RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING A USE PERMIT TO ALLOW A MIXED-USED DEVELOPMENT CONSISTING OF EIGHTEEN (18) RESIDENTIAL UNITS AND 4,500 SQUARE FEET OF COMMERCIAL SPACE ON A NON-HOUSING ELMENT SITE LOCATED AT 10625 SOUTH FOOTHILL BOULEVARD (APN: 342-16-087 & 088)

SECTION I: PROJECT DESCRIPTION

Application No.: U-2018-04
Applicant: Dan Shaw (SCR Enterprises)
Location: 10625 South Foothill Boulevard (APN#s 342-16-087 & 088)

SECTION II: FINDINGS FOR A USE PERMIT:

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

WHEREAS, 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 City prepared an Initial Study and proposed Mitigated Negative Declaration ("Project"); and

WHEREAS, on October 28, 2021, the City of Cupertino's Environmental Review Committee held a duly noticed public hearing to receive public testimony and reviewed and considered the information contained in the Draft IS/MND, and voted 5-0-0 to recommend that the City Council adopt the Draft IS/MND (EA-2018-06) and mitigation measures; and

WHEREAS, on November 23, 2021, the Planning Commission held a duly noticed public hearing to receive staff's presentation and public testimony, and to consider the information contained in the IS/MND along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing, and recommended on a 5-0 vote, based on substantial evidence in the record, that the City Council adopt the MND, adopt and incorporate into the Project and implement as conditions of approval all of the mitigation measures for the project that are identified in the IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project (EA-2018-06); and

WHEREAS, on November 23, 2021 the Planning Commission recommended on a 5-0 vote that the City Council approve Zone Map Amendment (Z-2018-02), in substantially

similar form to the Resolution presented (Resolution No. 6938) approve the Vesting Tentative Map (TM-2018-04), in substantially similar form to the Resolution presented (Resolution No. 6940), approve the Development Permit (DP-2018-07) in substantially similar form to the Resolution presented (Resolution No. 6939), approve the Architectural and Site Approval Permit (ASA-2018-09) in substantially similar form to the Resolution presented(Resolution No. 6941), approve the Use Permit (U-2018-04) in substantially similar form to the Resolution presented (Resolution No. 6942), approve the Tree Removal Permit (TR-2018-39) in substantially similar form to the Resolution presented (Resolution No. 6943); 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 December 21, 2021, the City Council held a public hearing to consider the Development Permit; and

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

WHEREAS, on January 13, 2022, after consideration of substantial evidence contained in the entire administrative record, and prior to consideration of the Use Permit, the City Council adopted Resolution No. [####] adopting and requiring as conditions of approval all of the mitigation measures for the Project which are within the responsibility and jurisdiction of the City that are identified in the IS/MND, and adopting the Mitigation Monitoring and Reporting Program for the Project; and

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

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

a) The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;
Given that the project is consistent with the densities and land uses as allowed in the General Plan and Zoning Ordinance, with the approval of the Zone Map Amendment (Z-2018-02), 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.

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

Code since the Project is consistent with the existing land use designations (Commercial, Residential), Municipal Code requirements, including but not limited to, parking regulations, open space, density.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the IS/MND and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-06), subject to the conditions which are enumerated in this Resolution beginning on PAGE 3 thereof, and those contained in all other Resolutions approved for this Project,

The application for a Use Permit, Application No. U-2018-04, 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. U-2018-04 as set forth in the Minutes of the City Council Meeting of January 13, 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 September 15, 2020 consisting of 55 sheets labeled as Canyon Crossings Mixed-Use Development, A0-A6, E1.1, L1.0-L3.1, C1-C14, and ST2 prepared by LPMD Architects, TS Civil Engineering, and Reed Associates, 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. Z-2018-02, TM-2018-04, DP-2018-07, ASA-2018-09, TR-2018-39, and EA-2018-06 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. **CONSULTATION WITH OTHER DEPARTMENTS**

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

6. **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.

7. **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 13th 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: _____	_____ Date

Kirsten Squarcia, City Clerk	