

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE GRANTING A RELEASE OF THE COVENANT OF EASEMENT, WHICH INCLUDES INGRESS, EGRESS, PARKING, EMERGENCY ACCESS, AND ACCESS TO AND/OR OPERATION AND MAINTENANCE OF STORM WATER TREATMENT MEASURE EASEMENTS, LOCATED ON AN APPROXIMATELY 2.7-GROSS-ACRE SITE CONSISTING OF THREE PARCELS LOCATED AT THE SOUTHEAST CORNER OF NORTH JACKSON AVENUE AND BERRYESSA ROAD (APNS 254-80-021, 022 & 023)**

**FILE NO. ET19-003**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 11, 2019, William Chan, on behalf of property owner Berryessa Property, LLC, filed an application (File No. ET19-003) for a petition to release a Covenant of Easement which includes ingress, egress, parking, emergency access, and access to and/or operation and maintenance of storm water treatment measure easements located on an approximately 2.7-gross-acre site consisting of three parcels located at the southeast corner of North Jackson Avenue and Berryessa Road (APN 254-80-021, 022 and 023) (the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” and depicted in Exhibit “B,” entitled “Plat Map,” both dated January 23, 2023, which are 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 City Council conducted a hearing on said application concurrent with a Conforming Rezoning application (File No. C19-011) and a Site Development Permit (File No. H19-020), notice of which was duly given; and

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a Plat Map for the subject property entitled, "Exhibit B", "Plat to Accompany Legal Description," dated January 23,2023, said Exhibit is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The foregoing recitals are hereby incorporated as findings as though set forth in the body of this Resolution. After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The subject parcels have a General Plan Transportation/Land Use Diagram designation of Neighborhood/Community Commercial.
2. The subject parcels are located within the CP Commercial Pedestrian Zoning District.

3. A release of a Covenant of Easement, which includes ingress, egress, parking, emergency access, and access to and/or operation and maintenance of storm water treatment measure easements on and for the benefit of Lot 1 (Assessor's Parcel Number 254-80-021, approximately 57,799 square feet), Lot 2 (Assessor's Parcel Number 254-80-022), approximately 28,843 square feet), and Lot 3 (Assessor's Parcel Number 254-80-023, approximately 33,677 square feet), recorded in the Parcel Map filed on June 15, 2011, in Book 845 of Maps at page 41 and 42 in the Office of the Recorder of the County of Santa Clara, as corrected by a certificate of correction recorded on July 28, 2011, as Document No. 21259977 of official records.

On June 11, 2019, the applicant applied for a release of the Covenant of Easement for all on-site easements as they are no longer required on Lots 1 through 3, which will be developed with a new permit under File No. H19-020 and merged into one assembled lot.

4. The Zoning Ordinance, pursuant to Section 20.110.130, requires that the release of the Covenant of Easement be approved by the Planning Commission, unless the project is being reviewed concurrently pursuant to Section 20.100.140 of the Municipal Code which states that the unified process shall use the public hearing procedures required for the highest level permit or approval.
5. A release of the Covenant of Easement may be approved if the City Council makes the findings required by Section 20.110.150 of the San José Municipal Code.
6. An Initial Study/Mitigated Negative Declaration entitled "Berryessa-Jackson Commercial Project" was prepared in accordance with the California Environmental Quality Act. Approval of the project would not result in any significant impacts relating to land use or density.
7. The Covenant of Easement is not necessary for the development of the property or to achieve the land use goals of the City, and a request for release was properly applied for pursuant to the San José Municipal Code.

## CONDITIONS

1. **Recording (Release to be recorded).** A Site Development Permit (File No. H19-020) is related to this release of the Covenant of Easement (File No. ET19-003). As a condition of the Site Development Permit and the release of the Covenant of Easement, and pursuant to San José Municipal Code Chapter 20.110, the permittee is required to record the ET19-003 resolution in the office of the recorder for the County of Santa Clara within fifteen days after the action of the City Council in granting a petition for release has become final. Prior to the issuance of building permits, the permittee shall provide proof to the Director of Planning, Building and

Code Enforcement or Director's designee that the ET19-003 resolution granting the release of the Covenant of Easement was recorded.

In accordance with the findings set forth above, the City Council hereby releases the Covenant of Easement for the subject property, which release shall be effective upon the recordation of this resolution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

Exhibit 'A'  
**Lot Line Adjustment for  
Lands of Pulte Home Corporation**

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:

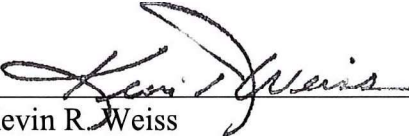
**Lot 1**

Being all of Lots 1, 2 and 3 as shown on that certain Parcel Map filed for record in the Office of the Recorder on June 15, 2011 in Book 845 of Maps, at Pages 41 and 42, Santa Clara County Records.

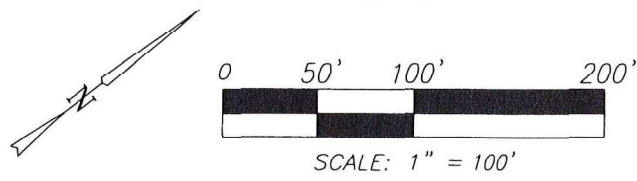
Said combined Lot 1 containing 120,319 square feet, (2.762 acres), more or less.

Attached hereto is an exhibit labeled "Exhibit A: Lot Line Adjustment Plat" and by this reference is made a part hereof.

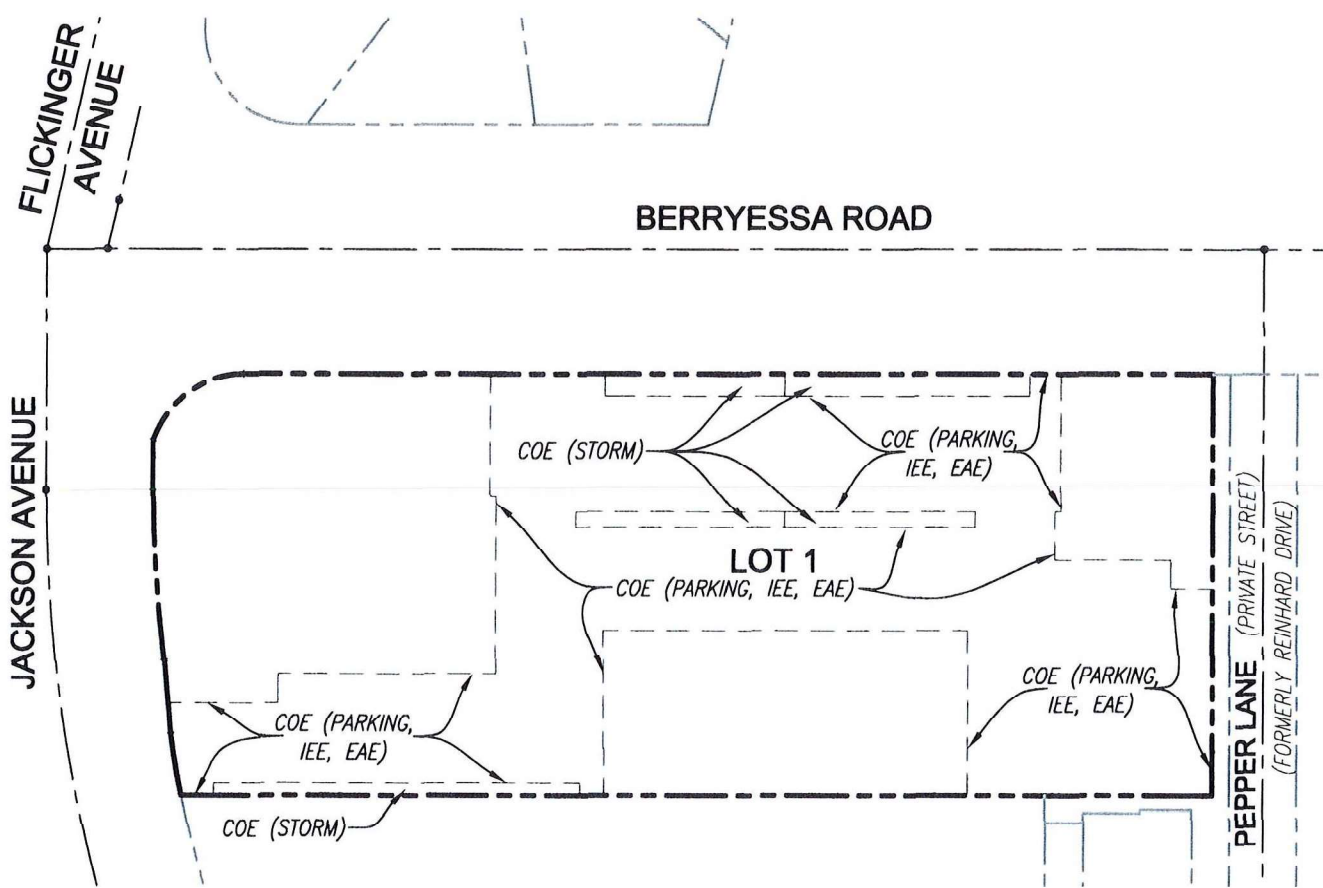


  
Kevin R. Weiss \_\_\_\_\_  
Date 3/19/19

ET 19-003



LOT 1 IS A COMBINATION OF LOTS 1, 2 AND 3 OF THAT PARCEL MAP RECORDED ON JUNE 15, 2011 IN BOOK 845 OF MAPS, AT PAGES 41-42, SANTA CLARA COUNTY RECORDS.



**BASIS OF BEARINGS:**

THE BEARING OF A LINE DRAWN BETWEEN TWO FOUND MONUMENTS IN PEPPER LANE (A PRIVATE STREET); THE BEARING, NORTH 52°36'37" WEST, AS SHOWN ON THAT MAP OF TRACT NO. 10022, RECORDED ON APRIL 18, 2011, IN BOOK 844 OF MAPS, AT PAGES 10-18, SANTA CLARA COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS OF THIS SURVEY.



**LEGEND & ABBREVIATIONS**

- — — — — PROPERTY LINE - SUBJECT PARCEL
- — — — — PROPERTY LINE - ADJACENT PARCEL
- - - - - COVENANT OF EASEMENT TO BE RELEASED
- — — — — CENTERLINE/MONUMENT LINE
- FOUND CITY MONUMENT
- COE COVENANT OF EASEMENT

*[Handwritten Signature]*

KEVIN R. WEISS, L.S. 7139  
 LICENSE EXPIRES 12/31/2020

06/10/19  
 DATE

|                              |                  |        |
|------------------------------|------------------|--------|
| EXHIBIT 'B'                  |                  |        |
| COVENANT OF EASEMENT RELEASE |                  |        |
| SCALE:                       | DATE: 05/21/2019 | BY: CT |
| SHEET 1 OF 1                 | JOB NO. 5138     |        |

**JMH WEISS, INC.**

1731 Technology Drive, Ste #880  
 San Jose, CA 95110  
 Phone: (408) 286-4555  
 www.jmhweiss.com