

RESOLUTION NO. ____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING AN ARCHITECTURAL AND SITE APPROVAL PERMIT MODIFYING
THE PREVIOUSLY APPROVED WESTPORT CUPERTINO PROJECT BY REDUCING
THE UNDERGROUND PARKING TO REFLECT ADJUSTMENTS IN USES,
REDUCTION OF MASSING ON THE TOP FLOOR TO ACCOMMODATE A SIXTH
FLOOR AQUA THERAPY POOL, AND OTHER MINOR CHANGES TO THE
BUILDING WITHIN THE ASSISTED LIVING FACILITY (BUILDING 1) LOCATED AT
21267 STEVENS CREEK BOULEVARD (APN: 326-27-043)

SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2021-007
Applicant: Related California (Cascade Zak)
Property Owner: 190 West St. James, LLC
Location: 21267 Stevens Creek Blvd. (APN #326-27-043)

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

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

WHEREAS, The Westport Cupertino Mixed-Use Project (“Project”), including the Heart of the City Exception, is fully described and analyzed in the Initial Study and proposed Final Environmental Impact Report (State Clearinghouse No. 2019070377) (“EIR” or “Final EIR”) for the Project; and

WHEREAS, on August 18, 2020, after consideration of substantial evidence contained in the entire administrative record, the City Council approved the Westport Cupertino project, by adopting resolutions including the Development Permit Resolution No 20-106, and Resolution No. 20-105 certifying the EIR, adopting and requiring as conditions of approval all of the mitigation measures for the Project that are identified in the EIR and are within the responsibility and jurisdiction of the City , and adopting the Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, on October 15, 2021, the applicant submitted and requested the City to consider modifications to the approved Westport Development project which include adjusting unit mix in the assisted living facility (Building 1) to 123 assisted living units and 35 memory care rooms, reclassification of approximately 8,000 square feet of public dining area to private dining, reducing the underground parking to reflect adjustments

in uses, and reduction of massing on the top floor to accommodate a sixth floor aqua therapy pool; and

WHEREAS, other than the changes described above, the Architectural and Site Approval proposes the same development and public improvements approved in August 2020, covering 8.1 gross acres, and providing for 88 single-family units, and 48 below-market-rate units; and

WHEREAS, the proposed changes to the project would not have any new or substantially more severe significant environmental impacts; and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and on December 7, 2021, the City Council held a public hearing to consider the Heart of the City Exception; and

WHEREAS, the City Council moved to continue the item the City Council hearing on December 21, 2021; and

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

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

1. The proposal, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

With the conditions of approval and the approved density bonus, parking reduction, waivers, and incentive/concession the project is consistent with the General Plan and Zoning Ordinance. All mitigation measures identified in the Initial Study/Mitigated Negative Declaration that are within the responsibility and jurisdiction of the City have been adopted and incorporated into the project to mitigate potential impacts to a less than significant level. The modifications do not influence the programming of the site and are all within the standards of the zoning ordinance as well as the Heart of the City Specific Plan. As a result, the project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

2. The proposal is consistent with the purposes of Chapter 19.168, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:
 - a) Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings.

The proposed project is a redevelopment of a commercial site with mix of housing types that include two multistory high-density structures, as well as lower density townhome/rowhouse condominiums. The site is bordered by high density residential to the north and De Anza College to the South, across Stevens Creek Boulevard. The development is designed to concentrate the taller structures on the northwest corner of Mary Avenue and Stevens Creek Boulevard intersection while the shorter townhome/rowhouse structures are placed closer to the smaller apartment and single-family developments along Mary Avenue. This design provides a gradual transition between buildings of different height and bulk.

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

The design quality of the development is consistent with the high-quality standards encouraged by City Staff and consistent with the original approval of the Westport development from August 2020. Both the high-density structures and townhome/rowhouse buildings meet the design qualities of a Mediterranean design development. The architectural style is consistent throughout the development. Further, the planting plan is consistent with the intent of the Heart of the City Specific Plan guidelines. Unsightly uses such as loading and trash pickup have been placed within the buildings away from view of neighboring uses. Utility installation has been designed to be screened by landscaping and or incorporated into the building design. The final lighting for the development will be reviewed as part of the review of the project construction documents to ensure that they meet safety requirements while avoiding spill-over light to adjacent properties.

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

Signage approval is not included in this application.

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

The project does not abut any existing residential development. The multi-family development across Mary Avenue (Glenbrook Apartments) will be buffered from any impacts because the project has been designed to maintain trees along the frontage and has been designed with adequate parking on-site. The buildings have been designed with setbacks from the curb line that what is required within the General Plan and Heart of the City Specific Plan.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter and the Environmental Impact Report and the Mitigation Monitoring and Reporting Program for the Project (EA-2018-04), subject to the conditions which are enumerated in this Resolution, beginning on PAGE 3 herein, and subject to the conditions contained in all other Resolutions approved for this Project,

The application for an Architectural and Site Approval, Application No. ASA-2021-007, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. ASA-2021-007 as set forth in the Minutes of the City Council Meeting of December 21, 2021 Meeting, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on the plan set dated December 15, 2021, consisting of 14 sheets labeled as Westport Cupertino Building 1: Enhanced Senior and Living Project, G00 – G1, and A10-A31, drawn by Steinberg Hart except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or

construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review, including any misrepresentation related to the note on the Vesting Tentative Map that the Townhouse/Rowhouse units will be for-sale.

3. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. EXC-2021-003, and M-2021-003 shall be applicable to this approval. The conditions of approval contained in file nos. ASA-2018-05, TR-2018-22, TM-2018-03, TM-2021-002, DP-2018-05, U-2019-03, EXC-2019-03 and EA-2018-04 shall be applicable to this approval unless in conflict with the conditions of approval of this resolution.

4. ANNOTATION OF THE CONDITIONS OF APPROVAL

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

5. FINAL ARCHITECTURAL DETAILS AND EXTERIOR BUILDING MATERIALS

The final building exterior plan shall closely resemble the details shown on the original approved plans. The final building design and exterior treatment plans (including but not limited to details on exterior color, materials, architectural treatments, doors, windows, lighting fixtures, and/or embellishments) shall be reviewed and approved by the Director of Community Development prior to issuance of building permits and through an in-field mock-up of colors prior to application to ensure quality and consistency. Any exterior changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

6. CONSULTATION WITH OTHER DEPARTMENTS

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

7. INDEMNIFICATION

To the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving

the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

8. NOTICE OF FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21st day of December, 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:
ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date