

**RESOLUTION NO.**  
**A RESOLUTION OF THE CUPERTINO CITY COUNCIL**  
**APPROVING OF AN ARCHITECTURAL AND SITE APPROVAL PERMIT TO**  
**CONSTRUCT NEW SEVEN (7) UNIT TOWNHOME DEVELOPMENT LOCATED**  
**AT 10046 BIANCHI WAY (APN: 359-07-021)**

---

---

**SECTION I: PROJECT DESCRIPTION**

Application No.: ASA-2023-002  
Applicant: Leon Hu of Top Mission Realty & Investment, Inc.  
Location: 10046 Bianchi Way (APN: 359-07-021)

**SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:**

WHEREAS, the City of Cupertino received an application for an Architectural and Site Approval Permit (Application No. ASA-2023-002) as described in Section I of this resolution; and

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

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

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

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

RESOLUTION NO.

Page 2

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

WHEREAS, the City Council finds:

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 has been determined to be consistent with the General Plan, Heart of the City Specific Plan and applicable portion of the Municipal Code. The project scope has been determined to fall within Class 32 CEQA Exemption pursuant to CEQA Guideline Sections 15332 (Infill Development Projects). The incorporated conditions of approval into the project will further mitigate potential impacts and therefore the project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:

- a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

*The proposed project is a redevelopment of an existing residential four-plex. The project incorporates variation in wall planes, rooflines, and multiple recessed areas; that help to reduce the height and bulk of the buildings. The exterior siding is a mixture of different materials, textures, colors and finishes; methodically repeated throughout the building design on every elevation. The landscape plantings help to further screen the development with the proposal of dense, fast-growing shrubs. Additionally, the project incorporates trees throughout the street frontage to further reduce the massing and bulk of the structures.*

- 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 proposed development is that of a Modern design, architectural details and style is consistent throughout the development. The landscape architect has strategically placed landscape screening throughout the site and has proposed a new six-foot tall redwood fence along the sides and rear perimeter of the property. Unsightly uses such as roof top equipment installation is conditioned to be either screened on top of the roof or be located interior to the structure. 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 while avoiding spill-over light to adjacent properties. The applicant has demonstrated compliance 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

*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 site is not located within an existing residential neighborhood since it is located in the Heart of the City Special Plan Area. However, the project has been designed in the manner to protect other residents located in close proximity from noise, traffic, light and other visually intrusive effects by setting back and locating the homes further away from the existing residential uses on the street, in addition to screening landscaping proposed along the side and rear property lines to further buffer the project from surrounding uses. Additionally, all utilities have been proposed to be underground and the project will be required to meet the City's noise ordinance for any noising producing equipment, such as air conditioner units.*

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 NO.

Page 4

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-2023-002, is hereby approved, and that the conclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. ASA-2023-002 as set forth in the Minutes of the City Council Special Meeting of January 17, 2024, and are incorporated by reference as thoroughly set forth herein.

### SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

#### 1. APPROVED EXHIBITS

Approval is based on the plan set entitled "Leon Townhouse, 10046 Bianchi Way Cupertino, CA 95014" consisting of thirty-five sheets labeled A0.0 – A10.0, L1-L1 and C3.1-C7.1 drawn by Tectonic Builders Corp., except as may be amended by conditions in this resolution.

#### 2. ACCURACY OF PROJECT PLANS

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

#### 3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2023-001, TM-2023-001 & TR-2023-008

#### 4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

#### 5. EXTERIOR BUILDING MATERIALS/TREATMENTS

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.

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

6. BIRD SAFE FENESTRATION

Consistent with CMC 19.102.030, the development shall implement the bird safe fenestration and glass requirements. The applicant, prior to issuance of Building Permits, may submit for an Alternative Compliance Method in which the property owners/applicants may propose an alternate compliance method recommended by a qualified biologist to meet the requirements and intent of CMC 19.102.030. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.

7. DARK SKY COMPLIANCE

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

8. 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.

9. 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.

10. 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.

11. 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 special meeting of the City Council of the City of Cupertino this 17<sup>th</sup> day of January 2024, by the following vote:

Vote            Members of the City Council

AYES:

NOES:

ABSTAIN:

ABSENT:

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