

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT TO  
DEMOLISH APPROXIMATELY 44,000 SQ. FT. OF EXISTING COMMERCIAL SPACE  
AND THE CONSTRUCTION OF THREE MIXED-USE BUILDINGS WITH  
APPROXIMATELY 41,268 SQ. FT. OF COMMERCIAL SPACE AND 206  
CONDOMINIUM UNITS AND REQUESTING A DENSITY BONUS, AND DENSITY  
BONUS WAIVERS FOR HEIGHT, SETBACKS, AND COMMON OPEN SPACE  
LOCATED AT 10145 N. DE ANZA BLVD, 10118 BANDLEY DRIVE (APN: 326-34-066,  
326-34-043)

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SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2022-001  
Applicant: Larry Wang (Tectonic Builders Corp.)  
Property Owner: De Anza Venture, LLC  
Location: 10145 N. De Anza Blvd, 10118 Bandley Drive (APN: 326-34-066, 326-34-043)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

WHEREAS, the Planning Commission 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, after consideration of evidence contained in the entire administrative record, at the public hearing on September 6, 2016, the City Council adopted Resolution No. 16-091, adopting a Mitigated Negative Declaration for the Marina Development; and

WHEREAS, environmental analysis and peer reviews were conducted by Placeworks, Inc. pursuant to the requirements of CEQA, finding that no new or substantially increased significant environmental effects; and

WHEREAS, on November 10, 2022 the Planning Commission recommended on a 5-0 vote that the City Council adopt the Addendum to the Mitigated Negative Declaration (EA-2015-05) and approve the Development Permit (DP-2022-001) in substantially similar form to the Resolution presented (Resolution No. 6964), approve the Architectural and Site Approval Permit (ASA-2022-002) in substantially similar form to the Resolution presented (Resolution No. 6965), approve the Tree Removal Permit (TR-2022-026) in substantially similar form to the Resolution presented (Resolution No. 6967) and approve

the Vesting Tentative Map (TM-2022-003), in substantially similar form to the Resolution presented (Resolution No. 6966); 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 6, 2022 the City Council held a public hearing to consider the Development Permit; and

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

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

WHEREAS, the analysis in the Addendum prepared by Placeworks, Inc. indicates that the proposed project would not require major revisions to the Mitigated Negative Declaration adopted on September 6, 2016, due to new or substantially increased significant environmental effects. Furthermore, there have been no substantial changes with respect to the circumstances under which these minor modifications would be undertaken that would require major revisions of the Adopted Mitigation Negative Declaration due to new or substantially increased significant environmental effects, and there has been no discovery of new information of substantial importance that would trigger or require major revisions to the Mitigated Negative Declaration due to new or substantially increased significant environmental effects.

WHEREAS, the adopted Mitigated Negative Declaration adequately identifies all environmental effects and adequate mitigation measures for the proposed modifications to the previously approved project. Therefore, no subsequent or supplemental Mitigated Negative Declaration is required prior to approval of the proposed project.

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;

*Given that the project is consistent with the General Plan and Zoning Ordinance; all mitigation measures identified in the Initial Study/Mitigated Negative Declaration addendum that are within the responsibility and jurisdiction of the City have been adopted and incorporated into the project to mitigate potential impacts to a less than significant level, 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 a commercial site with three mixed-use multi-story high-density structures. The development is surrounded by multi-storied structures with the Aloft Hotel to the north and an Apple office building adjacent to the south. The site is bordered by multi-story structures primarily, with some taller single story structures (Apple Cafeteria) to the north. There are other single story commercial structures across N. De Anza Blvd, to the east, which are over 100 feet away from the proposed structures. There is landscaping proposed at the perimeter which will help mask some of the bulk of the proposed buildings. There are also two taller four story office building located directly south-east of the proposed project. While the remaining four structures on the site are single story, these are commercial buildings, and the proposed structures are between 10 feet and 25 feet from the existing buildings with adequate landscaping buffer and existing trees.*

- 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 mixed-use buildings meet the design qualities of a Modern design development. The architectural style is consistent throughout the development. Further, the planting plan is consistent with the intent of the Heart of the City Specific Plan guidelines. Unsightly uses such as loading and trash pickup have been placed within the buildings away from view of neighboring uses. 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 while avoiding spill-over light to adjacent properties.*

- 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 does not abut any existing residential development. The multi-family development to the north-east of the project site, across Alves, will be buffered from any impacts because the project has been designed to plant further street trees along the frontage and has been designed with adequate parking on-site. The buildings have been designed with setbacks from the curb line as required by the General Plan and Heart of the City Specific Plan.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the MND Addendum, 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-2022-001, 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-2022-001 as set forth in the Minutes of the City Council Meeting of December 6, 2022 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 dated July 27, 2022 consisting of 91 sheets labeled as Marina Plaza, A0.0 – A11.0, T-01 – T-03, C0.1 – C4.3, JT-1 – JT-3, L1.01 – L3.05, and TR0.1 – TR0.9, drawn by Tectonic Builders, Giuliani & Kull, Vizion Utility, and JETT Landscaping, 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. TR-2022-026, TM-2022-003, and DP-2022-001 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. 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.

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 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.

8. 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.

9. 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.

10. 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.

11. SIGN PROGRAM

A sign program is required for this project. The sign program shall be approved by the Director of Community Development prior to issuance of sign permits.

12. SITE IMPROVEMENTS

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

13. 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.

14. TREE PROTECTION

As part of the demolition or building permit drawings, a tree protection plan shall be prepared by a certified arborist for the trees to be retained. In addition, the following measures shall be added to the protection plan:

- For trees to be retained, chain link fencing and other root protection shall be installed around the dripline of the tree prior to any project site work.
- No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.

- No trenching within the critical root zone area is allowed. If trenching is needed in the vicinity of trees to be retained, the City's consulting arborist shall be consulted before any trenching or root cutting beneath the dripline of the tree.
- Wood chip mulch shall be evenly spread inside the tree projection fence to a four-inch depth.
- Tree protection conditions shall be posted on the tree protection barriers.
- Retained trees shall be watered to maintain them in good health.
- A covenant on the property shall be recorded that identifies all the protected trees, prior to final occupancy.

The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits. The City's consulting arborist shall inspect the trees to be retained and shall provide reviews prior to issuance of demolition, grading or building permits. A report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

#### 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.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6th day of December, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

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