

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A VESTING TENTATIVE MAP, SUBJECT TO CONDITIONS, TO SUBDIVIDE ONE PARCEL INTO NO MORE THAN 64 PARCELS AND ALLOW UP TO 320 RESIDENTIAL CONDOMINIUMS ON AN APPROXIMATELY 15.7-GROSS ACRE SITE, LOCATED AT THE SOUTHWEST CORNER OF PRUNE WAY AND MAPLEWOOD AVENUE, (555 SOUTH WINCHESTER BOULEVARD)

FILE NO. PT19-023

WHEREAS, pursuant to the provisions of Chapter 19.13 of Title 19 of the San José Municipal Code, on June 4, 2019, a concurrent application (File No. PT19-023) was filed by the applicant, Scott Hilk for Pulte Homes Company, LLC, with the City of San José for a Vesting Tentative Map to subdivide 1 lot into no more than 64 lots and allow up to 320 residential condominiums on an approximately 15.7-gross acre site, on that certain real property situated in the RM(PD) Planned Development Zoning District and located at the southwest corner of Prune Way and Maplewood Avenue (555 South Winchester Boulevard, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said concurrent applications on December 4, 2019, notice of which was duly given; and

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WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Vesting Tentative Map Winchester Ranch", dated November 18, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council.

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WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site, composed of one lot, is located at the southwest corner of Prune Way and Maplewood Avenue. The subject 15.7 gross-acre site is an existing 111-unit mobilehome park with a community recreation building, pool, and accessory facilities. The mobilehome park is surrounded by single family residences to the north; Highway 280 to the south; Winchester Boulevard and Winchester Mystery House to the east and single-family residences to the west. Olsen Drive and Winchester Boulevard provide access to the site.

The project site is located within the Santana Row/Valley Fair Urban Village Plan Area.

2. **Project Description.** The project consists of the conversion of a mobilehome park to multi-family residential use, demolition of 111 mobilehomes and their associated carports, a recreation building (approximately 3,600 square feet), a pool (approximately 820 square feet), 36 sheds (ranging from 120 square feet to 400 square feet), and the construction of an approximately 2-acre neighborhood park, and 687 multi-family residential units (24 row home buildings, six flat buildings, and one apartment podium building). The row home and flat buildings consist of 320 condominiums and designed as for-sale units. Additionally, the flat buildings would feature the on-site relocation housing units for the current mobilehome owners and tenants who choose this option as their replacement housing. This replacement housing is described further below. The apartment podium building consists of 367 apartment units and designed as for-rent units.

This Vesting Tentative Map facilitates this development through the subdivision of 1 parcel to up to 64 parcels and allow up to 320 residential condominiums.

3. **General Plan Conformance.** The subject site has an Urban Village land use designation on the General Plan Land Use/Transportation Diagram. This designation supports a wide variety of commercial, residential, institutional, or other land uses, with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan, which specifies

how each Urban Village will accommodate the planned housing and job growth capacity.

The project conforms to the following key General Plan strategies and policies:

1. Major Strategy #3- Focused Growth: Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. A Major Strategy of the Envision General Plan is to focus new growth capacity in specifically identified “Growth Areas,” while the majority of the City is not planned for additional growth or intensification.
2. Major Strategy #5- Urban Villages: Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan’s environmental goals.

Analysis: The project is a mixed-use development within the Santana Row/Valley Fair Urban Village boundary. Urban Villages are considered growth areas in the General Plan, and Urban Villages are intended to create higher-density housing growth along with a significant amount of job growth. The project is furthering General Plan Major Strategy #3 and #5 by developing a higher-density residential as envisioned in the Santana Row/Valley Fair Urban Village.

2. **Santana Row/Valley Fair Urban Village.** Additionally, the subject site is within the Santana Row/Valley Fair Urban Village Plan, which was adopted by City Council on August 7, 2017. On December 18, 2018, the Plan was shifted into Horizon 1 Urban Village by City Council through Resolution 78940. The Urban Village has a dwelling unit capacity of 2,635 units. To date, 773 units have been entitled. The project would utilize 687 units of the remaining 1,862-unit capacity. The project is not subject to the City Council adopted Urban Village Implementation and Amenity Framework (Implementation Framework). The Implementation Framework includes a provision that exempted residentially designated sites without a required commercial component.

The proposed project conforms to the following key Santana Row/Valley Fair Urban Village policies.

- a. Diversity of Housing Policy 3-23: Encourage a mix of for sale and rental housing units within the Urban Village area.

Analysis: The project incorporates a mix of for sale and rental housing units within the Urban Village area. For sale units are available as a four-story townhome or a four-story flat with two bedrooms on a single floor. The apartments are located in the podium building situated adjacent to Winchester Boulevard. Additionally, the apartment units are offered with a variety of bedrooms which would help accommodate a variety of tenants.

- 3. Zoning and Planned Development Zoning Conformance.** The project site is in an A(PD) Planned Development Zoning District (File No. PDC75-095). This existing A(PD) Planned Development Zoning District would not permit the proposed development, as the current zoning is for a low-density residential to facilitate the existing mobilehome park and does not accommodate for increased density, taller buildings, and compatible setbacks. As part of the project, the site is proposed to be rezoned from a A(PD) Planned Development Zoning District to a R-M(PD) Planned Development Zoning District. General Plan Implementation Policy IP-8.5 allows the Planned Development Rezoning process to be utilized if the Planned Development Rezoning process would better conform to the General Plan goals and policies than a conventional zoning district.

The subject site's rezoning to a R-M(PD) Planned Development Zoning District complies best with the Santana Row Valley Fair Urban Village goals, policies, standards, and guidelines. The full draft development standards can be found in Exhibit L attached to the staff report. The R-M(PD) Planned Development Zoning District requires greater minimum setbacks to single-family residential development in relation to height based on 45-degree daylight plane consistent with the requirements in the Santana Row Valley Fair Urban Village. The R-M(PD) Planned Development Zoning District would allow for uses that conform to the RM Multiple Residence Zoning District, as amended, which includes a higher density multi-family development. The project is consistent with the setbacks associated with each property line and the 45-degree daylight plane requirement adjacent to the single-family neighborhood to the north and to the west of the site. The tallest building is the apartment podium building, which has a maximum height of approximately 82 feet, with projections as high as 88 feet. Projects are allowed to exceed the maximum building height by 10 feet.

Vehicle and bicycle parking would be required pursuant to the parking standards and requirements of the San José Municipal Code. The project is required to provide to provide 1.25 parking spaces for studio and one-bedroom units, 1.7 parking spaces per two-bedroom unit, 2 parking spaces per three-bedroom unit, and 0.15 parking spaces per additional bedroom beyond three bedrooms. The project is required to provide 1,045 parking spaces and the project would provide 1,172 parking spaces. A minimum of 172 bicycle parking spaces is required for the project and 407 bicycle parking spaces would be provided.

- 4. Environmental Review.** The City of San José, as the lead agency for the proposed project, prepared a Draft Environmental Impact Report (DEIR), which was circulated for public review and comment from August 30, 2019 to October 15, 2019. A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Environmental

Impact Report (FEIR) for the proposed project. The following discussion outlines the environmental impacts discussed in the DEIR.

Identified Significant Unavoidable Impacts – Impacts to the Winchester House Setting and Construction Noise

The DEIR found that the project would result in significant and unavoidable impacts due to changes in the historic setting of the adjacent Winchester House and construction noise impacts on adjacent residences.

The project evaluated in the DEIR includes an apartment building with five levels of residences over two stories of podium parking at the eastern portion of the project site, immediately south of the Winchester House and grounds. This apartment building includes six “fingers” above the podium parking that reach within 15.5 feet of the northern property line adjoining the shared property line with the Winchester House. A Historic Resources Project Assessment (Appendix D of the DEIR) found that although the project would not have a direct physical impact on the Winchester House, the design of the project would have a significant impact on the setting of the Winchester House for the following reasons:

Setting: The project does not provide a compatible setting to the Winchester House and grounds, as the proximity, massing, and dimensions of the project, coupled with the lack of open space and landscaping, would diminish the sense of space that currently exists on the Winchester House grounds. The project is at least twice as tall as the Winchester House and will block views of the mountains from the Winchester House grounds.

Design: The scale of the project may overwhelm the Winchester House by overshadowing it, and no landscaped open space buffer is proposed to make the building compatible with the design and setting of historic resource.

Feeling: The feeling of surrounding open space on the Winchester House grounds, which gives the feeling of the historic resource being part of a larger property, would be lost with development of the project.

Association: The project would significantly impact the integrity of association of the Winchester House with the agricultural past of its surroundings due to the reduction in open space and landscaping.

In addition, the DEIR identified a significant impact as the project would conflict with General Plan Policy LU-13.8, which requires new development adjacent to a designated landmark to be designed to be sensitive to the character of the landmark. In addition to the reasons stated above, the project would conflict with this policy because the project would shade portions of the Winchester House and outbuildings (including a greenhouse) during the winter months.

No feasible mitigation would reduce these impacts to a less than significant level absent a redesign of the project. The applicant proposes to retain seven trees adjacent to the Winchester House property and along the project's frontage with Winchester Boulevard, but this is not sufficient to reduce the impact of the project on the setting of the Winchester House. The DEIR evaluated six alternatives to the project, including three preservation alternatives that would reduce identified impacts to the Winchester House setting. These alternatives would either relocate the podium apartment building approximately 380 feet to the west, relocate the podium building approximately 10 feet to the south (closer to the I-280 on-ramp), or reduce the height of the three easternmost "fingers" of the podium building to four stories.

The DEIR also identified a significant and unavoidable impact as major noise-generating construction activities consisting of demolition, site preparation, grading, and excavation will exceed 12 months in close proximity to adjacent residents. Because the project will be constructed in two phases, the length of resident's exposure to construction noise will be approximately 3.5 years.

A Statement of Overriding Considerations is required for this project for the identified significant and unavoidable impacts. The Statement of Overriding Considerations sets forth how the benefits of the project outweigh its significant adverse environmental impact. Specifically, it finds that the significant, unavoidable impacts of the project are acceptable because: i) the project will be phased to allow existing mobile-home park residents to remain on site during and after project construction; ii) the project will provide an approximately 2.0-acre neighborhood-serving park in a neighborhood with limited parks; iii) the project will support General Plan Major Strategies #3 to promote focused growth in City designated growth areas such as the Santana Row/Valley Fair Urban Village; iv) the project will support General Plan policies to focus high-density residential development in locations in proximity to high-frequency transit, such as the existing bus service and the proposed Bus Rapid Transit (BRT) service along Stevens Creek Boulevard; and v) the project will advance Envision San Jose 2040 General Plan goals for complete communities, with high-density residential in close proximity to existing and future commercial/retail uses.

Environmental Impacts and Mitigation Measures

As part of the certification of the Final EIR, the City Council adopted a related Mitigation Monitoring and Reporting Program (MMRP) for the project (Resolution No. [REDACTED]). As described in the DEIR and the MMRP, the following mitigation measures apply to the project:

Air Quality – The applicant must prepare a construction operations plan demonstrating that all diesel-powered off-road equipment operating on site for more than two days will meet U.S. Environmental Protection Agency (EPA) Tier 4

standards or equivalent. Implementation of these measures would reduce the temporary community health impact to a less than significant level.

Noise – Limitation on types and use of construction equipment and preparation of a construction vibration monitoring plan would reduce vibration-related construction impacts to adjacent structures (including the Winchester House and outbuildings) to a less than significant level. A construction noise logistics plan will be required to address construction noise impacts to neighboring residents. However, as discussed above, due to the length of major noise-generating construction activities, this impact is significant and unavoidable.

Biological Resources – If construction activities start during the migratory bird breeding season (February through August, inclusive), pre-construction surveys for nesting raptors or other migratory birds are required to reduce the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment impacts to less than significant levels. Tree protection measures are required to protect the 11 ordinance-sized trees from damage or removal during construction, including the cork oak along the project's Winchester Boulevard frontage.

Hazardous Materials – Due to the potential for residual agricultural chemicals, a Site Management Plan and worker Health and Safety Plan must be approved by the appropriate regulatory agency prior to the issuance of grading permits.

CEQA Alternatives

As required under CEQA, the DEIR evaluated two No-Project alternatives and two Reduced Development alternatives. These alternatives are summarized as follows:

- a. No Project – No Development Alternative: The No Project – No Development Alternative assumes no redevelopment of the project site and would result in the retention of the existing mobilehome park.
- b. No Project – Existing Residential Neighborhood Land Use Designation Alternative: The No Project – Existing Residential Neighborhood Land Use Designation Alternative assumes a project is built consistent with the sites' Residential Neighborhood General Plan Land Use/Transportation Diagram designation. Assuming an overall maximum density of eight dwelling units per acre, such a development would result in approximately 126 units (a net increase of 15 units over the existing mobilehome park).
- c. Single Phase Construction Alternative: The Single-Phase Construction Alternative would not change the project design, but would construct the entire project in one phase instead of two phases to reduce the length of time residents are exposed to construction noise. This alternative would reduce total construction time by approximately half of the 3.5 years anticipated for the current project.

The DEIR evaluated three preservation alternatives to reduce impacts to the Winchester House, as follows:

- **Relocation of Podium Building to the West:** This preservation alternative would relocate the seven-story podium apartment building approximately 380 feet west of the proposed location and locate four of the four-story “flat” buildings to the eastern portion of the site to the south of the Winchester House. Such an alternative would place reduced height buildings adjacent to the Winchester House grounds and would provide a landscaped buffer between the buildings and the northern property line to reduce impacts to the setting of the Winchester House.
- **Relocation of Podium Building to the South:** This preservation alternative would shift the seven-story podium apartment building approximately 10 feet south from its proposed location, which would increase the distance between the Winchester House and podium building to approximately 25 feet. This would increase distance between the building and Winchester House grounds, reducing some of the identified impacts.
- **Reduced Height of Podium Building:** This preservation alternative would reduce the height of the three easternmost “fingers” of the podium apartment building to four stories. This alternative would reduce the massing of the building at the locations adjacent to the Winchester House, which would reduce impacts to the setting of the Winchester House to a less than significant level.

The environmentally superior alternative is the No Project – Existing Residential Neighborhood Land Use Designation Alternative. This alternative would have a shorter construction timeframe and would not result in cancer risk and levels of annual particulate matter less than 2.5 microns (PM_{2.5}) in excess of BAAQMD thresholds during construction. In addition, impacts to biological resources, hazardous materials, and cosmetic damage to the Winchester House and to the adjacent residences would be the same or less than with the project assuming demolition of the existing structures and removal of all trees on-site would still occur. Finally, as development under this alternative would occur at a lower density, any new buildings would likely be no more than two-stories, avoiding the significant and unavoidable impacts to the setting of the Winchester House. However, this alternative would not meet any of the Project objectives as it would result in a low-density residential development of a similar density to the existing mobilehome park.

Circulation and Public Comments

The DEIR was circulated for a 45-day period from August 30, 2019 to October 15, 2019. The City received 18 written comment letters during the public comment period. Comments were submitted by 12 individuals and the following agencies and

organizations: San Jose Historic Landmarks Commission, California Department of Transportation (Caltrans), California Department of Toxic Substances Control (DTSC), Santa Clara Valley Transportation Authority, City of Santa Clara, and Stevens Creek Advisory Group/Winchester Neighborhood Action Coalition. Issues raised in these comment letters include, but are not limited to the following:

- a. Impacts to the Winchester House setting due to size and massing of development and removal of trees;
- b. Adequacy of soil testing in the Phase I, II, and updated Phase II Environmental Site Assessment;
- c. Traffic congestion on Winchester Boulevard and Stevens Creek Boulevard;
- d. Affordable housing;
- e. Size and use of the proposed park;
- f. Vehicle access to and from the site onto Winchester Boulevard;
- g. Pedestrian and bicyclist safety;
- h. Overflow parking in adjacent residential neighborhoods;
- i. Height and massing of the proposed development;
- j. Construction noise and air quality impacts to adjacent residents;
- k. Coordination of Traffic Study with City of Santa Clara;
- l. Emergency access to the site, especially during peak hours;

Revised Project Design Consistent with the Reduced Height of Podium Building Preservation Alternative

In response to comments on impacts to the setting of the Winchester House, the applicant elected to revise the project design consistent with the Reduced Height of Podium Building preservation alternative. Specifically, the revised design would remove two of the three seven-story “fingers” adjacent to the Winchester House grounds, reduce the height of one finger from seven to four-stories, extend the seven-story portion of the podium building towards Winchester Boulevard, and increase the massing of the building on the western portion of the building to the south of the Santana West site. This design reduces the bulk and massing of the podium building at locations adjacent to the Winchester House grounds. The podium building will still be seven stories along the southern portion of the site facing I-280, but the distance between the seven-story portion of the building and the Winchester House grounds would increase by approximately 40 to 70 feet. As evaluated in the Reduced Height of Podium Building preservation alternative, the increase in distance between the tallest portions of the podium building and the Winchester House grounds would

reduce the identified impacts to the setting of the Winchester House to a less than significant level. Therefore, the revised project plans dated November 18, 2019, show the Reduced Height of Podium Building preservation alternative as the project approved by City Council.

The City responded to all comments received on the DEIR and incorporated them into the First Amendment to the DEIR. The First Amendment taken together with the DEIR constitutes the Final EIR. The DEIR and First Amendment to the DEIR are available for review on the project page on the City's Active EIRs website at: <http://sanjoseca.gov/activeeirs>.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the DEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the DEIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a DEIR is not "significant" unless the DEIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the DEIR for the project includes written responses to all comments received during the public review period for the DEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the DEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the DEIR and, in some cases, correct or update information in the DEIR. No significant new information has been added to the EIR since publication of the DEIR; therefore, the EIR does not need to be recirculated.

6. FINDINGS

The City Council concludes and finds, based on the analysis of the above facts, that:

Conformance with the Subdivision Ordinance and the Subdivision Map Act. In accordance with San José Municipal Code (SJMC) Section 19.12.130, the City Council may approve the vesting tentative map if the City Council cannot make any of the findings for denial in Government Code Section 66474, and the City Council has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the City Council may approve the project if the City Council

does not make any of the findings for denial in San José Municipal Code Section 19.12.220. San José Municipal Code Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code, as set forth below.

- a. The City Council finds that the proposed subdivision shown on the Vesting Tentative Map, subject to the conditions listed below and the requirements for project design and improvements is consistent with applicable General and Specific Plans of the City of San José, in that:

Analysis: As discussed in detail above, the project is consistent with the General Plan.

- b. The City Council has considered the proposed subdivision shown on the Vesting Tentative Map, with the imposed conditions, to determine whether to make any of the findings set forth in the subsections of Section 66474 of the Government Code of the State of California which states “A legislative body of a city or county shall deny approval of a vesting tentative map, or a parcel map for which a vesting tentative map was not required, if it makes any of the following findings:”
 - a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
 - b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
 - c) That the site is not physically suitable for the type of development.
 - d) That the site is not physically suitable for the proposed density of development.
 - e) That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
 - f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
 - g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

***Analysis:** As described above, based on review of the project subdivision, the vesting tentative map and the development's design are consistent with the San José Envision 2040 General Plan and the Santana Row/Valley Fair Urban Village Plan, as discussed above. The site is physically suitable for the project development in that the project's residential density is in conformance with the Urban Village Plan. The site is not located within a designated Federal Emergency Management Agency (FEMA) 100-year flood plan. The project site, as well as the surrounding area, are presently developed with structures and do not provide a natural habitat for either fish or wildlife. The project subdivision and subsequent improvements are not likely to cause serious public health problems. The project is required to improve the sidewalk along Winchester Boulevard and to demonstrate that common areas will be retained as common areas and maintained for the life of the project.*

In accordance with the findings set forth above, a Vesting Tentative Map to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have granted this permit and determination except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Vesting Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Vesting Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
 - a. Acceptance of the Vesting Tentative Map by the Subdivider; and
 - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire 48 months from and after the date of issuance hereof by the Director of Planning of the City of San José. The date of issuance is the date this Vesting Tentative Map is approved by the City Council.
3. **Development Rights - Vesting on Approval of Vesting Tentative Map.**
 - a. Per San José Municipal Code Section 19.13.070, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards

described in Government Code Section 66474.2. However, if Section 66474.2 of the Government Code is repealed, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.

- b. Notwithstanding subsection 3.a., above, any permit, including a building permit, approval, extension, or entitlement may be made conditional or denied if any of the following are determined:
 - i. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
 - ii. The condition or denial is required, in order to comply with state or federal law.
- c. The rights referred to herein shall expire if a final map is not approved prior to the expiration of the vesting tentative map as provided in Section 19.13.060. If the final map is approved, these rights shall last for the following periods of time:
 - i. An initial time period of one year. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this one-year initial time period shall begin for each phase when the final map for that phase is recorded. All of said final maps or parcel maps must be recorded within the time period set forth in Section 19.13.060 or the vesting tentative map approval shall expire for those parcels for which final maps or parcel maps are not timely recorded.
 - ii. The initial time period set forth in 3.c.i. shall be automatically extended by any time used for processing a complete application for a grading permit if such processing exceeds thirty days from the date a complete application is filed.
 - iii. A subdivider may apply to the director for a one-year extension at any time before the initial time period set forth in 3.c.i. expires. If the extension is denied, the subdivider may appeal that denial to the city council within fifteen (15) days.
 - iv. If the subdivider submits a complete application for a building permit during the periods of time specified in 3.c.i. through 3.c.iii., above, the rights referred to herein shall continue until the expiration of that permit, or any extension of that permit.
- 4. **Conformance to Plans.** Development shall conform to the approved Vesting Tentative Map plans entitled "Vesting Tentative Map Winchester Ranch" dated November 18, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Vesting Tentative Map Plan Set.
- 5. **Compliance with Subdivision Ordinance.** The final map shall comply with all of the requirements for final maps in Chapter 19.16 of the San José Municipal Code and

shall show and contain all of the data required by San José Municipal Code Section 19.16.110.

6. **Conformance with Other Permits.** The subject Vesting Tentative Map conforms to and complies in all respects with the Planned Development Permit File No. PDC18-037 on which such Vesting Tentative Map is based. Approval of said Vesting Tentative Map shall automatically expire with respect to any portion of the lands covered by such Vesting Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Planned Development Permit for such lands automatically expires or for any reason ceases to be operative.

7. **Common Interest Development**

- a. The Subdivider, at its sole cost, shall prepare, submit for review and approval by the City, and record concurrently with the applicable parcel or final map, governing documents for the Common Interest Development that include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms, including enforcement by the City, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Prior to approval of the parcel or final map by the city, the Subdivider shall submit the proposed governing documents to the City for review for compliance with this condition.
- b. The Subdivider shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the City for compliance with the terms of Chapter 20.175 of the City of San José Municipal Code, and shall upon City approval be recorded concurrently with the approved parcel for Final Map.

8. **Owner's Association.**

- a. Prior to the issuance of any occupancy permit (temporary or final), an Owner's Association shall be established for maintenance of all common areas, including pedestrian walkways, easements, and landscaping. The Subdivider shall provide to the Owner's Association a copy of the Vesting Tentative Map, the accompanying Plan Set, any approved development permits, amendments, and adjustments under Title 20 of the Municipal Code, and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
- b. The Subdivider shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the city for compliance with the terms of the City of San José Municipal Code, and shall upon city approval be recorded concurrently with the approved parcel or final map
- c. The Transportation Demand Management Plan measures, as amended, shall be incorporated into the Owner's Association agreement.

9. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Vesting Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
10. **Improvement Contract.** In the event subdivider has not completed the improvements required for his proposed subdivision at the time the final map is presented for approval, subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
11. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking in and upon all areas within the subdivision shown on the Vesting Tentative Map for the subdivision to be devoted to such purposes.
12. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Vesting Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Final Map. Such easements so conveyed shall be shown on the Final Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
13. **Distribution Facilities.** The Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
14. **Covenant of Easements.** Prior to recordation of the Final Map, the Subdivider shall offer to the City of San José a Covenant of Easement for joint use and emergency access purposes, reciprocal rights for shared parking, ingress, and egress in accordance with Part 1 of Chapter 20.110 of Title 20 of the San José Municipal Code, across parcels 1 to 64, as shown on the Approved Plan Set. Said easements shall be binding upon, and all benefits shall insure to, all successors in interest to the affected real property.
15. **Multiple Final Maps.** Multiple Final Maps may be filed for this subdivision if each and all of the following conditions are met with each Final Map:
 - a. All fees associated with development and a part of this approval shall be apportioned and paid for each portion of this subdivision for which a Final Map is being filed, including but not limited to Parkland Dedication, undergrounding of utilities, drainage, area and sewer treatment plan.

- b. All public streets on which each Final Map has frontage shall be improved or bonded to be improved to the satisfaction of the Director of Public Works.
 - c. All grading, drainage, and easements for drainage, adequate to protect each lot for which a Final Map is requested, and surrounding parcels which could be impacted by such design or lack of design, shall be guaranteed to the satisfaction of the Director of Public Works.
 - d. Any and all off-site improvements necessary for mitigation of impacts brought about by this project shall be apportioned to the degree possible to guarantee adequate mitigation for each area for which a Final Map is being filed, to the satisfaction of the Director of Public Works.
16. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
17. **Sewage Fees:** In accordance with City Ordinance, all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable to the Department of Public Works prior to Public Works clearance.
18. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Vesting Tentative Map shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
19. **Affordable Housing.** The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced IHO or AHIF, the subdivider must execute and record their

Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.

- a. Subdivider must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
- b. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
- c. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.
- d. The existing property located at 555 S. Winchester Blvd is subject to the City's Mobilehome Park Conversion to Ownership or to Any Other Use Ordinance, Chapter 20.180, and Council Policy 6-33, titled Conversion of Mobilehome Parks to Other Use. In addition are state law requirements set forth under California Government Code Section 66427.4 as well as California Civil Code Section 798.56(g) related to notice requirements.

20. Parkland Dedication Ordinance. This development is subject to the requirements of either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code,) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the subdivider shall enter a parkland agreement with the City to the satisfaction of the Directors of Public Works and Parks, Recreation and Neighborhood Services in order to fulfill the requirements of the Parkland Dedication Ordinance.

21. Conformance to Mitigation Monitoring and Reporting Program. This Project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No.

22. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract by the Director of Public Works, or the issuance of any Building permits, whichever occurs first, the subdivider will be required to have satisfied all of the following Public Works conditions as described in the Planned Development Permit (PD19-019).

23. Revocation, Suspension, Modification. This Vesting Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

In accordance with the findings set forth above, a Vesting Tentative Map Permit to use the subject property for said purpose specified above, subject to conditions, is hereby **approved**.

EFFECTIVE DATE

The effective date of this Vesting Tentative Map shall be the same effective date of the Planned Development Rezoning Ordinance for File No. PDC18-037 passed for publication on _____, 20__ (the "Planned Development Zoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

APPROVED and issued this _____ day of _____, 20__, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

Exhibit "A"

Legal Description

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF WINCHESTER BOULEVARD, FORMERLY SANTA CLARA - LOS GATOS ROAD, AS SAID LINE WAS ESTABLISHED BY PARCEL 1-A IN THAT CERTAIN FINAL ORDER OF CONDEMNATION ENTERED ON APRIL 4, 1963 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, IN THAT CERTAIN ACTION ENTITLED, "THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE DEPARTMENT OF PUBLIC WORKS, PLAINTIFF, VS. CHARLES J. CALI, ET AL, DEFENDANTS", CASE NO. 134825, A CERTIFIED COPY OF WHICH ORDER WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 4, 1963 IN BOOK 5969 OFFICIAL RECORDS, PAGE 661, WITH A NORTHERLY LINE OF THAT CERTAIN 30.40 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM CHARLES J. CALI TO CHARLES J. CALI ET UX, DATED MARCH 19, 1953, RECORDED MARCH 24, 1953 IN BOOK 2605 OFFICIAL RECORDS, PAGE 204, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 0° 40' 07" WEST ALONG SAID WESTERLY LINE OF WINCHESTER BOULEVARD FOR A DISTANCE OF 110.42 FEET; THENCE SOUTHWESTERLY ALONG AN ARC OF A CURVE TO THE RIGHT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 84° 25' 44", FOR AN ARC DISTANCE OF 73.68 FEET TO A POINT IN THE NORTHERLY LINE OF JUNIPERO SERRA FREEWAY (STATE HIGHWAY), AS SAID LINE WAS ESTABLISHED BY THE FINAL ORDER OF CONDEMNATION ABOVE REFERRED TO; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY LINE OF JUNIPERO SERRA FREEWAY FOR THE FOLLOWING COURSES AND DISTANCES: SOUTH 85° 05' 51" WEST 335.98 FEET; THENCE ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 4053.00 FEET, THROUGH A CENTRAL ANGLE OF 2° 19' 06", FOR AN ARC DISTANCE OF 164.00 FEET; THENCE SOUTH 84° 46' 26" WEST 710.02 FEET; THENCE SOUTH 84° 41' 23" WEST 299.89 FEET; THENCE SOUTH 84° 03' 45" WEST 50.63 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF SAID 30.40 ACRE TRACT ABOVE REFERRED TO; THENCE NORTH 0° 05' WEST ALONG SAID WESTERLY LINE OF THE 30.40 ACRE TRACT FOR A DISTANCE OF 695.61 FEET TO THE NORTHWESTERLY CORNER THEREOF; THENCE NORTH 89° 59' EAST ALONG A NORTHERLY LINE OF SAID 30.40 ACRE TRACT FOR A DISTANCE OF 820.05 FEET TO AN ANGLE CORNER THEREIN; THENCE SOUTH 0° 07' EAST ALONG AN EASTERLY LINE OF SAID 30.40 ACRE TRACT FOR A DISTANCE OF 348.18 FEET TO AN ANGLE CORNER THEREIN; THENCE NORTH 89° 56' EAST ALONG A NORTHERLY LINE OF SAID 30.40 ACRE TRACT FOR A DISTANCE OF 772.12 FEET TO THE POINT OF BEGINNING.

APN: 303-38-001