

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO MERGE TWO PARCELS INTO ONE PARCEL AND SUBDIVIDE THE ONE PARCEL INTO NO MORE THAN 15 COMMERCIAL CONDOMINIUM UNITS AND COMMON AREA ON AN APPROXIMATELY 9.78-GROSS-ACRE SITE, FOR THE DEVELOPMENT OF TWO DATA CENTERS TOTALING APPROXIMATELY 522,194 SQUARE FEET, ONE APPROXIMATELY 136,573-SQUARE-FOOT, 300-STALL PARKING STRUCTURE, AND AN ELECTRICAL SUBSTATION, LOCATED ON THE SOUTHEAST CORNER OF TRADE ZONE BOULEVARD AND RINGWOOD AVENUE (2400 RINGWOOD AVENUE AND 1849 FORTUNE DRIVE) (APNS 244-17-009 & 244-17-014)

FILE NO. PT22-002

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on February 17, 2022, an application (File No. PT22-002) was filed by the owner and applicant, Stack Infrastructure, with the City of San José for a Vesting Tentative Map to merge two parcels into one parcel and subdivide the one parcel into no more than 15 commercial condominium units on an approximately 9.78-gross-acre site, and for the concurrent Planned Development Permit application (PD22-001) for the construction of two data centers totaling approximately 522,194 square feet, one approximately 136,573-square foot manufacturing building, an approximately 150,000-square-foot, 300-stall parking structure, an electrical substation, and 39 backup generators with an approximately 32% parking reduction, on that certain real property situated in the Transit Employment Center Planned Development Zoning District TEC(PD) located on the southeast corner of Trade Zone Boulevard and Ringwood Avenue (2400 Ringwood Avenue and 1849 Fortune Drive, APNS 244-17-009 & 244-17-014, 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 April 26, 2023, 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 recommendation 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 plan for the subject property entitled, "Vesting Tentative Parcel Map", dated April 15, 2022, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for

inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were 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; and

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 evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject 9.78-gross-acre site is located at the southeast corner of Trade Zone Boulevard and Ringwood Avenue (2400 Ringwood Avenue and 1849 Fortune Drive). The site is comprised of two lots (APNS 244-17-009 & 244-17-014). The project site is bounded by industrial uses to the east, south, and west, and multifamily residential uses in the City of Milpitas across Trade Zone Boulevard to the north. 2400 Ringwood Avenue is currently developed with a vacant approximately 80,000-square foot single-story industrial building and associated surface parking. 1849 Fortune Drive is currently developed with a vacant approximately 55,000-square-foot single-story industrial building and associated surface parking.
2. **Project Description.** The project consists of the merger of two parcels into one parcel and the subdivision of the one parcel into no more than 15 commercial condominium units with common area, the redevelopment of the subject property for the construction of one four-story advanced manufacturing building (approximately 136,573 square feet), two four story data center buildings (approximately 522,194 square feet), a 300-stall parking garage (150,000 square feet), an associated electrical substation, and 36 backup generators.

The four-story advanced manufacturing building is located at the northernmost portion of the lot nearest to the intersection of Trade Zone Boulevard and Ringwood Avenue. The maximum height of manufacturing building is approximately 83 feet.

The two data center four-story buildings are located in the central and southernmost portions of the site. Each data center consists of two main components. The data

center suites house the client servers, while the administrative facilities include the building lobbies, conference rooms, restrooms, office space, customer space, loading dock, and storage. The two data centers have a maximum height of approximately 80 feet.

The project also includes the construction of a new 100 MVA (mega volt-ampere) electrical substation at the easternmost portion of the site. The substation will be capable of delivering electricity to the data centers from a new Pacific Gas and Electric (“PG&E”) circuit but would not allow any electricity generated from the backup generation facility to be delivered to the transmission grid. To serve the project, PG&E would construct a “looped” transmission interconnection involving two offsite transmission lines. The substation consists of an all-weather asphalt surface, underlain by an aggregate base. A 13-foot-high concrete masonry unit (CMU) wall will be constructed to screen the substation. An additional 8-foot-high chain link fence would also be constructed inside the main wall for additional security.

The project also includes a backup generation facility with a generation capacity of 91 megawatts (MW) to support the needs of the data centers and to provide uninterruptible power supply for the tenant’s servers. The backup generation facility consists of 36 3-MW and 3 1-MW diesel-fired backup generators arranged in two generation yards, each designed to serve the two data center buildings. The generator yards are located to the south and north of the two data center buildings, respectively.

Vehicle parking is provided in a 5-level structured parking garage located in the north-central portion of the site, to the east of the data center buildings. A total of 339 vehicle parking spaces are provided resulting in an approximately 32% vehicle parking reduction. The vehicle parking reduction is supported with the implementation of a Transportation Demand Management (“TDM”) Plan.

The site is accessible to vehicles from a primary 32-foot-wide driveway along Trade Zone Boulevard. Secondary vehicular access is provided from a 32-foot-wide driveway along Fortune Drive and a 32-foot-wide driveway along Ringwood Avenue. A fourth, 26-foot-wide, maintenance-only driveway is provided along Trade Zone Boulevard for access to the electrical substation.

Off-site improvements include construction of a Class IV protected bikeway along Trade Zone Boulevard, a 15-foot-wide detached sidewalk along Trade Zone Boulevard, and a 10-foot detached sidewalk along Ringwood Avenue.

To facilitate the project, the Vesting Tentative Subdivision Map is included with the application to allow the merger of the two parcels into one parcel and the subdivision of the one parcel into no more than 15 commercial condominium units with common area.

3. **General Plan Conformance.** The site is designated Transit Employment Center on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan.

This designation is applied to areas planned for intensive job growth because of their importance as employment districts to the City and high degree of access to transit and other facilities and services. To support San Jose's growth as a Regional Employment Center, it is useful to designate such key Employment Centers along the light rail corridor in North San José, in proximity to the Bay Area Rapid Transit (BART) and light rail facilities in the Berryessa/Milpitas area, and in proximity to light rail in the Old Edenvale area. All of these areas fall within identified Growth Areas and have access to transit and other important infrastructure to support their intensification. Uses allowed in the Industrial Park designation are appropriate in the Transit Employment Center designation, as are supportive commercial uses. The North San José Transit Employment Center also allows limited residential uses, while other Employment Centers should only be developed with industrial and commercial uses.

Analysis: The project encourages the development of manufacturing and data center uses that will generate jobs and revenue for the City. The subject site is located in the Berryessa International Business Park, an identified growth area, that is intended to be developed with intensive employment activities. Based on a market research report prepared by Colliers International, dated November 9, 2022, the manufacturing building is designed to attract businesses focused on "advanced manufacturing" sectors providing examples such as semiconductor or lithium battery production. These types of advanced manufacturing employers provide well-paying jobs and often require high school level education levels. The project would replace two existing aging vacant industrial buildings with a modern advanced manufacturing building as well as two data centers that will support the infrastructure needs of the surrounding area. The subject site is located approximately 2,300 feet from the Milpitas BART station. Bus stops serving VTA Routes 60 and 77 are located directly in front of the project site along Trade Zone Boulevard. Additionally, the applicant is required to implement a Transportation Demand Management (TDM) Plan, which includes the implementation of a Transit Use Incentive Program to encourage transit ridership for employees. Therefore, the project will also facilitate efficient commute patterns for future employees

4. Zoning Ordinance Consistency

General Development Plan

The project is in the TEC(PD) Planned Development Zoning District per File No. PDC22-001. Subject to the project's Development Standards, the newly created TEC(PD) Planned Development Zoning District would allow for Data Center uses as well as uses that conform with the TEC Transit Employment Center Zoning District, in alignment with the Transit Employment Center General Plan land use designation. The Planned Development Zoning District allows for data centers and manufacturing uses, as a permitted uses with the issuance of a Planned Development Permit.

Setbacks and Height

The table below highlights the Development Standards as outlined in the General Development Plan of the TEC(PD) Planned Development Zoning District File No. PDC22-001. The project is in compliance with the development standards of the TEC Transit Employment Zoning District pursuant to Section 20.50.200 of the Zoning Code.

Development Standard	Required	Project
Minimum Lot Size	6,000 square feet	426,016 square feet
Minimum Front Setback (Building)	15 feet	23 feet (from Trade Zone Boulevard) 20 feet (from Fortune Drive)
Minimum Side Setback	0 feet	20 feet (from Ringwood Avenue), 20 feet (from Easterly property line)
Minimum Rear Setback	0 feet	26 feet (from Southeasterly property line)
Maximum Building Height	120 feet	83 feet

As shown on the Project Plans, the project conforms with all required height and setback standards pursuant to the General Development Plan of the Planned Development Zoning District.

Use	Square Footage	Ratio	Required
Data Center	31,231 sf of data center office space	1 stall per 250 sf of office/meeting/technician space	125 spaces
	257,175 sf of data hall space	1 stall per 5,000 sf of floor area for computer equipment space	52 spaces
Manufacturing	112,246 sf of floor area	1 per 350 square feet of floor area	321 spaces
Total Required			498
Total Provided			339

Parking Reduction	32%
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Parking

Pursuant to Section 20.90.060 of the Zoning Code, the project is required to provide 498 vehicle parking spaces. A total of 339 vehicle parking spaces are provided, resulting in a parking reduction of approximately 32%. Pursuant to Section 20.90.220 of the Zoning Code, up to 20% of the parking reduction is allowed as the project is located within the Berryessa International Business Park, a growth area. The additional 12% parking reduction is allowed with the implementation of a TDM plan. A TDM plan, dated October 20, 2022 was prepared by Hexagon Transportation Consultants, Inc, which achieves an additional 12% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project is required to implement a Transit Use Incentive Program and a Telecommuting and Flexible Work Schedule.

In addition to the approximately 32% parking reduction, the project requires a total of 50 motorcycle parking spaces and 38 bicycle parking spaces. The project would provide 50 motorcycle parking spaces and 39 bicycle parking spaces, in compliance with the Zoning Code requirements

5. Environmental Review.

In accordance with the California Environmental Quality Act (CEQA), the California Energy Commission (CEC) is the lead agency for the Project and Certified the Final Environmental Impact Report (“FEIR”) on April 12th, 2023. The FEIR identified potential environmental impacts to air quality, biological resources, cultural and tribal resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, noise, and transportation. These impacts would be reduced to less than significant levels with the implementation of identified mitigation measures. The FEIR determined there would be no significant and unavoidable impacts due to the implementation of the project,

The City of San José is the Responsible Agency for the Project pursuant to CEQA. Whenever a Responsible Agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a Responsible Agency to make its own findings pursuant to Section 15091. When making the findings, a Responsible Agency should adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during Project implementation. The City of San José reviewed the Draft EIR prior to its certification by the CEC and concluded that all impacts were adequately addressed, impacts were reduced to less than significant levels, and that such a mitigation monitoring and reporting program has been prepared for the Project for consideration

by the decision-maker of the City of San José as the Responsible Agency for the Project (the “Mitigation Monitoring and Reporting Program” or “MMRP”). The FEIR with MMRP is available at <https://www.energy.ca.gov/powerplant/tradepark>.

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

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the project. An on-site sign has been posted on the project frontage since March 5, 2021. A formally noticed Community Meeting was held on Thursday, February 23, 2023 to introduce the project to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on March 30, 2023. The staff report is also posted on the City’s website. Staff has also been available to respond to questions from the public.

7. Vesting Tentative Map Findings: In accordance with Section 66474 of the Government Code of the State of California, the City Council of the City of San José, in consideration of the subdivision shown on the Vesting Tentative Map with the imposed conditions, shall deny approval of a Vesting Tentative Map, if it makes any of the following findings.

1. That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
2. That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
3. That the site is not physically suitable for the type of development.
4. That the site is not physically suitable for the proposed density of development.
5. 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.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. 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: To facilitate the potential future financing and sale of portions of the subject property, the Vesting Tentative Subdivision Map is the preliminary step of conditional approval to merge two parcels into one parcel and subdivide the one parcel into no more than 15 commercial condominium units and common area. As discussed in Section 5 above, the project is consistent with the applicable General

Plan goals, policies, and land use designation. The project site is physically suitable for the project buildings and the FAR of the TEC land use designation. The manufacturing, data center, and substation uses are all permitted uses of the TEC(PD) Planned Development Zoning District (File No. PDC22-001). The parcel exceeds the minimum required lot size of 6,000 square feet. The minimum commercial condominium size is not less than 750 square feet. The subject site is located within Berryessa International Business Park in an already developed area. Therefore, the project and associated improvements would not cause environmental damage or substantially injure fish or wildlife or their habitat. Please see the discussion on the California Environmental Quality Act in Section 5 above for additional information.

A Declaration of Covenants, Conditions, and Restrictions (CC&Rs) is required to be reviewed and approved by the City, and recorded, prior to final map approval. The CC&Rs would include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common areas continue to be adequately and safely maintained and repaired for the life of the common interest development. Additionally, the applicant, at its sole cost, shall prepare grant deeds for all mutual or reciprocal easement right, which shall be reviewed by the City for compliance with the terms of Chapter 20.175 of the Zoning Code and Chapter 19 of Subdivision Code. Additionally, the project is required to record a covenant of easement in favor of the City for private ingress and egress, emergency vehicle access, landscape maintenance, public utilities, and water lines purposes in accordance with Chapter 20.110 of the Zoning Code. Therefore, based on the review of Vesting Tentative Map, the Director of Planning, Building and Code Enforcement is recommending approval of the Vesting Tentative Subdivision Map, because none of the above findings can be made for the denial of the subdivision.

- 8. Subdivision Ordinance Findings.** In accordance with San José Municipal Code Section 19.12.130, the Director may approve the 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. Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code specified in Findings Section 1 herein and also adds the additional requirement that the project obtain CEQA clearance.

Analysis: As described above, based on review of the subdivision, the Director of Planning, Building and Code Enforcement is recommending approval of the Vesting Tentative Map. The map and the development's design are consistent with the San José Envision 2040 General Plan designation of Transit Employment center and the

TEC(PD) Planned Development Zoning District (PDC22-001), as discussed in Section 4 (Zoning Ordinance Consistency) above. The site is physically suitable for the subdivision in that the project's density and FAR and lot sizes are in conformance with the Transit Employment Center land use designation.

In accordance with the California Environmental Quality Act (CEQA), the California Energy Commission (CEC) is the lead agency for the Project and Certified the Final Environmental Impact Report ("FEIR") on April 12th, 2023. The FEIR identified potential environmental impacts to air quality, biological resources, cultural and tribal resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, noise, and transportation. These impacts would be reduced to less than significant levels with the implementation of identified mitigation measures. The FEIR determined there would be no significant and unavoidable impacts due to the implementation of the project. The City of San José shall adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures identified in the FEIR. 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 subdivision and subsequent improvements are not likely to cause serious public health problems.

In accordance with the findings set forth above, a Vesting Tentative Map to establish the conditions of approval by which the subject property may be subdivided by recordation of an approved final subdivision map for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Vesting Tentative Map 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 conditionally 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 of the San José Municipal Code 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 City Council of the City of San José, if within such time period, a Final Map has not been obtained,

pursuant to and in accordance with the provisions of this Vesting Tentative Map. The date of issuance is the date this Vesting Tentative Map is approved by the City Council. However, the Director of Planning, Building, and Code Enforcement may approve a Vesting Tentative Map Extension to extend the validity of this Vesting Tentative Map in accordance with Title 19.

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 lot 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 lots for which final maps or lot 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 and all associated development and improvements shall conform to the approved Tentative Map plans entitled, "Vesting Tentative Parcel Map", dated April 15, 2022, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set". The Vesting Tentative Map allows for a phased subdivision.
5. **Conformance with Other Permits.** The subject Vesting Tentative Map conforms to and complies in all respects with the Planned Development Permit (File No. PD22-001) 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 Special Use Permit for such lands automatically expires or for any reason ceases to be operative.
6. **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.
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 the 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. **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.
10. **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.

11. **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 private ingress and egress, private sanitary sewer, private storm drainage, private surface drainage release, ingress, egress, emergency access, and access to and operation and maintenance for stormwater treatment in accordance with Part 1 of Chapter 20.110 of Title 20 of the San José Municipal Code, across the subject property for the benefit of the commercial condominium units 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.
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. **Common Interest Owner's Association.** Prior to approval of a Final Map by the Department of Public Works, a Common Interest Owner's Association shall be established for maintenance of all common areas, including but not limited to, private streets, pedestrian walkways, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district. The subdivider shall provide to the Owner's Association a copy of the Vesting Tentative Map Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the associated Planned Development Permit (File No. PD22-001), and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
14. **Common Interest Development.**
 - a. The Subdivider, at its sole cost, shall prepare, submit for prior 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 the requirements of this chapter.
 - 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 this chapter and the requirements of Title 19 of this Code, and shall upon city approval be recorded concurrently with the approved parcel or final map.

15. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Vesting Tentative Map 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 makes a determination that such action 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.
16. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
17. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
18. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
15. **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. _____.
16. **Standard Environmental Permit Conditions**
 - a. **Construction Related Air Quality.** The following measures shall be implemented during all phases of construction to control dust emissions.
 - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.

- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet-~~power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.~~
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. All vehicle speeds on unpaved roads shall be limited to 15 mph
- viii. Replant vegetation in disturbed areas as quickly as possible.
- ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- x. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- xi. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- xii. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. **Biological Resources**

- i. **Santa Clara Valley Habitat Plan.** The project may be subject to applicable Santa Clara Valley Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Subdivider shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.
- ii. **Tree Replacement.** The trees removed for the project shall be replaced at ratios required by the City, as stated in the table below, as amended:

Table: Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box replacement tree = two 15-gallon replacement trees

- (i) 156 trees onsite will be removed, 12 trees will be replaced at a 1:1 ratio, 40 trees will be replaced at a 2:1 ratio, 3 trees will be replaced at a 3:1 ratio, 91 trees will be replaced at a 4:1 ratio, and the remaining 10 trees will be replaced at a 5:1 ratio. The total number and size of replacement trees required to be planted on site is 515 (15-gallon) trees or 258 (24-inch box) trees. Based on the landscape plan provided, a total of 47 (24-inch box) trees are to be planted on site (equal to 94 15-gallon trees). Prior to the issuance of Grading or Building Permits, whichever comes first, the Permittee shall be required to pay the Off-Site Tree Replacement Fee to the City for 421 trees that could not be planted on-site because of insufficient area.
- (ii) Prior to the issuance of building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for ## off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
- (iii) If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment
 - (a) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site
 - (b) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee

Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

c. Cultural Resources

- i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Public Works and Code Enforcement or the Director's designee, and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Subdivider shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission ("NAHC") within 24 hours. The NAHC will then designate a Most Likely Descendant ("MLD"). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- (i) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - (ii) The MLD identified fails to make a recommendation; or
 - (iii) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- d. **Greenhouse Gas Emissions/Energy**
 - i. **Proof of Enrollment in SJCE.** Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement or Director's designee, proof of enrollment in the San Jose Community Energy GreenSource program (approximately 60% renewable energy) or TotalGreen program (approximately 100% renewable energy) assumed in the approved environmental clearance for the project in accordance with the CEQA. If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.
- e. **Geology and Soils**
 - i. **Seismic Hazards**
 - (i) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - (ii) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - (iii) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
 - (iv) The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
 - (v) If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
 - f. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of

the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Subdivider shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.

g. Hazards and Hazardous Materials

i. Asbestos and Lead-Based Paint

- (i) In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- (ii) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- (iii) All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- (iv) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- (v) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District ("BAAQMD") regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

h. Hydrology and Water Quality

i. Construction Related Water Quality

- (i) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- (ii) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- (iii) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

- (iv) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- (v) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- (vi) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- (vii) Vegetation in disturbed areas shall be replanted as quickly as possible.
- (viii) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- (ix) The Subdivider shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

i. Noise

- i. **Construction Related Noise.** Noise minimization measures include, but are not limited to, the following:
 - (i) Pile Driving is prohibited.
 - (ii) Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
 - (iii) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - (iv) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - (v) Prohibit unnecessary idling of internal combustion engines.
 - (vi) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - (vii) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - (viii) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.

- (ix) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
 - (x) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- ii. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

19. Housing. This development is subject to the City’s Commercial Linkage Fee (CLF) and each of the conditions below:

- a. Permittee must strictly comply with each requirement of the approved CLF Satisfaction Plan Application (Plan), Processing Fee, and Agreement, and any other applicable requirements of the CLF.
- b. No building permit may issue until an Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the CLF and the proposed Plan to fulfill the CLF obligations.
- c. No scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.

19. Building Division Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, PT22-002 shall be printed on all construction plans submitted to the Building Division.
- b. *San Jose’s Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City’s Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division.

- Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- f. **Common Interest Development.** Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
 - g. **Project Addressing Plan.** Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development. The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - h. **Other.** Such other requirements as may be specified by the Chief Building Official.
20. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
21. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of Tract or Parcel Map (if applicable) 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. The Subdivider is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works Permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:** A Transportation Analysis has been performed for this project. We conclude that, with the following conditions, the subject project will be in conformance with the City of San Jose Transportation Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts. See separate Transportation Analysis Memo dated 3/30/23 for additional information.
 - c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground

- pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. If the project will haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the Subdivider is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed for conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs

have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

f. **Flood: Zone AO, Depth 1’:**

- i. Elevate the lowest floor to 1 foot or more above the existing highest adjacent grade to the proposed structure or floodproof to the same elevation. For insurance rating purposes, the building’s floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
- ii. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
- iii. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
- iv. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the depth of flooding or protected from flood damage.
- v. Construction materials used below the depth of flooding must be resistant to flood damage.

g. **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 issuance of Public Works clearance.

h. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Trade Zone Blvd prior to issuance of a Public Works Clearance. Percentage of the base fee in place at the time of payment will be due. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record’s City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.

i. **Street Improvements:**

- i. Trade Zone Boulevard/Ringwood Avenue intersection: Construct a complete streets protected intersection design, with a Class IV protected bikeway and a raised crosswalk at the southeast and southwest corners at Trade Zone Boulevard/Ringwood Avenue.
- ii. Trade Zone Boulevard:
 - (i) Construct a raised median island per City standards along the Trade Zone Boulevard project frontage.

- (ii) Construct an on-street Class IV protected bikelane along the Trade Zone Boulevard project frontage that includes a 5-foot wide raised concrete island and 7-foot wide bikelane.
- (iii) Reconstruct VTA Standard bus stop. Actual dimensions to be coordinated with City and VTA during implementation.
- (iv) Construct 15-foot wide detached sidewalk with curb, gutter, 7-foot wide parkstrip, and 8-foot wide sidewalk along Trade Zone Boulevard frontage per CSJ standards.
- (v) Construct 32-foot wide driveway per City standards at the proposed ingress/egress location along Trade Zone Boulevard
- (vi) Construct 26-foot wide driveway per City standards at the easternmost proposed ingress/egress location along Trade Zone Blvd.
- (vii) Provide 3-inch diameter communications conduit along Trade Zone Boulevard
- iii. Ringwood Avenue:
 - (i) Construct 10-foot wide detached sidewalk with parkstrip per City standards along the Ringwood Avenue frontage.
 - (ii) Construct 32-foot wide driveway per City standards at the proposed ingress/egress locations along the Ringwood Ave.
 - (iii) Per the City Standard Details, revise depiction of driveway widths to exclude flares.
 - (iv) Provide contribution for future implementation of a Class IV protected bike lane along the Ringwood Avenue frontage per the CSJ Better Bike Plan 2025. Fair share contribution estimated at \$121 per LF of total project frontage.
- iv. Subdivider shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
- v. Repair, overlay, or reconstruction of asphalt pavement up to half street along Fortune Drive frontage may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans
- vi. Close unused driveway cuts.
- vii. Street dedication required to cover the extent of all public improvements.
- viii. Dedication and improvements of the public streets shall be to the satisfaction of the Director of Public Works.
- ix. Coordination with Milpitas may be required for any signal modifications at the Trade Zone Blvd/Ringwood Ave intersection.
- j. **Sanitary:** The Subdivider is required to submit a sanitary sewer plan with pipe slopes, surface elevations, and invert elevations.
- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

- I. **Street Trees:**
 - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current “Guidelines for Planning, Design, and Construction of City Streetscape Projects”. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
 - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are to be removed.
 - m. **Referrals:** This project should be referred to the City of Milpitas and the VTA.
22. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
23. **Final Map.** No Final Map or Tract Map shall be approved by City Council unless and until the appeal period for the development permit, City File No. PD22-001 has expired and all appeals have been exhausted.
24. **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.
25. **Revocation, Suspension, Modification.** This Vesting Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or conditions.

In accordance with the findings set forth above, a Vesting Tentative Map is hereby approved.

ADOPTED this ____ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
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"
VESTING PARCEL MAP T22-002
LEGAL DESCRIPTION
FOR PLANNING PURPOSES ONLY

PARCEL 1

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP", IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, FILED FOR RECORD ON SEPTEMBER 10, 1981 IN BOOK 489 OF MAPS, AT PAGE 43, TOGETHER WITH PARCEL 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP", IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, FILED FOR RECORD ON JULY 28, 1983 IN BOOK 515 OF MAPS, AT PAGE 24, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 2, SAID CORNER BEING ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF TRADE ZONE BOULEVARD, A 53.00 FOOT WIDE HALF-STREET; THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE AND ALONG THE EASTERLY LINE OF SAID PARCEL 2 THE FOLLOWING THREE (3) COURSES:

- 1.) SOUTH 03°23'21" EAST 349.77 FEET;
- 2.) THENCE SOUTH 86°36'39" WEST 358.42 FEET;
- 3.) THENCE SOUTH 03°23'21" EAST 31.40 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2, SAID CORNER ALSO BEING A POINT ON THE NORTHERLY LINE OF SAID PARCEL B;

THENCE ALONG SAID NORTHERLY LINE NORTH 86°36'39" EAST 17.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL B;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL B SOUTH 03°23'21" EAST 462.07 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL B, SAID CORNER BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF FORTUNE DRIVE, A 40.00 FOOT WIDE HALF-STREET;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B AND SAID NORTHERLY RIGHT-OF-WAY LINE, SOUTH 86°36'39" WEST 347.03 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL B;

THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG THE WESTERLY LINE OF SAID PARCEL B AND SAID PARCEL 2 THE FOLLOWING THREE (3) COURSES:

- 1.) NORTH 03°23'21" WEST 634.02 FEET;
- 2.) THENCE SOUTH 86°36'39" WEST 30.00 FEET;
- 3.) THENCE NORTH 03°23'21" WEST 13.04 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 2, SAID CORNER BEING A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF RINGWOOD AVENUE, A 40.00 FEET WIDE HALF-STREET, SAID RIGHT-OF-WAY LINE ALSO BEING A POINT ON A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, AND HAVING A RADIUS OF 540.00 FEET, A RADIAL LINE TO SAID CURVE HAVING A BEARING OF NORTH 43°57'16" WEST;

EXHIBIT "A"
VESTING PARCEL MAP T22-002
LEGAL DESCRIPTION
FOR PLANNING PURPOSES ONLY

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL B AND SAID SOUTHEASTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES:

- 1.) NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°26'35", AN ARC DISTANCE OF 296.34 FEET TO A REVERSE CURVE, CONCAVE SOUTHEASTERLY, AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE TO SAID CURVE THAT BEARS NORTH 75°23'51" EAST;
- 2.) THENCE NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 81°13'12", AN ARC DISTANCE OF 70.88 FEET TO A POINT OF TANGENCY WITH THE NORTHEASTERLY LINE OF SAID PARCEL 2, SAID NORTHEASTERLY LINE ALSO BEING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID TRADE ZONE BOULEVARD;

THENCE ALONG SOUTH NORTHEASTERLY LINE AND SAID SOUTHWESTERLY RIGHT-OF-WAY LINE SOUTH 84°10'39" EAST 507.00 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE-DESCRIBED PARCEL CONTAINS 9.78 ACRES, MORE OR LESS.

AS SHOWN ON THE ATTACHED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RIGHTS, RIGHTS-OF-WAY, AND OTHER MATTERS OF RECORD, IF ANY.

PREPARED BY ME OR UNDER MY DIRECTION
ON APRIL 5, 2023.



PETER E. WEILBACHER, PLS 8403

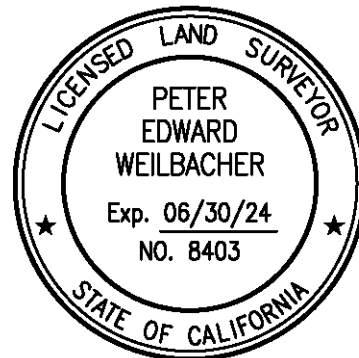
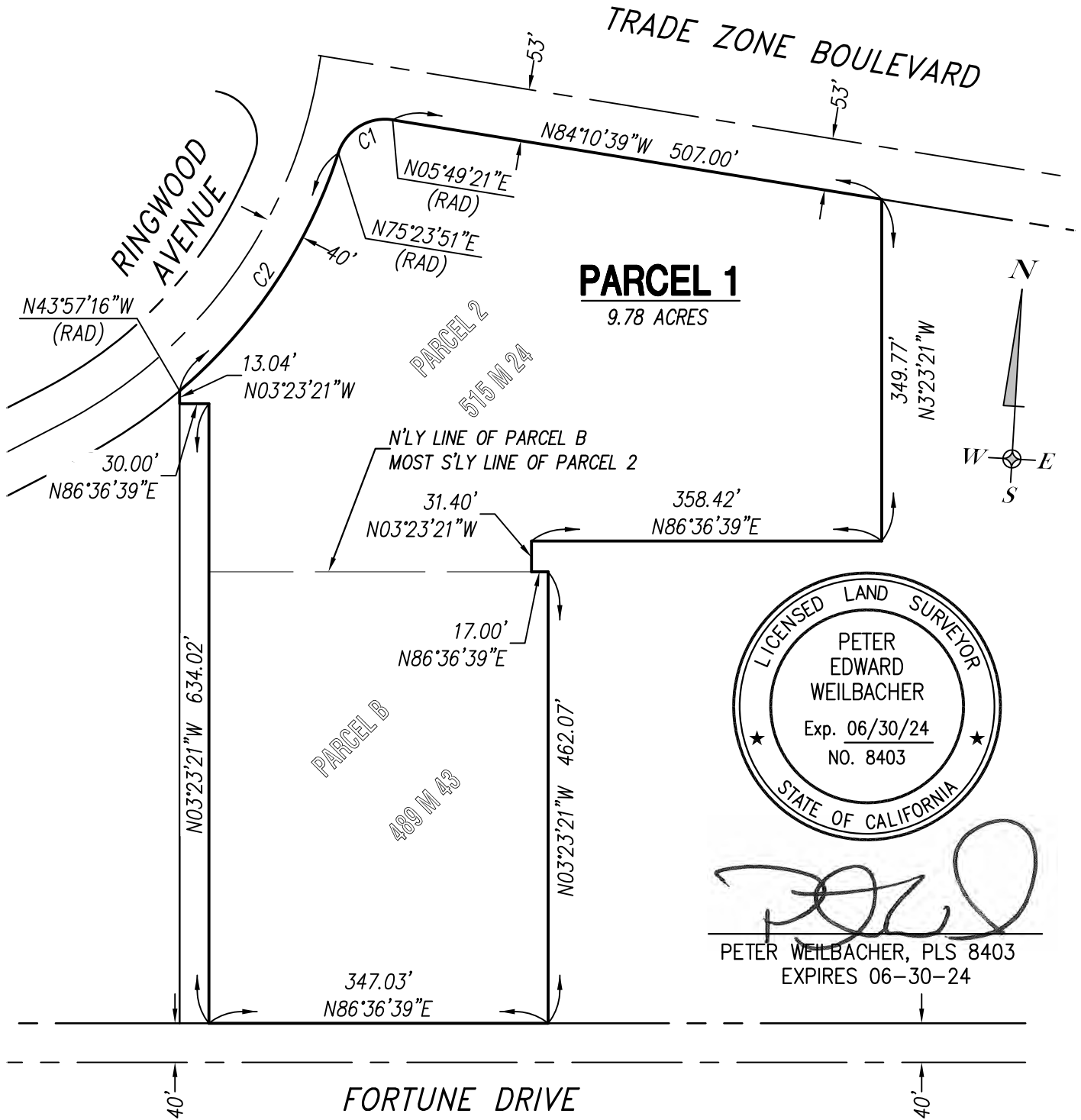


EXHIBIT "B"

PROPOSED PARCEL EXHIBIT



NOTES

SEE SHEET 2 FOR CURVE TABLE, LEGEND, AND BASIS OF BEARINGS STATEMENT.

FOR PLANNING PURPOSES ONLY

DATE: 04/05/2023



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EXHIBIT "B"

PROPOSED PARCEL EXHIBIT

<i>CURVE TABLE</i>			
<i>CURVE</i>	<i>RADIUS</i>	<i>LENGTH</i>	<i>DELTA</i>
<i>C1</i>	<i>50.00'</i>	<i>70.88'</i>	<i>081°13'12"</i>
<i>C2</i>	<i>540.00'</i>	<i>296.34'</i>	<i>031°26'35"</i>

BASIS OF BEARINGS

THE BEARING NORTH 86°36'29" EAST, BEING THE CENTERLINE OF FORTUNE AVENUE, AS SHOWN ON THAT CERTAIN PARCEL MAP, RECORDED IN BOOK 916 OF MAPS AT PAGE 43, SANTA CLARA COUNTY RECORDS, AND AS FOUND MONUMENTED, WAS TAKEN AS BASIS OF BEARINGS FOR THIS MAP.

LEGEND

- DISTINCTIVE BOUNDARY LINE
- RIGHT OF WAY
- EXISTING PROPERTY LINE
- HISTORIC LOT LINE
- CENTERLINE

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