RESOLVED:

The application for an Architectural Site Approval, Application No. ASA-2019-05, 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-2019-05 as set forth in the Minutes of the City Council Meeting of January 18, 2022, and are incorporated by reference as though fully set forth herein.

1. The City Council exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183. The exemption in CEQA Guidelines section 15332

applies to an infill development project which 1) is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable Zoning designations and regulations; 2) occurs within the City limits on a site of less than 5 acres in size that is substantially surrounded by urban uses; 3) is located on a site that has no value for endangered, rare or threatened species; 4) would not result in any significant effects related to traffic, noise, air quality or water quality; and 5) can be adequately served by all required utilities and public services. The exemption in CEQA Guidelines section 15183 applies to a project that is consistent with General Plan designations and zoning for the site described in the General Plan, the potential impacts of which would be substantially mitigated by the imposition of uniformly applied standard conditions of approval. The General Plan Amendment, Housing Element Update, and Associated Rezoning Final Environmental Impact Report (SCH No. 2014032007), certified by the City Council on December 4, 2014, was prepared consistent with the requirements for applicability of streamlining under CEQA Guidelines Section 15183(d)(2), and there are no environmental effects that are peculiar to the proposed project or project site that were not analyzed in the General Plan EIR;

2. The application for an Architectural Site Approval, Application No. ASA-2019-05 is hereby recommended to be approved; and

The subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no.(s) ASA2019-05 as set forth in the Minutes of the City Council Meeting of January 18, 2022, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated January 15, 2021 consisting of 34 sheets titled as Bay Area Self Storage, A.1 – A.16, C0.1-C3.0, and CLP-01 – CLP-03 prepared by Bruce Jordan Architect, Sandis, and Preinaire Design Group, 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. DP-2019-05, EXC-2019-04 and TR-2019-048 shall be applicable to this approval.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

5. 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.

6. 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."

7. LANDSCAPE INSTALLATION/REHABILITATION SUBMITTAL

Prior to issuance of building permits, the applicant shall submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C of the Landscape Ordinance. The Water-Efficient Design Checklist (Appendix A of Chapter 14.15), landscape design plans, and irrigation plans shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits. A full Landscape Documentation Package submittal will be required if more than 500 square feet of landscaping is proposed.

8. 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.

Note that all landscape and trees planted is considered protected per the City's Protected Trees Ordinance. Tree Removal permits are required prior to removal of any trees.

9. 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.

10. SOIL ANALYSIS REPORT

A soils analysis report shall document the various characteristics of the soil (e.g. texture, infiltration rate, pH, soluble salt content, percent organic matter, etc) and provide recommendations for amendments as appropriate to optimize the productivity and water efficiency of the soil.

The soil analysis report shall be made available to the professionals preparing the landscape and irrigation design plans in a timely manner either before or during the design process. A copy of the soils analysis report shall be submitted to the Director of Community Development as part of the landscape documentation package.

11. LANDSCAPE AND IRRIGATION PLANS

The applicant shall submit detailed landscape and irrigation plans to be reviewed and approved by ___ 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.

12. 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.

13. SIGNAGE

Signage is not approved with this use permit application. Signage shall conform to the City Sign Code.

14. 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. Transformers shall not be located in the front or side building setback area.

15. 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.

16. 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.

17. 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.

18. 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.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18th day of January 2022 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

| | |
|--|---------------|
| SIGNED: _____ Darcy Paul, Mayor City of Cupertino | _____ Date |
| ATTEST: _____ Kirsten Squarcia, City Clerk | _____ Date |