RESOLUTION NO. _____

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
DENYING A DEVELOPMENT PERMIT MODIFICATION (M-2021-002),
ARCHITECTURAL AND SITE APPROVAL (ASA-2021-007), AND HEART OF THE
CITY EXCEPTION (EXC-2021-003), MODIFYING THE APPROVED WESTPORT
DEVELOPMENT PROJECT WHICH INCLUDES 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 AT 21267 STEVENS CREEK BOULEVARD (APN:
326-27-043)

SECTION I: PROJECT DESCRIPTION
Application Nos.:   M-2021-002, ASA-2021-007, & EXC-2021-003
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 DENIAL:
WHEREAS, the City of Cupertino received an application for a Development Permit
Modification, Architectural and Site Approval, and Heart of the City Exception 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, the Heart of the City Exception No. 20-110, 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 modification 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, 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 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. Strategy 7 in the Housing Element of the General Plan requires that all residential development projects in the City provide below market-rate units as specified in the City's Residential Housing Mitigation Program. Zoning Code Section 19.172.020(A) further requires that all housing developers comply with the Residential Housing Mitigation Program, and Zoning Code Section 19.172.030(A) further provides that the City Council shall adopt policies, rules, and regulations for implementation of the Residential Housing Mitigation Program. The City Council has adopted the BMR Housing Mitigation Program Procedural Manual (the Mitigation Manual) containing the policies, rules, and regulations for implementation of the Residential Housing Mitigation Program as required by Section 19.172.030(A). Compliance with the Mitigation Manual is required to comply with the City's Housing Element and Zoning Ordinance.

2. The proposed project is inconsistent with the Mitigation Manual, section 2.3.4 (A), because the BMR units in Building 2 will not be comparable to the market rate units in terms of unit type and number of bedrooms per unit.

3. Section 1.01.020 (A) of the Heart of the City Specific Plan requires an exception for developments that do not provide at least 75% of the total building frontage along Stevens Creek Boulevard and/or 50% of the rear of the building to the retailing of goods and services. The original project was approved because the development provided retail frontage along Mary Avenue, where it is not required by the Heart of the City Specific Plan, in an equivalent size and scope

that would have been needed to meet the retail frontage requirement along Stevens Creek Boulevard. Because the restaurant was provided along Mary Avenue, Council found that the exception from the Heart of the City Specific Plan retail standard involved the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel. Since the restaurant is no proposed to be private, and not public serving, this finding cannot be made any further.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council of the City of Cupertino:

1. Find that this action is not subject to environmental review under Section 21080(b)(5) of the California Environmental Quality Act (CEQA) and Section 15270 of the CEQA Guidelines because CEQA does not apply to projects which a public agency rejects or disapproves.

2. Deny the Development Permit Modification (M-2021-002) because the following findings cannot be made:

    a. The project will not be conducted in a manner in accord with the Cupertino Comprehensive General Plan and the Zoning Ordinance in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance.

3. Deny the following permits: Architectural and Site Approval (ASA-2021-007), and Heart of the City Exception (EXC-2021-003), because they are dependent on approval of the Development Permit Modification (M-2021-002) and because following findings cannot be made:

    a. Architectural and Site Approval: The project is not consistent with the General Plan and Zoning Ordinance, in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance. The project will not be conducted in a manner in accord with the Heart of the City Specific Plan in not providing the required retail

frontage along Stevens Creek Boulevard. As such, the underground parking garage would need to be conforming to CMC 19.124 *Parking* for public serving dining and/or general retail.

b. Heart of the City Exception: The proposed development is not otherwise consistent with the City's General Plan, in that it is not implementing the Residential Housing Mitigation Program in conformance with the Mitigation Manual and so is not implementing the Residential Housing Mitigation Program as required by the Housing Element of the General Plan and the Zoning Ordinance. The project will not be conducted in a manner in accord with the Heart of the City Specific Plan in not providing the required retail frontage along Stevens Creek Boulevard.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 7th day of December, 2021, by the following vote:

<u>Members of the City Council</u>

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED:	
_____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST:	
_____ Kirsten Squarcia, City Clerk	_____ Date