

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A TENTATIVE MAP TO ALLOW THE SUBDIVISION OF ONE PARCEL INTO SIX PARCELS AND ONE COMMON PARCEL, ON AN APPROXIMATELY 0.46-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF NORTH CAPITOL AVENUE, APPROXIMATELY 240 FEET NORTHERLY OF PENITENCIA CREEK ROAD (907 NORTH CAPITOL AVENUE)

FILE NO. PT17-047

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on October 26, 2017, a concurrent application (File No. PT17-047) was filed by the applicant, Margaret Pham of Berryessa Homes Development, on behalf of William and Nancy Hoang, with the City of San José for a Tentative Map to allow the subdivision of one parcel into seven parcels consisting of six residential parcels and one common area parcel on an approximately 0.46-gross acre site, on that certain real property situated in the R-M(PD) Planned Development Zoning District and located on the west side of North Capitol Avenue, approximately 240 feet northerly of Penitencia Creek Road (907 North Capitol Avenue, 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 November 17, 2020, notice of which was duly given; and

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

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

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Berryessa Home Development", dated October 11, 2017 and revised December 16, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; 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 all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this project:

1. **Site Description and Surrounding Uses.** The project site is located on the west side of North Capitol Avenue, approximately 240 feet northerly of Penitencia Creek Road. The site is currently developed with a single-family residence, two-car garage, and shed. The site has one driveway off of North Capitol Avenue. Residential uses surround the site including multi-family residential to the north, a single-family residence and attached single-family residences to the south, and attached single-family residences to the east and west. Planned Development Zoning Districts surround the site and permit densities between 12.1 to 26 dwelling units per acre. The Valley Transportation Authority (VTA) Light Rail Orange Line runs along the project site's North Capitol Avenue frontage and the Penitencia Creek is located approximately 575 feet southeast of the site. The nearest VTA light rail station is the Penitencia Creek Station approximately 700 feet southeast of the site.
2. **Project Description.** The project is a Planned Development Permit application (File No. PD19-022) to allow the demolition of an existing single-family residence, two-car garage, and shed totaling 2,400 square feet and the removal of five ordinance-size trees for the construction of six single-family attached residences on the approximately 0.46-gross acre site. The project would be developed at a density of approximately 13 dwelling units per acre and would permit a minimum lot size of 1,300 square feet.

The development would consist of two residential buildings with three single-family dwelling units in each building designed as attached townhomes. The 3-story buildings would have a maximum height of 34 feet, 2 inches. The buildings would have a modern design with cedar siding, fiber cement cladding, panel cladding, and painted stucco materials to create visual interest along all facades of the buildings. The roofs of each building would be slightly angled to further define the massing of the residential buildings. Each residential unit would provide a minimum of 400 square feet of residential open space in the form of rear yards and balconies.

A total of 18 parking spaces would be provided on-site; including twelve covered spaces and six uncovered spaces. The covered spaces would be within individual two-car garages. The uncovered parking spaces would be designated for guest parking and would be located on the common lot with the private street and trash collection area. The project would include a new private street providing access to each unit's garage and entry.

The tentative map would allow the property to be subdivided into seven parcels consisting of six residential parcels and one common area parcel containing the front landscaping, the private street, trash area, and uncovered parking spaces.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Mixed Use Neighborhood. This designation is described in Chapter 5 of the General Plan as being 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. The designation supports densities up to 30 dwelling units per acre and a commercial Floor Area Ratio of 0.25 to 2. This designation supports commercial or mixed-use development integrated within the 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 small townhouse development may exist adjacent to more traditional single-family development or more intense multi-family development.

This designation should be used to establish new neighborhoods with a cohesive urban form, to provide transition between higher-density and lower-density neighborhoods, or to facilitate new infill development within an existing area that does not have an established cohesive urban character. Small lot single-family neighborhoods with this designation may involve zero lot-line or other design features not available through a standard subdivision process.

Because, within such mixed neighborhoods, the established overall neighborhood density and character is more intense than that found in typical single-family detached neighborhoods, it is appropriate to allow for infill development in Mixed Use Neighborhood areas that includes medium density residential uses such as townhouses or stacked flats and some opportunity for live/work, residential/commercial, or small stand-alone commercial uses.

Analysis: The development would allow six attached townhomes on an infill site surrounded by other single-family and multi-family residential uses. The project would have a density of 13 dwelling units per acre, consistent with the land use designation. The project site is surrounded by a mixture of residential densities and the infill development would complement the surrounding combination of single family residences and multi-family residential developments. Consistent with this land use designation, the project proposes to establish small lot single-family units with zero-foot lot line setbacks between the new townhome units.

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

- a. Goal H-3 Housing: Create and maintain safe and high quality housing that contributes to the creation of great neighborhoods and great places.

Analysis: The infill project would develop six new residential units on the existing single-family site which front Capitol Avenue and the VTA light rail orange line. The three-story townhomes would continue the development pattern of the three-story residential development located south and east of the site.

- b. Community Design Policy CD-2.7: Design private streets to appear and function like public streets. Include street trees and sidewalks, and prohibit gated communities that restrict connectivity. Promote security at the building face rather than at the street.

Analysis: The project's private street would include landscaping along the walkway and would not be gated. The project would incorporate street lights along the private street and building lighting along the project's frontage and private street to enhance security.

- c. Land Use Policy LU-11.1. Design all new single-family detached residences so that each home has a frontage on a public street or on a private street that appears and functions as a public street.

Analysis: Consistent with Land Use Policy LU-11.1, the new attached single-family residences would have direct access from the new private street. The private street design would be similar and compatible to the neighborhood pattern and private street across Capitol Avenue.

- d. Transportation Policy TR-4.3: Support the development of amenities and land use and development types and intensities that contribute to increased ridership on the potential high-speed rail system, and also provide positive benefits to the community.

Analysis: The project would increase the residential density of the site located along the VTA light rail line and would include design measures to encourage transit ridership such as locating bicycle parking along the project's frontage and ensuring the frontage of the development which faces Capitol Avenue is oriented towards the street, with a front door, and is pedestrian friendly through the use of landscaping and walkways.

- e. Implementation Policy IP-1.7: Ensure that proposals to rezone and prezone properties conform to the Land Use / Transportation Diagram, and advance Envision General Plan Vision, goals, and policies.

Analysis: The Planned Development Rezoning would support the development of smaller residential lot to allow the development of attached single-family townhomes consistent with the Mixed Use Neighborhood General Plan land use designation described in Chapter 5 of the General Plan.

4. Zoning and Planned Development Zoning Conformance.

The subject site’s rezoning to a R-M(PD) Planned Development Zoning District best conforms with the General Plan goals, policies, standards, and guidelines. The R-M(PD) Planned Development Zoning District would allow for uses that conform to the R-M Multiple Residence Zoning District, as amended and the development of up to six attached single-family residential units.

Use

Subject to the Development Standards as adopted as part of the rezoning, the allowed uses are pursuant to the R-M Multi-Family Residence Zoning District per Title 20 of the Municipal Code. The R-M(PD) Zoning District would also permit the development of attached single-family units. The project includes the development of six attached single-family residential units.

Development Standards

The table below shows the minimum lot size, lot width, and setbacks in the Development Standards. The project conforms to the following setback requirements.

Development Standard	Minimum Requirement	Provided
Minimum Lot Size	1,300 square feet	Minimum 1,301 square feet
Minimum Lot Width	27 feet	Minimum 27 feet 4 inches
Setback Along North Capitol Avenue	15 feet	15 feet
Side Setback along northern shared property line	15 feet	15 feet
Side Setback along southern shared property	15 feet	32 feet
Rear Setback along the rear shared property line	5 feet	5 feet
Interior lot line setbacks	0 feet	0 feet

The Tentative Map would divide the property into seven parcels including six residential parcels and one common area parcel that would be maintained through the Homeowners’ Association. The smallest lot would be the 1,301 square foot lot size and the largest lot would be the 11,702 square foot common area lot. Consistent with the Planned Development Standards the minimum lot width would be 27 feet 4 inches. The two residential townhome buildings would comply with the Planned Development Permit Setbacks. The front townhome building (Block A) would be located 15 feet from North

Capitol Avenue and the northern property line. The building would be located 32 feet from the southern property line. The rear townhome building (Block B) would be located 15 feet from the northern property line, 5 feet from the eastern rear property line, and 32 feet from the southern property line. The individual townhomes would have 0-foot interior setbacks as attached units. The private street would be located between the townhomes and the southern property line.

Height

The development standards state that the allowable height is pursuant to the R-M Multi-Family Residence Zoning District in Title 20 of the San José Municipal Code, as may be amended. Therefore, the maximum allowed height would be 45 feet. The height of the two townhome buildings measure 34 feet, 2 inches.

Parking

The Development Standards state the parking shall be provided in compliance with Title 20 of the San José Municipal Code, as amended. In addition, the Planned Development Zoning requires guest parking shall be provided at a ratio of 0.5 spaces per unit. Table 20-190 of Section 20.90.060 requires two parking spaces per single-family unit. The Development Standards state one guest bicycle parking per unit shall also be provided.

The parking requirements provided in the Development Standards incorporate the parking requirements of the Municipal Code and additionally require 0.5 guest parking spaces per unit and one guest bicycle space per unit. The guest bicycle parking spaces would be located on the common area lot and would incentivize the use of alternative modes of transportation to the site. Consistent with the development standards, the project provides 6 bicycle spaces along the project's Capitol Avenue frontage and 18 vehicle parking spaces which exceeds the minimum 15 vehicle parking spaces required by the R-M(PD) Zoning District.

5. City Council Policies.

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

Under City Council Policy 6-30, the project is a standard project. Council Policy 6-30 specifies the public outreach and communication required regarding development projects including posting a notice of development application on the project site, hosting a community meeting which is appropriately advertised to the community, and providing Public Hearing Notices to the community in a timely matter to an appropriate project radius. Under City Council Policy 6-30, a standard project requires notification to property owners and tenants within 500 feet of the project site.

Analysis: Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. The hearing notice was sent to all owners and tenants within 500 feet of the project. Staff contact information has also

been available on the on-site sign and hearing notice. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

6. Residential Design Guidelines.

The project is a residential use and is therefore evaluated under the City of San José Residential Design Guidelines.

Per the design guidelines, new development should continue the functional, on-site relationships of the surrounding neighborhood. The development efficiently uses the narrow project site to develop and infill attached single-family project. The residential development is a modern design to reflect the newer developments in the project's vicinity. The project uses earth-tone colors, grays, and blues on the exterior stucco as well as a variety of materials including cedar siding, Equitone exterior cladding panels, fiber cement trim, and cable railing for the balconies. The front townhome unit is oriented towards Capitol Avenue and the remaining five townhome units are oriented towards the private street with the front doors and garages facing the private street similar to the single family development across Capitol Avenue.

The design guidelines state that enclosed garages that front on parking drives or parking courts should have tree pockets of not less than nine square feet. The project would provide tree pockets along the garage entries. Additionally, the project would provide landscaping along the southern property line. The project includes a mix of trees, shrubs, and groundcover.

Pursuant to the Residential Design Guidelines, each unit should provide a minimum of 400 square feet of private open space. The six units would each provide at least 400 square feet of private open space. Unit 1 would provide 412 square feet of rear yard open space, Unit 2 would provide 410 square feet of rear yard open space, unit 3 would provide 402 square feet of open space including 330 square feet of rear yard space and a 73-square foot balcony, unit 4 would provide 400 square feet of open space including 330 square foot rear yard and 70 square foot balcony, unit 5 would provide 410 square feet of rear yard open space and unit 6 would provide 552 square feet of rear yard open space. The rear yards would be separated by 6-foot tall wooden privacy fences and each rear yard would have a minimum depth of 12 feet.

7. Environmental Review.

Under the provisions of Section 15303(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Tentative Map is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303(b) New Construction or Conversion of Small Structures, Class 3, consists of construction and location of limited numbers of new, small facilities or structures; installation of small equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Examples of

the exemption include but are not limited to a duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.

The project is in an urbanized area and involves the construction of six new single-family attached residential units at the project site. Robert Cartier prepared an historic report dated February 5, 2016, to review the existing residence on-site which was constructed in 1936. Although the building's age is greater than 45 years old, the building was not found to be eligible for local, state, or national listing and therefore, the project would not adversely change the significance of a historical resource. Phase I and Phase II Environmental Site Assessments were conducted for the subject site, by AEI Consultants and GeoRestoration, which found contaminated soils due to the site's agricultural history. As part of the project and incorporated as Condition of Approval 36, the applicant will submit the Phase II results and obtain regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH), under their Site Clean Up Program, to ensure the appropriate remediation of the site. The subject site is served by public services such as water, sewer, trash, and is not in an environmentally sensitive area. Based on the Santa Clara Valley Habitat Agency, the subject site is in an Urban-Suburban land cover area. The project would conform to the City's Environmental Standard Permit Conditions outlined in Planned Development Permit Resolution Condition No. 37 and Planned Development Permit Resolution Public Works Condition No. 34 requiring the project implement Stormwater Best Management Practices. For the reasons cited above, the project meets the provisions for CEQA Guidelines Section 15303 (b) to qualify for a Categorical Exemption and would not result in a significant environmental impact.

- 8. Tentative Map Findings:** In order to make the Planned Development Permit findings, the City Council must determine that:
- a. In accordance with San José Municipal Code (SJMC) Section 19.12.130, the City Council 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. San José Municipal Code Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code, as set forth below.
 - i. The City Council finds that the proposed subdivision shown on the Tentative Map, subject to the conditions listed below and the requirements for project design and improvements is consistent with applicable General and Specific Plans of the City of San José, in that:

Analysis: As discussed in detail above, the project and tentative map are consistent with the General Plan Mixed Use Neighborhood land use designation and General Plan policies. The six small lots comply with the density limitations of the Mixed Use Neighborhood and the Tentative Map and related Planned Development Zoning and Permit facilitate the development of medium density infill residential development which is supported in the Mixed Use Neighborhood Land Use designation.

- ii. The City Council has considered the proposed subdivision shown on the Tentative Map, with the imposed conditions, to determine whether to make any of the findings set forth in the subsections of Section 66474 of the Government Code of the State of California which states “A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a vesting tentative map was not required, 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.

Analysis: As discussed herein, the project is consistent with the General Plan Mixed Use Neighborhood land use designation and General Plan policies. There are no applicable specific plans governing the project site.

2. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans

Analysis: As discussed in detail above, the project and tentative map are consistent with the General Plan policies including Community Design Policy CD-2.7 and Land Use Policy LU-11.1.

3. That the site is not physically suitable for the type of development.

Analysis: The 0.46-gross acre site is suitable for the infill development. The development is in an urbanized area that is adequately served by all required utilities and public services, and the Stormwater Control Plan is in compliance with the City’s stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Compliance with the Stormwater Control Plan is required under Condition No. 34 of the resolution approving the Planned Development Permit, PD19-022.

4. That the site is not physically suitable for the proposed density of development.

Analysis: The project site’s General Plan Land Use Designation supports residential densities up to 30 dwelling units per acre. The project would result in a development with a residential density of

approximately 13 dwelling units per acre consistent with the General Plan maximum, and compatible with the existing surrounding development. As described above, the site is suitable for the infill development.

5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Analysis: The subdivision and project would not result in substantial environmental or habitat damage. The project site is urban and located over 300 feet from the Penitencia Creek riparian corridor. The project would be subject to the applicable fees and conditions of the Santa Clara Valley Habitat Plan.

6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.

Analysis: The residential townhomes would not likely result in serious public health problems. The project would be surrounded by residential uses. Construction of the project would be subject to the City's environmental Standard Permit Conditions including dust control measures, adherence to the Bay Area Air Quality Management District's (BAAQMD's) best management practices, General Plan and Municipal Code noise standards.

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. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

Analysis: The tentative map would not conflict with any easements or improvements. The tentative map and project would be subject to the Public Works Conditions of Approval including the removal and replacement of curb, gutter, and sidewalk and dedication of a 7-foot street dedication easement to achieve a 15-foot sidewalk.

In accordance with the findings set forth above, a Tentative Map to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter

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

CONDITIONS

1. **Acceptance of Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this 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 Tentative Map by the Subdivider; and
 - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Tentative Map.
2. **Expiration of the Tentative Map.** This Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the Director of Planning of the City of San José. The date of issuance is the date this Tentative Map is approved by the City Council.
3. **Conformance to Plans.** Development shall conform to the approved Tentative Map plans entitled “Berryessa Home Development”, dated October 11, 2017 and revised December 16, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City’s approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the “Approved Tentative Map Plan Set.”
4. **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.
5. **Conformance with Other Permits.** The subject Tentative Map conforms to and complies in all respects with the Planned Development Permit File No. PD19-022 on which such Tentative Map is based. Approval of said Tentative Map shall automatically expire with respect to any portion of the lands covered by such Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Planned Development Permit for such lands automatically expires or for any reason ceases to be operative.
6. **Homeowners’ Association(s) and/or Maintenance District.** A Homeowners’ Association or Maintenance District or Facilities District shall be established for maintenance of all common areas, including private streets, pedestrian walkways,

parking, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district, etc. The applicant shall provide to the Homeowners Association(s) a copy of the Tentative Map Permit, the accompanying Plan Set within 30 days of completion the construction phase.

7. **Improvements.** Pursuant to the Subdivision Improvement 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 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 this proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
9. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
10. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Final Map. Such easements so conveyed shall be shown on the Final Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
11. **Final Map.** No Final Subdivision Map or Tract Map shall be approved by City Council unless and until the appeal period for the development permit, City File No. PD19-022 has expired and all appeals have been exhausted.
12. **Private Street:** No Final Map or Tract Map for the private street shall be approved by City Council unless and until the U.S. Postal Service Address Management Systems has confirmed the new street name is acceptable for the proposed private road.
13. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet

or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

14. **Sewage Fees:** In accordance with City Ordinance, all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
15. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Tentative Map shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
16. **Parkland Dedication Ordinance.** This development is subject to the requirements of either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code,) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the Subdivider shall enter a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance.
17. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions as described in the Planned Development Permit (PD19-022).
18. **Revocation, Suspension, Modification.** This Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

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

EFFECTIVE DATE

The effective date of this Permit (File No. PT17-047) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC17-046 approved for publication on _____, 2020 (the “Planned Development Rezoning Ordinance”) and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

Exhibit "A"

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being more particularly described as follows:

All of Parcel No. 1 and Parcel No. 2, as described in the Trust Transfer Deed from Anna Chelstowski, an unmarried woman to Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust, recorded on July 9, 1990 in Book L411 of Official Records at Page 1521, said Santa Clara County records, excepting therefrom that certain parcel of land as described in the Grant Deed from Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust to the Santa Clara Valley Transportation Authority, recorded on April 5, 2001 as Document No. 15621624 of Official Records, said Santa Clara County records.

and, excepting therefrom, the following area:

Beginning at the most Southerly corner of said parcel of land as described in the Grant Deed from Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust to the Santa Clara Valley Transportation Authority;

Thence along the Southeasterly line of Parcel No. 2 and Parcel No. 1, as both parcels are described in said Trust Transfer Deed from Anna Chelstowski, an unmarried woman to Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust, South 48° 30' 22" West, 247.54 feet to the most Southerly corner of said Parcel No. 1;

Thence leaving said Southeasterly line, along the Southwesterly line of said Parcel No. 1, North 40° 00' 53" West, 2.54 feet;

Thence leaving said Southwesterly line, North 49° 05' 35" East, 247.49 feet to the Point of Beginning.

and, in addition thereto, the following area:

Beginning at the most Southerly corner of said Parcel No. 1, as described in the Trust Transfer Deed from Anna Chelstowski, an unmarried woman to Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust;

Thence, from said Point of Beginning, along the Southwesterly line of said Parcel No. 1, North 40° 00' 53" West, 2.54 feet to the True Point of Beginning;

Thence leaving said Southwesterly line, South 49° 05' 35" West, 3.89 feet;

Thence parallel with said Southwesterly line of Parcel No. 1, North 40° 00' 53" West, 80.78 feet to a point in the Northwesterly line of said Parcel 2;

Thence leaving said parallel line, along the Northwesterly line of said Parcel 2, North 49° 15' 22" East, 3.89 feet to the most Westerly corner of said Parcel No. 1;

Thence leaving said Northwesterly line, along the said Southwesterly line of Parcel No. 1, South 40° 00' 53" East, 80.77 feet to the True Point of Beginning.

Containing an area of 0.463 acres (20,162 square feet), more or less.

Assessor's Parcel Numbers(s): 254-29-029