



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: Development Agreement – River Oaks
San Jose, LLC

DATE: March 2, 2012

DISTRICT: 4

RECOMMENDATION

Recommend approval to the City Council of an ordinance approving a proposed Development Agreement with River Oaks San Jose, LLC, a California Corporation for the development of real property in North San Jose.

BACKGROUND

The proposed Development Agreement between River Oaks San José (Irvine), to be developed by The Irvine Company, and the City is the vehicle to lay out the agreement reached between the City staff and the developer reallocating up to 450 affordable housing units in the North San José Area Development Policy (NSJADP) to be used as market-rate units. The discussions between Irvine and the City have progressed over the past four months and have been presented, in concept, to the City Council during that time.

DEVELOPMENT AGREEMENT ORDINANCE FINDINGS

Development Agreements are required by the City Municipal Code to meet certain findings to be considered for approval by the City Council. The findings with the appropriate information documenting how the proposal conforms to the requirements of the Municipal Code for each finding area as follows:

1. The proposed development is consistent with the general plan and all applicable specific or area plans; and

The proposed ordinance would set forth the substance of a Development Agreement between the developer and the City regarding the amount of a contribution offered by the developer to facilitate the production of affordable housing units, and would establish the timing of the contribution. The specific project that would benefit from

the Development Agreement is subject to a Planned Development Rezoning that would allow up to 450 multifamily units or industrial park uses. The rezoning is consistent with the Envision 2040 General Plan and the North San José Area Development Policy in that it is on lands designated for the housing overlay, and does not displace driving industry companies

2. The proposed development should be encouraged in order to meet important economic, social, environmental or planning goals of the city; and

The proposed project will make an extraordinary contribution to affordable housing of over \$6,000,000 during a period in which no requirement exists for affordable housing; this will allow the City to proceed with affordable housing projects that have been suspended due to the lack of financial resources to build the projects. This contribution is beyond what any other market-rate builder has provided in the NSJADP area or city-wide.

3. The development agreement would facilitate the development of the subject property in the manner proposed; and

The proposed development does not currently have market-rate units reserved in Phase 1 of the NSJADP. The approval of the Development Agreement would allow the developer to make a contribution to the City for affordable housing that would meet the City's housing goals, and also give certainty for the developer to proceed through the permitting process to be ready to make the financial contribution to the City Affordable Housing Fund.

4. The proposed development meets all of the findings listed for criteria a, or b, or c below.
 - a. The developer will incur unusually substantial costs in order to provide public improvements, facilities or services from which the public will benefit; and

The proposed project will be making an extraordinary contribution to affordable housing of over \$6,000,000 during a period that no requirement existing for affordable housing that will allow the City to proceed with affordable housing projects that have been suspended due to the lack of financial resources to build the projects. This contribution is beyond what any other market-rate builder has provided in the NSJADP area or city wide.

- b. The developer has made commitments to a very high standard of quality and agreed to development limitations beyond that required by existing city zoning code;

The proposed project is high quality and the developer is making a contribution to the Affordable Housing Fund that meets the previous City affordable housing requirement and exceeds it with an additional \$2,000,000 contribution.

ANALYSIS

The proposed Development Agreement would result in the developer making a monetary contribution to the City of San José's affordable housing program of approximately \$8,855,000 total, in two parts--\$6,855,000 as compensation for the City's reallocation up to 450 affordable housing units in Phase 1 of the NSJADP to be built as market-rate units, tied to the actual number and size of units built, and a second fixed amount of \$2,000,000. The first amount is to be paid prior to issuance of the first building permit; the fixed amount would be paid at Certificate of Occupancy of the building. Since the City Council approved the incentives to start housing construction in the NSJADP, all the market-rate units in the phase have been reserved and, in some cases, over-subscribed. Based on the level of competition that currently exists in the North San José market, staff explored approaches that would allow those market forces to drive development while continuing to generate resources to achieve the City's affordable housing goals.

Because market-rate units in the NSJADP are highly coveted by other developers, staff alerted other developers who had expressed interest in additional Phase 1 market-rate units to submit proposals that would achieve the City Council's goal of producing the largest boost to the affordable housing production in the shortest time possible. The proposal from Irvine was the only formal response received that met those goals.

OUTCOME

Approval of the ordinance that would approve the substantive terms of the Development Agreement will provide certainty to the developer to proceed with the Building Permit process and will allow the City the mechanism to reallocate some of the affordable units to market-rate developers while retaining the certainty that sufficient resources will be delivered to the City to build additional affordable housing in the NSJADP as well as the balance of the City. Alternatives to this general concept were considered and were discussed with the City Council when the Council considered and approved amendments to the North San Jose Area Development Policy that would allow the City to consider such a reallocation.

CEQA

An Initial Study (IS) and Addendum to the North San Jose Area Development Policies Update Program Environmental Impact Report (EIR) were prepared by the Director of Planning, Building, and Code Enforcement for the subject Planned Development Rezoning and proposed Development Agreement.

Based on the analysis in the Initial Study and Addendum, the City concludes that the Final Program EIR adequately discloses and addresses the environmental effects of the proposed rezoning for 450 residential units as part of the 32,000 units that the Program EIR analyzed. Furthermore, the City finds that this project would not result in any significant environmental effects not already identified and addressed in the Final Program EIR.

PLANNING COMMISSION

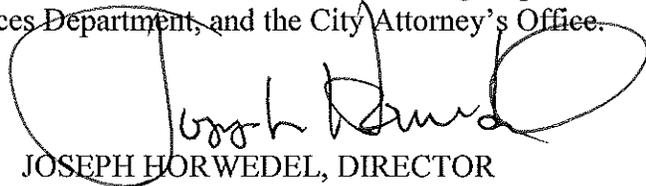
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COORDINATION

The proposed Development Agreement has been coordinated with the Housing Department, the Parks, Recreation and Neighborhood Services Department, and the City Attorney's Office.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", is written over a large, faint circular stamp or watermark.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For additional information, please contact Joe Horwedel at (408) 535-7900.

Attachment

**TERM SHEET FOR
PROJECT DEVELOPMENT AGREEMENT**

RIVER OAKS MULTIFAMILY RESIDENTIAL PROJECT

1. **Proposed Project.** The Irvine Company (“TIC”) proposes to demolish existing buildings and attendant infrastructure, and subsequently develop a high-density multi-family residential project consisting of up to 450 Class A residential units (the “Project”).
2. **Project Site.** The real property proposed to be developed is an approximately 8.1 acre site located at 401 and 405 River Oaks Parkway (the “Project Site”).
3. **Rezoning.** On October 14, 2011, TIC submitted an application for a rezoning of the Project Site to A(PD) (Planned Development) to allow for the Project. The City of San Jose (“City”) agrees to cooperate in good faith with TIC in processing this application. The City’s cooperation is not to be construed as granting any approvals of the rezoning or any other request. If, for any reason (including, but not limited to, withdrawal of the application), the Project Site is not rezoned to A(PD), TIC and the City agree that the existing IP (Industrial Park) site zoning shall remain in effect, and the Project Implementation Agreement (the “Agreement”) contemplated by this Term Sheet shall terminate and neither party shall have any obligations thereunder.
4. **Residential Allocation.**
 - a. **Residential Conversion Permitted.** TIC acknowledges that the Project is subject to the North San Jose Area Development Policy (the “Policy”) phasing requirements. The Policy supports the conversion of specific sites from industrial use to high-density residential use, based upon specific criteria compatible with industrial activity, allowing for the phased development of up to 32,000 new residential units in the North San Jose area. The City and TIC agree that (1) the Project Site does not contain an important, vital, or driving industrial use, as the buildings located at the Project Site are currently vacant, (2) the Project Site is not located adjacent to an industrial use that would be adversely affected by a residential conversion, and (3) the Project Site is not located in proximity to a use that would create a hazardous condition for the proposed residential development.
 - b. **Agreement Will Identify Market Rate Allocation.** Prior to or concurrently with execution of the Agreement, the City shall have reserved 450 market rate residential units to TIC under the Policy, and upon completion of the plan check process for issuance of permits for construction of the first residential building, the City shall allocate 450 market rate units to TIC. The Agreement shall provide that this reservation and any subsequent allocation shall not be modified during the term of this agreement without the consent of TIC.
5. **Environmental Review.** TIC and the City will cooperate on compliance with the environmental review requirements of the California Environmental Quality Act. (“CEQA”; Pub. Resources Code, §§ 21000 et seq; 14 Cal. Code Regs., §§ 15000 et seq.) TIC and the City acknowledge that an environmental impact report was prepared and certified for the North San Jose Development Policies Update (the “NSJEIR”). To the extent authorized by CEQA, and consistent with the City’s approach for other projects in the North San Jose area, TIC and the

City agree to use the NSJEIR to streamline the environmental review for the Project. The City acknowledges that the purpose of the NSJEIR was to allow for such streamlining, and that the City has previously utilized addenda for purposes of complying with CEQA in the North San Jose area.

6. Approval Process. The City will cooperate with TIC to facilitate all permits, agreements, amendments, subdivision maps, site plan reviews, and other zoning and governmental approvals associated with the Project. TIC and the City will identify all City approvals required for the Project, develop a schedule to address processing requirements for the various approvals, and work together in good faith to ensure review and processing of the applications in a timely manner.

7. Payment to City. TIC agrees to pay the City approximately \$6,885,000 (which is equal to the in-lieu fee set forth in the City's Inclusionary Housing Policy assuming that TIC constructs 450 residential units at the Project, each with a net square footage of 900 square feet, and shall be adjusted based upon the actual number of residential units constructed and the net square footage of such constructed residential units), plus an additional \$2 million. The payment shall be made to the City by TIC in two separate installments as follows: (1) \$6,885,000 (as adjusted pursuant to the preceding sentence) shall be payable upon the issuance of the first building permit to authorize residential construction for the Project, and (2) \$2,000,000 shall be payable upon the issuance of a certificate of occupancy for the Project.

8. Satisfaction of Inclusionary Housing Requirement. Because of the uncertain status of the City's Redevelopment Agency and the legal uncertainty created by the *Palmer v. City of Los Angeles* decision, the City agrees that TIC's payment set forth in clause (1) of Section 7 of this Term Sheet will fully satisfy any and all existing and future inclusionary housing requirement(s).

9. Satisfaction of Park Requirement. The City and TIC acknowledge that TIC's Crescent Village project includes a 5-acre public park that is located across the street from the Project. In addition, the City and TIC acknowledge that the Essex Property Trust project at 535 River Oaks Parkway includes a public park. In light of the existence of the nearby public parks, the City and TIC agree that all park requirements (including, without limitation, the City's Parkland Dedication Ordinance, Park Impact Ordinance, and the North San Jose Neighborhoods Plan) applicable to the Project will be satisfied through payment of a consolidated in-lieu park fee, and that no park will be required to be constructed on the Project Site, nor will a parkland dedication be required

10. Agreement Term. This agreement is for the sole purpose of facilitating development of affordable housing in an expeditious manner and implementation is of utmost interest to the City. TIC shall proceed with due diligence and speed to ensure that work necessary to start construction prior to December 31, 2013. Should TIC not obtain their plan check approvals and pull permits to start construction of the first phase including payment to the City prior to December 31, 2013, this agreement is terminated and all allocations of Market Rate Units shall revert back to the Affordable Housing pool in Phase One.