

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO ALLOW FOR UP TO 16 RESIDENTIAL CONDOMINIUM UNITS ON TWO PARCELS ON AN APPROXIMATELY 0.81-GROSS-ACRE SITE SITUATED ON THE WEST SIDE OF EVERGREEN VILLAGE SQUARE, BETWEEN RUBY AVENUE AND CLASSICO AVENUE (APN: 659-57-015 & 659-84-093)**

**FILE NO. T23-010**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on July 14, 2023, the applicant, Reyad Katwan of Hawkstone Development, on behalf of the property owner, William P. West of Shapell Norcal Rental Properties, LLC (“Subdivider”), filed a Vesting Tentative Map application (File No. T23-010) to the City of San José (“City”) to allow for up to 16 residential condominium units including up to 10 units on the approximately 0.54-gross-acre lot (APN 659-57-015), and up to six units on the approximately 0.27-gross-acre lot (APN 659-84-093), in association with the concurrent Planned Development Permit application (PD21-020) for the construction of 16 multi-family residential units, including seven live-work units, in three buildings on these two lots, on that certain real property situated in the MUN(PD) Planned Development Zoning District (File No. PDC21-036) located on the west side of Evergreen Village Square, between Ruby Avenue and Classico Avenue (APN: 659-57-015 & 659-84-093) 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”, and Exhibit "B," entitled “Plat Map,” which are attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, at a duly noticed public hearing on May 28, 2025, the Planning Commission considered public comments and all evidence and testimony received at the public hearing regarding the Project and recommended that the City Council approve the Project; and

**WHEREAS**, this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building, and Code Enforcement and conducted a duly noticed public hearing on the Project, giving all persons full opportunity to be heard and to present evidence and testimony; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Evergreen Village Square, Vesting Tentative Map for Condominium Purposes", dated revised on September 18, 2024; said plan is on file in the Department of Planning, Building and Code Enforcement, is available for inspection and is incorporated by reference;

**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 Project:

1. **Site Description and Surrounding Uses.** The subject site, consisting of two separate lots totaling approximately 0.81 gross acre, is located on the west side of Evergreen Village Square, between Classico Avenue and Ruby Avenue. The southern lot (Lot 1, APN 659-57-015) is approximately 0.54 acre, and the northern lot (Lot 2, APN 659-84-093) is approximately 0.27 acre. Both lots are undeveloped. The site is surrounded by a townhome building to the north, Evergreen Village Duck Pond to the west, apartment buildings and a library to the southeast across Classico Avenue, Evergreen Village Square to the east, and commercial use to the east across Ruby Avenue.

2. **Project Description.** The Project consists of a Vesting Tentative Map to allow up to 16 residential condominium units on two parcels, including up to 10 units on parcel “Lot 1” and up to six units on parcel “Lot 2.”

In conjunction with the Vesting Tentative Map, the Project also includes a Planned Development Rezoning, File No. PDC21-036, and a Planned Development Permit, File No. PD22-021. The Planned Development Rezoning rezoned the site from the A(PD) Planned Development Zoning District to the MUN(PD) Planned Development Zoning District, and the Planned Development Permit allowed the construction of three buildings on these two lots for a total of 16 multi-family residential units, including seven live-work units.

3. **General Plan Conformance.** The Project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of MUN Mixed Use Neighborhood.

Density: Up to 30 DU/AC; FAR 0.25 to 2.0 (1 to 3.5 stories)

This designation is applied to areas intended for development primarily with either townhouse or small lot single-family residences and to existing neighborhoods that were historically developed with a wide variety of housing types, including a mix of residential densities and forms. This designation supports commercial or mixed-use development integrated within the MUN Mixed Use Neighborhood area. Existing neighborhoods with this designation are typically characterized by a prevalence of atypical lot sizes or shapes and a parcel-by-parcel development pattern where a small townhouse development may exist adjacent to a more traditional single-family development or more intense multi-family development.

*Analysis: The Vesting Tentative Map is to allow for up to 16 residential condominium units on two parcels at the subject site to facilitate the 16-unit multi-family residential development project (PD21-020). The site is within a neighborhood that includes a mix of two- and three-story townhomes, detached single-family houses, low-rise apartment buildings, and low-rise commercial buildings. The project development's urban form (three-story multi-family residential buildings) is consistent with the surroundings. The project density is 19.75 DU/AC, which is also consistent with the MUN density.*

4. **Zoning Conformance.** The project site is located within the MUN(PD) Planned Development Zoning District, File No. PDC21-036. The Vesting Tentative Map is associated with the development covered under the Planned Development Permit, File No. PD21-020, The development is consistent with the following MUN(PD) development standards:
  - a. Land Use. This MUN(PD) Zoning District would allow for permitted, special, and conditional uses that conform with the MUN Mixed Use Neighborhood Zoning District, as amended, including multiple dwellings and live-work units.
  - b. Development Standards. The MUN Mixed Use Neighborhood Zoning District in Chapter 20.55 of the Zoning Code is the base zoning district for this MUN(PD)

Planned Development Zoning District. The development standards for both are compared in the table below, including proposed project compliance with the Planned Development Zoning standards.

**MUN & MUN(PD) Zoning District Development Standards**

| <b>Development Standard</b>   | <b>MUN Requirement (Conventional)</b>                             | <b>MUN(PD) Requirement</b>  | <b>Provided by Project</b>  |
|---|---|---|---|
| Height (maximum)  | Multiple dwelling: 45 feet  | 45 feet*  | Building A: 35 feet<br>Building B: 37.75 feet<br>Building C: 42 feet  |
| Stories (maximum)   | Multiple dwelling: 4  | No change   | 3   |
| Setback, Front (to the property lines along public streets) (minimum) | 10 feet   | 5 feet  | 5 feet  |
| Side, interior (minimum)  | 8 feet  | No change   | Building A: 8 feet<br>Building B: 9 feet<br>Building C: 13 feet   |
| Rear (minimum)  | 15 feet   | 15 feet (Lot 1, APN 659-57-015)<br><br>7 feet (Lot 2, APN 659-84-093) | Building A (on Lot 2): 7 feet<br>Building C (on Lot 1): 20 feet   |
| Private Open Space (minimum)  | Multiple dwelling: 60 square feet per unit;<br><br>Width: 15 feet | 45 square feet per unit;<br><br>Width: 8 feet                         | Unit A1: 69 square feet<br>Unit A1a: 69 square feet<br>Unit B1: 45 square feet<br>Unit B2: 59 square feet<br>Unit C1: 87 square feet<br>Unit C2: 97 square feet<br>Width: 8 to 13.75 feet |
| Common Open Space (minimum)   | 100 square feet per unit  | Not required  | Not provided.   |

\* Elevator shafts, roof equipment, and other non-habitable building elements (including architectural elements) may extend 10 feet past the maximum building height.

*Analysis: The associated Planned Development Permit conforms with the required height, setback, and private open space standards pursuant to the project development standards as outlined in the General Development Plan of the Planned Development Zoning District. The reduced setbacks and open space requirements compared to the standard (conventional) MUN Zoning District would allow the project to achieve a density consistent with the General Plan Land Use Designation of MUN Mixed Use Neighborhood, while maintaining consistency with the form and pattern of the neighborhood.*

- c. Parking: Pursuant to the General Development Plan, vehicle, bicycle, and motorcycle spaces are to be provided in accordance with Chapter 20.90 of the Zoning Code, as may be amended, except as follows: Each unit shall have a minimum one-car garage.

*Analysis: The Project development includes fewer than 26 multi-family residential units. Therefore, the Project is exempt from the Transportation Demand Management (TDM) requirement per Zoning Code Section 20.90.900.B.2.b.*

Each project unit would include an enclosed garage. Six units include a one-car garage, and ten units include a two-car garage. The total number of parking spaces provided is 26  $((6 \times 1) + (2 \times 10))$  spaces.

Bicycle parking: Pursuant to Section 20.90.250, the Director of Planning, Building and Code Enforcement may reduce or eliminate required long-term bicycle parking spaces for multi-family residential uses with a development permit when the multi-family uses are located in buildings that have individual enclosed garages assigned to each multi-family dwelling unit.

*Analysis: Pursuant to Section 20.90.250, each project unit includes a garage; therefore, the project is not required to provide bicycle parking spaces.*

Two-wheeled Motorized Vehicle Parking: Two-wheeled motorized vehicle parking shall be provided at a rate of 2.5% of standard vehicle parking provided, except for multi-family residential uses when the multi-family uses are located in buildings that have individual enclosed garages assigned to each multi-family dwelling unit.

*Analysis: Pursuant to Section 20.90.250, each project unit includes a garage, and no surface parking is provided. Therefore, the project is not required to provide motorcycle parking spaces.*

5. **Environmental Review.** The City of San José, as the lead agency for the project, prepared an Initial Study/Mitigated Negative Declaration ("IS/MND") for the subject project. The potential environmental impacts of the subject project were assessed in the IS/MND. The document was circulated for public comment from February 25,

2025, to March 15, 2025. The IS/MND identified potential impacts to Biological Resources, and Hazards and Hazardous Materials. The project includes a Mitigation Monitoring and Reporting Program (“MMRP”) and incorporates standard conditions and best management practices for construction activities. The IS/MND concluded that the project would not result in a significant and unavoidable impact and an MND is the appropriate level of CEQA clearance for the project.

A total of two comment letters were received during the public review period. One letter was received from the Amah Mutsun Tribal Band of San Juan Bautista & AMTB and provided general information on tribal cultural resources and most-likely descendant (“MLD”) recommendations, as well as resource sensitivity training and tribal resource monitoring services offered by the commenting party. The letter from the Amah Mutsun Tribal Band of San Juan Bautista & AMTB seemed to be intended for another project located in Redwood City, based on context within the comment letter. The second comment letter received was submitted by PG&E confirming coordination with the applicant regarding the location of PG&E utilities and easements and did not raise any environmental concerns.

The comments received did not result in any changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. While not required under the CEQA Guidelines for an IS/MND, these comments were addressed by staff in a formal Response to Comments document available on the project website and emailed to the commenting parties.

The entire IS/MND and other related environmental documents are available on the Planning website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/evergreen-village-townhomes-project>

6. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals.** Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the project. Three onsite signs have been posted on the project street frontages since January 24, 2022. 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 May 8, 2025. Staff have 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 proposed 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: The Vesting Tentative Map is for residential condominium purposes for up to 16 units. Based on the review of the Vesting Tentative Map, the Director of Planning, Building, and Code Enforcement of the City of San José does not make any such findings to deny the project. As discussed in the General Plan Conformance section, the project is consistent with General Plan land use designation as well as policies related to Land Use and Housing. The General Plan land use designation of MUN Mixed Use Neighborhood allows the development of multifamily dwellings. The project site is physically suitable for multifamily residential buildings, and the residential density is consistent with the MUN Mixed Use Neighborhood land use designation, and the urban form is consistent with the surrounding neighborhood. Furthermore, the project site does not contain historic resources, sensitive habitats, or wildlife. The project includes the construction of two private streets that would be accessible from Classico Avenue and Ruby Avenue. Additionally, as explained above, the project is consistent with the subject MUN(PD) Zoning District.*

8. **Subdivision Ordinance Findings.** In accordance with San José Municipal Code Section 19.12.130, the Director of Planning, Building, and Code Enforcement 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: Based on the review of the subject Vesting Tentative Map, 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 MUN Mixed Use Neighborhood and the MUN(PD) Planned Development Zoning District (PDC21-036), as discussed above. The site is physically suitable for the subject development in that the residential density is consistent with the land use designation.*

*In accordance with the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration (MND) has been prepared for the project. The MND identifies potential project impacts related to Biological Resources, and Hazards and Hazardous Materials, which can be reduced to less than significant with mitigation measures. The City of San José shall adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures identified in the MND. The project site is currently undeveloped and does 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 of the San José Municipal Code, 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. **Map Expiration.** 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 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 of Planning, Building, and Code Enforcement 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, "Evergreen Village Square, Vesting Tentative Map for Condominium Purposes", dated revised on September 18, 2024, 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".
5. **Conformance with Other Permits.** The subject Vesting Tentative Map conforms to and complies in all respects with the Planned Development Permit (File No. PD21-020) 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 proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into an improvement contract pursuant to agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and shall provide the bonds and insurance mentioned 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.** The Subdivider shall dedicate on the final map for public use easements for public utilities, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and slope easements in and upon all areas within the subdivision shown on the Vesting Tentative Map for the subdivision to be devoted to such purposes.

11. **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.
12. **Homeowner's Association.** Prior to the recordation of a Final Map, a Homeowner'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 Homeowner's Association a copy of the Vesting Tentative Map Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans within 30 days of completion.
13. **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. PD21-020, has expired and all appeals have been exhausted.
14. **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.
  - e. For Final Maps that are phased, where the phasing is not specified, the Subdivider is required to process a Permit Amendment to specify the phases and phased improvements. All improvements must be in conformance with the associated development permit, as may be amended.

- 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.
- 16. Housing Department.** Residential Developments are subject to the Inclusionary Housing Ordinance (“IHO”).
- a. Prior to earliest of approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
  - b. Permittee 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 or its guidelines and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.

- c. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.

**17. 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 Public Works conditions as described in the Planned Development Permit (File No. PD21-020).

**18. 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. \_\_\_\_\_.

**19. Standard Environmental Permit Conditions.**

- a. **Construction-related Air Quality.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
  - 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. Replant vegetation in disturbed areas as quickly as possible.
  - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - ix. 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.
  - x. Maintain and properly tuned in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.

- xi. 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 is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant 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 (PBCE) 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.** 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                             |
| <p>x:x = tree replacement to tree loss ratio<br/>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.<br/>A 38-inch tree equals 12.1 inches in diameter.<br/>A 24-inch box replacement tree = two 15-gallon replacement trees</p> |                            |            |         |                                       |

- A. Four onsite trees will be removed. Three trees require replacement at a 5:1 ratio and one tree requires replacement at a 3:1 ratio. Therefore, the removal of the four trees onsite results in a replacement tree requirement of 18 15-gallon trees (or 9 24-inch box trees). Based on the landscape plans, the Project will include planting of 17 24-inch box trees.

B. 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 Commission for the City of San Jose 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 Planning, Building 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 project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) 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:

- A. 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.
- B. The MLD identified fails to make a recommendation; or

**d. Geology and Soils**

**i. Seismic Hazards.**

- A. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- B. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- C. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- D. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- E. 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.

**e. Paleontological Resources.**



- i. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or 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 project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

**f. 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 required to cover all trucks or 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 knock mud from truck 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.

**g. Construction-related Noise.**

- i. Pile driving is prohibited.
- ii. Limit construction hours to between 7:00 a.m. and 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 uses.

- iii. Construct solid plywood fences around ground level construction sites adjacent to operational business, 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 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.
- xi. Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will 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.

**h. Interior Noise Standard for Residential Development.**

- i. The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates design controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

- ii. The landowner or their authorized representative rejects the recommendations of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

i. **Proof of Enrollment in SJCE.**

- i. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of Planning, Building, and Code Enforcement, or Director's designee, proof of enrollment in either the San Jose Community Energy (SJCE) GreenSource program (approx. 95% renewable energy) or SJCE TotalGreen program (approx. 100% renewable energy). Program enrollment will be determined by the level assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act (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....Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of Planning, Building, and Code Enforcement, or Director's designee, proof of enrollment in either the San Jose Clean Energy (SJCE) GreenSource program (approx. 95% renewable energy) or SJCE TotalGreen program (approx. 100% renewable energy). Program enrollment will be determined by the level assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act (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.

**19. 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 \_\_\_\_\_ 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, MMC  
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"  
FOR REZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcel 1 as shown on that certain Parcel map filed for record on May 20, 2002, in Book 748 of Maps, page 41, Santa Clara County Records, described as follows:

BEGINNING at the most southwesterly corner of said Parcel 1, being a point in the northwesterly right of way line of Classico Avenue;

Thence along said right of way the following two courses:

1. Thence North 77°24'03" East, 18.69 feet;
2. Thence North 56°13'45" East, 289.67 feet to the westerly line of Evergreen Village Square;

Thence along said westerly line, North 22°12'35" East, 51.60 feet;

Thence along the general northerly and northwesterly lines of said Parcel 1, the following seven courses:

1. Thence South 80°13'26" West, 30.98 feet;
2. Thence North 33°49'08" West, 63.22 feet;
3. Thence South 51°58'32" West, 137.84 feet;
4. Thence South 28°53'48" West, 115.59 feet;
5. Thence South 41°16'06" West, 37.67 feet;
6. Thence South 59°21'51" West, 30.51 feet;
7. Thence South 05°09'24" East, 30.28 feet to the POINT OF BEGINNING.

Containing 0.54 acres, more or less.


As shown on Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

*For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 11-9-21

  
Tracy L. Giorgetti, LS 8720

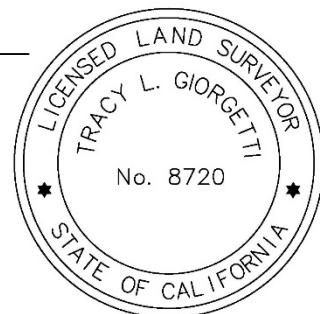




EXHIBIT "A"  
FOR REZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Lot 93 as shown on that map of Tract 10093 filed for record on February 8, 2012, in Book 850 of Maps, page 26, Santa Clara County Records, described as follows:

BEGINNING at the most southerly corner of said Lot 93, being a point in the westerly right of way line of Evergreen Village Square;

Thence along said right of way, North 22°12'35" East, 112.19 feet to the southwesterly right of way line of Ruby Avenue;

Thence along said right of way, North 28°05'41" West, 42.85 feet;

Thence along the general northerly, westerly and southwesterly lines of said Lot 93, the following five courses:

1. Thence South 61°54'19" West, 60.62 feet;
2. Thence North 82°23'22" West, 62.19 feet;
3. Thence South 17°35'17" East, 17.33 feet;
4. Thence South 01°25'30" West, 61.22 feet;
5. Thence South 63°55'47" East, 99.29 feet to the POINT OF BEGINNING.

Containing 0.27 acres, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

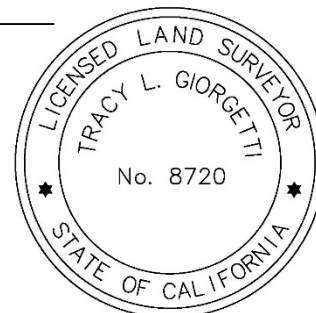
END OF DESCRIPTION

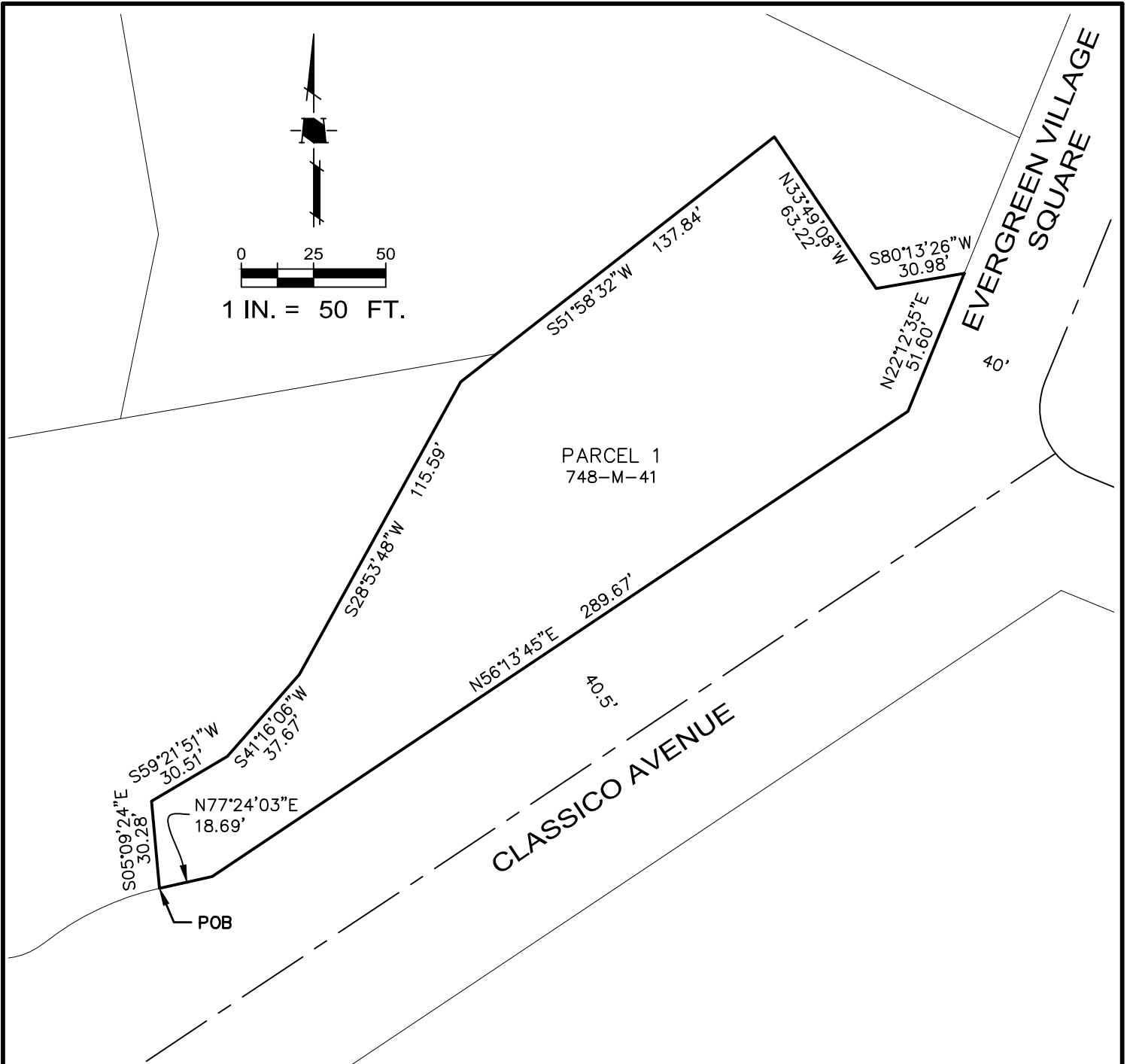
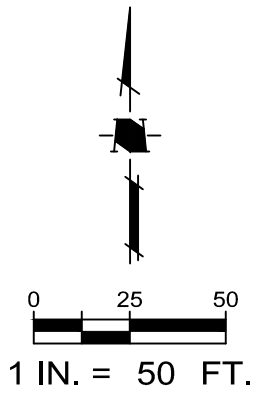
*For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 11.9.21

  
Tracy L. Giorgetti, LS 8720





**LEGEND**

POB      POINT OF BEGINNING

SHEET 1 OF 1

|              |            |
|--------------|------------|
| Date:        | 2021 11 09 |
| Designed:    | DAW        |
| Drawn:       | DAW        |
| Checked:     | RF         |
| Proj. Engr.: | DM         |
| 279170PL02   |            |



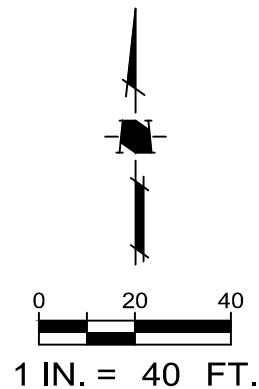
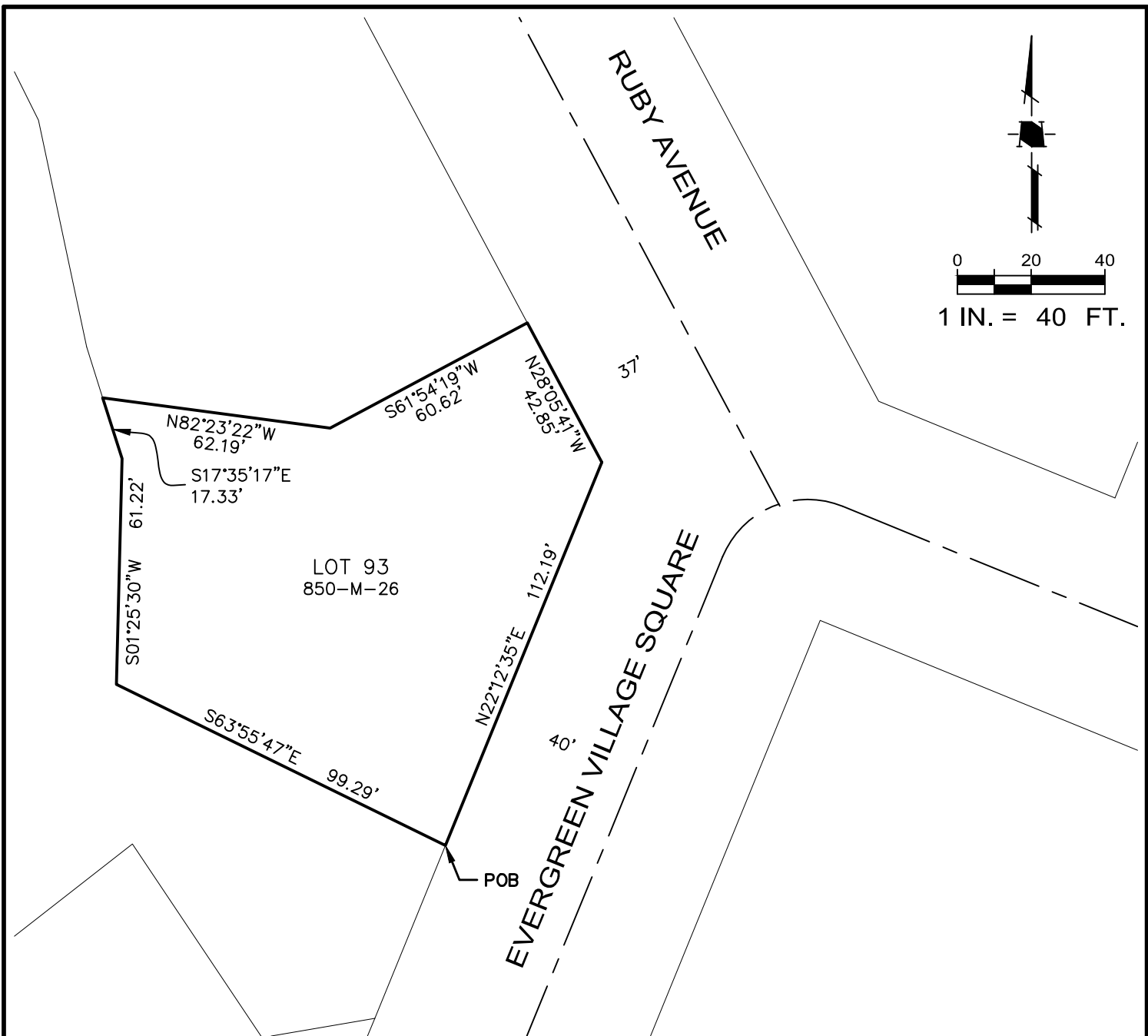
1570 Oakland Road (408) 487-2200  
San Jose, CA 95131 HMMca.com

EXHIBIT "B"  
PLAT TO ACCOMPANY DESCRIPTION:  
FOR REZONING PURPOSES

[File No. PDC21-036](#)

SAN JOSE

CALIFORNIA



# LEGEND

POB POINT OF BEGINNING

SHEET 1 OF 1

Date: 2021 11 09  
 Designed: DAW  
 Drawn: DAW  
 Checked: RF  
 Proj. Engr.: DM  
 279170PL01



1570 Oakland Road (408) 487-2200  
 San Jose, CA 95131 HMMca.com

EXHIBIT "B"  
 PLAT TO ACCOMPANY DESCRIPTION:  
 FOR REZONING PURPOSES

SAN JOSE

File No. PDC21-036

CALIFORNIA