

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO CONSOLIDATE SEVEN PARCELS INTO ONE PARCEL FOR THE DEVELOPMENT OF A MIXED-USE PROJECT INCLUDING A COMMERCIAL RESIDENTIAL CARE FACILITY AND FOUR MULTI-FAMILY RESIDENTIAL UNITS ON AN APPROXIMATELY 0.90-GROSS ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF WEST SAN CARLOS STREET AND GIFFORD AVENUE (470 WEST SAN CARLOS STREET)

FILE NO. T20-020

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on June 26, 2020, a concurrent application (File No. T20-020) was filed by the applicant, Urban Catalyst LLC, on behalf of owner Thang N Do Trustee, et al, with the City of San José for a Vesting Tentative Map to consolidate seven parcels into one parcel and for the concurrent Conditional Use Permit application for the development of a mixed-use project including a commercial residential care facility and four multi-family residential units on an approximately 0.90-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located on the southwest corner of West San Carlos Street and Gifford Avenue (470 West San Carlos Street, 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 9, 2020, notice of which was duly given; and

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 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", dated received June 26, 2020, 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;

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 project site is located on the southwest corner of West San Carlos Street and Gifford Avenue. The subject 0.90-gross acre site is currently developed with three residential buildings, two residential garages, two commercial accessory buildings, and one carport. The three residential buildings total nine units and approximately 5,150 square feet with associated garages. The residential buildings were analyzed by the Housing Department and determined as not subject to the Ellis Act Ordinance, and therefore no relocation assistance or other restrictions are applicable.

Adjacent land uses to the northwest are high-density multi-family residential, to the north are commercial uses, to the east are auto-related light industrial uses and single-family residences, to the west is a martial arts school, and to the south are commercial and light industrial uses, including a painting company and a warehouse.

2. **Project Description.** A Conditional Use Permit to allow the demolition of all existing structures on the site, including two commercial accessory buildings associated with a used car sales lot, three residential buildings totaling nine units and approximately 5,150 square feet with associated garages, the removal of seven ordinance-size trees, the construction of a mixed-use project including a 190-bed residential care facility with 116 assisted living residential care guest rooms and 49 memory care guest rooms, and four multi-family units on a 0.90-gross acre site on an approximately 0.90-gross acre site at 470 West San Carlos Street.

Operations of the commercial residential care facility include 24-hour care of up to 190 residents. Services include a shuttle service, meals, programs, activities, and events designed to maximize residents' dignity, autonomy, independence, choice, and safety. For memory care residents, activities are designed to stimulate cognitive abilities, while also enjoying passions and hobbies. There will be up to 60 full-time staff members employed by the facility, with a maximum of 36 employees at any time. This facility will be licensed by Department of Social Services through the State of California. The Operator and Staff must comply with relevant laws and regulations as set forth by the Residential Care Facility for the Elderly (RCFE) license needed to operate the community, including pre-employment screening via FBI & DOJ background checks as well as staff continuing education and certifications. The four multi-family residential units will be primarily used as staff housing.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan land use designation of Downtown and is within the Diridon Station Area Plan (DSAP), an adopted Urban Village Plan area. The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and

increase transit ridership. Residential care facilities are allowed within the DSAP Area through the City's discretionary review and permitting process.

Analysis: The project is consistent with the General Plan and DSAP policies, as discussed further below, and is therefore consistent with the Downtown General Plan designation. Additionally, the changes to the General Plan land use designation are consistent with Senate Bill 330 as discussed below.

General Plan Policies

The project is consistent with the following key General Plan goal and policies:

1. Major Strategy #3 - Focused Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified "Growth Areas" (Urban Villages, Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.
2. Growth Area Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
3. Commercial Lands Policy LU-4.3: Concentrate new commercial development in identified growth areas and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods when such development is appropriately located and designed.

Analysis for Major Strategy 3, LU-2.1, LU-4.3, and TR-3.4: The project is within the DSAP and is approximately 0.6-mile from Diridon Station. The project would result in a higher intensity of development on the subject site consistent with General Plan major strategy, and policies supporting focused growth and development near transit. Furthermore, the project would facilitate a more intense mixed-use development in place of the existing auto-oriented used car lot at the site.

4. Maximize Use of Public Transit Policy TR-3.4: Maintain and improve access to transit stops and stations for mobility-challenged population groups such as youth, the disabled, and seniors.
5. Social Equity and Diversity Policy H-1.4: Encourage the location of housing designed for senior citizens in neighborhoods where health and community facilities and services are within a reasonable walking distance and are accessible by public transportation.

6. Access to Medical Services Policy ES-6.5: Encourage new health care facilities to locate in proximity to existing or planned public transit services.

Analysis for Policies TR-3.4, H-1.4, and ES-6.5: The project site is located along Bus Route 23 and Rapid Bus Route 523, providing service to Downtown, Blossom Hill, and Mountain View. The site is within 2.5 miles of O'Connor Hospital and Santa Clara Valley Medical Center, and is within four miles of the Santa Clara Senior Center. This development is intended for seniors and would provide close access to transit services, health services, and community facilities.

Diridon Station Area Plan

The subject site is located within the boundary of the Diridon Station Area Urban Village and subject to the Diridon Station Area Plan (DSAP). On June 14, 2014, City Council certified the DSAP Program Environmental Impact Report (EIR) and adopted the existing DSAP. In December 2018, the City Council certified the Downtown Strategy 2040 EIR which includes the DSAP area. The DSAP analyzes the expansion of the existing Diridon Station and the development of land uses within the 250-acre Area Plan boundary surrounding the station. Development of the subject site would need to be consistent with the goals, objectives, and guidelines of the DSAP.

Within DSAP, the subject site is located in Subarea F of the Southern Zone. The Southern Zone is the urban neighborhoods zone consisting predominantly of residential and mixed uses as well as nonresidential uses including office, retail, service, hotel, medical, and entertainment uses. Per the Land Use Plan of the DSAP, Figure 2-1-1, the site is partially within the Downtown land use designation and partially within the Residential Neighborhood designation. However, with the General Plan Amendment, the project is proposing to amend the designation to be wholly Downtown as discussed above. The changes to the General Plan land use designation over the Project Site are consistent with Senate Bill 330 as discussed below.

Diridon Station Area Plan Design Guidelines

The DSAP's Design Guidelines represent a long-term vision for the area. Various design aspects are discussed in detail below. Pedestrian activity and bike access are key to the development of the Diridon Station Area as a vibrant urban destination. High levels of pedestrian activity can be achieved by good overall connectivity and an interesting and varying street environment. Wide sidewalks, safe crossings, slow traffic, street trees, street furniture, and mid-block connections all contribute to a walkable and bikeable environment. Attributes include: high-density, active ground floor uses, broken-up building massing and articulated façades at the ground level that respond to the pedestrian scale, as well as small integrated plazas and seating areas.

Analysis: The project is conditioned to widen the public sidewalks to fifteen feet along West San Carlos Street and ten feet along Gifford Street, planted with street trees every thirty feet along West San Carlos Street and every twenty feet along Gifford Avenue. The ground floor includes active uses such as a resident coffee shop, activity center, wellness center, and salon, and includes substantial transparency, which will provide an active sidewalk presence, making the pedestrian experience visually interesting. The project would provide the required number of bicycle parking spaces, which will encourage employees to use a multi-modal transportation network.

Floor Area Ratio (FAR)

The project site is proposed to be located entirely within the DSAP Downtown land use designation per the General Plan Amendment. Per the Downtown designation, the project site is allowed up to 15.0 FAR.

Analysis: The FAR for the project site is 4.8 and is consistent with this requirement.

Height

Guidelines are provided on the maximum height of buildings in the Diridon Station Area per Figure 3-2-1, which indicates a height limit of 65 feet for this area. The building height guidelines for the Southern Zone are intended to ensure the compatibility of new development with the surrounding relatively low density residential neighborhoods. Guidelines in the DSAP discourage taller buildings adjacent to existing single-family residential uses.

Analysis: The project is adjacent to commercial and light industrial uses. There are no residential uses directly adjacent to the project site, but there are single-family residences across Gifford Avenue from the project. For neighborhood compatibility, the project is stepped back at the Gifford Avenue street frontage at the southeastern portion of the property to create a common open space balcony facing the street, therefore stepping the building height and massing down at this location by one floor to a height of 55 feet at the street facade.

The project consists of one six-story building, and the maximum height is 65 feet, plus an additional four feet to the parapet, as allowed within the Building Heights section on Page 3-6 of the DSAP. Therefore, the project is consistent with the height requirement.

Retail Requirement

Per the Land Use Plan of the DSAP, Figure 2-1-1, this section of West San Carlos Street is required to have retail frontage. This requirement is further detailed in the Plan on Page 2-11. This requirement is intended to provide restaurants and services to residents and workers in the area to reduce the need for driving.

Analysis: The project is proposing active uses on the ground floor facing the street. The ground floor will provide transparency and will showcase the proposed active uses including communal spaces for residents and visitors, a wellness center, and a

salon, among other uses, making the pedestrian experience more visually interesting. Additionally, the proposed uses will be provided for residents and workers within the building. Therefore, the project is consistent with this requirement.

4. **Zoning Code Compliance.** The project is consistent with the development standards as set forth in the DC Downtown Primary Commercial Zoning District. The subject site is currently located in the LI Light Industrial and R-2 Two-Family Residence Zoning Districts. However, the project is proposing to rezone to DC Downtown Primary Commercial, for which consistency is analyzed below:

Land Uses

Pursuant to the Zoning Code Section 20.70.100, the DC Downtown Primary Commercial Zoning District is a conforming zoning district to the Downtown General Plan Designation. The purpose of the Downtown Primary Commercial Zoning District is to provide development standards for the property within the designated Downtown Area.

Analysis: The project site is within the stated boundary of Downtown per Section 20.70.100 of the Zoning Code. In the DC Downtown Primary Commercial Zoning District, multi-family residential units are allowed, and residential care facilities can be permitted with a Conditional Use Permit.

Development Regulations

The project conforms to the DC Downtown Primary Commercial Zoning District Development Standards, beginning with Zoning Section 20.70.200, as discussed below. Building height and FAR are regulated by the Diridon Station Area Plan (DSAP) as discussed above. Additionally, per Section 20.70.210 of the Zoning Code, the DC Downtown Primary Commercial District is not subject to setback regulations.

- a. Vehicle Parking:

The required number of vehicle parking spaces for the residential care facility is 0.75 parking space per employee per Section 20.70.100, Table 20-140 of the Zoning Code. With a maximum of 36 employees per shift, this calculates to 27 spaces required. The residential multi-family housing units require one space per unit per Table 20-210, for a total of four spaces. The total required vehicle parking is therefore 31 spaces.

Analysis: The project has 32 parking spaces in the at-grade garage accessed by a driveway from Gifford Avenue. The project is consistent with the parking requirement.

- b. Bicycle Parking:

The project is required to provide one bicycle space per ten employees for residential care facility per Table 20-190 of the Zoning Code and one space per four housing units per Table 20-210. For 36 employees, the requirement is four

spaces, plus one space for the housing units for a total of five bicycle parking spaces required.

Analysis: The project includes a secure bicycle storage room on the ground floor adjacent to the staff lounge, accessible to the street, and a bike rack for short-term parking along Gifford Avenue, adjacent to the building pedestrian entrance. The long-term storage room has five spaces, and the short-term bike rack has four spaces, for a total of nine spaces provided. The project is therefore consistent with the requirement.

c. Loading Spaces:

This project requires one loading space per Section 20.70.440 of the Zoning Code. The loading space must be ten feet wide, thirty feet long and fifteen feet high, exclusive of driveways for ingress and egress and maneuvering areas per Section 20.90.420. Alternately, per Section 20.70.450.B, the director may reduce the number of off-street loading spaces based on the available loading space within the public right-of-way.

Analysis: The loading space does not meet the 15 feet clear height as required by Section 20.70.420 of the Zoning Code. An exception is requested to allow twelve feet of height for the loading space, which would allow Class 4 thru Class 6 delivery trucks. The applicants will also apply for an on-street loading space along West San Carlos Street via a separate Public Works permit process. See the Exception Findings within the Conditional Use Permit Resolution.

5. San José Downtown Design Guidelines Consistency

In addition to the DSAP Design Guidelines, as discussed above, the project was analyzed for consistency with the 2014 San José Downtown Design Guidelines and Standards to achieve an attractive residential environment. The project complies with standards of the Downtown Design Guidelines specifically in the following areas:

Urban Form and Massing. The massing of a podium level greater than 100 feet wide facing the sidewalk is required to be visibly articulated into smaller masses using projections and recesses, materials, shadow relief, or other architectural elements (Standard 4.3.1).

Analysis: The facades at both Gifford Avenue and West San Carlos Street are greater than 100 feet wide. The project has provided sufficient articulation in massing along both facades through the use of varying colors, materials, and projections and recessions along the façade. The project is therefore consistent with this requirement.

Street Wall/Active Frontage. The base of the building is required to contribute to the vibrancy of the street at the ground level through transparency and durable materials. Further, the Guidelines state that building frontage should appear safe, welcoming, and open to the general public. Active frontage means transparent to the interior of the

building. This standard applies to both West San Carlos Street and Gifford Avenue (Standards 4.3.3 and 5.3.1).

Analysis: The project design includes transparent glass at ground level along 60% of Gifford Avenue and 77% along West San Carlos Street. The project provides active uses interior to the site at ground level along both street frontages. The project is therefore consistent with this requirement.

Architecture and Materials. Green roofs, high-quality materials, and a prominent pedestrian entry are required. Specifically, for buildings less than 150 feet in height, a green roof or solar panels must cover at least 20% of the roof area, the project must use high-quality materials at the Pedestrian Level, and pedestrian entries must be emphasized and clearly identifiable. (Standards 4.4.3, 4.4.7, and 5.5.1)

Analysis: The project is providing a combination of solar panels and green roof for a total of 20% of the roof area. The project is providing materials such as glass, aluminum, concrete, cement plaster, and horizontal plank siding. The pedestrian entry is located at the corner of the intersection, and is recessed, framed, and labeled with signage to be clearly identifiable. Therefore, the project complies with these requirements.

6. City Council Policy Consistency

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered to be a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since August 25, 2020, to inform the neighborhood of the project. A community meeting was held to discuss the project on October 1, 2020 via Zoom webinar. Approximately 17 members of the public were in attendance for the meeting. Comments received during the community meeting and project review are discussed in the staff report. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

7. Senate Bill 330 Compliance

Governor Gavin Newsom signed Senate Bill 330, Housing Crisis Act of 2019, on October 9, 2019 to catalyze housing that would offset the high rents and home ownership costs leading to increasing homelessness. The bill is intended to speed up housing construction in California by decreasing the time it takes to obtain building permits and limiting fee increases on housing applications. The bill also bans local governments from reducing the number of homes that can be built on properties that

allow housing, including downzoning, changing general or specific plan land use designations to a less intensive use, reductions in height, density or floor area ratio, or other types of increased requirements. The exception to this is that a property may be allowed to reduce intensity of residential uses if changes in land use designations or zoning elsewhere ensure no net loss in residential capacity within the jurisdiction.

The proposed General Plan Amendment (GP19-012) does not reduce the intensity of residential uses because the proposed Downtown land use designation allows for greater residential density than the existing Residential Neighborhood land use designation. GP19-012 would increase the residential capacity by 353 units. Further, the proposed amendment, if approved concurrently with GP20-001 (net 69 units) and GP20-002 (net 74 units) would offset reduced intensity of residential capacity for proposed project file no. GP20-003 (loss of 248 units) resulting in no net loss of residential capacity.

8. California Environmental Quality Act.

The Director of Planning, Building and Code Enforcement prepared an Initial Study in support of an Addendum to the 2018 Downtown Strategy 2040 FEIR for the Delmas Senior Living Project, which includes a General Plan Amendment to change the land use designation from the Residential Neighborhood designation to the Downtown designation, a conforming rezoning from the LI Light Industrial and R-2 Two-Family Residence districts to the DC Downtown Primary Commercial (district, and a Conditional Use Permit for the development of the proposed project. The Downtown Strategy 2040 FEIR contains sufficient information to provide project-level environmental clearance for certain impacts by including standard measures that apply to all projects in San José. The Initial Study did not identify any new impacts beyond those analyzed in the Downtown Strategy 2040 FEIR. Therefore, the proposed project meets the criteria of an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 and was completed in compliance with CEQA to reflect the independent judgement of the City.

The Initial Study identified relevant mitigation measures included in the Downtown Strategy 2040 FEIR for potential impacts to air quality during construction, nesting birds, buried and unknown archaeological resources, contamination during and after construction, and construction vibration impacts on adjacent buildings and businesses. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for controlling dust and exhaust during construction, tree replacement, compliance with the Habitat Plan, uncovering buried archaeological or historic resources and human remains during construction activities, preventing impacts from lead-based paint and asbestos during demolition activities, preventing stormwater pollution during construction, managing mechanical equipment noise, and interior noise levels. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and both the mitigation measures and standard permit conditions are made a part of this permit.

The Initial Study concluded that the proposed project would not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the Downtown Strategy 2040 FEIR. Therefore, a supplemental or subsequent EIR is not required, and an Addendum to the Downtown Strategy 2040 FEIR is the appropriate level of CEQA clearance for the project.

The Addendum and supporting Initial Study, associated technical studies (in appendices to the Initial Study) are available on the Planning Division environmental review webpage at: <https://www.sanjoseca.gov/activeeirs>.

9. Permit Findings.

Vesting Tentative Map Findings. In accordance with San José Municipal Code (SJMC) Sections 19.12.130 and 19.12.220 and California Government Code Section 66474, the Director of Planning of the City of San José, in consideration of the proposed subdivision shown on the Vesting Tentative Map with the imposed conditions, shall deny approval of a Vesting Tentative Map, if the Director 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 are 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.

Analysis: Based on review of the proposed subdivision, a Vesting Tentative Map to merge seven parcels into one parcel for the development of a mixed-use project including a commercial residential care facility and four multi-family residential units on an approximately 0.90-gross acre site, the City Council of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan goals, policies, and land use designation. The project complies with the General Plan goals and policies related to Major Strategies, design, and Growth Areas, among others. The General Plan land use designation of Downtown allows for higher-intensity projects. The project site is physically suitable for the project and intensity in that the development is encouraged and envisioned within the Diridon

Station Area Plan (DSAP). Furthermore, the project site does not contain historic resources or sensitive habitats or wildlife.

Additionally, the site is not located within a designated Federal Emergency Management Agency (FEMA) 100-year flood plain. The project site, as well as the surrounding area, are currently developed with structures and do not provide a natural habitat for either fish or wildlife. The proposed subdivision and subsequent improvements are not likely to cause serious public health problems. The project is conditioned to widen the public sidewalks to fifteen feet along West San Carlos Street and ten feet along Gifford Street, planted with street trees every thirty feet along West San Carlos Street and every twenty feet along Gifford Avenue.

In accordance with the findings set forth above, a 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 San José Municipal Code 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 30 months from and after the date of issuance hereof by the Director of Planning, Building and Code Enforcement 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.** The development of the site shall conform to the approved plans entitled, "Vesting Tentative Map," dated June 26, 2020, 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 Conditional Use Permit File No. CP20-019 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 Conditional Use Permit for such lands automatically expires or for any reason ceases to be operative.
7. **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.
8. **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.
9. **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.
10. **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.
11. **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 Plant 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.

12. **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 prior to Public Works clearance.

13. **Housing Conditions of Approval:**

- a. The development may be subject to the Affordable Housing Impact Fee (AHIF) or subject to the Inclusionary Housing Ordinance (IHO). If the development is a rental project between 3 to 19 units, the Subdivider must pay the Affordable Housing Impact Fee prior to the issuance of any building permits, unless an exemption claim has been made and conditionally accepted. Rental developments are developments that do not include the filing of a tentative map, parcel map or other plan intended to allow the separate conveyance of individual residential units or interests.
 - i. Subdivider shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the AHIF.
 - ii. If a development qualifies for a conditional exemption to the AHIF in the approved Plan, the Subdivider and owner must execute and record an Affordable Housing Agreement with the City prior to the issuance of any building permits.
 - iii. Subdivider's approval is for development of less than 20 qualifying dwelling units, as determined by the City's Housing Department. Any changes in the number of units or the type of units in the development may result in additional requirements up to and including a requirement to comply with the IHO.
 - iv. No building permit may be issued until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
- b. The development may be subject to the City's Inclusionary Housing Ordinance (IHO) or the Commercial Linkage Fee whichever applies at the time of building permits and each of the conditions below:
 - i. The Subdivider must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any

- contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.
- ii. 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.
 - iii. 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.
 - iv. 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.
14. **Parks:** This residential project is subject to 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 for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
15. **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.
16. **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. _____.
17. **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 Building permits, whichever occurs first, the subdivider will be required to have satisfied all of the following Public Works conditions as described in the Conditional Use Permit (CP20-019).
18. **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 Conventional Rezoning Ordinance for File No. C19-042 passed for publication on _____, 20__ (and shall be no earlier than the effective date of said Rezoning Ordinance).

APPROVED and issued this _____ day of _____, 2021, 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

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL OF LOTS 24, 25 AND 26, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF GIFFORD ADDITION BEING LOT 2 SUNOL PARTITION OF A PART OF THE LOS COCHES RANCHO SANTA CLARA CO. CAL.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 5, 1905 IN [BOOK K OF MAPS, AT PAGE 71](#).

[APN: 264-20-086 \(LOT 26\), 264-20-087 \(LOT 25\) AND 264-20-088 \(LOT 24\)](#)

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

All of Lot 27, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

[APN: 264-20-085](#)

PARCEL TWO:

All of Lot 30, and the Westerly one-half of Lot 29, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

EXCEPTING THEREFROM all that portion conveyed to the City of San Jose, a municipal corporation, by Instrument recorded January 17, 1956, in [Book 3388, Page 453 of Official Records](#).

[APN: 264-20-083](#)

PARCEL THREE:

The Northeasterly 39.00 feet of Lot 31, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

EXCEPTING THEREFROM all that portion conveyed to the City of San Jose, a municipal corporation, by Instrument recorded January 17, 1956, in [Book 3388, Page 450 of Official Records](#).

[APN: 264-20-082](#)

EXHIBIT A LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

All of Lot 28, and the Northeasterly one-half, front and rear measurements of Lot 29, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

EXCEPTING THEREFROM all that portion conveyed to the City of San Jose, a municipal corporation, by Instrument recorded April 25, 1956, in [Book 3476, Page 623 of Official Records](#).

[APN: 264-20-084](#)