

**FINDINGS OF FACT AND FINAL ORDER
TYPE III LAND USE PROPOSAL**

This proposal was reviewed concurrently as a Type III Design Review and Type II Food Cart Pod with seven (7) Type III variances, one design deviation, and tree removal. The following exhibits and findings of fact explain the proposal and support the Planning Commission decision.

DATE: August 2, 2022

FILE NO.: 22-012 DR/VAR/TREE/DEV/CART

PROJECT NAME: The Riffle Food Cart Pod

APPLICANT: Todd Hoffman

OWNER: Shawna Hoffman (Tax Lots 1000 and 1200); PLR Properties, LLC (Tax Lot 1100)

PHYSICAL ADDRESS: 37095, 37115, and 37133 Highway 26

LEGAL DESCRIPTION: Lots 8, 9, and 10 of Twin Cedars No. 2, otherwise known as T2SR4E14BA, Tax Lots 1000, 1100, and 1200

TABLE OF CONTENTS:

EXHIBITS..... 3

FINDINGS OF FACT..... 5

GENERAL FINDINGS.....5

DESIGN REVIEW – Chapter 17.907

FOOD CARTS AND FENCES/RETAINING WALLS – Chapter 17.7415

VARIANCES – Chapter 17.6619

ZONING and SETBACKS – Chapters 17.44 and 17.8030

TRANSPORTATION AND IMPROVEMENTS – Chapter 17.8431

PARKING, LOADING, AND ACCESS REQUIREMENTS – Chapter 17.9834

UTILITIES – Chapters 17.84 and 15.3039

URBAN FORESTRY – 17.10242

LANDSCAPING AND SCREENING – Chapter 17.92.....52

EROSION CONTROL – Chapters 15.44 and 8.04.....55

DECISION..... 56

CONDITIONS OF APPROVAL 58
RIGHT OF APPEAL 71

EXHIBITS

Applicant's Submittals:

- A. Land Use Application, Supplemental Application, and Signed Acknowledgement by Owner of Tax Lot 1100
- B. Project Narrative (dated March 2022) & Supplemental Narrative
- C. Civil Plan Set
 - Sheet C1 - Cover Sheet
 - Sheet C2 - Topographic Survey
 - Sheet C3 – Overall Site Plan
 - Sheet C4 – Building Setbacks
 - Sheet C5 – Detailed Site Plan
 - Sheet C6 – Preliminary Utility Plan
 - Sheet C7 – Preliminary Grading and Stormwater Plan
 - Sheet C8 – Tree Survey (Onsite)
 - Sheet C9 – Tree Survey (Off-site)
 - Sheet C10 – Detailed Tree Information
- D. Architectural Plan Set
 - Sheet A2.01 – Building Footprints
 - Sheet A3.01 – Main Building Elevations
 - Sheet A3.02 – Restroom Building Elevations
 - Sheet A3.03 – Trash Enclosure Elevations
- E. Landscape Plans
 - Sheet L1 – Planting Plan
 - Sheet L2 – Planting Details & Notes
- F. Lighting Plans
 - Sheet ES.01 – Site Lighting & Photometry Plan
 - Sheet ES.02 – Luminaire Data Sheets
- G. Color Renderings
- H. Wall and Fence Sections
- I. Preliminary Storm Drainage Report (dated March 2022)
- J. Transportation Impact Study (dated March 7, 2022) and Parking Memo (dated April 19, 2022)
- K. Arborist Report (dated April 14, 2022)
- L. Line of Sight Sketches

Agency Comments:

- M. DEQ (email dated June 24, 2022)
- N. Fire Marshal (dated June 24, 2022)
- O. City Engineer (dated June 24, 2022)
- P. Earth Care Designs, LLC dba Oregon Tree Care Third-Party Arborist Review (dated June 28, 2022)
- Q. SandyNet General Manager (email dated July 1, 2022)
- R. City Transportation Engineer (dated July 5, 2022)
- S. ODOT (dated July 8, 2022)

Additional Documents Submitted by Staff:

- T. Twin Cedars Subdivision Tree Covenant and Exhibit Map
- U. Twin Cedars No. 2 Subdivision Plat
- V. Site Plan with Staff's Parking Recommendations
- W. July 18, 2022, Staff Report
- X. Staff Presentation for July 25, 2022, Planning Commission Hearing

FINDINGS OF FACT

GENERAL FINDINGS

1. These findings are based on the applicant's submittal items received on March 18, 2022, with additional items received April 21, 2022, May 12, 2022, and May 13, 2022. The application was deemed complete on May 16, 2022. The 120-day deadline is September 13, 2022.
2. This report is based upon the exhibits listed in this document, including the applicant's submittals, agency comments, and public testimony.
3. The proposal is primarily on two lots (Tax Lots 1000, Lot 8 and 1200, Lot 10) that total 1.72 acres. In addition, a portion of the parking area on Tax Lot 1000 (Lot 8) is proposed to extend onto Tax Lot 1100 (Lot 9), which is 4.78 acres, and this lot is also proposed to be encumbered with multiple required retention trees. The proposed food cart pod (Tax Lot 1200) is located at 37133 Highway 26, with additional parking proposed on 37115 Highway 26 (Tax Lot 1000) and extending onto 37095 Highway 26 (Tax Lot 1100).
4. The parcel has a Comprehensive Plan Map designation of Commercial and a Zoning Map designation of General Commercial (C-2).
5. The applicant, Todd Hoffman, submitted an application on behalf of owner Shawna Hoffman for a design review of a food cart pod with a dining facility located at 37133 Highway 26, with additional parking on 37115 Highway 26 (and extending onto 37095 Highway 26). The proposal includes 18 food cart pads, a 3,600 square foot beverage and dining building, and associated parking and landscaping. The development also includes removal of 19 trees from the subject property. In addition, the applicant is requesting the following seven (7) variances and one (1) design deviation:
 - A. Type II Variance to Section 17.44.30 to exceed the maximum 50-foot front yard setback.
 - B. Type II Variance to Section 17.90.120(D.1) to not have 50 percent of the site's street frontage be comprised of buildings placed within 20 feet of a sidewalk.
 - C. Type III Special Variance to Section 17.74.40(B.2) to exceed the 4-foot maximum height of a retaining wall and fence in a commercial front yard (east side).
 - D. Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial side yard (north side).
 - E. Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial rear yard (west side).
 - F. Type III Special Variance to Section 17.90.120(G) to not provide civic space.
 - G. Type III Special Variance to Section 17.98.10(Q) to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent.
 - H. Type III Design Deviation to Section 17.90.120(D.3) to not have the ground floor space of the dining building face a public street or civic space with a direct pedestrian connection.

6. The City of Sandy completed the following notices:
 - A. A transmittal was sent to agencies asking for comment on June 23, 2022.
 - B. Notification of the proposed application was mailed to affected property owners within 500 feet of the subject property on June 23, 2022.
 - C. A legal notice was published in the Sandy Post on July 6, 2022.
7. No written public comments were received.
8. The Planning Commission held a public hearing on July 25, 2022, to discuss the proposal. The following individuals spoke on behalf of the applicant: Tracy Brown, Blane Skowhede, and Ray Moore. There were no public comments.

DESIGN REVIEW – Chapter 17.90

9. The proposal is subject to all the requirements for Design Review as stated in Section 17.90.00. **As required by Section 17.90.00, the reviewing body shall refer to the following objectives in evaluating Design Review requests:**

- A. Protect and enhance the city's quality of life and community image.
- B. Encourage functional, safe, and aesthetically pleasing development, while maintaining compatibility with the surrounding built and natural environment.
- C. Implement the Sandy Style, as described by this chapter. The Sandy Style is based on the following guiding principles:
 - i. Celebrate Sandy as the Gateway to Mount Hood through contextually appropriate landscaping and building designs.
 - ii. Protect and enhance Sandy's tree canopy, particularly along the Highway 26 Landscape Management Corridor.
 - iii. Emphasize a "village" scale and character in new development. Village scale means development is compact and walkable, building entrances are oriented to the street sidewalk or a plaza, and large building masses are broken down through a combination of design elements such as articulation, combinations of complementary building materials and detailing.
 - iv. Express elements of or reflect Cascadian architecture by adapting appropriate elements of English Arts and Crafts Style (1900—1920) and Oregon Rustic Style (1915—1940), and/or similar elements, into new buildings and exterior remodels, except in locations where this Code allows or requires a different architectural style (e.g., C-1 Historic Roadside Commercial District).
 - v. Encourage green building practices in new construction, such as the use of renewable energy (e.g., solar and wind), use of recycled materials, integration of water quality facilities in landscapes, capture of rainwater for irrigation, and similar practices.
- D. The city considers the following elements to be incompatible with the Sandy Style. The reviewing body may deny, or require modifications to, a project with any of the following:
 - i. Excessive tree removal and/or grading that may harm existing vegetation within a designated landscape conservation area.
 - ii. Commercial development where buildings are setback from the street behind surface parking lots.
 - iii. Excessive surface parking lot paving and redundant driveways.
 - iv. Drive-up facilities adjacent to a street that interrupt pedestrian circulation patterns or create potential safety hazards.
 - v. Disjointed parking areas, confusing or unsafe circulation patterns.
 - vi. Box-like structures with large, blank, unarticulated wall surfaces.
 - vii. Building materials or colors that do not conform to this Code.
 - viii. Highly reflective surfaces or heavily tinted glass storefronts.
 - ix. Strongly thematic architectural styles, forms, colors, materials, and/or detailing, that do not conform to the Sandy Style, including some forms of franchise architectural styles associated with some chain commercial establishments.
 - x. Inadequate landscape buffers adjacent to parking lots, walkways, and streets.

- xi. Visible outdoor storage, loading, and equipment areas.

Staff finds the proposal is generally in compliance with the intent of the Sandy Style, but believes the project contains a few elements that are incompatible with Sandy Style as proposed, particularly D.3, D.5, and D.10. The incompatibilities are discussed further in Chapter 17.66 of this document as part of the analysis of the applicant's requested variance to exceed the maximum permitted parking.

10. Section 17.90.70 specifies that **design review approval shall be void after two (2) years from the date of the Final Order, unless the applicant has submitted plans for building permit approval.**
11. Section 17.90.120 contains design standards for the general commercial (C-2) zone. Section 17.90.120(A) contains standards related to site layout and access. Section 17.90.120(A.1) requires all lots to abut or have cross access to a dedicated public street. The proposed food cart pod lot (Tax Lot 1200) abuts an unimproved section of Kate Schmitz Avenue; however, the proposal does not include frontage improvements along Kate Schmitz Avenue or access from the Kate Schmitz Avenue right-of-way. As stated in the narrative (Exhibit B): "The subject property abuts a private drive created to provide access from Highway 26 to the subject properties. There is an existing sidewalk along the east side of this drive from Highway 26 to the development site."
12. Section 17.90.120(A.5) requires urban design details, such as raised or painted pedestrian crossings and similar devices incorporating changes in paving materials, textures or color, to be used to calm traffic and protect pedestrians in parking areas. Section 17.90.120(A.7) requires walkways from the public street sidewalk to the building entrance(s) and that crosswalks through parking lots and drive aisles shall be constructed of a material contrasting with the road surface or painted (e.g., colored concrete inlay in asphalt). As stated in the narrative, there is an existing sidewalk along the east side of the private access easement that extends from Highway 26 to the food cart pod development site (Tax Lot 1200). There is also an existing walkway along the east side of the proposed accessory parking lot (Tax Lot 1000). **The applicant shall update the plan set to detail a pedestrian crossing connecting the proposed walkway in the surface parking lot across the private access easement to the proposed walkway in the food cart pod area in compliance with the design standards of 17.90.120(A.5 and 7). The pedestrian crossing shall have a paved delineation. The Planning Commission requires a concrete inlay speed table.**
13. Section 17.90.120(B) contains provisions specifying building façade articulation, pedestrian shelters, construction materials, and colors. Section 17.90.120(B.1) requires that buildings visible from an abutting public street are to be articulated, varied, and provide visual interest. The applicant submitted line of sight diagrams (Exhibit L) that demonstrate the building will not be visible from either Kate Schmitz Avenue or Highway 26 and, therefore, building articulation is not required. However, as stated in the narrative (Exhibit B) and detailed on the main building elevations (Exhibit D, Sheet A3.01), the proposed building features changes in wall planes and articulation on each elevation.

14. Section 17.90.120(B.2) requires that buildings incorporate pedestrian shelters over primary building entrances. The pedestrian shelters must extend at least 5 feet over the pedestrian area. Shelters designed with gables are preferred over flat shelters and must comply with the roof pitch standards in Section 17.90.120(C). Primary building entrances are located on the east, north, and south sides of the dining building. The dining building is proposed to have a 5-foot-deep pedestrian shelter over the east entrance and a 20-foot-deep 3:12 pitched cantilevered awning over the entirety of the north and south elevations, including the entrances. The restroom building elevations (Exhibit D, Sheet A3.02) do not detail a pedestrian shelter over the restroom building entrance. **The applicant shall update the restroom building elevations to detail a 5-foot-deep pedestrian shelter over the restroom entrance.**

15. Section 17.90.120(B.3.a) requires architecturally unified buildings. Architectural unity means buildings are related in architectural style and share some common elements, such as color scheme, materials, roof forms, and/or detailing. The applicant is proposing the primary dining facility structure as well as a restroom structure and a garbage enclosure. Per the submitted narrative (Exhibit B), “all exterior building materials on the structures are intended to convey an impression of strength and durability.” The main building elevations (Exhibit D, Sheet A3.01) detail a stone veneer base with vertical board and batten siding and a standing seam metal roof with gabled ends featuring cedar shingles, heavy timbers, and steel brackets. The restroom building (Exhibit D, Sheet A3.02) features vertical board and batten siding and a standing seam metal roof and sits atop a split face block retaining wall on the north elevation and a foundation wall on the west elevation. **The applicant shall update the west elevation of the restroom building to detail a split face finish or a broomed finish, or submit a similar alternative design to staff for review and approval. To better match the dining facility building, the applicant shall update the west and east elevations of the restroom building to detail cedar shingles in the gables with a belly band separating the shingles from the board and batten siding.** The trash enclosure (Exhibit D, Sheet A3.03) features split face CMU block walls with a black chain link fence gate with black webbing. **To better match the dining facility building, the applicant shall update the garbage enclosure to detail a split face rock veneer and a screened gate that more closely matches the black picket fence look, or submit a similar alternative design to staff for review and approval.**

16. Section 17.90.120(B.3.b) requires strong base materials on those sides of the building visible from an abutting public street. Per the submitted main building elevations (Exhibit D, Sheet A3.01) and narrative (Exhibit B), all of the main building elevations feature a 4-foot-tall stone veneer base specified as Glacier Stone Supply “Bitterroot” in compliance with this standard.

17. Section 17.90.120(B.3.d) states that siding shall consist of wood, composite-wood (e.g., concrete fiberboard, panels or shingles), stone, brick, split-faced or rusticated concrete block, concrete form liner or a combination of these materials. The applicant is proposing to use vertical board and batten siding on all four elevations of the main dining building as well as cedar shingles in the gabled portions of the east and west elevations. Section 17.90.120(B.3.d.ii) states: “Where board-and-batten siding is used, battens shall be a minimum of two-inches wide x one-inch deep and spaced 24 inches apart or closer; rough-

sawn boards (specialty panel) are preferred over panels having a resin overlay.” The main building elevations (Exhibit D, Sheet A3.01), restroom building elevations (Exhibit D, Sheet A3.02), and narrative (Exhibit B) specify that the battens are 3-inches wide by 1-inch deep and are spaced 16-inches on center in compliance with the code.

18. Section 17.90.120(B.3.e) requires building elevations facing a public street to incorporate at least three (3) Sandy Style features. The east elevation faces Kate Schmitz Avenue, and the south elevation faces Highway 26. As detailed on the main building elevation (Exhibit D, Sheet A3.01), the east elevation of the dining building features exposed heavy timbers, metal brackets, a gabled roof with cedar shingles, a metal canopy over the pedestrian entrance, and a stone base. The south elevation of the main dining building features a metal canopy, heavy timber awning supports, and a stone base. The east elevation of the restroom building features a gabled roof. **The applicant shall update the east elevation of the restroom building to detail heavy timber truss bracing with metal brackets and cedar shingles in the gables.**
19. Section 17.90.120(B.4) requires exterior building colors to include warm earth tones that conform to the Color Palette in Chapter 17.90, Appendix C. As specified in the supplemental land use application (Exhibit A) and narrative (Exhibit B), all paint colors are from the City’s approved Miller Paint Historic Collection. The shingles will be painted “Maple,” the board and batten siding “Bean Pot,” and window and door trim “Portsmouth Spice.” Per the narrative, all exposed wood trusses will be stained Valspar Semi-transparent “Cedar Natural Tone” to complement the building colors.
20. Section 17.90.120(C.1) requires gable roofs with a minimum roof pitch of 6:12 on new buildings with a span of 50 feet or less. The applicant is proposing a 6:12 roof pitch for both the dining facility building and the restroom building in compliance with the code.
21. Section 17.90.120(C.4) requires pitched roofs visible from an abutting public street to provide a secondary roof form. Per the submitted line of sight diagrams (Exhibit L), the proposed building is not visible from either Kate Schmitz Avenue or Highway 26 and therefore the secondary roof form requirement does not apply.
22. Section 17.90.120(C.5) requires visible roof materials to be wood shingle or architectural grade composition shingle, slate, or concrete tile. Metal with standing or batten seam may also be used conforming to the Color Palette in Appendix D of the Development Code. The applicant is proposing to use Metallion Industries “Light Bronze,” which is an approved roof color in Appendix D.
23. Section 17.90.120(C.6) requires all roof and wall-mounted mechanical, electrical, communications, and service equipment, including satellite dishes and vent pipes, to be screened from view from all adjacent public rights-of-way and civic spaces by parapets, walls, or by other approved means. Per the narrative (Exhibit B): “All mechanical equipment associated with the building will be located inside the building. Electrical and gas meters associated with the food carts will be mounted to the garbage enclosure wall. These facilities will not be visible from any public right-of-way or civic space.”

24. Section 17.90.120(D) contains standards related to building orientation and entrances. The intent of providing adequate building orientation and entrances is to maintain and enhance streetscapes as public spaces, emphasizing pedestrian-scale and character. Section 17.90.120(D.1) requires buildings to be oriented to a public street or civic space. This standard is met when at least 50 percent of the subject site's street frontage is comprised of building(s) placed within 20 feet of a sidewalk, walkway, or civic space and not more than 20 percent of the off-street parking is located between a building's front façade and the adjacent street(s). The proposed structure is oriented with a primary door facing the Kate Schmitz Avenue right-of-way. The applicant is requesting a Type II Variance to Section 17.90.120(D.1) to not have a building occupying 50 percent of the site's frontage within 20 feet of the Kate Schmitz Avenue right-of-way. The variance request is discussed further in Chapter 17.66 of this staff report.
25. Section 17.90.120(D.3) states that ground floor spaces shall face a public street or civic space and shall be connected to it by a direct pedestrian route (i.e., avoid out-of-direction travel). The applicant is requesting a Design Deviation to Section 17.90.120(D.3) to not have the ground floor space of the dining building face a public street or civic space with a direct pedestrian connection. The dining building will face Kate Schmitz Avenue, but the applicant is not proposing to install a sidewalk or other frontage improvements along Kate Schmitz Avenue, nor is the applicant proposing a direct pedestrian walkway to Kate Schmitz Avenue. The proposal does include a walkway that connects the north, east, and south sides of the dining structure to the existing walkway along the east side of the private access easement that connects the food cart pod property to the Highway 26 sidewalk. In addition, the narrative (Exhibit B) states that a soft surface trail will be constructed to provide a pedestrian connection between the development site and the Kate Schmitz Avenue right-of-way in order to comply with the intent of the code. **The Planning Commission approved the requested design deviation to Section 17.90.120(D.3) to not have the ground floor space of the dining building face a public street or civic space with a direct pedestrian connection.**
26. Section 17.90.120(D.7) requires buildings to provide at least one (1) elevation where the pedestrian environment is "activated." An elevation is "activated" when it meets the window transparency requirements in Subsection 17.90.120(E) and contains a public entrance with a pedestrian shelter extending at least five (5) feet over an adjacent sidewalk, walkway, or civic space. As stated in the narrative (Exhibit B), the applicant has identified the south building elevation as the "activated" elevation. The south elevation contains a primary building entrance with an awning extending greater than five feet over the walkway in front of the entrance. The elevation also complies with window transparency requirements in subsection 17.90.120(E) as discussed below.
27. Section 17.90.120(D.8) states that primary entrances shall be architecturally emphasized, visible from the public right-of-way, and sheltered with a canopy, overhang, or portico with a depth of at least five (5) feet. Architectural emphasis should be provided by a gabled shelter where practical, consistent with the Sandy Style. Detailing around the base of the building, such as stonework, benches, or art, should also be used to emphasize an entrance. The proposed dining facility has primary entrances on the north, south, and east elevations all of which have a pedestrian shelter with a depth of at least 5 feet. The east elevation will include

a gable roofed entry featuring heavy timbers and metal brackets. The proposal also includes a stone base along the entirety of the dining hall building.

28. Section 17.90.120(E.2) contains standards for construction and placement of ground floor windows. A building less than 10,000 square feet is required to provide 30 percent ground floor windows on the activated frontage. The windows shall contain clear glass to allow views to interior activity or display areas. The bottom edge of windows shall be no less than three (3) feet above the adjacent finished grade. Windows shall be square or vertically oriented and may consist of vertically stacked or horizontally banked window units. Windows located over a door or transom windows may be horizontally oriented. Windows with any dimension exceeding six (6) feet shall be divided to contain two or more smaller panes with real divided panes, vinyl inserts, or applied dividers. Windows shall have trim or moldings at least three (3) inches in width around them or have reveals of at least three (3) inches in depth. Casings shall consist of a drip cap, head casing, side casings, and/or sills. As noted in the narrative (Exhibit B), the applicant has designated the south elevation as the activated frontage. Per the main building south elevation (Exhibit D, Sheet A3.01), the ground floor wall area of the south elevation is 1,350 square feet and the glazed opening area, consisting of two windows, two garage doors, and one man-door, is 408 square feet, which is 30 percent of the wall area in compliance with the code. Per the narrative, all windows will be clear glass and are located at least three feet above the adjacent finished grade. All windows and door frames will be aluminum “Kawneer Dark Bronze” and the vinyl clerestory windows on the north and south elevations will be Milgard “Bronze.” In addition, all windows are proposed to include 4-inch-wide trim.
29. Section 17.90.120(E.3) contains standards for upper floor windows. The proposed dining hall building is only one-story; however, due to the height of the building it features upper story windows on the north, south, and east elevations. Per Section 17.90.120(E.3), upper story windows shall be square or vertically oriented. Individual window units shall not exceed five feet by seven feet. Any portion of a window unit with a dimension exceeding four feet shall be divided into smaller panes. At least half of all the window area in upper floors shall be made up of glass panes with dimensions no greater than two feet by three feet, unless approved by variance or adjustment. Upper story windows that have one foot by one foot grid inside double pane glass are appropriate and are encouraged. Per the narrative (Exhibit B), all upper floor windows are square (3-feet by 3-feet) and further divided into 1-foot by 1-foot grids. The frames of these windows will be vinyl Milgard “Bronze,” and the windows will include 4-inch trim painted “Portsmouth Spice” to match the ground floor windows in compliance with the code.
30. Section 17.90.120(F) contains additional landscaping and streetscape design standards, including standards for parcels along Highway 26. The food cart pod and surface parking lot properties do not have frontage on Highway 26. Landscaping requirements are discussed further in Chapter 17.92 of this staff report.
31. Section 17.90.120(G) contains requirements related to civic space. The intent of civic space is to connect buildings to the public realm and create comfortable and attractive gathering places and outdoor seating areas for customers and the public. The code requires 3 percent of the building area be developed as civic space and in no instance have an area less than 64

square feet. The proposed building is 3,600 square feet. Therefore, the required civic space is 108 square feet. The applicant is requesting a Special Variance to not provide civic space. The variance request is discussed further in Chapter 17.66 of this staff report.

32. Section 17.90.120(H) contains standards related to lighting and states that walkways and parking lots should be illuminated at 1.5 to 2.0 foot-candles. The applicant is proposing a woodchip path connecting the food cart pod area to the Kate Schmitz Avenue right-of-way. Per the City Engineer (Exhibit O), path lighting should be installed when the path is built. The path is detailed within the critical root zones of three retention trees (Trees #1, 2, and 3). **The applicant shall update the Site Lighting Plan to detail path lighting along the proposed path to the Kate Schmitz Avenue right-of-way. To prevent further impact within the critical root zones of the required retention trees, the Planning Commission recommends solar path lighting; however, if electrical conduit is installed, the applicant shall bore the conduit at a minimum depth of 18-inches under the critical root zone of the required retention trees under supervision of an ISA-certified arborist.** Lighting is further reviewed in Chapter 15.30 of this document.
33. Section 17.90.120(I) contains standards related to safety and security and requires window placement that enables visibility between the building interior and exterior pedestrian and parking areas. As detailed on the main building elevations (Exhibit D, Sheet A3.01), all four sides of the building contain windows, which provides visibility between the interior of the building and the outdoor food carts.
34. Section 17.90.120(L.3) contains standards related to addressing and requires street address numbers measuring a minimum of six (6) inches high, which clearly locate buildings and their entries for patrons and emergency services. **The applicant shall provide street address numbers measuring a minimum of six (6) inches high, which clearly locates the dining facility building and its entries for patrons and emergency services. The applicant shall verify the location(s) of the address with the Building Official and emergency service providers.**
35. The intent of Section 17.90.120(J) is to promote land use compatibility and aesthetics, particularly where development abuts public spaces. Section 17.90.120(J.1) states that exterior storage of merchandise and/or materials, except as specifically authorized as a permitted accessory use, is prohibited. The applicant is not proposing outdoor storage or display areas. The applicant is proposing a garbage and recycling area, which will be screened. On June 30, 2022, staff visited two food cart pods in Troutdale and Fairview. Staff observed that a majority of the food carts in the Troutdale pod had accessory storage sheds, some of which were in the process of being constructed. Staff has concerns that the gravel areas behind the food carts will be used for external storage, which is prohibited by Section 17.90.120(J.1). **The applicant shall not store any merchandise and/or materials in the gravel areas behind the carts and/or elsewhere on the subject properties. If storage buildings are desired in the future, the applicant shall submit a separate design review application with proposed storage buildings designed to meet the Sandy Style.**
36. Section 17.90.120(J.3) states that mechanical, electrical, communications equipment including meters and transformers, and service and delivery entrances and garbage storage

areas shall be screened from view from public rights-of-way and civic spaces. Garbage storage areas are addressed in staff's response to Section 17.90.120(J.4), below. The submitted narrative (Exhibit B) states that all of the mechanical equipment associated with the building will be located inside the building. Electrical and gas meters associated with the food carts will be either located on the garbage enclosure wall or a wall constructed next to the garbage enclosure structure designed for this purpose and will not be visible from any public right-of-way or civic space. **All mechanical, electrical, and communications equipment shall be screened from view from all public rights-of-way and civic spaces.** Staff visited the Troutdale food cart pod on June 30, 2022, and noticed that the electrical equipment was highly visible from the parking lot area. Therefore, staff recommended the Planning Commission consider requiring mechanical, electrical, and communications equipment to be screened from view from private walkways and parking areas in addition to being screened from public rights-of-way and civic spaces. The Planning Commission discussed screening mechanical equipment from private walkways and parking areas at the July 25, 2022, Planning Commission hearing and determined it should be up to the applicant to decide whether or not they want the equipment screened from the private walkways and parking areas.

37. Section 17.90.120(J)(4) contains standards for trash collection and recycling areas. The applicant proposes a screened garbage and recycling area to the southeast of the food cart pod area. The submitted trash enclosure elevations (Exhibit D, Sheet A3.03) detail an 8-foot-tall split face CMU block enclosure with a black chain link fence gate with black webbing. As previously discussed, **the applicant shall update the restroom building elevations to detail split face block veneer to match the main dining building and a screened gate that more closely matches the black metal picket fence look, or submit a similar alternative design to staff for review and approval.**

FOOD CARTS AND FENCES/RETAINING WALLS – Chapter 17.74

38. Section 17.74.40 specifies, among other things, retaining wall and fence height in front, side, and rear yards. Retaining walls on property in commercial zones shall not exceed 4 feet in height in the front yard and 8 feet in height in rear and side yards. The Detailed Site Plan (Exhibit C, Sheet C5) details both a retaining wall and a fence on the north, south, east, and west sides of the proposed food cart pod. The combined height of the retaining wall and fence on the north, west, and east sides exceed the maximum allowed fence height in a commercial zone per Section 17.74.40(B). The applicant has requested three special variances to exceed the maximum allowed retaining wall and fence height for the north, west, and east sides of the food cart pod, which are discussed in more detail in Chapter 17.66 of this staff report. The Detailed Site Plan details the retaining wall and fence along the south side as an approximately 2- to 3-foot-tall split face block wall with a 5-foot-tall black steel or aluminum picket fence behind the retaining wall, for a combined height of 7 to 8 feet in compliance with the code. **The individual or combined height of a fence and/or retaining wall in the south (side) yard shall not exceed 8 feet.** The applicant did not specify the width of the gap between the pickets for the black steel or aluminum picket fence. **Where the pickets are required as a guard from falling, the space between pickets shall be less than 4 inches.**
39. Section 17.74.90 contains standards for food and beverage carts. The applicant proposes establishing a food cart pod to include sewer and water service, electrical connections, a garbage/recycling enclosure, a restroom facility, 18 food cart pads, and a common dining facility. **Following completion of required improvements, each food cart requesting to locate at the facility will be required to apply for a Food Cart Permit (Type I land use application) and obtain an individual City of Sandy Business License.**
40. Section 17.74.90(E.1) states that drive-through uses are not permitted. The applicant is not proposing any drive-thru uses.
41. Section 17.74.90(E.2) states that carts shall not exceed 20 feet in length, not including the trailer hitch, or be greater than 200 square feet. This would potentially allow for a 20 foot long by 10-foot-wide food cart. The Detailed Site Plan (Exhibit C, Sheet C5) details 15 of the carts at a maximum cart size of 20 feet long by 8 feet wide and the remaining three food carts at 14 feet long by 8 feet wide. The maximum 8-foot width is to ensure a minimum of 5 feet of space is maintained between carts as required by Section 17.74.90(E.5). **The maximum food cart size permitted on pads 1-15 is 20 feet long by 8 feet wide. The maximum food cart size permitted on pads 16-18 is 14 feet long by 8 feet wide.**
42. Section 17.74.90(E.3) requires all carts to be placed on a paved surface. The proposal includes 18 food cart pads, all of which are located on a paved surface in compliance with this standard.
43. Sections 17.74.90(E.4-6) require carts to be located at least three feet from the public right-of-way or back of sidewalk, at least five feet from other carts, and not located within 25 feet of an active driveway entrance as measured in all directions from where the driveway enters the site at the edge of the street right-of-way. The food cart pod is located approximately 170

feet from the nearest right-of-way such that all pads are much greater than three feet from the right-of-way and no pad is located near an active driveway entrance. Fifteen of the pads are 25 feet long by 13 feet wide and are intended to contain food carts that are a maximum of 20 feet long and 8 feet wide such that each cart will be a minimum of 5 feet from an adjacent cart. The remaining three pads are detailed at approximately 19 feet long by 13 feet wide and are intended to contain food carts that are a maximum of 14 feet long by 8 feet wide such that each cart will be a minimum of 5 feet from an adjacent cart.

44. Section 17.74.90 (E.7) specifies that carts shall not occupy fire lanes or drive aisles necessary for vehicular circulation or fire/emergency vehicle access. The Sandy Fire Marshal reviewed the proposal and provided comments (Exhibit N). **The applicant shall comply with all Fire District requirements as contained in Exhibit N.**
45. Section 17.74.90(E.8) requires customer service windows to be located at least five feet from an active drive aisle. All carts are proposed to be located in a fenced in food cart pod area that will be separated from any parking areas or drive aisles.
46. Sections 17.74.90(E.9 and 10) state that carts shall not occupy pedestrian walkways, required landscape areas, or parking areas needed to meet the minimum vehicle and bicycle parking. As stated in the narrative (Exhibit B), no cart will occupy a pedestrian walkway, landscape area, or needed bicycle or vehicle parking space.
47. Section 17.74.90(E.11) requires each food cart to provide a minimum of one paved off-street parking space for employee use or provide proof of written permission from an adjacent business or property owner within 1/4 mile of the subject site allowing the food cart operator to share parking facilities. The proposal includes space for 18 food carts, which requires 18 off-street parking spaces. As stated in the narrative (Exhibit B), the proposed parking count includes the required 18 parking spaces.
48. Sections 17.74.90(E.12-15) contain design standards for food carts. **Food cart design standards will be reviewed at the time individual food cart placement permits (Type I land use application) are requested.**
49. Section 17.74.90(E.16) requires all seating areas on the subject property to be at least 10 feet from a food cart and seating areas shall be separated from parking areas by an approved fence or barrier. The proposed seating is located inside the proposed dining facility and the entire food cart pod is proposed to be located within a gated area. **Any additional seating areas on the subject property to be at least 10 feet from a food cart and seating areas shall be separated from parking areas by an approved fence or barrier.**
50. Section 17.74.90(E.17) states that food carts' signage shall comply with Chapter 15.32, Sign Code regulations and that each cart is permitted one A-frame sign. In accordance with Chapter 15.32, roof signs are prohibited. **All signage requires approval of a City sign permit in compliance with the requirements of Chapter 15.32, Sign Code.**
51. Section 17.74.90(E.18) requires auxiliary storage to be provided on site when there are four (4) or more food carts. The structure for auxiliary storage shall meet Chapter 17.90, Design

Standards. The proposal contains space for up to 18 food carts thus compliance with this standard is required. Neither the Overall Site Plan (Exhibit C, Sheet C3) nor the Detailed Site Plan (Exhibit C, Sheet C5) identify a location for the required storage structure. The dining facility footprint (Exhibit D, Sheet A2.01) details a cooler, a bar, and two vendor spaces but it does not detail a storage area. **The applicant shall provide additional information on the location and size of the required storage area if it is located in the proposed dining facility building. If the auxiliary storage structure is proposed to be an additional structure on the site, the applicant shall submit a separate design review application for the proposed storage building(s) including the proposed location and design in conformance with Sandy Style (Section 17.90.120).**

Fire Safety

52. Sections 17.74.90(E.19-23) contain fire safety requirements for food carts. Fire safety standards will be reviewed at the time individual food carts are requested. The Sandy Fire Marshal reviewed the proposal and provided comments (Exhibit N). **The applicant shall comply with all Fire District requirements as contained in Exhibit N.**

Health and Sanitation

53. Sections 17.74.90(E.24-28) contain health and sanitation requirements for food carts. Section 17.74.90(E.24) requires trash and recycling receptacles to be provided at a rate of one (1) receptacle for every food cart. Where the food cart operator proposes to provide a common seating area, a minimum of one (1) trash receptacle and one (1) recycling receptacle shall be provided in the common seating area. The plan set (Exhibit C) details a garbage and recycling enclosure for the entire food cart pod area. Per the submitted narrative (Exhibit B), garbage cans will be distributed throughout the site and within the dining structure as required. **The applicant is required to comply with the provisions of Section 17.74.90(E.24).**

54. Sections 17.74.90(E.25-26) state restrooms with handwashing facilities shall be provided for employees and customers and that sites containing more than one food cart shall provide a restroom facility on site. The proposal includes a restroom facility located in the northeast corner of the food cart pod area in compliance with this standard.

55. Section 17.74.90(E.27) states wastewater and gray water shall be disposed of properly without harm to the environment or city infrastructure. An approved disposal plan shall detail storage and removal methods. The Preliminary Utility Plan (Exhibit C, Sheet C6) details sanitary sewer, water, and stormwater service. The proposal also includes a grease interceptor that each cart will connect. **Any below or at-grade sewer connections shall be water-tight and lockable or sealable while not in use. In addition, a grease interceptor properly sized for the maximum number of carts shall be required on the sanitary sewer service for the facility.**

56. Section 17.74.90(E.28) states that food carts that require a water source, power source, or waste disposal location are permitted only where the Director has approved site plans that show safe access and location of the aforementioned provisions. Such provisions may be subject to all applicable building permits and System Development Charge requirements. The applicant proposes installing a water system and sanitary connection with a grease interceptor

for each food cart to connect to. **A backflow prevention device shall be required for the water service. The installation of sewer and water service requires approval of a City building permit. The installation of electrical service requires permit approval from Clackamas County.**

VARIANCES – Chapter 17.66

57. The applicant requested the following seven (7) variances:

- A. Type II Variance to Section 17.44.30 to exceed the maximum 50-foot front yard setback.
- B. Type II Variance to Section 17.90.120(D.1) to not have 50 percent of the site's street frontage be comprised of buildings placed within 20 feet of a sidewalk.
- C. Type III Special Variance to Section 17.74.40(B.2) to exceed the 4-foot maximum height of a retaining wall and fence in a commercial front yard (east side).
- D. Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial side yard (north side).
- E. Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial rear yard (west side).
- F. Type III Special Variance to Section 17.90.120(G) to not provide civic space.
- G. Type III Special Variance to Section 17.98.10(Q) to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent.

Variance A: Maximum Front Yard Setback

58. The applicant requested a Type II Variance to Section 17.44.30 to exceed the maximum 50-foot front yard setback from Kate Schmitz Avenue.

59. Criteria A. of Section 17.66.70 states “The circumstances necessitating the variance are not of the applicant’s making.” The applicant is proposing to locate the dining facility 173-199 feet from the Kate Schmitz Avenue right-of-way. The narrative (Exhibit B) states that the reason the building can’t be located within the maximum 50-foot setback from Kate Schmitz Avenue is because of existing topography and retention trees that were protected as part of the Twin Cedars subdivision approval. The Planning Commission finds criterion A is met.

60. Criteria B. of Section 17.66.70 states “The hardship does not arise from a violation of this Code, and approval will not allow otherwise prohibited uses in the district in which the property is located.” The applicant has not violated the Code and the uses allowed on the lots will be the same with or without approval of this variance. Granting of this variance will allow a majority of the existing retention trees to remain protected on the lot. The Planning Commission finds criterion B is met.

61. Criteria C. of Section 17.66.70 states “Granting of the variance will not adversely affect implementation of the Comprehensive Plan.” The variance will not have an impact on any of the policies or goals of the Comprehensive Plan. On the contrary, granting a variance to allow the proposed dining structure to be located further than 50 feet from Kate Schmitz Avenue will better protect the existing trees, which is consistent with the Comprehensive Plan Goal 5 policies for protection of natural resources. The Planning Commission finds criterion C is met.

62. Criteria D. of Section 17.66.70 states “The variance authorized will not be materially detrimental to the public welfare or materially injurious to other property in the vicinity.” Approval of the variance will not be materially detrimental or injurious to other property owners in the vicinity. The Planning Commission finds criterion D is met.

63. Criteria E. of Section 17.66.70 states “The development will be the same as development permitted under this code and City standards to the greatest extent that is reasonably possible while permitting some economic use of the land.” The development will be the same as development permitted under this code and City standards to the greatest extent that is reasonably possible while permitting economic use of the land. As explained in this staff report, the proposal meets applicable code sections, or will be able to meet the code with conditions of approval. As stated in the narrative (Exhibit B), the east elevation facing the Kate Schmitz Avenue right-of-way features windows, a decorative gabled end, and a door with a pedestrian shelter. The Planning Commission finds criterion E is met.
64. Criteria F. of Section 17.66.70 states “Special circumstances or conditions apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape (legally existing prior to the effective date of this Code), topography, or other circumstances over which the applicant has no control.” The applicant’s narrative (Exhibit B) states that the circumstances necessitating the variance are the existing topography of the site and the location of protected trees abutting the unimproved Kate Schmitz Avenue, which is at a significantly lower elevation than the majority of the site. The Planning Commission finds criterion F is met.
65. For the reasons discussed, **the Planning Commission approved the requested variance to allow the dining facility structure to exceed the maximum 50-foot setback from Kate Schmitz Avenue.**

Variance B: Site Frontage

66. The applicant requested a Type II Variance to Section 17.90.120(D.1) to not have 50 percent of the site’s street frontage be comprised of buildings placed within 20 feet of a sidewalk.
67. Criteria A. of Section 17.66.70 states “The circumstances necessitating the variance are not of the applicant’s making.” As noted in the discussion of variance A, above, the applicant is proposing to locate the dining facility 173-199 feet from the Kate Schmitz Avenue right-of-way due to existing topography and retention trees. Locating the building within 20 feet of the future sidewalk on Kate Schmitz Avenue would require significant grading of the site and removal of protected trees. The Planning Commission finds criterion A is met.
68. Criteria B. of Section 17.66.70 states “The hardship does not arise from a violation of this Code, and approval will not allow otherwise prohibited uses in the district in which the property is located.” The applicant has not violated the Code and the uses allowed on the lots will be the same with or without approval of this variance. Approval of the variance will protect most of the existing trees located on the subject property that were required to be retained as a condition of approval of the Twin Cedars subdivision. The Planning Commission finds criterion B is met.
69. Criteria C. of Section 17.66.70 states “Granting of the variance will not adversely affect implementation of the Comprehensive Plan.” The variance will not have an impact on any of the policies or goals of the Comprehensive Plan. On the contrary, granting a variance to allow the proposed dining structure to be located further than 20 feet from the Kate Schmitz

Avenue right-of-way will better protect the existing trees, which is consistent with the Comprehensive Plan Goal 5 policies for protection of natural resources. The Planning Commission finds criterion C is met.

70. Criteria D. of Section 17.66.70 states “The variance authorized will not be materially detrimental to the public welfare or materially injurious to other property in the vicinity.” Approval of the variance will not be materially detrimental or injurious to other property owners in the vicinity. As stated in the narrative (Exhibit B), the site is designed to better protect retention trees, which will have a positive effect on the public welfare. The Planning Commission finds criterion D is met.
71. Criteria E. of Section 17.66.70 states “The development will be the same as development permitted under this code and City standards to the greatest extent that is reasonably possible while permitting some economic use of the land.” The development will be the same as development permitted under this code and City standards to the greatest extent that is reasonably possible while permitting economic use of the land. As explained in this staff report, the proposal meets applicable code sections, or will be able to meet the code with conditions of approval. The Planning Commission finds criterion E is met.
72. Criteria F. of Section 17.66.70 states “Special circumstances or conditions apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape (legally existing prior to the effective date of this Code), topography, or other circumstances over which the applicant has no control.” As previously stated, the circumstances necessitating the variance are the existing topography of the site and the location of protected trees abutting the unimproved Kate Schmitz Avenue, which is at a significantly lower elevation than the majority of the site. The Planning Commission finds criterion F is met.
73. For the reasons discussed, **the Planning Commission approved the requested variance to not have 50 percent of the site’s street frontage be comprised of buildings placed within 20 feet of a sidewalk.**

Variance C: Wall/Fence Height – Front Yard (East Side)

74. The applicant requested a Type III Special Variance to Section 17.74.40(B.2) to exceed the 4-foot maximum height of a retaining wall and fence in a commercial front yard (east side).
75. To be granted a Type III Special Variance, the applicant must meet one of the following criteria in Section 17.66.80:
- A. The unique nature of the proposed development is such that:
 - 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
 - 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

- B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.
- C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.

76. Staff believes the requested variance to Section 17.74.40(B.2) to exceed the 4-foot maximum height of a retaining wall and fence in a commercial front yard meets Criterion A. As detailed on the Detailed Site Plan (Exhibit C, Sheet C5), the applicant is proposing a black vinyl coated chain link fence on top of a 2-foot-tall to 6-foot-tall retaining wall along the north portion of the east (front) elevation, and a chain link fence along the south portion of the east elevation. The narrative (Exhibit B) specifies that the fence would be 5-foot-tall and is proposed for security purposes, whereas the 2-foot-tall to 6-foot-tall wall is needed to hold up a portion of the site. The narrative further states: “The proposed wall and fence will be located about 160 - 180 feet west of and about 15 - 20 feet higher than the Kate Schmitz unimproved right-of-way. The Development Code does not state the intent of this standard but it is assumed the standard has to do with the aesthetic appearance of the front yard and the building.” The applicant is proposing both retaining walls and fences on all four sides of the food cart pod area. The north, south, and west retaining walls are proposed as split-face block walls and the north, south, and west fences are proposed as black steel or aluminum picket fences. In the July 18, 2022, Staff Report, staff recommended the applicant be required to match the split face block wall and black steel or aluminum picket fence design on the east side as well to be in compliance with Section 17.90.120(B.3.a), which requires architectural unity. The proposed front yard (east) fence includes a gate. Based on the site plan, it appears the gate will be a sliding gate. Staff visited the Fairview food carts on June 30, 2022, and noticed that the sliding gate included a raised tracker on the ground and that mats had been placed over it. Staff identified that tracker as a tripping hazard and potentially not in compliance with ADA standards.

77. For the reasons discussed, **the Planning Commission approved the requested variance to exceed the 4-foot maximum height of a retaining wall and fence in a commercial front yard (east side). The applicant shall update the plan set to detail the front (east) retaining wall and fence as a 2-foot-tall to 6-foot-tall split face block wall and a maximum 5-foot-tall black steel or aluminum picket fence, or submit a similar alternative design to staff for review and approval. A raised tracker for the sliding gate shall not be permitted.**

Variance D: Wall/Fence Height – Side Yard (North Side)

78. The applicant requested a Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial side yard (north side).

79. To be granted a Type III Special Variance, the applicant must meet one of the following criteria in Section 17.66.80:

- A. The unique nature of the proposed development is such that:

1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.
- B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.
- C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.
80. Staff believes the requested variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial side yard meets Criterion A. As detailed on the Detailed Site Plan (Exhibit C, Sheet C5), the applicant is proposing a split face block wall with a maximum exposed height of 9.5 feet and a 5-foot-tall black steel or aluminum picket fence behind the wall. The submitted Wall and Fence Sections (Exhibit H, Section A) detail the fence approximately 1 foot back from the top of the block wall in a 7-foot-wide section of gravel between the wall and the food cart pads. As stated in the narrative (Exhibit B), the reason the retaining wall is needed is due to the existing site grade. Staff assumes the fence is needed for safety (to prevent people from falling off the wall) and is desired for security (to keep people out of the food cart pod area outside of business hours). **Where the fence pickets are required as a guard from falling, the space between pickets shall be less than 4 inches.**
81. For the reasons discussed, **the Planning Commission approved the requested variance to exceed the 8-foot maximum height of a retaining wall and fence in a commercial side yard (north side).**

Variance E: Wall/Fence Height – Rear Yard (West Side)

82. The applicant requested a Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial rear yard (west side).
83. To be granted a Type III Special Variance, the applicant must meet one of the following criteria in Section 17.66.80:
- A. The unique nature of the proposed development is such that:
 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.
 - B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.

- C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.

84. Staff believes the requested variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial rear yard meets Criterion A. The submitted Wall and Fence Sections (Exhibit H, Sections B-D) detail the retaining wall and fence sections for the west property line west of the north food carts (Section B), dining building (Section C), and south food carts (Section D). The section west of the north food carts (Section B) includes a 6-foot-tall split face block retaining wall with a 5-foot-tall black steel or aluminum picket fence, totaling 11 feet in height. The fence is approximately 1 foot back from the top of the block wall with 6 feet of landscaping between food cart pad #1 and the fence, and an additional one foot of landscaping between the fence and the wall. In order to provide a more functional landscaping area, staff recommended the applicant update the plan set to detail the fence on top of the retaining wall with 7 feet of landscaping between food cart pad #1 and the fence/wall. The section west of the dining building (Section C) includes a 4-foot-tall split face block retaining wall with 7 feet of landscaping between the top of the retaining wall and the building, in compliance with the 8-foot maximum rear yard wall/fence requirement. The section west of the south food carts (Section D) includes a 4-foot-tall split face block retaining wall (the Detailed Site Plan details the wall as 5-foot-tall) with a 5-foot-tall black steel or aluminum picket fence, totaling 9 (or 10) feet in height. The fence abuts food cart pad #8, with one foot of landscaping between the fence and the top of the wall. As previously discussed, the reason the retaining wall is needed is due to the existing site grade. Staff assumes the fence is needed for safety (to prevent people from falling off the wall) and is desired for security (to keep people out of the food cart pod area outside of business hours).

85. For the reasons discussed, **the Planning Commission approved the requested variance to exceed the 8-foot maximum height of a retaining wall and fence in a commercial rear yard (west side). The applicant shall update the plan set to detail the fence on top of the retaining wall with 7 feet of landscaping between food cart pad #1 and the fence/wall.**

Variance F: Civic Space

86. The applicant requested a Type III Special Variance to Section 17.90.120(G) to not provide civic space.

87. To be granted a Type III Special Variance, the applicant must meet one of the following criteria in Section 17.66.80:

- A. The unique nature of the proposed development is such that:
 - 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
 - 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

- B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.
- C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.

88. Staff does not believe the requested variance to Section 17.90.120(G) to not provide civic space meets any of the Special Variance approval criteria. The intent of providing civic space is to connect buildings to the public realm and create comfortable and attractive gathering places and outdoor seating areas for customers and the public. Not providing a civic space is not in line with the intent and purpose of the civic space requirement nor is it necessary to permit compliance with another law or regulation. Based on the 3,600 square foot dining facility, the applicant would need to provide 108 square feet of civic space per Section 17.90.120(G.1). Section 17.90.120(G.5) states that civic spaces should abut a public right-of-way or otherwise be connected to and visible from a public right-of-way by a sidewalk or approved pedestrian access way; access ways shall be identifiable with a change in paving materials (e.g., pavers inlaid in concrete or a change in pavement scoring patterns and/or texture) or painted. Civic spaces shall not be gated or closed to public access, unless otherwise required by the City. Per Section 17.90.120(G.3), civic space improvements may include plazas, private extensions of sidewalks and walkways (i.e., to accommodate outdoor seating), public art, pedestrian-scale lighting, bus waiting areas, tourist amenities (e.g., way finding signs as approved by the city) or similar pedestrian amenities as approved through Design Review. The proposal is for a food cart pod that will be gated on all four sides and presumably closed to public access outside of business hours. The applicant is not proposing to install frontage improvements on Kate Schmitz Avenue as part of the proposal, but the food cart pod site does have frontage along the Kate Schmitz Avenue right-of-way. It is unclear whether the proposal includes any areas for outdoor seating, though none are depicted on the site plan. In the July 18, 2022, Staff Report, staff recommended the applicant be required to provide the minimum 108 square feet of civic space in the form of outdoor seating. Staff recommended the civic space be required to include seating as well as landscaping and/or public art. Staff further recommended the civic space be located at the east terminus of the proposed foot path, adjacent to the Kate Schmitz Avenue right-of-way and outside of the critical root zones of the retention trees and the 8-foot PUE. At the July 25, 2022, Planning Commission hearing, the Commissioners discussed the possibility of providing the civic space closer to the proposed food cart pod area and wanted to provide flexibility to do so.

89. For the reasons discussed, **the Planning Commission denied the requested variance to Section 17.90.120(G) to not provide civic space and required the applicant to provide the minimum 108 square feet of civic space in the form of outdoor seating. The civic space shall be located at the east terminus of the proposed foot path, adjacent to the Kate Schmitz Avenue right-of-way and outside of the critical root zones of the retention trees and the 8-foot PUE, or near the ADA parking spaces at the top of the proposed foot path closer to the food cart pod area and outside of the critical root zones of the retention trees. The civic space shall include seating as well as landscaping and/or public art.**

Variance G: Exceed Maximum Parking

90. The applicant requested a Type III Special Variance to Section 17.98.10(Q) to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent.

91. To be granted a Type III Special Variance, the applicant must meet one of the following criteria in Section 17.66.80:

- A. The unique nature of the proposed development is such that:
 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.
- B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.
- C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.

92. Staff believes the requested variance to Section 17.98.10(Q) to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent generally meets Criterion A, but not to the degree that the applicant is proposing. Section 17.98.10(Q) states that the provided parking shall not exceed the minimum parking required by Section 17.98.20 by more than 30 percent. The minimum parking requirement per Section 17.98.20 is 34 spaces, so the maximum parking allowed in accordance with Section 17.98.10(Q) is 44 spaces (10 additional spaces). The applicant is proposing to exceed the minimum parking by 35 spaces, or 103 percent, which is well over the 30 percent limit. In addition, staff has concerns regarding the location of some of the proposed parking spaces, the extra-long length of some of the proposed parking spaces, and the proposed increase in impervious surface in general. As stated in Section 17.90.00, the reviewing body is required to evaluate all design review applications based on both Sandy Style objectives and elements that are incompatible with Sandy Style; the reviewing body may deny or require modifications to a project with any of the incompatible elements. Section 17.90.00(D) lists the following parking lot related elements as being incompatible with Sandy Style:

- Excessive surface parking lot paving (D.3)
- Disjointed parking areas, confusing or unsafe circulation patterns (D.5)
- Inadequate landscape buffers adjacent to parking lots (D.10)

Staff believes that exceeding the minimum required parking by 103 percent results in excessive surface parking lot paving. Tax Lots 1000 and 1200 are currently vacant and vegetated. The proposal includes 35 more parking spaces than needed, resulting in significantly more impervious surface than needed. Tax Lot 1000 is proposed to be almost

entirely paved for parking, with just the bare minimum of the required landscaping provided. Staff acknowledges the applicant's desire to provide extra-long parking spaces for oversized vehicles but finds that 13 extra-long spaces is unnecessary. The proposal for Tax Lot 1200 includes a parking area located in the southeast portion of the site, which is within the original tree protection area detailed in the 2005 Tree Covenant. To accommodate the proposed parking on Tax Lot 1200, the applicant is proposing to remove 10 trees. In addition, the proposed encroachment into the critical root zone of retention Tree #9 is detailed at the maximum 25 percent; the entirety of that encroachment is due to the proposed parking lot.

Staff also believes the proposal includes unsafe parking spaces, particularly the 10 parking spaces proposed on the north side of Tax Lot 1000 that extend partially onto Tax Lot 1100. Staff pointed out this concern to the applicant and the applicant submitted a parking space memorandum (Exhibit J) with the incompleteness submittal. The City Transportation Engineer (Exhibit R) reviewed the proposal along with the supplemental parking memo and noted that vehicles would enter and exit the 10 parking spaces directly from the existing drive aisle. The City Transportation Engineer further noted that the submitted parking space response memo does not demonstrate that the inclusion of the 10 parking spaces will not result in issues and recommended that the following be a condition of approval: "The development shall remove the 10 parking stalls on the north side of the proposed parking lot at 37115 US 26. The parking layout shall be designed so that all parking maneuvers will be internal to the parcel." In addition to the safety concerns, the location of the 10 parking spaces on the north side of Tax Lot 1000 does not comply with Section 17.92.80, which requires a minimum 5-foot landscaping buffer between parking areas and adjacent properties. It's also unclear whether the proposed location of the eastern two parking spaces along the north side of Tax Lot 1000 provides a sufficient vision clearance area for the intersection of the east-west and north-south 25-foot access easements. Staff also has concerns about whether there's sufficient space for a vehicle to safely pull out of the southeasternmost proposed parking space on Tax Lot 1200.

Staff also believes the landscape buffers adjacent to the parking lots are inadequate. As previously stated, Section 17.92.80 requires a minimum 5-foot landscaping buffer between parking areas and adjacent properties, which is not met along the north side of Tax Lot 1000 adjacent to the 10 parking spaces proposed to be accessed directly from the drive aisle. The Overall Site Plan (Exhibit C, Sheet C3) also appears to be detailing the required landscape buffers at 4 or 4.5 feet in width, instead of the 5-foot minimum width required by Section 17.92.10(D).

93. In the July 18, 2022, Staff Report, staff recommended the Planning Commission approve 20 parking spaces on Tax Lot 1200 and 36 parking spaces on Tax Lot 1000, for a total of 56 parking spaces, which is 22 parking spaces, or 65 percent, more than the minimum requirement of 34 parking spaces. Specifically, staff recommended the Planning Commission require the applicant to update the Plan Set as follows (see staff recommendation in Exhibit V):

- Remove the proposed parking space to the west of Tree #9 on Tax Lot 1200 and retain existing natural area landscaping.

- Remove the southeasternmost proposed parking space on Tax Lot 1200 and replace with landscaping.
- Remove the 10 proposed parking spaces on Tax Lot 1000 that are accessed directly from the 25-foot access easement, replace with landscaping, and retain the 4 existing adjacent trees.
- Reduce the proposed extra-long parking spaces on Tax Lot 1000 by 7 feet (from 25 feet in length to 18 feet in length, i.e., standard sized spaces), replace with landscaping, and adjust the adjacent parking aisle accordingly, including removal of the southernmost parking space in the western parking bay.

Staff recommended no more than 3 extra-long parking spaces be permitted if the Planning Commission decided to approve any of the extra-long parking spaces; however, the Planning Commission approved the 13 extra-long parking spaces as proposed by the applicant. The Planning Commission also approved the 10 parking spaces that extend onto Tax Lot 1100 and directly access the 25-foot private drive. **The applicant shall complete a stormwater analysis for Tax Lot 1100 (Lot 9) to determine if the existing stormwater facility can accommodate the additional impervious surface, and if not, the parking spaces shall be removed, or the stormwater facility shall be modified to accommodate the additional stormwater.**

94. The Planning Commission discussed the applicant's parking proposal and staff's recommended parking modifications at the July 25, 2022, Planning Commission hearing. The Commissioners acknowledged that excessive surface parking lot paving, disjointed parking areas, confusing or unsafe circulation patterns, and inadequate landscape buffers adjacent to parking areas are all elements that are incompatible with the Sandy Style as defined in Section 17.90.00(D). The Commissioners discussed the 10 parking spaces that back out directly to the 25-foot access easement north of Tax Lot 1000 and the City Transportation Engineer's recommended condition to remove those spaces and require all parking maneuvers to be internal to the parcel. The Commissioners discussed their experience parking at other nearby food cart pods and the size of their own vehicles and expressed an interest in retaining extra-long parking spaces as well as an interest in potentially including extra-wide parking spaces to accommodate wide trucks with large side mirrors. **The Planning Commission approved the 47 parking spaces proposed on Tax Lot 1000, including the extra-long parking spaces and the 10 parking spaces that gain direct access from the 25-foot access easement north of Tax Lot 1000.** Due to the proposed locations of the driveways along the north and east sides of Tax Lot 1000 as well as the 10 proposed parking spaces that directly access the 25-foot access easement north of Tax Lot 1000, eight (8) existing trees located along the private drives as required by Section 17.92.30 will need to be removed. The Commissioners acknowledged that removal of the existing trees along the private drives would not be in compliance with Section 17.92.30 and that excessive impervious surface and loss of trees and vegetation contribute to the urban heat island effect. The Overall Site plan (Exhibit C, Sheet C3) and the Landscape Plan (Exhibit E, Sheet L1) detail retention of two (2) existing trees along the private drive to the west of Tax Lot 1000 (Trees #59 and 62) as well as planting two (2) new trees to mitigate for the removal of Trees #60 and 61. The plans detail removing all six (6) trees along the private drive north of Tax Lot 1000 but include planting trees in the parking lot planters to the east and west of

the proposed driveway and a tree in the parking landscape bay to the west of the proposed 10 spaces that access the 25-foot access easement directly. In addition to these three trees, a fourth tree will be required in the landscape planter to the east of the parking spaces on the north side of Tax Lot 1000 that access the 25-foot access easement directly as required by Section 17.98.120(D). Thus, four (4) of the removed trees will be replaced along the north side of Tax Lot 1000. **To mitigate for the four (4) additional trees that will need to be removed along the 25-foot access easement north of Tax Lot 1000 to accommodate the parking spaces that gain direct access from the 25-foot access easement, the Planning Commission requires the applicant to plant an additional four (4) mitigation trees.** Because the Planning Commission approved the applicant's request for both the extra-long parking spaces and the parking spaces that gain direct access from the private drive rather than providing additional landscaping, there is not sufficient space to plant the four (4) mitigation trees required by the Commission or the one (1) mitigation tree required by File No. 17-070 TREE on Tax Lot 1000. Mitigation trees are discussed further in Chapter 17.102 of this document. **The Planning Commission approved 20 of the 22 proposed parking spaces on Tax Lot 1200 and required the applicant to update the Plan Set to detail the following: removal of the parking space to the west of Tree #9 and retention of the existing natural area landscaping, and removal of the southernmost parking space and replacing with landscaping. The applicant shall complete a stormwater analysis for Tax Lot 1100 (Lot 9) to determine if the existing stormwater facility can accommodate the additional impervious surface from the proposed parking spaces that access the 25-foot access easement directly, and if not, the parking spaces shall be removed, or the stormwater facility shall be modified to accommodate the additional stormwater.**

ZONING and SETBACKS – Chapters 17.44 and 17.80

95. The applicant proposes constructing a food cart pod and associated dining facility on Tax Lot 1200 (Lot 10 of the Twin Cedars subdivision) as permitted in the general commercial (C-2) zoning district per Section 17.44.10(B.1.e). The applicant also proposes constructing a surface parking lot on Tax Lot 1000 (Lot 8). A surface parking lot is not a primary use permitted outright, but rather an accessory use allowed per Section 17.44.10(C.3). The accessory parking lot is needed to meet the minimum parking requirement for the food cart pod. **The applicant shall record a shared parking covenant that runs with the land and is nonrevocable between Lots 10 and 8 of Twin Cedars.** The covenant shall be nonrevocable as the parking on Lot 10 does not have the minimum parking required of the proposed facility.
96. Section 17.44.30(A) contains the development requirements for the C-2 zoning district, which include a 20 percent minimum landscaping requirement, a 55-foot maximum structure height, and a 10-foot minimum and 50-foot maximum front yard setback. Chapter 17.80 contains additional setback requirements on collector and arterial streets. Section 17.80.20 requires all structures to have a minimum setback of 20 feet to collector and arterial streets. Kate Schmitz Avenue is classified as a collector street and, thus, all structures will need to be set back at least 20 feet from Kate Schmitz Avenue.
97. Landscaping is discussed further in Chapter 17.92 of this final order. As detailed on the submitted elevations (Exhibit D, Sheet A3.01), the proposed dining facility is 27-feet-7 3/8-inches in height in compliance with the Sandy Development Code. As stated in the narrative (Exhibit B), the proposed building is located approximately 173 to 199 feet from Kate Schmitz Avenue. The applicant is requesting a variance to allow the front yard setback to exceed the 50-foot maximum. The variance request is discussed further in Chapter 17.66 of this final order.
98. Section 17.44.30(B) contains special setback standards for side or rear yards that abut a more restrictive zoning district. Tax Lot 1200 abuts a property zoned R-2, medium density residential, on its east (side yard) property line. Section 17.44.30(B.1) states that a property abutting a more restrictive zoning district shall have the same yard setback as required by the abutting district and that an additional ten feet shall be added for each ten-foot increment in building height over 35 feet. The minimum side yard setback in the R-2 zone is 5 feet. The proposed building is less than 35 feet in height; thus, the minimum side yard setback along the east property line of Tax Lot 1200 is 5 feet. No buildings are proposed along the east property line of Tax Lot 1200. A parking area is proposed along the south portion of the east property line and is set back 5 feet from the property line in compliance with the code.

TRANSPORTATION AND IMPROVEMENTS – Chapter 17.84

99. Section 17.84.20 pertains to timing of required improvements. Section 17.84.20(A.2) states that where a land division is not proposed, the site shall have required public and franchise utility improvements installed or financially guaranteed in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures. The applicant is not proposing to install frontage improvements as part of this application. There is an existing gap between the constructed portion of Kate Schmitz Avenue along the Goodwill site (Tax Lot 500) and the proposed food cart pod parcel (Tax Lot 1200). The property between Goodwill and the proposed food cart pod parcel is zoned R-2, Medium Density Residential, and is owned by the Oregon Trail School District. Staff do not anticipate this parcel developing any time soon based on the zoning and ownership. Therefore, staff is supportive of the applicant financially guaranteeing the improvements rather than installing them with the proposed food cart pod development. Kate Schmitz Avenue is identified as a collector street in the TSP. The City Engineer (Exhibit O) reviewed the proposal and notes: “A fee-in-lieu charge or a non-remonstrance agreement should be required for the development of the street frontage on Kate Schmitz Avenue. The property frontage is 76 feet long and the developer would be responsible for improving the roadway to local residential standards. The additional cost to construct the roadway to collector standards would be an SDC eligible expense. The engineer should provide a cost estimate for this frontage.” **The applicant shall financially guarantee the required Kate Schmitz Avenue improvements in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures. The financial guarantee shall be in the amount of 110 percent of the Engineer estimate for the cost of half-street improvements to Collector Street standards for the entire 75.87 feet of frontage on Kate Schmitz Avenue.**

100. Section 17.84.30 includes pedestrian and bicycle requirements. Section 17.84.30(A.2) requires all proposed sidewalks on arterial or collector streets to be six feet wide and separated from curbs by a tree planting area that is a minimum of five feet in width. As required by Section 17.84.30(B), safe and convenient pedestrian and bicyclist facilities that strive to minimize travel distance to the extent practicable shall be provided in conjunction with new development. As previously discussed, the applicant is not proposing to install frontage improvements along the Kate Schmitz Avenue right-of-way as part of this application and will be providing a financial guarantee instead. The applicant is proposing a 5-foot-wide soft surface path connecting the food cart pod area to the Kate Schmitz Avenue right-of-way. When the Kate Schmitz Avenue sidewalk is installed in the future, the path will connect the sidewalk to the proposed food cart pod development. Currently, there are a number of trails located within or adjacent to the Kate Schmitz Avenue right-of-way in the vicinity of where the proposed 5-foot-wide path will end. To improve connectivity, **the applicant shall connect the proposed 5-foot-wide soft surface trail to an existing trail provided there is an existing trail located in the Kate Schmitz Avenue right-of-way. The applicant shall submit the proposed connection for review and approval by the Parks Director.**

101. This finding analyzes the Transportation Impact Study (TIS).

- A. The applicant submitted a Transportation Impact Study (Exhibit J) from Lancaster Mobley, dated March 7, 2022, as well as a Parking Stalls Memorandum from Lancaster

Mobley dated April 19, 2022. According to the TIS, the proposed development would generate up to 12 site trips during the morning peak hour, 57 trips during the evening peak hour, and 566 average weekday trips.

- B. The City Transportation Engineer (Exhibit R) reviewed the TIS and provided the following comments:
- i. **The development shall contribute System Development Charges toward citywide impacts.**
 - ii. The City Transportation Engineer reviewed Lancaster Mobley's response to concerns surrounding the 10 parking spaces on the north side of the proposed parking lot at 37115 US 26 and noted that vehicles would enter and exit these spaces directly from the drive aisle. Staff had expressed concerns about the proposed spaces backing into the existing 25-foot access easement. The City Transportation Engineer finds that the applicant's response does not demonstrate that the inclusion of the 10 spaces will not result in issues identified by the City. Based on concerns about safety and the City Transportation Engineer's recommended condition, staff had recommended that the applicant be required to update the Plan Set to remove the 10 parking spaces on the north side of the proposed parking lot at 37155 US 26 and that the parking layout should be designed so that all parking maneuvers will be internal to the parcel. At the July 25, 2022, Planning Commission hearing, the Commissioners decided to approve the applicant's request to provide parking spaces that access the 25-foot access easement directly.
 - iii. The City Transportation Engineer included a comment that bicycle parking shall be provided per Sandy Development Code 17.98.20. The applicant is proposing 4 bicycle parking spaces, which complies with the minimum requirement. Bicycle parking is discussed further in Chapter 17.98 of this document.
 - iv. Page 20 of the study states that alternate mobility standards apply along US 26 between Orient Drive and Ten Eyck Road. No alternate mobility standards have been adopted and typical mobility standards apply. **The applicant shall update the TIS as needed to apply typical mobility standards.**
- C. ODOT (Exhibit S) reviewed the TIS and provided the following comments in a letter dated July 8, 2022:
- i. The site of this proposed land use action is adjacent to US 26. ODOT has permitting authority for this facility and an interest in ensuring that this proposed land use is compatible with its safe and efficient operation. **The applicant shall contact the District Contact, Robbie Cox, at D2CAP@odot.oregon.gov to determine permit requirements and obtain application information.**
 - ii. ODOT determined that the Change of Use criteria in OAR 734-051-3020 are met and a new State Highway Approach Road Permit is required for access to the highway. **The applicant shall obtain a Permit to Construct a State Highway Approach Road from ODOT for access to the state highway. Truck turning templates shall be provided as needed to ensure vehicles can enter and exit the approach safely. A sight distance evaluation shall be provided to demonstrate that adequate intersection sight distance is provided and meets ODOT sight distance standards. Site access to the state highway is regulated by OAR 734.51. Application for a Permit to Construct a State Highway**

Approach. Note: It may take 2 to 3 months to process a State Highway Approach Road Permit.

D. The City Engineer (Exhibit O) reviewed the TIS and provided the following comment: "...driveway to the shopping center operates at a LOS F with existing conditions and at buildout, which is typically an unacceptable service level. Is this acceptable because it is a private shopping center or is that typical for a commercial center?" Staff reached out to the City's Transportation Engineer for input and received the following response: "Along US 26 the city uses ODOT's mobility standard which is based on volume/capacity ratio and not LOS. While the LOS of F does indicate a long average delay, the volume to capacity ratio meets the ODOT mobility standard. So the reason this LOS is acceptable is because for development that impacts intersections along US 26 the adopted standard does not consider the LOS but the v/c ratio."

102. Sections 17.84.50(F and G) require public streets to be improved to City standards along the entire frontage of the property. Kate Schmitz Avenue is identified as a collector street in the TSP and is therefore required to be improved to collector street City standards. As previously discussed, the applicant is not proposing to install frontage improvements as part of this application but rather will be providing financial guarantee. **The applicant shall financially guarantee the required Kate Schmitz Avenue improvements in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures. The financial guarantee shall be in the amount of 110 percent of the Engineer estimate for the cost of half-street improvements to Collector Street standards for the entire 75.87 feet of frontage on Kate Schmitz Avenue.**

103. The plat for Twin Cedars No. 2 (Exhibit U) details a 1-foot-wide access control strip along the Kate Schmitz Avenue right-of-way and states: "All access control strips are in favor of the City of Sandy. Access control strips or portions there of shall be relinquished by the City of Sandy when abutting public street is constructed and accepted by the City of Sandy." The City is not relinquishing the access control strip along the 75.87 feet of Kate Schmitz Avenue.

PARKING, LOADING, AND ACCESS REQUIREMENTS – Chapter 17.98

104. Section 17.98.10(Q) pertains to maximum parking allowed and states that Commercial or Industrial zoned properties shall not be permitted to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent. The applicant is requesting a Special Variance to Section 17.98.10(Q) to exceed the minimum parking requirement by more than 30 percent. The variance request is discussed further in Chapter 17.66 of this final order.
105. Section 17.98.20 contains off-street parking requirements. The proposed use is a food cart pod with a dining facility. Per Section 17.74.90.(E.11), each food cart shall provide a minimum of one paved off-street parking space for employee use or provide proof of written permission from an adjacent business or property owner within one-quarter mile of the subject site allowing the food cart operator to share parking facilities. The proposal includes space for 18 food carts, which requires 18 off-street parking spaces. In addition, the proposal includes a 3,600 square foot dining facility. Per Section 17.98.20(A.10), eating or drinking establishments require 1 parking space per 250 square feet of gross floor area or 1 parking space per 4 fixed seats or stools, plus 1 per 2 employees. The applicant's narrative (Exhibit B) states that the anticipated number of dining facility employees at the largest shift is 4, which requires 2 off-street parking spaces. The 3,600 square foot building requires 14 parking spaces ($3,600/250=14.4$ rounded down to 14). Therefore, the total required number of off-street parking spaces for the food cart pod and dining facility is 34 ($18+14+2=34$). The applicant is proposing 69 parking spaces, which exceeds the minimum by 35 spaces, or 103 percent. As discussed in Section 17.98.10(Q), above, the applicant is requesting to exceed the minimum parking requirement by more than 30 percent, which is discussed in Chapter 17.66 of this final order.
106. Based on the required 34 parking spaces, two (2) bicycle parking spaces are required. The Detailed Site Plan (Exhibit C, Sheet C5) details four (4) bicycle parking spaces located at the southeast corner of the dining facility (south elevation) around the corner from the main entrance (east elevation). Section 17.98.160 contains requirements related to bicycle parking facilities. Per Section 17.98.160(B) each required bicycle parking space shall be at least two and one-half feet by six feet; vertical or upright bicycle storage structures are exempted from the parking space length. An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking. Staff has concerns about the location of the proposed bicycle parking area in relation to maintaining adequate space and pedestrian flow between the bicycle parking and the order counter. During staff's June 30, 2022, site visit to the Troutdale food carts, staff observed that the bicycle parking spaces were vertical spaces installed on the building façade. Therefore, staff recommended the bicycle parking spaces be relocated to the east elevation so they're closer to the main entrance and aren't between the building and the food carts, or that they be installed as vertical spaces on the south façade. **The applicant shall update the plan set to detail the bicycle parking spaces adjacent to the east elevation so they're closer to the main entrance and aren't between the building and the food carts, as vertical spaces on the south façade, or propose an alternative location to be reviewed and approved as staff.**
107. Section 17.98.40 contains standards related to shared use of parking facilities. Section 17.98.40(A) specifies that required parking facilities may be located on an adjacent parcel of

land or separated only by an alley or local street, provided the adjacent parcel is maintained in the same ownership as the use it is required to serve or a shared parking agreement that can only be released by the Director is recorded in the deed records of Clackamas County. The 18 food cart pod proposal requires a minimum of 34 parking spaces. The applicant is proposing 22 parking spaces on the food cart pod parcel (Tax Lot 1200, Lot 10) and 47 parking spaces in the accessory surface parking lot (Tax Lot 1000, Lot 8). **The applicant shall record a shared parking covenant that runs with the land and is nonrevocable between Lots 10 and 8 of Twin Cedars.** The covenant shall be nonrevocable as the parking on Lot 10 does not have the minimum parking required of the proposed facility.

108. Section 17.98.60 includes standards on parking lot design, size, and access. Section 17.98.60(A) requires parking lots to be constructed with a durable hard surface such as concrete or asphalt. Per the submitted narrative (Exhibit B) all parking and maneuvering areas will be surfaced with asphalt.
109. Section 17.98.60(B) contains standards for the size of parking spaces. The Overall Site Plan (Exhibit C, Sheet C3) identifies 69 parking spaces, with 22 located on the same parcel as the food cart pod (Tax Lot 1200, Lot 10), and 47 located on Tax Lot 1000 or Lot 8 (10 of which extend partially onto Tax Lot 1100, Lot 9). The proposed parking spaces include 34 standard parking spaces at 9 feet by 18 feet, 13 extra-long parking spaces at 9 feet by 25 feet, 19 compact parking spaces at 8 feet by 18 feet. All parking spaces meet the minimum size requirements, with the compact spaces being two feet longer than required, and the extra-long spaces being seven feet longer than required. Both the compact spaces and the extra-long spaces are longer than what is required by the code, resulting in less landscaping, more impervious surface, and increased stormwater management needs, which is discussed further in Chapter 17.66 of this document in the analysis of the applicant's request to exceed the maximum parking permitted. The proposal also includes three (3) ADA parking spaces, one of which has a passenger side aisle. **Signage associated with the ADA parking spaces shall meet the head clearance distance requirement in the Building Code. All approved parking spaces shall be clearly delineated with painted lines and the entrance and exit driveways shall be signed or marked with paint.**
110. Section 17.98.60(C) contains standards on parking lot aisle width. All parking aisles are proposed to meet or exceed the minimum aisle width standards for one-way and two-way parking aisles. The Overall Site Plan (Exhibit C, Sheet C3) details all parking aisles at 25 feet wide.
111. Section 17.98.80(A) requires access from a lower functional order street. Tax Lot 1200 has 75.87 feet of frontage on Kate Schmitz Avenue, a collector street; however, the Kate Schmitz right-of-way adjacent to Tax Lot 1200 is unimproved, as is the portion of Kate Schmitz Avenue east of Tax Lot 1200. Therefore, both subject parcels (Tax Lots 1000 and 1200) are proposed to be accessed from Highway 26 via an existing private access easement located on Tax Lot 1100. The City Engineer (Exhibit O) reviewed the proposal and notes that the accessor map appears to indicate a 5.5-foot strip of land on Lot 9 (Tax Lot 1100) separates Tax Lot 1000 from the 25-foot access easement. **The applicant shall provide confirmation of the right to access Tax Lots 1000 and 1200 via the 25-foot access easement and**

whether the applicant has the legal right to cross the 5.5-foot strip on Lot 9 (Tax Lot 1100).

112. Section 17.98.120 contains landscaping and screening provisions for parking areas. Section 17.98.120(A) requires screening of parking areas containing 4 or more spaces. Section 17.92.80 requires buffering in conjunction with issuance of construction permits for parking areas containing four or more spaces, loading areas, and vehicle maneuvering areas. Boundary plantings shall be used to buffer these uses from adjacent properties and the public right-of-way. On-site plantings shall be used between parking bays, as well as between parking bays and vehicle maneuvering areas. A balance of low-lying ground cover and shrubs, and vertical shrubs and trees shall be used to buffer the view of these facilities. Section 17.92.10(D) states that planter and boundary areas used for required plantings shall have a minimum diameter of five feet (two and one-half foot radius, inside dimensions). Where the curb or the edge of these areas are used as a tire stop for parking, the planter or boundary plantings shall be a minimum width of seven and one-half feet. The proposal includes a parking area located southeast of the proposed food cart pod on Lot 1200 and an additional parking area on Lot 1000 (with 10 spaces proposed to extend onto Lot 1100). The Overall Site Plan (Exhibit C, Sheet C3) and Landscape Plan (Exhibit E, Sheet L1) detail boundary plantings between the parking areas and adjacent properties as well as plantings between parking bays and vehicle maneuvering areas. The Overall Site Plan details the landscaping buffers at 5-feet; however, that appears to include the curb. Neither the Overall Site Plan nor the Landscape Plan detail wheel stops, which is discussed in more detail below. **The applicant shall update the Plan Set to detail planter and boundary areas in the parking lot at a minimum diameter of five feet (two and one-half foot radius, inside dimensions).**
113. Section 17.98.120(B) requires parking in a commercial district that adjoins a residential district to include a site-obscuring screen that is at least 80 percent opaque when viewed horizontally from between 2 and 8 feet above the average ground level. The screening shall be composed of materials that are an adequate size so as to achieve the required degree of screening within three years after installation. The property to the east of the proposed food cart pod parcel is zoned R-2, Medium Density Residential. The Overall Site Plan (Exhibit C, Sheet C3) details a 5-foot-wide landscaping buffer east of the parking area on Tax Lot 1200 adjacent to the R-2 parcel; however, the Landscape Plan (Exhibit D, Sheet L1) does not detail landscaping in this area. **The applicant shall update the Landscape Plan to detail a minimum 5-foot-wide landscaping buffer with a site-obscuring screen that is at least 80 percent opaque when viewed horizontally from between 2 and 8 feet above the average ground level. The screening shall be composed of materials that are an adequate size so as to achieve the required degree of screening within three years after installation.**
114. Section 17.98.120(C) requires parking facilities to include at least 10 percent landscaping. The Landscape Plan (Exhibit E, Sheet L1) details multiple landscape planter bays in each parking lot area but do not include a landscaping analysis for the parking area. **The applicant shall submit additional information regarding landscaping in the parking areas to ensure that the 10 percent minimum landscaping is met.**

115. Section 17.98.120(D) restricts parking bays to no more than 20 spaces and requires landscape planters at the ends of each parking bay that have a minimum width of five feet and a minimum length of 17 feet for a single depth bay and 34 feet for a double bay. Each planter shall contain one major structural tree and ground cover. The Landscape Plan (Exhibit E, Sheet L1) details planter bays at the ends of a majority of the parking bays that are at least five feet in width by 17 feet in length with one major structural tree and ground cover; however, there are multiple planter bays that do not meet the minimum 5-foot by 17-foot requirement and/or do not detail one major structural tree and groundcover. **The applicant shall update the Landscape Plan to detail a landscape planter at the end of each parking bay at a minimum width of 5-feet and a minimum length of 17-feet, exclusive of curb, with one major structural tree and ground cover.**
116. Section 17.98.120(E) states that parking area setbacks shall be landscaped with major trees, shrubs, and ground cover. Section 17.92.80 requires parking area buffers to contain a balance of low-lying ground cover and shrubs, and vertical shrubs and trees. The submitted Landscape Plan (Exhibit E, Sheet L1) details landscaping buffers between parking areas and adjacent properties; however, a majority are detailed to only contain creeping raspberry groundcover. **The applicant shall update the Landscape Plan to detail a mix of groundcover, shrubs, and trees in the required landscaping buffers between parking areas and adjacent properties.**
117. Section 17.98.120(F) requires wheel stops or other methods to protect landscaped areas and pedestrian walkways. Neither the Overall Site Plan (Exhibit C, Sheet C3) nor the Landscape Plan (Exhibit E, Sheet L1) detail wheel stops in any of the proposed parking spaces. Section 17.98.120(F) allows parking to project over an internal sidewalk provided a minimum clearance of five feet for pedestrian circulation is maintained. Section 17.92.10(D) states that where the curb or the edge of a required planter or boundary area is used as a tire stop for parking, the planter or boundary plantings shall be a minimum width of seven and one-half feet. **The applicant shall update the Plan Set to either detail wheel stops in the parking spaces adjacent to landscaping and walkways to protect landscaping and pedestrian walkways, or shall update the Plan Set to detail a minimum planting area of 7.5 feet, exclusive of curb, adjacent to all parking spaces that use the curb as a tire stop and a minimum clearance of 5 feet for pedestrian walkways that are adjacent to parking spaces that use the curb as a tire stop.**
118. Section 17.98.130 requires that all parking and vehicular maneuvering areas shall be paved with asphalt or concrete. As required by Section 17.98.130, **all parking, driveway, and maneuvering areas shall be constructed of asphalt, concrete, or other approved material.**
119. Section 17.98.140 requires parking areas, aisles, and turnarounds to provide adequate provisions for on-site collection of stormwater to eliminate sheet flow onto sidewalks, public rights-of-way, and abutting private property. **The applicant shall comply with the requirements of Section 13.18 of the Sandy Municipal Code. The applicant shall complete a stormwater analysis for Tax Lot 1100 (Lot 9) to determine if the existing stormwater facility can accommodate the additional impervious surface related to the parking spaces that access the 25-foot access easement directly, and if not, the parking**

spaces shall be removed, or the stormwater facility shall be modified to accommodate the additional stormwater.

120. Section 17.98.150 requires lighting to be provided in all required off-street parking areas. The applicant submitted a lighting fixture schedule for new site lighting, and a photometric plan. These submittals are reviewed in Chapter 15.30 of this document.
121. Section 17.98.190 contains minimum standards for off-street loading facilities for commercial and industrial developments and states that all commercial and industrial uses that anticipate loading and unloading of products/materials shall provide an off-street area for loading/unloading of products/materials. The submitted narrative (Exhibit B) states that the proposed use does not warrant a separate designated loading area.

UTILITIES – Chapters 17.84 and 15.30

122. Section 17.84.60 outlines the requirements of public facility extensions. The applicant submitted a Preliminary Utility Plan (Exhibit C, Sheet C6) which shows the location of proposed water, sanitary sewer, and stormwater drainage facilities for Tax Lot 1200. The Utility Plan did not include proposed utilities for Tax Lot 1000. The surface parking lot on Tax Lot 1000 contains multiple landscape planters that are required to be irrigated. **The applicant shall submit an updated Utility Plan detailing water service to Tax Lot 1000.**
123. The City Engineer (Exhibit O) reviewed the proposal and anticipates all utilities are private; however, if they are public, the CDS manhole at detention pipe No. 1 would need to be relocated from under food cart No. 8 to ensure access for maintenance. Regardless of whether the utilities are public or private, staff recommended the applicant update the plan set to relocate the CDS manhole at detention pipe No. 1 from under food cart No. 8 so it can be accessed for maintenance. The Planning Commission discussed the proposal to locate the manhole as well as the stormwater drains underneath the proposed food carts at the July 25, 2022, Planning Commission hearing and determined it should be up to the applicant to decide whether or not they want to relocate the manhole or storm drains to allow for easier maintenance access.
124. Broadband vault/conduit infrastructure are required for all new developments. The SandyNet General Manager reviewed the proposal and provided comments (Exhibit Q). **The applicant shall provide SandyNet with a set of PGE utility and street/sidewalk lighting plans to design and return a SandyNet broadband deployment plan to overlay in the dry utility shared trench. SandyNet will provide requirements for layout and acceptable materials for the developer/contractor. SandyNet shall be contacted after installation of infrastructure and coordinated for onsite inspection before backfilling the common trench. Please send plans for SandyNet design to Greg Brewster gbrewster@ci.sandy.or.us, 503-953-4604. On site contact for general questions and inspection will be Ron Yow, ryow@ci.sandy.or.us, 541-514-9771.**
125. Franchise utilities will be provided as required in Section 17.84.80. The location of these utilities shall be identified with building permit plans and installed or guaranteed prior to the site receiving a certificate of occupancy. **All franchise utilities shall be installed underground. The developer shall make all necessary arrangements with franchise utility providers.**
126. Section 17.84.90 outlines requirements for land for public purposes. The application does not include dedication of any land. The City finds that land dedication is not necessary with this application.
127. Eight-foot-wide public utility easements (PUE) are required along all property lines abutting a public right-of-way. Tax lot 1200 (Lot 10) contains frontage on Kate Schmitz Avenue; however, the Twin Cedars subdivision plat does not detail an 8-foot PUE along Kate Schmitz Avenue. **The applicant shall record an eight-foot-wide public utility easement along the entirety of the Kate Schmitz Avenue right-of-way of Tax Lot 1200 (Lot 10 of Twin Cedars subdivision).**

128. Section 17.84.100 outlines the requirements for mail delivery facilities. **The location and type of mail delivery facilities shall be coordinated with the City Engineer and the Post Office as part of the construction plan process.**
129. The Fire Marshal (Exhibit N) reviewed the proposal and provided general comments as well as comments related to fire apparatus access and firefighting water supplies. **The applicant shall adhere to the following Fire Marshal requirements:**
- A. **Construction documents for proposed fire apparatus access, location of fire lanes, access easements, security gates across fire apparatus access roads and construction documents and hydraulic calculations for fire hydrant systems shall be submitted to the Fire District for review and approval prior to construction. For reference of requirements, applicants may review the Fire Code Application Guide.**
 - B. **Where fire apparatus access roads or a water supply for fire protection are required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except where approved alternative methods of protection are provided.**
 - C. **Buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property, including monument signs.**
 - D. **A key lock box for building and/or gate access may be required. If required, the Fire District uses KNOX brand boxes. To order a KNOX box, padlock, or key switch that is keyed for the Sandy Fire District, please visit Sandy Fire's website (<https://www.knoxbox.com/Products> for ordering information.**
 - E. **An emergency vehicle access and maintenance agreement may be needed as a condition of approval.**
 - F. **For private fire service water mains and/or fire hydrant systems, please contact Sandy Fire District when performing a pressure test to verify system integrity, when flushing the system, and conducting a flow test.**
 - G. **On-site fire hydrants and mains shall be provided.**
 - H. **An automatic fire sprinkler system may be required if the fire area of the Group A-2 occupancy (dining facility) has an occupant load of 100 or more.**
 - I. **Each new fire hydrant installed shall be ordered in an OSHA safety red finish and have a 4-inch non-threaded metal faced hydrant connection with cap installed on the steamer port (4 1/2-inch NST x 4-inch Storz Adaptor). If a new building, structure, or dwelling is already served by an existing hydrant, the existing hydrant shall also be OSHA safety red and have a 4-inch non-threaded metal faced hydrant connection with cap installed.**
 - J. **The applicant shall adhere to all other requirements of the Sandy Fire District.**
130. **All site runoff shall be detained such that post-development runoff does not exceed the predevelopment runoff rate for the 2, 5, 10 and 25 year storm events. Stormwater quality treatment shall be provided for all site drainage per the standards in the City of Portland Stormwater Management Manual (COP SWMM). The City Engineer (Exhibit O) finds that the stormwater report is acceptable; however, even though the post developed runoff is less than the predeveloped runoff, the post developed runoff enters the conveyance**

system whereas the predeveloped flow does not. **The applicant shall verify the capacity of the existing stormwater system. In addition, the applicant shall complete a stormwater analysis for Tax Lot 1100 (Lot 9) to determine if the existing stormwater facility can accommodate the additional impervious surface from the parking spaces that gain access directly from the 25-foot access easement, and if not, the parking spaces shall be removed, or the stormwater facility shall be modified to accommodate the additional stormwater.**

131. Chapter 15.30 contains the City of Sandy's Dark Sky Ordinance. **Downward facing, full cut-off lighting shall be required. Lights shall not exceed 4,125 Kelvins or 591 nanometers to minimize negative impacts on wildlife and human health.** The applicant submitted lighting plans and lighting fixture cut sheets (Exhibit F, Sheets ES.01 and ES.02). All lighting fixtures are detailed at 4,000 Kelvins in compliance with the code.

132. Section 15.30.060(D) states that all outdoor lighting systems shall be designed and operated so that the area ten feet beyond the property line of the premises receives no more than one-quarter of a foot-candle of light from the premises lighting system. The submitted Site Lighting and Photometry Plan (Exhibit F, Sheet ES.01) details foot candles extending 10 feet beyond the property lines. Light trespass onto adjacent properties is detailed to exceed the 0.25 foot-candle maximum on the east, west, and south sides of Tax Lot 1200 and possibly on the south side of Tax Lot 1000. **The applicant shall update the Photometric Plan such that the area ten feet beyond the property line of the premises receives no more than one-quarter of a foot-candle of light from the premises lighting system.**

URBAN FORESTRY – 17.102

133. In addition to the landscaping requirements of Chapter 17.92, Chapter 17.102 contains Urban Forestry regulations. An Arborist Report prepared by Todd Prager of Teragan & Associates and dated April 14, 2022, is included as Exhibit K. The arborist inventoried all trees 6-inches and greater diameter at breast height (DBH). The inventory of trees proposed to be retained is included in Exhibit C, Sheet C10 and the Tree Retention and Protection Plan is shown in Exhibit C, Sheets C8 and C9.
134. The subject properties are part of the Twin Cedars subdivision. The Twin Cedars subdivision required retention of a minimum of 25 trees as detailed in the 2005 Tree Covenant (Exhibit T). Twenty-four of the 25 retention trees were located on Tax Lot 1200 with the remaining retention tree located on Tax Lot 1000. The 24 retention trees on Tax Lot 1200 were all located in a tree protection area on the east side of the lot and were protected by tree protection fencing installed at the dripline plus 5 feet as detailed on Plate Nos. 3 and 4 of the Tree Covenant for the Twin Cedars Subdivision (Exhibit T). As stated in the Tree Covenant, none of the 25 retention trees shall be removed without first obtaining approval from the City and removal of any of the 25 trees shall only be allowed upon determination by a qualified professional that the tree is diseased, dead, dying, or otherwise hazardous to persons or property in a way that can only be remediated by complete removal of the tree. The retention tree on Tax Lot 1000 was located in the middle of the lot and was previously removed in conjunction with File No. 17-070 TREE, discussed below. Staff does not have record of any tree removal permits being processed for removal of any of the 24 retention trees on Lot 1200. The submitted Onsite Tree Survey (Exhibit C, Sheet C8) details 24 trees on Tax Lot 1200; however, a majority do not correspond to the trees identified in the Tree Covenant and many were likely planted since the 2005 covenant or were too small at the time the covenant was recorded to be included in the 2005 inventory, which only included trees 8-inches or greater DBH. Based on the 2005 Tree Covenant and the current tree survey, staff believes approximately 10 of the original 24 retention trees on Tax Lot 1200 may still be present (Trees #1, 4, 5, 6, 7, 8, 9, 14, 22, and 23), with two of them no longer being in good condition (Trees #14 and 22). Tree #14 is a 23-inch DBH Doug fir in fair condition that is proposed for removal to accommodate construction of the proposed parking lot and trash/recycling enclosure on Tax Lot 1200. Tree #22 is a 23-inch DBH black cottonwood in fair condition and is proposed to be retained. It is unclear what happened to the other 14 retention trees identified on Tax Lot 1200. Based on Google Earth aerial imagery, staff believes some of the required retention trees may have been removed between July and August 2012 in connection with staging for the Fresenius Clinic construction. If any of the retention trees were removed, the property owner at that time should have submitted a tree removal application in compliance with the 2005 Tree Covenant, in which case, any approved removal of trees would have required mitigation at a 2:1 ratio. To staff's knowledge, this never occurred. As part of the current application, the applicant is proposing 14 retention trees on Tax Lot 1100 as alternates to the missing 14 retention trees; however, 9 of the 14 trees are located in the parking lot and not in a natural grouping of retention trees similar to the retention tree area detailed in the 2005 Tree Covenant. The remaining 5 proposed retention trees on Tax Lot 1100 (Trees #82-86) are grouped together in a natural area setting similar to what was required in the 2005 Tree Covenant; thus, staff is supportive of these proposed alternative retention trees. Based on staff's recommendation from the July

18, 2022, Staff Report, the Planning Commission processed the removal of the missing 14 retention trees from Tax Lot 1200 concurrently with this application through a retroactive hazard tree removal permit, as required by the 2005 Tree Covenant. **The Planning Commission approved Trees #82-86 as alternate retention trees for 5 of the removed retention trees and required the remaining 9 removed retention trees to be mitigated at a 2:1 ratio.** As explained in the staff report, mitigation requirements could be satisfied either through planting 18 new mitigation trees on the subject properties, paying a fee-in-lieu of \$500 per mitigation tree, or a combination of the two. Staff believes there is sufficient space to plant approximately 5-6 mitigation trees on Tax Lot 1100 in the natural area adjacent to and north of Trees #82-86. Staff further believes there is sufficient space to plant approximately 7-8 mitigation trees on Tax Lot 1200 within the proposed natural tree protection area outside of the CRZ of the proposed retention trees and away from the Kate Schmitz Avenue right-of-way. Thus, staff recommended the applicant be required to plant 12 mitigation trees (5 on Tax Lot 1100 and 7 on Tax Lot 1200) and pay a fee-in-lieu of \$500 per tree for the remaining 6 mitigation trees. However, in addition to the 18 mitigation trees (or fee-in-lieu) for the nine (9) missing trees, File No. 17-070 TREE included a condition of approval requiring planting one (1) mitigation tree and the Planning Commission required planting four (4) additional mitigation trees to mitigate for the four (4) trees proposed for removal from the north side of Tax Lot 1000 to accommodate the parking spaces that gain direct access from the 25-foot access easement, for a total of 23 mitigation trees. Because the Planning Commission approved the applicant's request for both the extra-long parking spaces and the parking spaces that gain direct access from the private drive rather than providing additional landscaping on Tax Lot 1000, there is not sufficient space to plant the four (4) mitigation trees required by the Commission or the one (1) mitigation tree required by File No. 17-070 TREE on Tax Lot 1000. The Planning Commission supported staff's recommendation to require planting 12 mitigation trees (5 on Tax Lot 1100 and 7 on Tax Lot 1200) and pay a fee-in-lieu of \$500 per tree for the remaining 6 mitigation trees required to mitigate for nine (9) of the missing retention trees from the 2005 Tree Covenant. The Planning Commission further required that the applicant plant four (4) additional mitigation trees on site to help counter the additional impervious surface and additional urban heat island impacts resulting from approving the parking spaces that gain direct access from the 25-foot access easement. However, the Planning Commission did not provide any guidance as to where to plant the additional mitigation trees. **The Planning Commission requires the applicant to plant 12 mitigation trees (5 on Tax Lot 1100 and 7 on Tax Lot 1200) and pay a fee-in-lieu of \$500 per tree for the remaining six (6) mitigation trees to account for nine (9) of the missing retention trees from the 2005 Tree Covenant. The mitigation trees shall be planted in the natural area outside of the CRZs of the proposed retention trees and away from the Kate Schmitz Avenue right-of-way. All mitigation trees shall be located such that they are likely to remain healthy and grow to maturity based on existing, proposed, and future development including for the Kate Schmitz Avenue improvements. The Planning Commission also requires the applicant to plant or otherwise mitigate for an additional five (5) mitigation trees (the one (1) mitigation tree required by File No. 17-070 TREE and the four (4) additional mitigation trees required by the Planning Commission).** File No. 17-070 TREE conditioned that one (1) mitigation tree be planted on site. In addition, the Planning Commission indicated that they intended the four (4) mitigation trees to also be planted on site rather than collect a fee-in-lieu of planting. Staff's recommendations regarding adequate space for mitigation tree planting on Tax Lot

1100 were based on an assumption that the areas to the north and east of the easternmost parking area currently don't contain any trees because there are plans for future development. In addition, staff has observed that there's been recent earthwork north of the easternmost parking aisle on Tax Lot 1100 that may have compacted the soil and otherwise negatively impacted trees in that area. Based on an analysis of Google Earth imagery, this likely occurred between June and July 2021. Staff would prefer to avoid planting mitigation trees too close to an area that may develop in the future in order to avoid potential negative impacts to the trees and future conflict. Therefore, staff does not believe the area north of the easternmost parking area on Tax Lot 1100 is a suitable location to plant mitigation trees. However, it does not appear that there has been recent earthwork in the area east of the easternmost parking aisle on Tax Lot 1100 and that there is sufficient space to plant 5-6 mitigation trees. **The applicant shall update the plan set to detail five (5) additional mitigation trees located on Tax Lot 1100 in the natural area adjacent to and north of Trees #82-86, on Tax Lot 1100 east of the easternmost parking aisle, or on Tax Lot 1200 within the proposed natural tree protection area outside of the CRZs of the proposed retention trees and away from the Kate Schmitz Avenue right-of-way, or otherwise work with staff and the project arborist to determine if there is an alternative suitable location to plant the 5 additional mitigation trees such that they are likely to remain healthy and grow to maturity based on existing, proposed, and future development. The applicant shall submit the proposed locations of the mitigation trees for staff review and approval. If it is determined that there is insufficient space on Tax Lot 1100 or 1200 to plant all five (5) of the additional required mitigation trees, the applicant shall pay a fee in lieu of \$500 per tree for one or more of the additional five mitigation trees.**

135. The City processed a tree removal permit request to remove the retention tree identified on Tax Lot 1000 in 2017 (File No. 17-070 TREE). The tree, detailed as a 36-inch DBH cedar on Plate No. 2 of the Tree Covenant for the Twin Cedars Subdivision (Exhibit T), was requested to be removed due to its central location on Tax Lot 1000. In addition, the arborist report submitted with that application determined that the tree had a large area of *Phellinus weirii* (but rot), which would eventually lead to structural failure. The final order for File No. 17-070 TREE included the following conditions of approval:

Condition C. If the tree is removed the following shall be submitted within 30 days of tree removal:

1. Submit a site plan detailing the species, size, and location of the mitigation tree to be planted on the subject property. The mitigation tree shall be a native evergreen at least 6 feet in height and shall be planted per the City of Sandy standard planting detail. The applicant shall plant the tree in a location on the site that will not be impacted by future development of the site. Per Sections 17.92.10(C) and 17.102.50(B)(1), future construction shall not encroach within 5 feet outside of the dripline or 10 feet from the trunk of the tree, whichever is greater.
2. Submit a site plan detailing the species, size, and location of native ground cover, or submit additional information demonstrating that there are no areas with exposed soil resulting from the removal of the redcedar tree for Planning staff review and approval.

3. Submit payment of a \$400 fee-in-lieu of mitigation tree.

Condition D. If the tree is removed the following shall be complete within 60 days of tree removal:

1. Install the required native mitigation tree (double staked) per the approved site plan.
2. Install the required native groundcover (unless additional information was submitted and approved by Planning staff that demonstrates there are no areas with exposed soil resulting from the removal of the redcedar tree).
3. Record a tree protection covenant specifying protection of the mitigation tree planted on the site limiting future removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the location of the required mitigation tree and shall be recorded with Clackamas County. The tree protection covenant shall be submitted to the City for review and approval prior to recording. Per the tree protection covenant, proposed future removal of the mitigation tree will not be allowed without submittal of an Arborist's Report and City approval. Prior to obtaining City approval in the future, the applicant shall also be required to pay a third-party arborist review fee for any retention trees proposed for removal from the Twin Cedars subdivision in the future.

Condition E. General Conditions of Approval

1. The applicant shall ensure all plants and trees survive in good condition and shall replace dead or dying plants/trees. The applicant shall not anchor anything to the mitigation tree, compact the soil under the dripline, or otherwise harm or damage the mitigation tree.
2. Future tree removal from the Twin Cedars subdivision shall require additional permit approvals and if a permit is not obtained prior to removal of a tree, this violation may be subject to a fine per occurrence as specified in Section 17.06.80.
3. Successors-in-interest of the applicant shall comply with requirements of this final order. In the event the applicant should sell or lease the property upon which the condition contained in this document apply, the sale or lease will be subject to the restrictions and conditions described herein. The conditions shall run with the land and are binding on applicant's heirs, personal representatives, successors and assigns.

The applicant for File No. 17-070 TREE removed the cedar tree. Staff received payment of the fee-in-lieu for the second mitigation tree on February 2, 2018, but does not have record of any of the other conditions being met. **The applicant shall satisfy all outstanding conditions of File No. 17-070 TREE.** The July 18, 2022, Staff Report included a finding

stating that staff believes there would be sufficient space to plant the required mitigation tree in the northern portion of Tax Lot 1000 based on the City Transportation Engineer's recommendation to require removal of the 10 parking spaces on the north side of Tax Lot 1000 that access the 25-foot access easement directly. However, because the Planning Commission approved the applicant's request for both the extra-long parking spaces and the parking spaces that gain direct access from the private drive rather than providing additional landscaping, there is not sufficient space to plant the one (1) mitigation tree required by File No. 17-070 TREE (or the 4 mitigation trees required by the Commission) on Tax Lot 1000. As noted in the staff report, staff is also supportive of planting the mitigation tree in the natural area on either Tax Lot 1100 or 1200 adjacent to the clump of proposed retention trees. **To meet Conditions C.1 and D.1 of File No. 17-070 TREE, the applicant shall update the plan set to detail one (1) additional mitigation tree located on Tax Lot 1100 in the natural area adjacent to and north of Trees #82-86, on Tax Lot 1100 east of the easternmost parking aisle, or on Tax Lot 1200 within the proposed natural tree protection area outside of the CRZs of the proposed retention trees and away from the Kate Schmitz Avenue right-of-way, as previously discussed. Due to the presence of *Phellinus weirii* in the cedar tree that was removed, the applicant shall submit additional information from the project arborist or another TRAQ-certified arborist regarding the selection of a less susceptible mitigation tree species, treatment of the site, and/or documentation that the proposed planting location is no longer *P. weirii* infested for staff review and approval.**

136. All 25 of the trees proposed to be retained were evaluated by the project arborist to be in good condition, over 11-inch DBH, and not considered nuisance species based on the inventory completed in March and June of 2021. The Arborist Report was reviewed by a third-party reviewer. The third-party review was conducted by Damien Carré of Earth Care Designs, LLC dba Oregon Tree Care and is dated June 28, 2022 (Exhibit P). The review included a site visit and visual ground assessment of the condition of the trees conducted on June 27, 2022. Of the 25 trees proposed for retention by the applicant, all were found to be in good condition with the exception of Tree #10, a 13-inch DBH western redcedar that was determined to have a large wound 4-feet above the ground and poor structure. The Offsite Tree Survey (Exhibit C, Sheet C9) notes that there are 18 trees on Tax Lot 1100 that meet the tree retention requirements, 14 of which are proposed for retention. The remaining four (4) that meet the tree retention requirements but are not proposed as retention trees are Trees #91, 92, 93, and 94, all of which are conifers located adjacent to the parking area along the north property line of Tax Lot 1100. All four trees are already proposed to be retained as detailed on the Offsite Tree Survey. The Third-Party Arborist Review (Exhibit P) evaluated Trees #91-94 based on their proximity to the property line and determined the following:

- Tree #91: property line is located 5 feet from the tree and is within the minimum root protection zone; if not granted entry onto adjacent property, sufficient tree protection fencing could not be installed; no concerns about tree canopy or parking lot
- Tree #92: property line is located 5 feet from the tree and is within the minimum root protection zone; if not granted entry onto adjacent property, sufficient tree protection fencing could not be installed; no concerns about tree canopy or parking lot

- Tree #93: property line is located 7 feet from the tree and outside the minimum root protection zone; there is enough space to install sufficient tree protection fencing; no concerns about tree canopy or parking lot
- Tree #94: property line is located 7 feet from the tree and outside the minimum root protection zone; there is enough space to install sufficient tree protection fencing; no concerns about tree canopy or parking lot

Based on the third-party evaluation, Trees #91 and 92 would not be able to be adequately protected with tree protection fencing installed on the subject property; however, Trees #93 and 94 are located far enough from the property line that their minimum root protection zone is entirely on the subject property. Both Trees #93 and 94 are 11-inch DBH incense cedars. As previously discussed, staff does not believe the trees in the parking lot on Tax 1100 meet the intent of the tree retention standards or the recorded 2005 Tree Covenant. Based on the analysis of the current survey and 2005 Tree Covenant, staff believes Tree #22 was one of the original retention trees. Tree #22 is in fair condition and would not qualify as a retention tree currently, but Tree #22 is not evaluated to be a hazard tree and is proposed to be retained. Thus, **the Planning Commission allowed Tree #22 to remain as a retention tree and to be identified in the updated tree covenant in place of Tree #10.**

137. Fourteen (14) trees proposed for retention are conifer trees located on Tax Lot 1100. These trees are located in and around the existing parking lot and range in size from 11 inches DBH to 16 inches DBH. The remaining 11 proposed retention trees are located on Tax Lot 1200 and include seven deciduous bigleaf maple trees and four conifer trees. The seven bigleaf maple trees range in size from 17-inches DBH to 26-inches DBH, with one bigleaf maple (Tree #7) co-dominant at ground level and specified at 18- and 7-inches DBH. The four (4) conifers range in size from 13-inches DBH to 59-inches DBH. The 13-inch DBH tree is Tree #10, which was assessed to no longer be in good condition; the remaining three (3) conifers proposed as retention trees on Tax Lot 1200 range in size from 21-inches DBH to 59-inches DBH.

138. Staff has concerns that the nine (9) trees proposed for retention on Tax Lot 1100 that are in the parking lot landscape planters and buffers may have been impacted by compacted soils and/or lack of adequate soil volume. Staff also questions whether trees located in required parking lot landscape buffers meet the intent of a retention tree. Staff has additional concerns about whether proposed retention Trees #88, 89, 90, and 95, all of which are located in the existing parking lot landscape planters or buffers, will be able to be adequately protected due to their close proximity to the north and west property lines of Tax Lot 1100. The Third-Party Arborist Review (Exhibit P) assessed parking lot concerns as well as root/tree protection concerns. The review determined that there is no concern regarding impact of the already established parking lot on the 9 trees proposed for retention in the parking lot landscaping planters. The review also identified the following concerns related to minimum root protection zones of 3 of the 4 trees located in close proximity to the west or north property line:

- Tree # 88: property line is located 3 feet from the tree and is within the minimum root protection zone; if not granted entry onto adjacent property, sufficient tree protection fencing could not be installed; no concerns about tree canopy or parking lot
- Tree #90: property line is located 1 foot from the tree and is within the minimum root protection zone; if not granted entry onto adjacent property, sufficient tree protection fencing could not be installed; if the canopy were to be cut back to the property line by the adjacent owner, the tree would no longer be expected to grow to maturity; no parking lot concerns
- Tree #95: property line is 0 feet from the tree and is within the minimum root protection zone; if not granted entry onto adjacent property, sufficient tree protection fencing could not be installed; if the canopy were to be cut back to the property line by the adjacent owner, the tree would no longer be expected to grow to maturity; no parking lot concerns

The third-party analysis determined that proposed retention Trees #88, 90, and 95 cannot be adequately protected based on the tree protection fencing that can be installed on the subject property. **Based on staff's analysis of the 2005 Tree Covenant and the missing retention trees, the Planning Commission approved Trees #82-86 as alternate retention trees for five (5) of the removed retention trees and required the remaining nine (9) removed retention trees to be mitigated at a 2:1 ratio, as previously discussed.**

139. The Arborist Report (Exhibit K) provides recommendations for protection of retained trees including identification of the recommended tree protection zone for these trees as detailed on Attachment 1 of the report. The submitted Onsite Tree Survey (Exhibit C, Sheet C8) details the critical root zones of the proposed retention trees at 1 foot per 1-inch DBH but does not detail the minimum root protection zone (0.5 feet per 1-inch DBH). It appears that the proposed parking lot construction may come close to the minimum root protection zone of Tree #9. **In compliance with the project arborist's recommendations, the applicant shall install tree protection fencing as detailed on Attachment 1 of the Arborist Report. All fencing shall be installed outside of the minimum root protection zones of all trees to be retained, including Tree #9. The tree fencing shall be installed prior to any development activity on the site, including earthwork, tree removal, and erosion control measures, in order to protect the trees and the soil around the trees from disturbance. Erosion control fencing shall be installed outside of the tree protection area fencing. The applicant shall not relocate or remove the tree protection fencing prior to certificates of occupancy. The tree protection fencing shall be 6-foot-tall chain link or no-jump horse fencing supported with metal posts placed no farther than 10 feet apart installed flush with the initial undisturbed grade. The applicant shall affix a laminated sign (minimum 8.5 inches by 11 inches, placed every 75 feet or less) to the tree protection fencing with the following information as recommended by the project arborist:**

TREE PROTECTION ZONE, DO NOT REMOVE OR ADJUST THE APPROVED LOCATION OF THIS TREE PROTECTION FENCING, Please contact the City's Planning Division and the project arborist if alterations to the approved location of the tree protection fencing are

necessary. Planning Division – planning@cityofsandy.com. [Name],
Project Arborist – [Phone Number].

No construction activity shall occur within the tree protection zone, including, but not limited to, grading, clearing, excavation, access, stockpiling, or dumping or storage of materials such as building supplies, soil, waste items, equipment, or parked vehicles. The applicant shall request an inspection of tree protection measures with City staff and the project arborist prior to any tree removal, grading, or other construction activity on the site. Up to 25 percent of the area between the minimum root protection zone of 0.5 feet per 1-inch DBH and the critical root zone of 1 foot per 1-inch DBH may be able to be impacted without compromising the tree, provided the work is monitored by a qualified arborist. The applicant shall retain an arborist on site to monitor any construction activity within the critical root protection zones of the retention trees or trees on adjacent properties that have critical root protection zones that would be impacted by development activity on the subject property. Additional impacts within the critical root zones of the retention trees that are not detailed in the Plan Set shall not be permitted.

140. The submitted Onsite Tree Survey (Exhibit C, Sheet C8) details trees proposed to be retained and trees proposed for removal. The survey details Tree #61 as being retained; however, the Arborist Report (Exhibit K) notes that Tree #61 will need to be removed due to root zone impacts from the proposed driveway. **The applicant shall not remove any trees that aren't marked for removal with the exception of Tree #61, which may be removed based on the project arborist's recommendation. Tree removal shall be completed without the use of vehicles or heavy equipment in the tree protection zone. Trunks and branches of adjacent trees shall not be contacted during tree removal. Removal of any trees from within the critical root zones of protected retention trees shall be completed under the supervision of the project arborist and the applicant shall fell the trees to be removed away from the trees to be retained so they do not contact or otherwise damage the trunks or branches of the trees to be retained. Prior to receiving a certificate of occupancy, the applicant shall submit a post-construction arborist report prepared by the project arborist or other TRAQ certified arborist to assess whether any of the retention trees were damaged during construction. If retention trees were damaged and need to be replaced, the mitigation ratio shall be 4:1.**

141. The Arborist Report (Exhibit K) from Teragan and Associates, Inc. and the third-party review from Earth Care Designs, LLC dba Oregon Tree Care (Exhibit P) include recommendations for additional protection measures related to tree removal as well as tree protection recommendations for the trees to be retained. **The applicant shall adhere to recommendations contained in the arborist report and third-party arborist review as follows:**

- As detailed in Attachment 1 of the Arborist Report, apply a 4-inch layer of wood chips or compost within the critical root zones of Trees #1 and 9 prior to construction to help retain soil moisture during construction and compensate for root removal with construction.

- Adjust grading on Lot 1000 to outside of the minimum root protection zones of the three existing trees on the adjacent property to the west as detailed in Attachment 1 of the Arborist Report.
- Install tree protection fencing outside of the minimum root protection zones of the five existing trees on the adjacent property to the south of Tax Lot 1000 as detailed in Attachment 1 of the Arborist Report.
- Install the soft surface path that connects the food cart pod area to the Kate Schmitz Avenue right-of-way by hand and without excavating below the existing soil grade.
- The project arborist shall be onsite to oversee and document retaining wall construction and root pruning adjacent to Trees #1, 49, and 50 to ensure the proper protection or pruning of roots.
- Remove Tree #11 due to root zone impacts and either retain the stump or carefully surface grind.
- Retain the existing sidewalk adjacent to the trees on the east side of the 25-foot private access easement adjacent to Tax Lot 1200 to provide additional protection of their root zones.
- Fell the trees to be removed away from the trees to be retained so they do not contact or otherwise damage the trunks or branches of the trees to be retained. No vehicles or heavy equipment shall be permitted within the tree protection zones during tree removal operations. No excavation of soil shall be done within the trees RPZ without Arborist supervision. Demolition should be done by hand to minimize compaction of soil and tree roots. Air Spading is recommended prior to any excavation. A Certified Arborist must be on site to monitor and/or perform any root pruning that may be deemed necessary.
- The stumps of the trees to be removed from within the tree protection zones shall either be retained in place or stump ground to protect the root systems of the trees to be retained.
- Care will need to be taken to not contact or otherwise damage the crowns of the trees that may extend into the construction area.
- All preserved trees should be monitored annually for changes and/or signs of stress after construction activities are completed.
- Shift sediment fencing to outside the tree protection zones. If erosion control is required inside the tree protection zones, use straw wattles to minimize root zone disturbance of the trees to be retained.
- Notify all contractors of tree protection procedures. For successful tree protection on a construction site, all contractors must know and understand the goals of tree protection. Hold a tree protection meeting with all contractors to explain the goals of tree protection. Have all contractors sign memoranda of understanding regarding the goals of tree protection. The memoranda should include a penalty for violating the tree protection plan. The penalty should equal the resulting fines issued by the local jurisdiction plus the appraised value of the tree(s) within the violated tree protection zone per the current Trunk Formula Method as outline in the current edition of the Guide for Plant Appraisal by the Council of Tree & Landscape Appraisers. The penalty should be paid to the owner of the property.
- The trees should be protected from any cutting, skinning, or breaking of branches, trunks, or woody roots.

- The project arborist should be notified prior to the cutting of woody roots from trees that are to be retained to evaluate and oversee the proper cutting of roots with sharp cutting tools. Air spading is a less invasive option and is recommended. Do not use an excavator to pull or cut roots. Dig out around the exposed or severed root by hand prior to cutting. Only use tree pruning tools with sharpened blades to provide a clean cut. Tree pruning to compensate for potential root loss may be recommended before root pruning. Cut roots should be immediately covered with soil or mulch to prevent them from drying out. Trees that have roots cut should be provided supplemental water during the summer months.
- Any necessary passage of utilities through the tree protection zones should be by means of tunneling under woody roots by hand digging or boring with oversight by the project arborist.
- After Construction, carefully landscape the areas within the tree protection zones. Do not allow trenching for irrigation or other utilities within the tree protection zones. Carefully plant new plants within the tree protection zones. Avoid cutting the woody roots of trees that are retained. Do not install permanent irrigation within the tree protection zones unless it is drip irrigation to support a specific planting or the irrigation is approved by the project arborist. Provide adequate drainage within the tree protection zones and do not alter soil hydrology significantly from existing conditions for the trees to be retained. Provide for the ongoing inspection and treatment of insect and disease populations that are capable of damaging the retained trees and plants. The retained trees may need to be fertilized if recommended by the project arborist. Any deviation from the recommendations in this section should receive prior approval from the project arborist.

142. To ensure protection of the required retention trees, the applicant shall record an updated tree protection covenant specifying protection of the 16 approved retention trees on the subject properties (Trees #1-9, 22, 23, and 82-86) as well as the additional 17 required mitigation trees (or as otherwise reviewed and approved by staff) and limiting removal without submittal of an Arborist's Report and City approval. The covenant shall detail the species and locations of the mitigation trees and retention trees as well as the critical root zones of each retention tree at 1 foot per 1-inch DBH. This covenant shall be finalized after the post-construction arborist report.

LANDSCAPING AND SCREENING – Chapter 17.92

143. Section 17.92.10 contains general provisions for landscaping. As required by Section 17.92.10(C), trees over 25-inches circumference measured at a height of 4.5 feet above grade are considered significant and should be preserved to the greatest extent practicable and integrated into the design of a development. Trees to be retained shall be protected from damage during construction by a construction fence located five feet outside the dripline. A 25-inch circumference tree measured at 4.5 feet above grade has roughly an eight-inch diameter at breast height (DBH). Tree protection fencing and tree retention are discussed in more detail in the Urban Forestry, Chapter 17.102 section of this document.
144. **Per Section 17.92.10(D), planter and boundary areas used for required plantings shall have a minimum diameter of five feet (two and one-half foot radius, inside dimensions). Where the curb or the edge of these areas are used as a tire stop for parking, the planter or boundary plantings shall be a minimum width of seven and one-half feet.**
145. Per Section 17.92.10(L), **all landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing. The natural area on Tax Lot 1200 shall be maintained in a way that does not cause negative impacts within the critical root zones of the retention trees or newly planted trees; no heavy machinery shall be permitted within the natural area.** Landscaping will be maintained or otherwise enforced by Code Enforcement.
146. Section 17.92.20 contains minimum landscaping area requirements. The subject property is zoned General Commercial, C-2. Section 17.92.20 requires that a minimum of 20 percent of the site be landscaped in the General Commercial (C-2) zoning district. The submitted Cover Sheet (Exhibit C, Sheet C1) details 42 percent of the food cart pod lot (Tax Lot 1200) as natural area and 4 percent as improved landscaping area. The surface parking lot (Tax Lot 1000) includes 20 percent improved landscaping area.
147. Section 17.92.30 states that planting of trees is required for all parking lots with four or more parking spaces, public street frontages, and along private drives more than 150 feet long. Parking lot trees are required at 1 tree per 8 spaces. Tax Lot 1000 contains 47 parking spaces, which requires a minimum of 6 parking lot trees. The Landscape Plan (Exhibit E, Sheet L1) details planting 6 parking lot trees on Tax Lot 1000. In addition, the plans detail retaining two of the three existing maple trees along the west property line and removing all six existing maple trees along the north property line of Tax Lot 1000 adjacent to the east-west 25-foot access easement. Trees along the north property line of Tax Lot 1000 are discussed further in Chapter 17.66 of this document in the analysis of the applicant's request to exceed the maximum allowed parking. The Landscape Plan details a new tree along the 25-foot access easement on the west side of Tax Lot 1000 but does not detail retention of Tree #62, which is detailed to be retained in the Plan Set (Exhibit C). **The applicant shall update the Landscape Plan to detail retention of Tree #62 as well as the additional tree detailed to be planted, provided there is sufficient space to plant the additional tree north of the proposed driveway cut and south of Tree #62.** Tax Lot 1200 contains 22 parking spaces, which requires 3 parking lot trees. The Landscape Plan details planting 3

parking lot trees on Tax Lot 1200. In addition, two of the retention trees (Trees #9 and 10) are located in the northern landscape bay east of the ADA parking spaces. However, as previously stated, in order to be in compliance with Section 17.98.120(D), **the applicant shall update the Landscape Plan to detail one major structural tree and ground cover in the landscape planters at each end of each parking bay.** The applicant is proposing to retain all 5 existing trees on the east side of the north-south 25-foot access easement adjacent to Tax Lot 1200.

148. The applicant is proposing to mass grade the buildable portion of the site. This will remove topsoil and will heavily compact the existing soil. To maximize the success of the trees required to be planted, **the applicant shall aerate and amend the soil within the planting areas on the buildable portion of the site to a depth of 3 feet prior to planting the trees. The applicant shall submit a letter from the project landscaper confirming that the soil has been aerated and amended prior to planting the trees.**
149. Section 17.92.40 requires that all landscaping shall be irrigated, either with a manual or automatic system. The narrative (Exhibit B) states that the details of the irrigation system will be determined with building plans. The groundcover planting detail (Exhibit E, Sheet L2) shows sprinkler heads a minimum of 12 inches from plants. **The applicant shall submit details on the proposed automatic irrigation system with building plans. As required by Section 17.92.140, the applicant shall be required to maintain all vegetation planted in the development for two (2) years from the date of completion, and shall replace any dead or dying plants during that period.**
150. Section 17.92.50 specifies the types and sizes of plant materials that are required when planting new landscaping. Trees are typically required to be a minimum caliper of 1.5-inches measured 6 inches from grade if deciduous, or 5 feet in height if coniferous. Shrubs are required to be a minimum of one gallon in size or two feet in height when measured immediately after planting. **All trees planted on the site shall be a minimum of 1.5-inches in caliper measured 6 inches above the ground and shall be planted per the City of Sandy standard planting detail. The applicant shall replace the tree planting details (Exhibit E, Sheet L2) with the City of Sandy standard tree planting detail. Trees shall be planted, staked, and bark mulch, vegetation, or other approved material installed prior to occupancy. Tree ties shall be loosely tied twine or other soft material and shall be removed after one growing season (or a maximum of 1 year). All shrubs shall be a minimum of one gallon in size or 2-feet in height when measured immediately after planting.**
151. Section 17.92.50(B) encourages the use of native plant materials or plants acclimatized to the Pacific Northwest where possible. The Landscape Plan (Exhibit E, Sheet L1) includes one proposed native tree. The remaining proposed plants are not native to the Pacific Northwest but are also not nuisance species.
152. Section 17.92.60 requires revegetation in all areas that are not landscaped or remain as natural areas. The applicant did not submit any plans for re-vegetation of areas damaged through grading/construction, although most of the areas affected by grading will be improved. **Exposed soils shall be covered by mulch, sheeting, temporary seeding or**

other suitable material following grading or construction to maintain erosion control for a period of two (2) years.

153. Section 17.92.130 contains standards for a performance bond. The applicant has the option to defer the installation of trees and other landscaping for weather-related reasons. Staff recommends the applicant utilize this option rather than planting trees and landscaping during the dry summer months. Consistent with the warranty period in Section 17.92.140, staff recommends a two-year maintenance and warranty period for trees and landscaping. **If the applicant chooses to postpone tree and/or landscaping installation, the applicant shall post a performance bond equal to 120 percent of the cost of the trees/landscaping, assuring planting within 6 months. The cost of the trees shall be based on the average of three estimates from three landscaping contractors; the estimates shall include as separate items all materials, labor, and other costs of the required action, including a two-year maintenance and warranty period.**

EROSION CONTROL – Chapters 15.44 and 8.04

154. A separate Grading and Erosion Control Permit will be required prior to any site grading. **The applicant shall submit a grading and erosion control permit and request an inspection of installed devices prior to any additional grading onsite.** Section 15.44.50 contains requirements for maintenance of a site including re-vegetation of all graded areas. **All erosion control and grading shall comply with Section 15.44 of the Municipal Code. The proposed development is greater than one acre which typically requires approval of a DEQ 1200-C Permit.**
155. **All the work within the public right-of-way and within the paved area should comply with American Public Works Association (APWA) and City requirements as amended.**
156. Recent development has sparked unintended rodent issues in surrounding neighborhoods. Prior to development of the site, **the applicant shall have a licensed pest control agent evaluate the site to determine if rat eradication is needed. The result of the evaluation shall be submitted to staff.**
157. DEQ (Exhibit M) reviewed the proposal and noted that they found no environmental contamination sites on the subject property.

DECISION

The Planning Commission voted 7:0 to **approve** the food cart pod request **with conditions as outlined in the staff report**.

The Planning Commission voted 7:0 to **approve** the following requested variances and design deviation:

- A. Type II Variance to Section 17.44.30 to exceed the maximum 50-foot front yard setback.
- B. Type II Variance to Section 17.90.120(D.1) to not have 50 percent of the site's street frontage be comprised of buildings placed within 20 feet of a sidewalk.
- C. Type III Special Variance to Section 17.74.40(B.2) to exceed the 4-foot maximum height of a retaining wall and fence in a commercial front yard (east side).
 - The applicant shall update the plan set to detail the front (east) retaining wall and fence as a 2-foot-tall to 6-foot-tall split face block wall and a maximum 5-foot-tall black steel or aluminum picket fence, or submit a similar alternative design to staff for review and approval. A raised tracker for the sliding gate shall not be permitted.
- D. Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial side yard (north side).
- E. Type III Special Variance to Section 17.74.40(B.4) to exceed the 8-foot maximum height of a retaining wall and fence in a commercial rear yard (west side).
 - The applicant shall update the plan set to detail the fence on top of the retaining wall with 7 feet of landscaping between food cart pad #1 and the fence/wall.
- G. Type III Special Variance to Section 17.98.10(Q) to exceed the minimum off-street vehicle parking required by Section 17.98.20 by more than 30 percent.
 - The Planning Commission approves 20 parking spaces on Tax Lot 1200 and 47 on Tax Lot 1000, for a total of 67 parking spaces, which is 33 spaces, or 97 percent, more than the minimum requirement of 34 parking spaces. Specifically, the Planning Commission requires the applicant to update the Plan Set as follows:
 - Remove the proposed parking space to the west of Tree #9 on Tax Lot 1200 and retain existing natural area landscaping.
 - Remove the southeasternmost proposed parking space on Tax Lot 1200 and replace with landscaping.
 - .
 - The applicant shall complete a stormwater analysis for Tax Lot 1100 (Lot 9) to determine if the existing stormwater facility can accommodate the additional impervious surface from the parking spaces that gain direct access from the 25-foot access easement north of Tax Lot 1000, and if not, the parking spaces shall be removed, or the stormwater facility shall be modified to accommodate the additional stormwater.

- H. Type III Design Deviation to Section 17.90.120(D.3) to not have the ground floor space of the dining building face a public street or civic space with a direct pedestrian connection.

The Planning Commission voted 7:0 to **deny** the following requested variance:

- F. Type III Special Variance to Section 17.90.120(G) to not provide civic space.
- The Planning Commission requires the applicant to provide the minimum 108 square feet of civic space in the form of outdoor seating. The civic space shall be located at the east terminus of the proposed foot path, adjacent to the Kate Schmitz Avenue right-of-way and outside of the critical root zones of the retention trees and the 8-foot PUE, or near the ADA parking spaces at the top of the proposed foot path closer to the food cart pod area and outside of the critical root zones of the retention trees. The civic space shall include seating as well as landscaping and/or public art.

CONDITIONS OF APPROVAL

A. Prior to submittal of trade permits and/or grading or other construction permits, the applicant shall update the plans submitted with the land use application to include the following items as specified below:

1. Update the Plan Set to detail the following:
 - a. A pedestrian crossing connecting the proposed walkway in the surface parking lot across the private access easement to the proposed walkway in the food cart pod area in compliance with the design standards of 17.90.120(A.5 and 7). The pedestrian crossing shall have a paved delineation with a concrete inlay speed table.
 - b. Connect the proposed 5-foot-wide soft surface trail to an existing trail provided there's an existing trail in the Kate Schmitz Avenue right-of-way. The applicant shall submit the proposed connection for review and approval by the Parks and Recreation Director.
 - c. Detail the front (east) retaining wall and fence as a 2-foot-tall to 6-foot-tall split face block wall and a maximum 5-foot-tall black steel or aluminum picket fence, or submit a similar alternative design to staff for review and approval. A raised tracker for the sliding gate shall not be permitted.
 - d. Detail the fence on top of the west retaining wall with 7 feet of landscaping between food cart pad #1 and the fence/wall.
 - e. Detail the minimum 108 square feet of civic space in the form of outdoor seating. The civic space shall be located at the bottom of the proposed foot path, adjacent to the Kate Schmitz Avenue right-of-way and outside of the critical root zones of the retention trees and the 8-foot PUE, or near the ADA parking spaces at the top of the proposed foot path closer to the food cart pod area and outside of the critical root zones of the retention trees. The civic space shall include seating as well as landscaping and/or public art.
 - f. Detail planter and boundary areas in the parking lot at a minimum diameter of five feet (two and one-half foot radius, inside dimensions).
 - g. Detail the bicycle parking spaces relocated to the east elevation so they're closer to the main entrance and aren't between the building and the food carts, installed as vertical spaces on the south façade, or propose an alternative location to be reviewed and approved as staff.
 - h. Remove the proposed parking space to the west of Tree #9 on Tax Lot 1200 and retain the existing natural area landscaping.
 - i. Remove the southeasternmost proposed parking space on Tax Lot 1200 and replace with landscaping.
 - j. Detail the following mitigation trees located outside of the CRZs of the proposed retention trees and away from the Kate Schmitz Avenue right-of-way. All mitigation trees shall be located such that they are likely to remain healthy and grow to maturity based on existing, proposed, and future development. The applicant shall submit the proposed locations of the mitigation trees for staff review and approval.
 - i. Five (5) mitigation trees on Tax Lot 1100 in the natural area north of the clump of retention trees (Trees #82-86).

- ii. Seven (7) mitigation trees in the natural area on Tax Lot 1200.
 - iii. Five (5) additional mitigation trees located on Tax Lot 1100 in the natural area adjacent to and north of Trees #82-86, on Tax Lot 1100 east of the easternmost parking aisle, or on Tax Lot 1200 within the proposed natural tree protection area, or otherwise work with staff and the project arborist to determine if there is an alternative suitable location to plant the 5 additional mitigation trees such that they are likely to remain healthy and grow to maturity based on existing, proposed, and future development. If it is determined that there is insufficient space on Tax Lot 1100 (and/or 1200) to plant all 5 of the additional mitigation trees, the applicant shall pay a fee in lieu of \$500 per tree for one or more of the additional 5 mitigation trees.
2. Update the Restroom Building Elevations to detail the following:
 - a. 5-foot-deep pedestrian shelter over the restroom entrance.
 - b. A split face finish or a broomed finish on the west elevation, or submit a similar alternative design to staff for review and approval.
 - c. Cedar shingles in the gables with a belly band separating the shingles from the board and batten siding on the west and east elevations.
 - d. Heavy timber truss bracing with metal brackets and cedar shingles in the gables on the east elevation.
3. Update the Photometric Plan to detail the following:
 - a. The area ten feet beyond the property line of the premises receives no more than one-quarter of a foot-candle of light from the premises lighting system
 - b. Path lighting along the proposed path to the Kate Schmitz Avenue right-of-way. To prevent further impact within the critical root zones of the required retention trees, the Planning Commission recommends solar path lighting; however, if electrical conduit is installed, the applicant shall bore the conduit at a minimum depth of 18-inches under the critical root zone of the required retention trees under supervision of an ISA-certified arborist.
4. Update the Landscape Plan to detail the following:
 - a. A minimum 5-foot-wide landscaping buffer with a site-obscuring screen that is at least 80 percent opaque when viewed horizontally from between 2 and 8 feet above the average ground level. The screening shall be composed of materials that are an adequate size so as to achieve the required degree of screening within three (3) years after installation.
 - b. A landscape planter at the end of each parking bay at a minimum width of 5-feet and a minimum length of 17-feet, exclusive of curb, with one major structural tree and ground cover.
 - c. A mix of groundcover, shrubs, and trees in the required landscaping buffers between parking areas and adjacent properties.

- d. Detail retention of Tree #62 as well as the additional tree detailed to be planted, provided there is sufficient space to plant the additional tree north of the proposed driveway cut and south of Tree #62.
 - e. Replace the tree planting details (Exhibit E, Sheet L2) with the City of Sandy standard tree planting detail.
5. Update the Garbage Enclosure Elevations to detail a split face rock veneer and a screened gate that more closely matches the black picket fence look, or submit a similar alternative design to staff for review and approval.
 6. Update the Utility Plan to detail water service to Tax Lot 1000.
 7. Update the TIS as needed to apply typical mobility standards.
 8. Submit additional information on the location and size of the required storage area if it is located in the proposed dining facility building. If the auxiliary storage structure is proposed to be an additional structure on the site, the applicant shall submit a separate design review application for the proposed storage building(s) including the proposed location and design in conformance with Sandy Style (Section 17.90.120).
 9. Submit confirmation of the right to access Tax Lots 1000 and 1200 via the 25-foot access easement and whether the applicant has the legal right to cross the 5.5-foot strip on Lot 9 (Tax Lot 1100).
 10. Submit additional information regarding landscaping in the parking areas to ensure that the 10 percent minimum landscaping is met.
 11. Submit additional information from the project arborist or another TRAQ-certified arborist regarding the selection of a mitigation tree species that is less susceptible to *Phellinus weirii*, treatment of the site, and/or documentation that the proposed planting location is no longer *P. weirii* infested for staff review and approval
 12. Submit a draft easement for the 8-foot PUE along the Kate Schmitz Avenue right-of-way.
 13. Verify the capacity of the existing stormwater system. Complete a stormwater analysis for Tax Lot 1100 (Lot 9) to determine if the existing stormwater facility can accommodate the additional impervious surface from the parking spaces that access the 25-foot access easement directly, and if not, the parking spaces shall be removed, or the stormwater facility shall be modified to accommodate the additional stormwater.

B. Prior to tree removal, the applicant shall complete the following and receive the necessary approvals as described:

1. Apply for a Grading and Erosion Control Permit and detail the location of the tree protection fencing on the submitted Grading and Erosion Control Plan Set.

2. Install tree protection fencing as detailed on Attachment 1 of the Arborist Report. All fencing shall be installed outside of the minimum root protection zones of all trees to be retained, including Tree #9. The tree fencing shall be installed prior to any development activity on the site, including earthwork, tree removal, and erosion control measures, in order to protect the trees and the soil around the trees from disturbance. The tree fencing shall adhere to the following:
 - a. Erosion control fencing shall be installed outside of the tree protection area fencing.
 - b. The applicant shall not relocate or remove the tree protection fencing prior to certificates of occupancy.
 - c. The tree protection fencing shall be 6-foot-tall chain link or no-jump horse fencing supported with metal posts placed no farther than 10 feet apart installed flush with the initial undisturbed grade.
 - d. The applicant shall affix a laminated sign (minimum 8.5 inches by 11 inches, placed every 75 feet or less) to the tree protection fencing with the following: “TREE PROTECTION ZONE, DO NOT REMOVE OR ADJUST THE APPROVED LOCATION OF THIS TREE PROTECTION FENCING, Please contact the City’s Planning Division and the project arborist if alterations to the approved location of the tree protection fencing are necessary. Planning Division – planning@cityofsandy.com. [Name], Project Arborist – [Phone Number].”
3. Request an inspection of tree protection measures as specified in Section 17.102.50 C with Planning staff and the project arborist. The tree protection fencing inspection shall be completed prior to any tree removal, earthwork, grading, or other development/construction activity on the site.
4. Once the tree protection fencing is approved, the applicant shall adhere to the following conditions when performing tree removal or other development activity on the site:
 - a. No construction activity shall occur within the tree protection zone, including, but not limited to, grading, clearing, excavation, access, stockpiling, or dumping or storage of materials such as building supplies, soil, waste items, equipment, or parked vehicles.
 - b. Up to 25 percent of the area between the minimum root protection zone of 0.5 feet per 1-inch DBH and the critical root zone of 1 foot per 1-inch DBH may be able to be impacted without compromising the tree, provided the work is monitored by a qualified arborist.
 - c. Retain an arborist on site to monitor any construction activity within the critical root protection zones of the retention trees or trees on adjacent properties that have critical root protection zones that would be impacted by development activity on the subject property.
 - d. Additional impacts within the critical root zones of the retention trees that are not detailed in the Plan Set shall not be permitted.
 - e. The applicant shall not remove any trees that aren’t marked for removal with the exception of Tree #61, which may be removed based on the project arborist’s recommendation.
 - f. Tree removal shall be completed without the use of vehicles or heavy equipment in the tree protection zone.

- g. Trunks and branches of adjacent trees shall not be contacted during tree removal.
- h. Removal of any trees from within the critical root zones of protected retention trees shall be completed under the supervision of the project arborist and the applicant shall fell the trees to be removed away from the trees to be retained so they do not contact or otherwise damage the trunks or branches of the trees to be retained.
- i. Prior to receiving a certificate of occupancy, the applicant shall submit a post-construction arborist report prepared by the project arborist or other TRAQ certified arborist to assess whether any of the retention trees were damaged during construction. If retention trees were damaged and need to be replaced, the mitigation ratio shall be 4:1.

C. Prior to earthwork, grading, or excavation, the applicant shall complete the following and receive necessary approvals as described:

- 1. Apply and receive approval for a Grading and Erosion Control Permit and request an inspection of installed devices prior to any grading onsite. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction of the subdivision. All erosion control and grading shall comply with Section 15.44 of the Municipal Code. The applicant shall install sediment fencing outside the tree protection zones. If erosion control is required inside the tree protection zones, the applicant shall use straw wattles to minimize root zone disturbance of the trees to be retained. *(Submit to Planning Division and Public Works Department for approval)*
- 2. Submit proof of receipt of a Department of Environmental Quality 1200-C permit or submit confirmation from DEQ if a 1200-C Permit will not be required.
- 3. Request an inspection of erosion control measures. Inspections of erosion control measure by the Public Works Department shall be completed prior to any earthwork or grading being conducted onsite.
- 4. Prior to grading or any earthwork have a licensed pest control agent evaluate the site to determine if rat eradication is needed. The result of the evaluation shall be submitted to staff and if required the evaluation shall include eradication techniques.

D. Submit the following information with the Building Permit:

- 1. Submit a mail delivery plan, featuring grouped lockable mail facilities, to the City and USPS for review and approval prior to installation of mailboxes.
- 2. Submit details on the proposed automatic irrigation system. As required by Section 17.92.140, the installer and/or developer shall be required to maintain all vegetation planted with the development for two (2) years from the date of completion, and shall replace any dead or dying plants during that period. After two years, the owner shall be responsible for continual maintenance of landscaping including necessary watering, weeding, pruning, and replacing.

3. Construction documents for proposed fire apparatus access, location of fire lanes, access easements, security gates across fire apparatus access roads and construction documents and hydraulic calculations for fire hydrant systems shall be submitted to the Fire District for review and approval prior to construction. For reference of requirements, the applicant may review the Fire Code Application Guide.
4. Submit a detailed final stormwater report stamped by a licensed professional engineer for review. The calculations shall meet the water quality/quantity criteria as stated in the City of Sandy Development Code (SDC) Chapter 13.18 Standards and the City of Portland Stormwater Management Manual (SWMM) Standards that were adopted by reference into the Sandy Development Code.
5. The applicant shall call the PGE Service Coordinators at 503-323-6700 when they are ready to start the project.
6. Provide SandyNet with a set of PGE utility and street/sidewalk lighting plans to design and return a SandyNet broadband deployment plan to overlay in the dry utility shared trench. SandyNet will provide requirements for layout and acceptable materials for the developer/contractor. SandyNet shall be contacted after installation of infrastructure and coordinated for onsite inspection before backfilling the common trench. Please send plans for SandyNet design to Greg Brewster gbrewster@ci.sandy.or.us, 503-953-4604. On site contact for general questions and inspection will be Ron Yow, ryow@ci.sandy.or.us, 541-514-9771.
7. Pay System Development Charges prior to issuance of the building permits.

E. Prior to receiving a certificate of occupancy, the applicant shall complete all of the following improvements or provide financial assurance for their future completion:

1. Obtain a Permit to Construct a State Highway Approach Road from ODOT for access to the state highway. Truck turning templates shall be provided as needed to ensure vehicles can enter and exit the approach safely. A sight distance evaluation shall be provided to demonstrate that adequate intersection sight distance is provided and meets ODOT sight distance standards. Site access to the state highway is regulated by OAR 734.51.
Application for a Permit to Construct a State Highway Approach. Note: It may take 2 to 3 months to process a State Highway Approach Road Permit. contact the District Contact, Robbie Cox, at D2CAP@odot.oregon.gov to determine permit requirements and obtain application information
2. Install all required landscaping.
 - a. Aerate and amend the soil within the planting areas on the buildable portion of the site to a depth of 3 feet prior to planting the trees. Submit a letter from the project landscaper confirming that the soil has been aerated and amended prior to planting the trees.
 - b. Plant 12 mitigation trees (5 on Tax Lot 1100 and 7 on Tax Lot 1200) and pay a fee-in-lieu of \$500 per tree for the remaining 6 mitigation trees (\$3,000 total) to mitigate for 9 of the missing retention trees identified in the 2005 Tree covenant.

- c. Plant 5 additional mitigation trees on Tax Lot 1100 in the natural area adjacent to and north of Trees #82-86, on Tax Lot 1100 east of the easternmost parking aisle, or on Tax Lot 1200 within the proposed natural tree protection area, or otherwise work with staff and the project arborist to determine if there is an alternative suitable location to plant the 5 additional mitigation trees such that they are likely to remain healthy and grow to maturity based on existing, proposed, and future development. If it is determined that there is insufficient space on Tax Lot 1100 or 1200 to plant all 5 of the additional mitigation trees, the applicant shall pay a fee in lieu of \$500 per tree for one or more of the additional 5 mitigation trees.
3. Install all required improvements.
 - a. Any below or at-grade sewer connections shall be water-tight and lockable or sealable while not in use.
 - b. A grease interceptor properly sized for the maximum number of carts and other operations in the main dining facility shall be required on the sanitary sewer service for the facility.
 - c. A backflow prevention device shall be required for the water service. The installation of sewer and water service requires approval of a City building permit. The installation of electrical service requires permit approval from Clackamas County.
4. Satisfy all conditions of File No. 17-070 TREE. Based on the City Transportation Engineer's recommendation to require removal of the 10 parking spaces on the north side of Tax Lot 1000 that access the 25-foot access easement directly, staff believes there would be sufficient space to plant the required mitigation tree in the northern portion of Tax Lot 1000; however, staff would be supportive of planting the mitigation tree in the natural area on either Tax Lot 1100 or 1200 adjacent to the clump of proposed retention trees..
5. Buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property or as otherwise approved by the Building Official, including monument signs. Provide street address numbers measuring a minimum of six (6) inches high, which clearly locates the dining facility building and its entries for patrons and emergency services. The applicant shall verify the location(s) of the address with the Building Official and emergency service providers.
6. Submit a post-construction report prepared by the project arborist or other TRAQ qualified arborist to assess whether any of the retention trees were damaged during construction. If retention trees were damaged and need to be replaced, the applicant shall apply for a tree removal permit and the mitigation ratio shall be 4:1.
7. Record an updated tree protection covenant specifying protection of the 16 approved retention trees on the subject properties (Trees #1-9, 22, 23, and 82-86) as well as the additional 17 required mitigation trees (or as otherwise reviewed and approved by staff) and limiting removal without submittal of an Arborist's Report and City approval. The covenant shall detail the species and locations of the mitigation trees and retention trees

as well as the critical root zones of each retention tree at 1 foot per 1-inch DBH. This covenant shall be finalized after the post-construction arborist report.

8. Record a shared parking covenant that runs with the land and is nonrevocable between Lots 10 and 8 of Twin Cedars.
9. Record an eight-foot-wide public utility easement along the entirety of the Kate Schmitz Avenue right-of-way of Tax Lot 1200 (Lot 10 of Twin Cedars subdivision).
10. Where fire apparatus access roads or a water supply for fire protection are required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except where approved alternative methods of protection are provided.
11. Install all required fire hydrants. Each new fire hydrant installed shall be ordered in an OSHA safety red finish and have a 4-inch non-threaded metal faced hydrant connection with cap installed on the steamer port (4 ½-inch NST x 4-inch Storz Adaptor). If a new building, structure, or dwelling is already served by an existing hydrant, the existing hydrant shall also be OSHA safety red and have a 4-inch non-threaded metal faced hydrant connection with cap installed.
12. Submit a copy of the following prior to the certificate of occupancy:
 - a. Tree protection covenant including a map identifying the species and locations of the retention trees on the subject properties as well as the additional required mitigation trees. The covenant shall detail the species and locations of the mitigation trees and retention trees as well as the critical root zones of each retention tree at 1 foot per 1-inch DBH.
 - b. 8-foot-wide PUE along Kate Schmitz Avenue.
 - c. Shared parking covenant that runs with the land and is nonrevocable between Lots 10 and 8 of Twin Cedars.
13. Financially guarantee the required Kate Schmitz Avenue improvements in accordance with the provisions of Chapter 17 prior to temporary or final occupancy of structures. The financial guarantee shall be in the amount of 110 percent of the Engineer estimate for the cost of half-street improvements to Collector Street standards for the entire 75.87 feet of frontage on Kate Schmitz Avenue.

F. Conditions related to Individual Food Carts

1. Following completion of required improvements, each food cart requesting to locate at the facility will be required to apply for a Food Cart Permit (Type I land use application) and obtain an individual City of Sandy Business License.
2. The maximum food cart size permitted on pads 1-15 is 20 feet long by 8 feet wide. The maximum food cart size permitted on pads 16-18 is 14 feet long by 8 feet wide.
3. The applicant shall comply with all Fire District requirements as contained in Exhibit N.

4. Food cart design standards will be reviewed at the time individual food cart placement permits (Type I land use application) are requested.
5. Any additional seating areas on the subject property shall be at least 10 feet from a food cart and seating areas shall be separated from parking areas by an approved fence or barrier.
6. All signage requires approval of a City sign permit in compliance with the requirements of Chapter 15.32, Sign Code.
7. The applicant is required to comply with the provisions of Section 17.74.90(E.24).

G. General Conditions

1. Approval of this land use application shall be effective for a 2-year period from the date of approval, unless substantial construction has taken place. The Director (Type I) may grant a 1-year extension if the applicant requests such an extension prior to expiration of the initial time limit.
2. As required by Section 17.90.00, the reviewing body shall refer to the objectives listed in Section 17.90.00(A-D) in evaluating Design Review requests.
3. The applicant shall not store any merchandise and/or materials in the gravel areas behind the carts and/or elsewhere on the subject properties. If storage buildings are desired in the future, the applicant shall submit a separate design review application with proposed storage buildings designed to meet the Sandy Style.
4. All mechanical, electrical, and communications equipment shall be screened from view from all public rights-of-way and civic spaces.
5. The individual or combined height of a fence and/or retaining wall in the south (side) yard shall not exceed 8 feet.
6. Where the pickets are required as a guard from falling, the space between pickets shall be less than 4 inches.
7. Signage associated with the ADA parking spaces shall meet the head clearance distance requirement in the Building Code.
8. All approved parking spaces shall be clearly delineated with painted lines and the entrance and exit driveways shall be signed or marked with paint.
9. All parking, driveway, and maneuvering areas shall be constructed of asphalt, concrete, or other approved material.

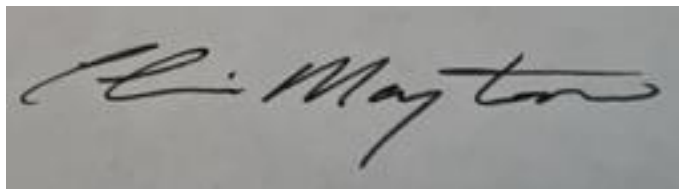
10. Per Section 17.92.10(D), planter and boundary areas used for required plantings shall have a minimum diameter of five feet (two and one-half foot radius, inside dimensions). Where the curb or the edge of these areas are used as a tire stop for parking, the planter or boundary plantings shall be a minimum width of seven and one-half feet.
11. All trees planted on the site shall be a minimum of 1.5-inches in caliper measured 6 inches above the ground and shall be planted per the City of Sandy standard planting detail. Trees shall be planted, staked, and bark mulch, vegetation, or other approved material installed prior to occupancy. Tree ties shall be loosely tied twine or other soft material and shall be removed after one growing season (or a maximum of 1 year). All shrubs shall be a minimum of one gallon in size or 2-feet in height when measured immediately after planting.
12. All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing. The natural area on Tax Lot 1200 shall be maintained in a way that does not cause negative impacts within the critical root zones of the retention trees or newly planted trees; no heavy machinery shall be permitted within the natural area.
13. Exposed soils shall be covered by mulch, sheeting, temporary seeding or other suitable material following grading or construction to maintain erosion control for a period of two (2) years.
14. If the applicant chooses to postpone tree and/or landscaping installation, the applicant shall post a performance bond equal to 120 percent of the cost of the trees/landscaping, assuring planting within 6 months. The cost of the trees shall be based on the average of three estimates from three landscaping contractors; the estimates shall include as separate items all materials, labor, and other costs of the required action, including a two-year maintenance and warranty period.
15. The applicant shall comply with the requirements of Section 13.18 of the Sandy Municipal Code.
16. All franchise utilities shall be installed underground. The developer shall make all necessary arrangements with franchise utility providers.
17. Adhere to the following Fire Marshal requirements:
 - a. A key lock box for building and/or gate access may be required. If required, the Fire District uses KNOX brand boxes. To order a KNOX box, padlock, or key switch that is keyed for the Sandy Fire District, please visit Sandy Fire's website (<https://www.knoxbox.com/Products> for ordering information).
 - b. An emergency vehicle access and maintenance agreement may be needed as a condition of approval.
 - c. For private fire service water mains and/or fire hydrant systems, please contact Sandy Fire District when performing a pressure test to verify system integrity, when flushing the system, and conducting a flow test.
 - d. On-site fire hydrants and mains shall be provided.

- e. An automatic fire sprinkler system may be required if the fire area of the Group A-2 occupancy (dining facility) has an occupant load of 100 or more.
 - f. Each new fire hydrant installed shall be ordered in an OSHA safety red finish and have a 4-inch non-threaded metal faced hydrant connection with cap installed on the steamer port (4 ½-inch NST x 4-inch Storz Adaptor). If a new building, structure, or dwelling is already served by an existing hydrant, the existing hydrant shall also be OSHA safety red and have a 4-inch non-threaded metal faced hydrant connection with cap installed.
 - g. The applicant shall adhere to all other requirements of the Sandy Fire District.
18. Adhere to recommendations contained in the arborist report and third-party arborist review as follows:
- a. As detailed in Attachment 1 of the Arborist Report, apply a 4-inch layer of wood chips or compost within the critical root zones of Trees #1 and 9 prior to construction to help retain soil moisture during construction and compensate for root removal with construction.
 - b. Adjust grading on Lot 1000 to outside of the minimum root protection zones of the three existing trees on the adjacent property to the west as detailed in Attachment 1 of the Arborist Report.
 - c. Install tree protection fencing outside of the minimum root protection zones of the five existing trees on the adjacent property to the south of Tax Lot 1000 as detailed in Attachment 1 of the Arborist Report.
 - d. Install the soft surface path that connects the food cart pod area to the Kate Schmitz Avenue right-of-way by hand and without excavating below the existing soil grade.
 - e. The project arborist shall be onsite to oversee and document retaining wall construction and root pruning adjacent to Trees #1, 49, and 50 to ensure the proper protection or pruning of roots.
 - f. Remove Tree #11 due to root zone impacts and either retain the stump or carefully surface grind.
 - g. Retain the existing sidewalk adjacent to the trees on the east side of the 25-foot private access easement adjacent to Tax Lot 1200 to provide additional protection of their root zones.
 - h. Fell the trees to be removed away from the trees to be retained so they do not contact or otherwise damage the trunks or branches of the trees to be retained. No vehicles or heavy equipment shall be permitted within the tree protection zones during tree removal operations. No excavation of soil shall be done within the trees RPZ without Arborist supervision. Demolition should be done by hand to minimize compaction of soil and tree roots. Air Spading is recommended prior to any excavation. A Certified Arborist must be on site to monitor and/or perform any root pruning that may be deemed necessary.
 - i. The stumps of the trees to be removed from within the tree protection zones shall either be retained in place or stump ground to protect the root systems of the trees to be retained.
 - j. Care will need to be taken to not contact or otherwise damage the crowns of the trees that may extend into the construction area.

- k. All preserved trees should be monitored annually for changes and/or signs of stress after construction activities are completed.
 - l. Shift sediment fencing to outside the tree protection zones. If erosion control is required inside the tree protection zones, use straw wattles to minimize root zone disturbance of the trees to be retained.
 - m. Notify all contractors of tree protection procedures. For successful tree protection on a construction site, all contractors must know and understand the goals of tree protection. Hold a tree protection meeting with all contractors to explain the goals of tree protection. Have all contractors sign memoranda of understanding regarding the goals of tree protection. The memoranda should include a penalty for violating the tree protection plan. The penalty should equal the resulting fines issued by the local jurisdiction plus the appraised value of the tree(s) within the violated tree protection zone per the current Trunk Formula Method as outline in the current edition of the Guide for Plant Appraisal by the Council of Tree & Landscape Appraisers. The penalty should be paid to the owner of the property.
 - n. The trees should be protected from any cutting, skinning, or breaking of branches, trunks, or woody roots.
 - o. The project arborist should be notified prior to the cutting of woody roots from trees that are to be retained to evaluate and oversee the proper cutting of roots with sharp cutting tools. Air spading is a less invasive option and is recommended. Do not use an excavator to pull or cut roots. Dig out around the exposed or severed root by hand prior to cutting. Only use tree pruning tools with sharpened blades to provide a clean cut. Tree pruning to compensate for potential root loss may be recommended before root pruning. Cut roots should be immediately covered with soil or mulch to prevent them from drying out. Trees that have roots cut should be provided supplemental water during the summer months.
 - p. Any necessary passage of utilities through the tree protection zones should be by means of tunneling under woody roots by hand digging or boring with oversight by the project arborist.
 - q. After Construction, carefully landscape the areas within the tree protection zones. Do not allow trenching for irrigation or other utilities within the tree protection zones. Carefully plant new plants within the tree protection zones. Avoid cutting the woody roots of trees that are retained. Do not install permanent irrigation within the tree protection zones unless it is drip irrigation to support a specific planting or the irrigation is approved by the project arborist. Provide adequate drainage within the tree protection zones and do not alter soil hydrology significantly from existing conditions for the trees to be retained. Provide for the ongoing inspection and treatment of insect and disease populations that are capable of damaging the retained trees and plants. The retained trees may need to be fertilized if recommended by the project arborist. Any deviation from the recommendations in this section should receive prior approval from the project arborist.
19. Downward facing, full cut-off lighting shall be required. Lights shall not exceed 4,125 Kelvins or 591 nanometers to minimize negative impacts on wildlife and human health.
20. All earthwork activities to include grading, foundation excavation, site and sub-grade preparation, cut and fill slopes shall be observed and documented by a geo-technical

engineer to assure compliance with IBC standards as amended by the state of Oregon and referenced as “Oregon Structural Specialty Code” (OSSC). Site grading shall not in any way impede or impound or inundate the surface drainage flow from the adjoining properties without a proper collection system. The earthwork activities shall be observed and documented under the supervision of the geotechnical Engineer.

21. All site runoff shall be detained such that post-development runoff does not exceed the predevelopment runoff rate for the 2, 5, 10 and 25 year storm events. Stormwater quality treatment shall be provided for all site drainage per the standards in the City of Portland Stormwater Management Manual (COP SWMM).
22. Utilities shall be installed pursuant to the requirements of the applicable utility company. All franchise utilities shall be installed underground and in conformance with City standards.
23. Erosion control measures shall be provided by the applicant in accordance with Section 15.44 of the Municipal Code.
24. Successors-in-interest of the applicant shall comply with site development requirements prior to the issuance of building permits.
25. Comply with all other conditions or regulations imposed by the Sandy Fire District, or state and federal agencies. Compliance is made a part of this approval and any violations of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Chris Mayton" in a cursive script.

Chris Mayton
Planning Commissioner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the City Council by an affected party by filing an appeal with the Director within 12 calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, “*Notice of Appeal*”, and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and,
5. Payment of required filing fees.