

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ESTABLISH A MASTER PLAN FOR A GENERAL SITE LAYOUT, PUBLIC AND PRIVATE STREET LAYOUT, GRADING AND DRAINAGE PATTERNS, AND UTILITY LAYOUT TO ALLOW THE FUTURE CONSTRUCTION OF UP TO 455,000 SQUARE FEET OF COMMERCIAL SPACE, A 0.92-ACRE PARK, AND UP TO 850 RESIDENTIAL UNITS, INCLUDING ON-SITE AFFORDABLE UNITS, AND CONSTRUCTION OF THE FIRST PHASE (BLOCKS A, B, AND C, INCLUDING 24 DETACHED SINGLE FAMILY HOMES AND 24 ATTACHED TOWNHOME UNITS), INCLUDING THE DEMOLITION OF AN EXISTING LIGHT INDUSTRIAL FACILITY (9,740 SQUARE FEET) AND SURFACE PARKING LOT, AND THE REMOVAL OF 47 ORDINANCE-SIZE TREES AND 56 NON-ORDINANCE TREES ON THE APPROXIMATELY 13.05-GROSS-ACRE PROJECT SITE, LOCATED AT THE NORTH SIDE OF BERRYESSA ROAD, APPROXIMATELY 1,100 FEET WESTERLY OF LUNDY AVENUE (1655 BERRYESSA ROAD)**

**FILE NO. PD21-009**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 28, 2021, an application (File No. PD21-009) was filed by owner and applicant Robert Facchino of Terracommercial Real Estate Corp for the establishment of a Master Plan for a general site layout, public and private street layout, grading and drainage patterns, and utility layout to allow the future construction of up to 455,000-square feet of commercial space, a 0.92-acre park, and up to 850 residential units, including on-site affordable units, and the construction of the first phase (Blocks A, B, and C, including 24 detached single family homes and 24 attached townhome units), including the demolition of an existing light industrial facility (9,740 square feet) and surface parking lot, and the removal of 47 ordinance-size trees and 56 non-ordinance trees, on that certain real property situated in the R-M(PD) and CP(PD) Planned

Development Zoning District and located on the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road, 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" titled “Legal Description,” and depicted in Exhibit “B,” titled “Plat Map,” 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 Public Hearing on said concurrent applications on May 10, 2023, notice of which was duly given; and

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

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

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

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, “Master Planned Development Permit for Lands of Facchino” dated December 23, 2022, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The Project Site is located at the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road). The approximately 13.05-gross acre site is currently developed with one light industrial building (9,740 square feet) and surface parking lot, constructed in 1975. Existing access to the site is from one ingress/egress driveway along Berryessa Road. The project scope includes connecting the public rights-of-way of adjacent streets that currently terminate at the project site, including Shore Drive, Mercado Way, and De Rome Drive, and will create new public rights-of-way, including Bernardo Drive and a portion of Perlo Drive. The remaining portion of Perlo Drive and newly created Facchino Way will be private streets.

To the north, west, and east (across the BART tracks) of the project site are single-family and multifamily residential uses. The Berryessa Flea Market site is located to the south of the project site, across Berryessa Road.

2. **Project Description.** The project consists of a Planned Development Permit to establish a Master Plan for a general site layout, public and private street layout, grading and drainage patterns, and utility layout to allow the future construction of up to 455,000-square feet of commercial space, an approximately 0.92-gross-acre park,

and up to 850 residential units, including on-site affordable units, and construction of the first phase (Blocks A, B, and C, including 24 detached single family homes and 24 attached townhome units), including the demolition of an existing light industrial facility (9,740 square feet) and surface parking lot, and the removal of 47 ordinance-size trees and 56 non-ordinance-size trees on the Project Site; and the Vesting Tentative Map would merge three parcels into one and subdivide into thirty-two parcels and up to 590 condominium units on the Project Site, an approximately 13.05-gross acre site, located at the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road).

The project would also connect the public rights-of-way of adjacent streets that currently dead-end into the project site, including Shore Drive, Mercado Way, and De Rome Drive, and will create new public rights-of-way, including Bernardo Drive and a portion of Perlo Drive. The remaining portion of Perlo Drive and newly created Facchino Way will be private streets

In conjunction with the Planned Development Permit, the project also included a Planned Development Rezoning, File No. PDC18-036, and a Vesting Tentative Map, File No. PT21-030. The Planned Development Rezoning will rezone the site from the LI Light Industrial and A Agricultural Zoning Districts to the R-M(PD) and CP(PD) Planned Development Zoning Districts and to establish a General Development Plan with site-specific development standards that will be applied to the development of the site, and the Vesting Tentative Map will merge three parcels into one and subdivide into up to thirty-two parcels and up to 590 condominium units on the Project Site.

### **3. Envision San José 2040 General Plan and Berryessa BART Urban Village Area Plan Consistency**

The project the site is partially designated as Mixed-Use Neighborhood along the western and northern property lines, Transit Employment Center facing Berryessa Road, and Urban Residential for the remainder of the site within the Envision San José 2040 General Plan Land Use/Transportation Diagram Map and is located within the Facchino District of the Berryessa BART Urban Village Area Plan (BBUVP).

The BBUVP is a Regional Transit Urban Village. The following is a summary and analysis of the requirements for each designation:

#### Mixed-Use Neighborhood

For new development, the Mixed-Use Neighborhood designation is applied to specific areas in the Facchino district only. The goal of the Plan is to concentrate planned growth in District areas, which results in mid- and high-density residential development in most Districts. In the Facchino District, the limited residential uses under the Mixed-Use Neighborhood designation will serve as a transitional buffer between the mid-density residential in the District and the adjacent single-family residential neighborhoods. This transitional buffer will minimize the height impacts of tall

residential buildings on adjacent homes. The Mixed-Use Neighborhood designation has an allowable residential density of up to 30 DU/AC.

*Analysis: This 2.06-gross-acre area comprises Blocks A, B, and C, and is proposed with 24 single-family residences and 24 townhomes. This is estimated to be approximately 23.3 DU/AC and is **consistent** with the land use designation, which allows up to 30 DU/AC. As part of this approval, Planned Development Permit PD21-009 would allow the construction of these 48 units in the first phase of the Master Plan. The units proposed in Phase 1 would serve as a transitional buffer between the existing residences and the higher intensity uses toward the center of the project and along the BART tracks.*

#### Transit Employment Center

Within this Urban Village plan, the Transit Employment Center designation is applied to areas within walking distance of the Berryessa/North San José BART Station, which are envisioned for intensive job creation. Uses allowed in this designation include retail and service commercial uses on the first two floors, office, research and development (R&D), as well as other supportive commercial uses such as personal services. In particular, this Village Plan envisions types of businesses with high employee densities that would place a premium on being adjacent to the BART Station and would support BART ridership. Flex office space with large floor plate formats that are highly adaptable to current or future decentralized employment needs is highly desirable. Overall, the focus on the Transit Employment designation in the Berryessa BART Urban Village is high-density employment growth, typically associated with office uses. Therefore, office/R&D uses are the only industrial uses that are allowed in this Urban Village.

The Transit Employment Center designation generally supports the desired urban form and development intensities of each District that has this designation. The range of commercial FAR for the Facchino District is 3.0 to 5.0 FAR, supporting between 288,000 and 480,000 square feet of space approximately. Minimum commercial FARs are envisioned to be implemented on a building basis, excluding parking (both surface and parking garage), roads, and public right-of-way. Additional flexibility in maximum FARs is allowed, provided that future development shape the desired urban form in each District, focusing on the development of towers on key locations.

*Analysis: This area is comprised of Block I along the Berryessa Road frontage of the project site. Pursuant to the Berryessa BART Urban Village Plan, a minimum 3.0 FAR of job-generating commercial use was implemented as a requirement to create jobs at the site, which is likely to generate a greater number of jobs than the previous light industrial use at existing site. This area is proposed with approximately 280,000 to 455,000 square feet of commercial medical office use over 2.09-gross-acres. This would result in approximately 3.0 to 4.0 FAR.*

*This is **consistent** with the land use designation. A future Planned Development*

*Permit would be required to develop Block I, consistent with the General Development Plan of the Planned Development Zoning, File No. PDC18-036.*

### Urban Residential

The Urban Residential designation allows for scaling-down building heights towards low-density residential neighborhoods. The Urban Residential designation is most appropriate for the residential character of the Facchino District. This land use designation will enable a transition between medium-density residential and the adjacent single-family homes to the north and west. Urban Residential will also allow compatibility with the commercial development fronting Berryessa Road and the new high-density residential on the district's western boundary.

Urban Residential is envisioned in this Village Plan to support mid-rise multifamily residential uses preferably, including mixed-use residential with ground-floor neighborhood-serving commercial uses or other community amenities. However, the General Plan generally allows commercial uses under Urban Residential, so this Village Plan would also allow 100% commercial projects that support transit ridership, such as coworking space, cultural activities, or community services to nearby residents. The Urban Residential land use designation in the Berryessa BART Urban Village supports a residential density that ranges from 75 to 250 DU/AC in the Facchino District. For context, the minimum density of 75 DU/AC supports the development of approximately 320 units and the maximum density of 250 DU/AC supports the development of approximately 1,062 units, using the area designated as Urban Residential in the land use plan. For condos and for-sale residential the Plan allows a density range of 95-100 DUs considering the larger size of those units.

*Analysis: This area is comprised of Blocks D, F, G, and H of the project site. The multifamily residential portion of the project site proposes approximately 567 units over approximately 4.66-acres. This calculates to approximately 121.7 DU/acre and is **consistent** with the requirements of the land use designation. These blocks provide a transition from the adjacent single-family homes and townhome units to the north and west into higher-density multifamily units and provides a transition into the high-intensity commercial use fronting Berryessa Road to the south. Future Planned Development Permits will be required to develop these sites to be consistent with the General Development Plan of the Planned Development Zoning, File No. PDC18-036.*

### **General Plan Goals and Policies**

The project is consistent with the following key General Plan policies:

Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than may be practical through implementation of a conventional Zoning District.

*Analysis: The project includes the rezoning of the Project Site from the LI Light*

*Industrial and A Agricultural Zoning Districts to the R-M(PD) and CP(PD) Planned Development Zoning Districts, but requires specific development standards to meet the density allowed by the General Plan and Urban Village Plan land use designation. The minimum parcel size of the R-M(PD) Planned Development Zoning Development Standards, compared to the standard R-M Multifamily Residential Zoning District, for example, would allow the project to achieve a density consistent with the General Plan Land Use Designation, as well as provide flexibility to better suit the project site.*

Major Strategy #3 – Focused Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.

Growth Area Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

Commercial Lands Policy LU-4.3: Concentrate new commercial development in identified growth areas and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods when such development is appropriately located and designed.

Fiscal Sustainability Policy FS-4.8: Emphasize mixed-use development for most new development, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

Community Design Policy CD-1.5: Encourage incorporation of publicly accessible spaces, such as plazas or squares, into new and existing commercial and mixed-use developments.

*Analysis: The project is within the BBUVP area, a designated Regional Transit Growth Area. The project will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while fostering the development of a more vibrant, walkable urban setting as compared to the existing light industrial building. By adding up to 455,000-square feet of commercial space, an approximately 0.92-gross-acre public park, and up to 850 residential units to the site, the project will bring much needed housing and jobs to the area.*

### **Berryessa BART Urban Design Guidelines – All Districts**

Block Size Standards – Per Table 5-1, Section B, the maximum block size is 2.3 acres with a maximum length of 450 feet.

*Analysis: The largest block within the project is 2.3 acres with a length of 437.5 feet. The project is consistent with this requirement.*

### **Berryessa BART Urban Design Guidelines – Facchino District**

Setbacks and Height – The project is located within the Facchino District of the Urban Village Plan. Per Table 5-1 and Policy 1A-DS of the BBUVP, the following are the setback and height requirements for Blocks A, B, and C of the Facchino District for the first phase of the project, as proposed under Planned Development Permit, File No. PD21-009. All other blocks will require future PD permits to establish consistency findings with the Urban Village Plan.

<b>Development Standard</b>	<b>Required by BBUVP</b>	<b>Provided by Project</b>
Front Setback	Table 5-1: Maximum 6 feet	Townhome – Maximum 6 feet Single-Family – Maximum 6 feet
Side Setback	Policy 1A-DS-4: Maximum 5 feet from existing residential areas	Townhome – N/A Single-Family – 4 feet
Rear Setback	Policy 1A-DS-3: Minimum 20 feet	Townhome – 20 feet Single-Family – 20 feet
Height	Policy 1A-DS-1: Maximum 40 feet where adjacent to single-family homes	Maximum 38 feet

*Analysis: The project is consistent with the setback and height requirements of the Urban Village Plan per the table above. The side setback for the townhomes is listed as “N/A” not applicable, since the townhomes do not have a side setback adjacent to the existing residences, only a rear setback.*

#### **4. Zoning Ordinance Consistency**

The project included a rezoning from the LI Light Industrial and A Agricultural Zoning Districts to the **R-M(PD) and CP(PD) Planned Development Zoning Districts**, and established General Development Plan and site-specific Development Standards that would be applied to the development of the site. The surrounding residential uses are primarily zoned A(PD) Planned Development, and the Berryessa Flea Market use to the south is zoned CP(PD) Planned Development.

#### Land Use



The R-M Multiple Residence base zoning district for the R-M(PD) Planned Development Zoning District supports the development of land for the construction, use and occupancy of higher density residential development and higher density residential-commercial mixed-use development.

The CP Commercial Pedestrian base zoning district for the CP(PD) Planned Development Zoning District supports pedestrian-oriented retail activity at a scale compatible with the residential neighborhood to the south, supports mixed residential/commercial development where appropriate, and is designed to support the commercial goals and policies of the general plan in relation to Urban Villages. This CP(PD) Planned Development Zoning District also supports intensive pedestrian-oriented commercial activity and development consistent with general plan urban design policies.

*Analysis: The R-M base zone is applied to the areas of the Project Site intended for single-family, townhome, and multifamily residential use, and the uses are consistent with the allowed uses of the base zone and the General Development Plan of the Planned Development Zoning. Similarly, the CP base zone is applied only to the area of the project site intended for high-intensity, pedestrian-oriented commercial use, which is consistent with the allowed land uses of the base zone and the General Development Plan of the Planned Development Zoning.*

#### Development Regulations

Below is a comparison of the R-M Multiple Residence Zoning District and the project's R-M(PD) Planned Development Zoning District development standards. The uses within the CP(PD) Planned Development Zoning District will require a future Planned Development Permit to provide consistency findings for the development. Per Section 20.60.040.B of the Zoning Code, when a Planned Development permit has been implemented, the provisions of the permit prevail over the regulations of the base district zoning of the property. In this case, the PD Permit is only applicable to Phase 1 of the project.

#### Residential Lot Standards

The table below is an analysis of the residential lot standards of the R-M Zoning District and the development standards of the PD Zoning per PDC18-036:

Lot Standard	R-M Multiple Residence Zoning District Requirements	R-M(PD) Planned Development Zoning District Development Standards	Provided by Project
Detached Single-Family Minimum Lot Area	6,000 square feet	2,160 square feet	2,170 square feet
Detached Single-Family Minimum Lot Width	55 feet	35 feet	35 feet

#### Setbacks and Height

Per the analysis above, the setbacks for the single-family and townhome residences and the building height requirements are consistent with the BBUVP. However, additional setback requirements are included in the General Development Plan, as follows:

- Maximum side setback for a corner lot: 14 feet
- No maximum setback for lots adjacent to BART tracks

*Analysis: The side setbacks for the single-family homes within Block A are typically four feet to the property line. This allows for the intended dense neighborhood and is similar to the existing single-family residence setbacks surrounding the project site. The single-family homes within Block B have an eight-foot and twelve-foot corner side setbacks, consistent with this requirement. The townhomes within Block C have a seven-foot and five-foot corner side setback, also consistent with the requirement. Therefore, the setbacks in Blocks A through C are consistent with the BBUVP Plan per Section 3 above and the additional setback regulations within the Development Standards of PDC18-036, as shown in the table above.*

#### Vehicle Parking

On December 6, 2022, City Council approved an update to the City's Parking Ordinance. This update eliminated minimum parking requirements citywide and established Transportation Demand Management (TDM) requirements, effective April 10, 2023. The applicant had the option of either complying with the new parking ordinance or the parking ordinance in effect when the application was submitted. The applicant is consistent with the parking ordinance that was effective at the time of application submittal and the PD Zoning standards per PDC18-036. The following

table shows a comparison of the parking standards of the Zoning Code, and the parking requirements of the CP(PD) Planned Development Zoning District development standards:

Parking	Zoning Code	R-M(PD) Planned Development Zoning District Development Standards	Provided by Project
Single-Family Residences	Per Table 20-190, minimum 2 covered spaces	No change	48 garage spaces (two covered spaces per unit)
Townhomes	Per Table 20-210, Minimum 2 spaces per two-bedroom Minimum 2.2 spaces per three-bedroom	Minimum two covered spaces per unit	48 garage spaces (two covered spaces per unit)
<b>Total Residential Parking Required and Provided</b>			<b>96 spaces</b>

*Analysis: The project site and all units are located within ½ mile of the Berryessa BART Station, as well as VTA Bus Routes 61, 70, 77, and Rapid 500. The R-M(PD) Planned Development Zoning District provides parking ratios consistent with the reductions allowed by the Zoning Code. The rezoning allows the project to reduce the amount of land dedicated exclusively to parking, as well as encourage transit ridership at the nearby transit station.*

#### Bicycle Parking

The General Development Plan (File No. PDC18-036) states: "Bicycle parking shall be provided as required per Title 20 of the San José Municipal Code, as may be amended. No bicycle parking is required for townhome units with two covered parking spaces." Per Table 20-190 of the Zoning Code, no bicycle spaces are required for single-family residences with a garage. Per Table 20-210, one bicycle space per four units is required for townhome residential buildings, resulting in six spaces required. However, due to the Development Standard of the PD Zoning, no bicycle spaces are required for the townhome units.

*Analysis: No bicycle parking is required or provided with the first phase of the project. The project is consistent with the bicycle parking requirements.*

## 5. San Jose Design Guidelines Consistency

In addition to the design guidelines contained within the BBUVP, the single-family residences are subject to the Single-Family Design Guidelines, and the townhome residences are subject to the Citywide Design Guidelines. The application of the Design Guidelines ensures that the relationships of structures to each other and to other on-site uses are both functional and attractive. As to the Single-Family Guidelines, per Senate Bill 330, effective January 1, 2020, only objective standards and guidelines can be applied to certain affordable housing projects. Objective standards per SB 330 must be measurable and quantifiable. The updated Citywide Guidelines were adopted on February 23, 2021, and effective March 25, 2021. These updated guidelines include objective standards in response to the requirements of SB 330.

### Single-Family Design Guidelines

The proposed 24 single-family homes of the first phase of the project are subject to and consistent with the following key guidelines below:

Section 1.C.3. Main entries should be prominent and oriented to the street unless another pattern is well established on the block and in appropriate scale for the block as well as the individual building.

*Analysis: The main entries on the single-family homes are oriented to the street. The recessed entries have been made prominent using accent colors on the front doors. There are four different entry door colors for each of the architectural styles (eight door colors total), as shown on the Project Plans, Sheets 7.1.3 and 7.3.2.*

Section 1.D.3. Where there are multiple single-family residences on a street, driveway curb cuts should be spaced to preserve the maximum number of street parking spaces.

*Analysis: Driveway curb cuts have been paired, and there is 22 feet for street parking between driveway flares, granting space for at least one parked car between each set of driveways.*

Section 2.A.2. The scale and mass of any portion of a new house or addition facing a public street should be compatible with those of adjacent houses and/or with the predominant scale on the block.

*Analysis: Parcels 1 through 3 include front elevations that diminish in scale in the direction approaching the existing adjacent homes. The existing two-story home adjacent to Parcel 1 has a tower element at the front entry which accentuates the height. The single-family homes are compatible with the surrounding neighborhood and continue the predominant massing and scale of the block.*

Section 2.A.3. Building forms should be varied enough to avoid monotony and to be

compatible with surrounding houses but should still be simple and elegant.

*Analysis: Two styles and two roof forms per floor plan type result in four variations in the proposed building forms, which is similar to the variation in building forms that exist along the shared property line. There are two architectural styles per plan type and two distinct color schemes per style, resulting in eight different home variations for only 24 single-family homes. The project has therefore achieved variety to an extent that is consistent with the neighboring community.*

### **Citywide Design Guidelines**

The proposed 24 townhomes of the first phase of the project are subject to and consistent with the following design standards below:

Section 3.3.3, Standard S2. Occupied decks and balconies must be at least six feet wide and four feet deep to encourage outdoor seating.

*Analysis: Per the floor plans of the townhomes on Sheets 8.3.1 thru 8.3.3 of the Plan Set, all units have decks. Plans 1 and 2 have decks that are 61 square feet and are dimensioned approximately 12 feet wide by 5 feet deep and Plans 3 and 4 have decks that are 62 square feet and are dimensioned 6.5 feet by 9.5 feet.*

Section 3.3.7, Standard S2. Material and color transitions along any façade must only occur on the inside corner of plane change. When material and color changes need to happen in the same plane, use trims, cornices, or other architectural elements to create a corner for the transition.

*Analysis: Per the elevations on Sheets 8.1.1 and 8.1.2 of the Plan Set, all color/material changes correspond to inside corners of changes in plane.*

Section 4.2.2, Additional Requirements. Refer to Appendix A.2 for additional requirements for common and private open space design. Per the Appendix, townhomes require a minimum of 60 square feet of private open space and 200 square feet of common open space per unit.

*Analysis: Per the summary above, all of the townhome units have a minimum of 60 square feet of private open space. Per the Landscape Sheet L3 of the Project Plans, the townhomes include a total common open space area of 13,560 square feet, or 565 square feet per unit. The project is consistent with the standard.*

## **6. City Council Policy Consistency**

Under City Council Policy 6-30, the project is considered to be a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, an on-site sign has been posted at the site since March 15, 2021 to inform the neighborhood of the project. A community meeting was held to discuss the project on August 12, 2021 via Zoom

webinar. Approximately six members of the public were in attendance for the meeting. There was one member of the public who spoke during the meeting, and he was in support of the project. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

## **7. California Environmental Quality Act**

The City of San José, as the Lead Agency, prepared an Environmental Impact Report (EIR) (State Clearinghouse No. 2021070467) for the Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map (PDC18-036, PD21-009, and PT21-030), for the Berryessa Mixed Use Project in compliance with the requirements of the California Environmental Quality Act (CEQA). The EIR was circulated from August 11, 2022, through September 26, 2022, and seven comment letters were received during the public review period. Concerns were raised in the public comments, including air quality, noise, wetlands, and consistency with the general plan and Berryessa BART Urban Village (BBUV) plan. The EIR, including responses to comments received during the public review period, can be found at the following link: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/berryessa-road-mixed-use-development>

The EIR identified relevant mitigation measures for potential Impacts to air quality during construction and operation, nesting birds and biological resources, cultural resources, hazards and hazardous materials from past uses on the site, and for construction-related noise and vibration. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for construction related air quality impacts, tree replacement, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, prehistoric and historic resources, protection of unknown subsurface cultural resources and human remains, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction and operation periods, and best management practices to control noise during construction. Applicable mitigation measures are included in the Mitigation Monitoring and Reporting Program ("MMRP") (Exhibit G), and both the mitigation measures and standard permit conditions are made a part of the resolution of this permit. The EIR concluded that the project would not result in any significant and unavoidable environmental impacts with implementation of identified mitigation measures.

## **8. Planned Development Permit Findings.** Section 20.100.940 of the Zoning Ordinance specifies the required findings for approval of a Planned Development Permit. These findings are made for the project based on the analysis related to

General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit. In order to make the Planned Development Permit findings and recommend approval to the Planning Commission, staff must determine that:

- a. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

*Analysis: As analyzed in Section 3 above, the project includes construction of the first phase (Blocks A, B, and C, including 24 detached single-family homes and 24 attached townhome units) of the Master Plan established by File No. PD21-009, and is consistent with the General Plan Land Use Designation and the BBUVP, including relevant goals and policies. Residential use is allowed within the designation, the first phase results in approximately 23.3 DU/AC, and it is consistent with the land use designation of Mixed-Use Neighborhood, which allows up to 30 du/ac.*

- b. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

*Analysis: As analyzed in Section 4 above, the first phase of the project is consistent with the R-M(PD) Planned Development Zoning District development standards. The project is required to have a minimum parcel size of 2,160 square feet of parcel area, 35 feet of parcel width, and two covered parking spaces per unit. The project is providing a minimum parcel size of 2,170 square feet, 35 feet of parcel width, and two covered spaces per unit. Therefore, the project conforms with the development standards of the Planned Development Zoning per PDC18-036.*

- c. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As discussed below in the City Council Development Policy Consistency section, the project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals, Policy 6-30. The on-site sign has been posted at the site since March 15, 2021 to inform the neighborhood of the project. A community meeting was held to discuss the project on August 12, 2021 via Zoom webinar. Approximately six members of the public were in attendance for the meeting. There was one member of the public who spoke during the meeting, and he was in support of the project. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other

uses on-site are appropriate, compatible and aesthetically harmonious; and

*Analysis: The subject project includes 24 single-family homes and 24 townhomes. The project design includes contemporary Mediterranean-style architecture including wood and stucco exterior materials with stone accents, clay tile roofing, and metal garage doors. The project design also includes variations on color, materials, projections, and recessions, which contribute to an interesting and varied design.*

- e. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: The project incorporates measures to address noise, stormwater runoff, drainage, and erosion. The project will be required to adhere to all applicable standard permit conditions and mitigation measures related to reducing temporary and operational sources of noise and vibration, dust, and erosion. Residential buildings are not usually considered a source of significant odor and would not impact adjacent properties. The project will be required to comply with all City permits and policies related to erosion and storm water runoff. For these reasons the project is not anticipated to have an unacceptable negative impact on adjacent properties.*

- 9. **Evaluation Criteria for Demolition.** Section 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood



*Analysis: The project includes the demolition of one vacant light industrial building on site with a total floor area of approximately 9,740 square feet, and a surface parking lot. The proposed redevelopment of the project site includes architectural design that is compatible with the character of the surrounding neighborhood, which includes single-family and multifamily residential uses to the north, east, and west, and the Berryessa Flea Market site to the south of the project site, across Berryessa Road. The demolition of the light industrial building would not have an adverse impact on the adjacent properties.*

*The demolition would facilitate the construction of the first phase of the Master Plan established by File No. PD21-009. Re-use of the building would not be feasible to implement the goals of the project. The existing building on-site was constructed around 1975, making it approximately 48 years old. However, the building is not listed on the City's Historic Resources Inventory, and none meet the eligibility criteria for inclusion on the California Register of Historic Resources or the National Register of Historic Places based on their age and architectural style. The existing supply of housing would be maintained and exceeded through the provision of the 48 housing units in the first phase and up to 850 residential units at completion of the Master Plan.*

**10. Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

- a. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question

*Analysis: As identified above, a total of 103 trees will be removed to accommodate the project. These include 47 ordinance-size trees and 56 non-ordinance-size trees, including one native tree, that are distributed within the footprint of the project development. The trees will be required to be replaced at the City-required ratio, as shown in the table below (Tree Replacement Ratios).*

*As described below, a total of 299 required replacement trees at 15-gallon size or 150 trees at 24-inch box size will be required as replacement trees. Pursuant to the project landscaping plan, the development would plant a total of 18 replacement trees at 15-gallon size and 53 trees at 24-inch box size (equivalent to 106 15-gallon trees), which is less than the City's Tree Replacement ratios. The applicant will therefore be required to pay in-lieu fees for the remaining 175 trees prior to issuance of a Building Permit or Grading Permit, in accordance with the approved City Council Fee Schedule. The reason for the discrepancy is because this project will be removing trees for all phases of the project, but is only constructing the first phase, and therefore only planting trees for the first phase at this time.*

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 up 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</p> <p>Note: Trees greater than or equal to 38-inch circumference 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.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p>				

*Per Sheet L2 of the Plan Set, of the 47 ordinance-size trees to be removed, one is a native Coast Live Oak and will be required to be replaced at a ratio of 5:1, totaling 5 replacement trees. The other non-native ordinance trees to be removed include species Mexican Fan Palm, Peruvian Pepper, and Red Ironbark, and will be required to be replaced at a ratio of 4:1, totaling 184 replacement trees.*

*Of the 56 non-ordinance trees to be removed, 54 are sized between 19 and 38 inches in circumference, and the remaining two trees are less than 19 inches in circumference. All of the non-ordinance sized trees are non-native. Species to be removed include Italian Cypress, Tree of Heaven, and Chinese Hackberry. The replacement ratios are 2:1 for the trees 19-38 inches in circumference, and 1:1 for all trees proposed to be removed less than 19 inches in circumference, for a total of 110 replacement trees.*

In accordance with the findings set forth above, a Planned Development Permit to use the subject property 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 Permit 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 Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **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 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.

5. **Use Authorization.** Subject to all conditions herein, this Permit allows the establishment of a Master Plan for a general site layout, public and private street layout, grading and drainage patterns, and utility layout to allow the future construction of up to 455,000-square feet of commercial space, a 0.92-acre park, and up to 850 residential units, including on-site affordable units, and construction of the first phase (Blocks A, B, and C, including 24 detached single family homes and 24 attached townhome units), including the demolition of an existing light industrial facility (9,740 square feet) and surface parking lot, and the removal of 47 ordinance-size trees and 56 non-ordinance trees on the Project Site.
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "Master Planned Development Permit for Lands of Facchino" dated December 23, 2022, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
7. **Demolition Permit.** A demolition permit may be issued for the existing light industrial building and surface parking lot only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
8. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
9. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of any Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by an approved licensed arborist. Fencing and signage shall be

maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

**10. Planned Development District Effectuated.** This Planned Development Permit effectuates the portion of the Planned Development Zoning as reflected in the Permit's Approved Plan Set and the corresponding legal description.

**11. Berryessa BART Urban Village (BBUV) Plan:** The subject project is located in a designated Urban Village established under the Envision San Jose 2040 General Plan. Development approved under this project is subject to the policies in Berryessa BART Urban Village Plan, including each of the following conditions related to transportation demand management:

a. Transportation Demand Management (TDM)

- i. Unbundle all off-street parking from the rental, lease, or sale of each residential unit in the project.
- ii. Price all off-street private parking spaces at market rate for users.
- iii. Consistent with the Berryessa BART Urban Village Parking and TDM plan and the anticipated Citywide Transportation Demand Management Policy, the project is required to implement the following Mandatory TDM measures:
- iv. Form the Berryessa BART Urban Village Transportation Management Association (TMA) as applicable and as specified below in Subsections (a) through (c) below.
- v. Join as an active member of the TMA and participate in the TDM programs offered by the TMA.
- vi. Transit Pass Subsidy: Provide contributions or incentives towards the equivalent cost of a VTA monthly pass for on-site residences and employees. The monthly contributions or incentives can be spent on VTA/BART fare tickets or monthly passes. The project shall meet this requirement by participating in the TDM program offered by the TMA, or by procuring the service on its own.
- vii. Education, Marketing, and Outreach: Provide employees and/or residents with information on available travel options. The project shall meet this requirement by participating in the TDM program offered by the TMA, or by procuring the service on its own.
- viii. In addition to the Mandatory TDM measures, the project is required to implement a set of Additional TDM measures, selected from a menu of options based on the TDM Point System framework as defined in the Berryessa BART Urban Village Parking and TDM plan and the anticipated Citywide Transportation Demand Management Policy. The project is required to submit a project-level TDM Plan comprised of selected TDM measures at the Planned Development Permit stage.

b. Transportation Management Association (TMA):

- i. The first development project to obtain a building permit within any of the four Districts in the BBUV Plan area established by that Plan shall, in conjunction with the City of San Jose, form the Berryessa BART Urban Village Transportation Management Association (TMA) in order to manage and administer the City-approved TDM Plans for development projects and uses with the four Districts in the BBUV Plan area. This TMA shall be established prior to occupancy of the first building. The TMA shall facilitate shared TDM services as appropriate; provide transportation-related marketing for TDM-related programs and services; coordinate annual monitoring, evaluation, and reporting to the City of San Jose in accordance with the relevant approvals and legally binding documents for each respective development project and use within the four Districts of the BBUV Plan area, with TMA approval prior to submittal to the City of San Jose. Appropriate funding mechanisms for the TMA shall be established no later than the date of occupancy of the first building following the BBUV Plan approval in any of the four BBUV Districts. The developer/property owner that forms the TMA shall be a member of the TMA and other developers/property owners of projects within the four Districts of the BBUV shall join the TMA for the purposes stated above.
  - ii. Projects approved under subsequent PD permits are required to join the TMA established in Subsection (e) above, and property owners shall pay a portion of the costs of any adopted funding mechanism(s) to implement the City and TMA functions under the Parking and Transportation Management Entity.
  - iii. Development approved under this project shall work with the City and the TMA to make adjustments in the project-level TDM Plan as appropriate to meet the TDM compliance and monitoring requirements set forth in the anticipated Citywide Transportation Demand Management Policy.
12. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
14. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
15. **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. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping

17. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
18. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
19. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
20. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
21. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
22. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
23. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
24. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
25. **Required Vehicular Parking.** This project shall conform to the vehicular parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular parking require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
26. **Garage Parking Spaces for Attached Residential Unit Projects.** All garage parking spaces shown on the Approved Plans are to be used only for parking of residential unit vehicles and shall be kept free and clear of all obstructions. No conversion of any garages to living space, storage, or any other use is permitted.
27. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
28. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
29. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and

telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

**30. Housing Conditions of Approval.** Inclusionary Housing Ordinance Requirements for Mixed Use Developments.

- 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. Permittee must strictly comply with the following conditions:
  - i. The security should be either a City performance bond (by a California licensed surety) or a letter of credit using the City forms.
  - ii. The Developers will be required to record the IHO agreement prior to the recording of the parcel map, and it will include the following conditions:
    1. The entire market rate obligation for in-lieu security is due for the entire market rate project prior to the first Certificate of Occupancy for the first unit. The amount of the fee security should be based on the current fiscal year fee when the security is provided. Alternatively, the market rate phase 1 obligations for in-lieu security could be due for the entire market rate project prior to the first C of O for the first phase 1 unit and with the same conditions applying to phase 2. The amount of the fee security should be based on the current fiscal year fee when the security is provided.
    2. The fees would be refundable to the payor upon the financing closing and the building permit issuance for the 697-unit restricted affordable project. If this does not occur within five (5) years of the 1st Certificate of Occupancy for the first phase 1 market-rate unit, then the fees would go to the City for the in-lieu obligation.
    3. No building permit should issue for Phase 3 except in accordance with the affordability restrictions for that site.
    4. Required minimum standards and amenities.



- d. 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.
31. **Homeowner's Association.** A Homeowner's Association shall be established for maintenance of all common areas, including driveways/courtyards, landscaping and the community amenity area. A copy of the Development Permit, the accompanying Approved Plans, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner's Association by the Permittee no later than 30 days upon completion of each phase.
32. **Tract Sales Office/Model Homes.** This Permit includes the approval of a tract sales office/model homes complex as shown on the Approved Plans. Signs related to said use shall conform to the City's Sign Ordinance.
33. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the "NO DUMPING - FLOWS TO BAY," applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately-maintained streets within the property are present and maintained.
34. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
35. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
36. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
37. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
38. **Common Area Landscaping.** All landscaping in common areas shall be maintained by the Homeowner's Association or other similar entity.
39. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall

pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

40. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code as adopted or updated by the city.
41. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This Permit file number, PD20-012 shall be printed on all construction plans submitted to the Building Division.
  - b. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
  - c. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
  - f. *Common Interest Development.* Should condominiums be proposed, prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
  - g. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved

tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).

h. *Other*. Such other requirements as may be specified by the Chief Building Official.

41. **Recycling**. Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

42. **Public Works Clearance for Building Permit(s) or Map Approval**: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.

a. **Construction Agreement**: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

b. **Transportation**: A Transportation Analysis has been performed for this project. The Transportation Analysis identified adverse intersection operation effects at four different intersections. In most instances, mitigation of the adverse operation effect is unfeasible and offsetting improvements is required. We conclude that, with the following conditions, the subject project will be in conformance with the City of San Jose Transportation Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts. See separate Transportation Analysis Memo dated 1/19/23 for additional information.

i. **Berryessa Road and Lundy Avenue**: Construct offsetting improvements planned at the Berryessa Road and Lundy Avenue intersection within the BBUV Area. The multi-modal improvements include the removal of pork-chop islands at the northeast and northwest corners of the intersection which will enhance safety by removing pedestrian-bicycle conflicts with vehicles. A signal modification also will be required for the intersection improvements (including APS, video detection, etc.).

ii. **Berryessa Station Way and Berryessa Road**:

a) Convert the middle northbound right-turn lane to a shared left and right turn lane at Berryessa Station Way and Berryessa Road. Install “no right-turn on red” signage on the south leg of the Berryessa Station Way and Berryessa Road intersection to accommodate the lane conversion.

- b) Contribute \$50k towards signal modifications at the intersection of Berryessa Station Way and Berryessa Road to implement a bike signal.
- iii. **7th Street and Jackson Street:** Contribute \$100k towards offsetting improvements that include those planned at the 7th Street and Jackson Street intersection as part of the City's application for a quiet zone in the Japantown area.
- iv. **King Road and Mabury Avenue:** Construct offset improvements planned at the King Road and Mabury Avenue intersection that are within the adopted BBUV boundary and implementation plan. The multi-modal improvements include the removal of pork-chop islands at the northeast and southwest corners of the intersection which will enhance safety by removing pedestrian-bicycle conflicts with vehicles. A signal modification also will be required for the intersection improvements (including APS, video detection, etc.).
- v. Pay the US-101/Oakland/Mabury Transportation Development Policy (TDP) traffic impact fee for 459 PM peak-project trips under the Mabury Interchange alternative and 582 PM peak-project trips under the Berryessa Interchange alternative prior to issuance of Building Permits. The 2023 TIF is \$48,226 for each project peak project trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco.
- c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more

information concerning the requirements for obtaining this permit.

- iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- e. **Shoring:**
- i. Shoring plans may be required for review and approval as part of the Grading Permit for this project.
  - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e. soldier beams).
  - iii. If tie-backs are proposed for use along the adjacent property (241-03-022) agreements between the Applicant and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- f. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed for conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public

Works Clearance.

- g. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14)
  - h. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
  - i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
  - j. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose 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 for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
  - k. **Assessments:** This project is located within the boundaries of Community Facilities District No. 15 (Berryessa - Sierra), which maintains a stormwater treatment facility; its pump station; street trees and landscaping within parkstrips and areas adjacent to the basin; and access roads, all of which are non-city standard facilities. Properties within the district pay for the maintenance through annual special taxes, which are adjusted annually by the Consumer Price Index. The 2022-2023 maximum special tax is calculated at \$126.36 per residential unit and \$5,375.95 acre for non-residential uses, minus any credits. Future year assessments will continue to be collected through the County property tax bills listed under Tax Code 0945 "CFD #15". Any questions may be directed to Development Services Permit Center at (408) 535-3555.
- l. **Street Improvements:**
- i. **Shore Drive:** Provide a 48' Right-of-Way (ROW) width with a 9' attached sidewalk and tree wells along the public park frontage and a 9' detached sidewalk with park strip along the single-family residential frontages to conform to the existing public street improvements for Tract 10160 (permit no. 12-035364 IP).
  - i. **Robert Drive between Shore Drive and Mercado Way:** Provide a 46' ROW width with a 9' attached sidewalk and tree wells at the back of curb along the public park frontage and a 9' detached sidewalk with park strip along the single-family residential frontage to conform to the existing public street improvements for Tract 10160 (permit no. 12-035364 IP).

- ii. Mercado Way:
  - a) From existing street to Robert Drive, provide a 56' ROW width with 10' attached sidewalks and tree wells at the back of curb to conform to the existing public street improvements for Tract 10160 (permit no. 12-035364 IP).
  - b) Between Robert Drive and Bernard Drive, provide a 52' ROW width with a 9' attached sidewalk and tree wells at the back of curb along the public park frontage and a 9' detached sidewalk with park strip along the multi-family residential frontage.
- iii. De Rome Drive: Provide a 56' ROW width with 10' attached sidewalks and tree wells at the back of curb to conform to the existing public street improvements for Tract 10377 (permit no. 17-010463 IP).
- iv. Bernard Drive: Provide a 56' ROW width with 10' attached sidewalks and tree wells at the back of curb.
- v. Berryessa Road frontage:
  - a) Provide a 12' attached sidewalk with tree wells at the back of curb to conform to the existing public street improvements per permit no. 12-035552 IP.
  - b) Provide an in-lieu contribution towards the Class IV protected bike lane along the Berryessa Road project frontage per the CSJ Better Bike Plan 2025 (\$144 per LF).
- vi. Facchino Way: Install speed bumps along the Facchino Way private drive aisle, between the office building and De Rome Drive to discourage the use of Facchino Way as a cut-through route.
- vii. Construct City Standard driveways at public/private street connections.
- viii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ix. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- x. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- m. **Electrical:**
  - i. Electroliers along the project's frontages will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk

construction.

- iii. Provide clearance for electrical equipment from driveways and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.
  - n. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb or withing the park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
    - i. Berryessa Road: The recommended street trees are Ginkgo biloba 'Autumn Gold' planted 35' on center.
    - ii. De Rome Drive: The recommended street trees are Acer campestre planted 35' on center.
    - iii. Mercado Way: The recommended street trees are Acer campestre planted 35' on center.
    - iv. Shore Drive: The recommended street trees are Ulmus parvifolia 'Emer II' planted 35' on center.
  - o. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
  - p. **Referrals:** This project should be referred to the Bay Area Rapid Transit District.
43. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP), as maybe be amended and approved for this development by City Council Resolution No.\_\_\_\_\_.
44. **Standard Environmental Conditions.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
- b. **Air Quality**
    - i. Water active construction areas at least twice daily or as often as needed to control dust and emissions.
    - ii. All trucks hauling soil, sand, and other loose material shall be covered and all trucks shall 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 tune construction equipment 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.

**c. Biological Resources**

- i. **Tree Removal and Replacement.** The trees removed by the proposed project would be replaced according to tree replacement ratios required by the City as provided in Table 3.4.2 below. Of the 47 ordinance-size trees to be removed, one is a native Coast Live Oak and will be required to be replaced at a ratio of 5:1, totaling 5 replacement trees. The other non-native ordinance trees will be required to be replaced at a ratio of 4:1, totaling 184 replacement trees. Of the 56 non-ordinance trees to be removed, 54 are sized between 19 and 38 inches in circumference, and the remaining two trees are less than 19 inches in circumference. All of the non-ordinance sized trees are non-native. The replacement ratios are 2:1 for the trees 19-38 inches in circumference, and 1:1 for all trees proposed to be removed less than 19 inches in circumference, for a total of 110 replacement trees.

<b>Table 3.4.2: Tree Replacement Requirements</b>				
<b>Diameter of Tree to be Removed<sup>1</sup></b>	<b>Type of Tree to be Removed<sup>2</sup></b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
12.1 inches or more <sup>3</sup>	5:1	4:1	3:1	15-gallon container
6.1 – 12.1 inches	3:1	2:1	None	15-gallon container
Less than 6.1 inches	1:1	1:1	None	15-gallon container
<sup>1</sup> As measured 4.5 feet above ground level <sup>2</sup> x:x = tree replacement to tree loss ratio <sup>3</sup> Ordinance-sized trees Notes: Trees greater than or equal to 12.1 inches in diameter 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 Tree Removal Permit is required for removal of trees of any size. A 38-inch tree is 12.1 inches in diameter. One 24-inch box tree = Two 15-gallon trees.				

- 1) The project will provide 18 replacement trees at 15-gallon size and 53 trees at 24-inch box size (equivalent to 106 15-gallon trees) and will pay the in-lieu fee for 175 trees. Prior to the issuance of building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for 175 off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
- 2) 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, at the development permit stage.
  - 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.

- ii. **Santa Clara Valley Habitat Plan.** The project may be 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 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>.
- d. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE 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.
- e. **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 f or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The

MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
  - ii. The MLD identified fails to make a recommendation; or
  - iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- f. **Greenhouse Gas Emissions/Energy.** Proof of Enrollment in San Jose Community Energy (SJCE) GreenSource program: Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the SJCE GreenSource program (approx. 60% renewable energy) or TotalGreen program (approx. 100% renewable energy) 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.
- g. **Geology and Soils.**
- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - iv. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
  - v. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative

groundwater control systems shall be required.

- h. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The 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 PBCE or the Director's designee.
- i. **Hazards and Hazardous Materials.** Asbestos and Lead-Based Paint:
  - i. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
  - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
  - iii. All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
  - iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
  - v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- j. **Hydrology and Water Quality.** Consistent with the General Plan, measures shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction, including, but not limited to, the following:

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from truck tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- ix. The permittee 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.
- k. **Noise.** Pursuant to General Plan Policy EC-1.7, project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following:
  - i. Pile Driving is prohibited.
  - ii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
  - iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
  - iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good conditions 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 businesses, 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 will 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.

**45. Revocation, Suspension, Modification.** This Planned Development Permit and may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

## EFFECTIVE DATE

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC18-036 passed for publication on \_\_\_\_\_, 2023 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

MATT MAHAN

Mayor

ATTEST:

---

TONI J. TABER, CMC

City Clerk

## NOTICE TO PARTIES

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





EXHIBIT "A"  
FOR ZONING PURPOSES

**Parcel One**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcels 1 & 2 and a portion of Parcel 3 as described in the Gift Deed recorded July 7, 2005, in Document No. 18456695 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the westerly corner of said Parcel 3;  
Thence along the southwesterly line of said Parcel 3, South 37°13'17" East, 854.86 feet, to Point A designated hereon;  
Thence North 48°50'52" East, 39.25 feet;  
Thence along a tangent curve to the right, having a radius of 190.00 feet, through a central angle of 06°39'07" for an arc length of 22.06 feet;  
Thence North 55°30'00" East, 65.11 feet;  
Thence along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of 02°43'16" for an arc length of 9.97 feet;  
Thence North 52°46'43" East, 195.70 feet;  
Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 65°35'57" for an arc length of 68.70 feet;  
Thence North 75°57'13" East, 1.51 feet, to the general westerly line of the Parcel of Land described in the Grant Deed recorded May 17, 2012, in Document No. 21671768 of Official Records, Santa Clara County Records;  
Thence along said general westerly line the following four courses:  
1. Thence North 14°02'47" West, 847.79 feet;  
2. Thence westerly, along a non-tangent curve to the left, having a radius of 10.00 feet, whose center bears South 75°57'56" West, through a central angle of 112°43'09" for an arc length of 19.67 feet;  
3. Thence South 53°14'47" West, 10.00 feet;  
4. Thence North 36°45'13" West, 21.69 feet, to the northwesterly line of said Parcel 3;  
Thence along said northwesterly line, South 53°13'56" West, 702.67 feet, to the POINT OF BEGINNING.

Containing 10.84 acres, more or less.

**Parcel Two**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 3 as described in the Gift Deed recorded July 7, 2005, in Document No. 18456695 of Official Records and a portion of Parcel C as shown on that certain Record of Survey, filed for record on February 17, 1969, in Book 249 of Maps, page 1, all of Santa Clara County Records, described as follows:

BEGINNING at Point A designated above, being on the southwesterly line of said Parcel 3;

Thence North 48°50'52" East, 39.25 feet;  
Thence along a tangent curve to the right, having a radius of 190.00 feet, through a central angle of 06°39'07" for an arc length of 22.06 feet;  
Thence North 55°30'00" East, 65.11 feet;  
Thence along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of 02°43'16" for an arc length of 9.97 feet;  
Thence North 52°46'43" East, 195.70 feet;  
Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 65°35'57" for an arc length of 68.70 feet;  
Thence North 75°57'13" East, 1.51 feet, to the general westerly line of the Parcel of Land described in the Grant Deed recorded May 17, 2012, in Document No. 21671768 of Official Records, Santa Clara County Records;  
Thence along said general westerly line the following three courses:  
1. Thence South 14°02'47" East, 137.76 feet;  
2. Thence South 30°57'40" West, 15.38 feet;  
3. Thence South 14°01'55" East, 206.48 feet;  
Thence South 46°05'08" West, 239.78 feet, to the southwesterly line of said Parcel 3;  
Thence along said southwesterly line, North 37°13'17" West, 315.90 feet, to the POINT OF BEGINNING.

Containing 2.09 acres, more or less.

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

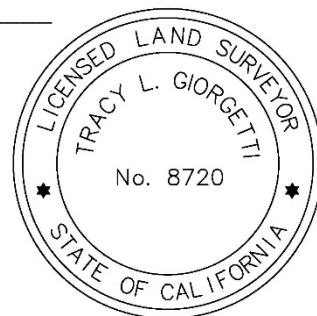
#### END OF DESCRIPTION

*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.*

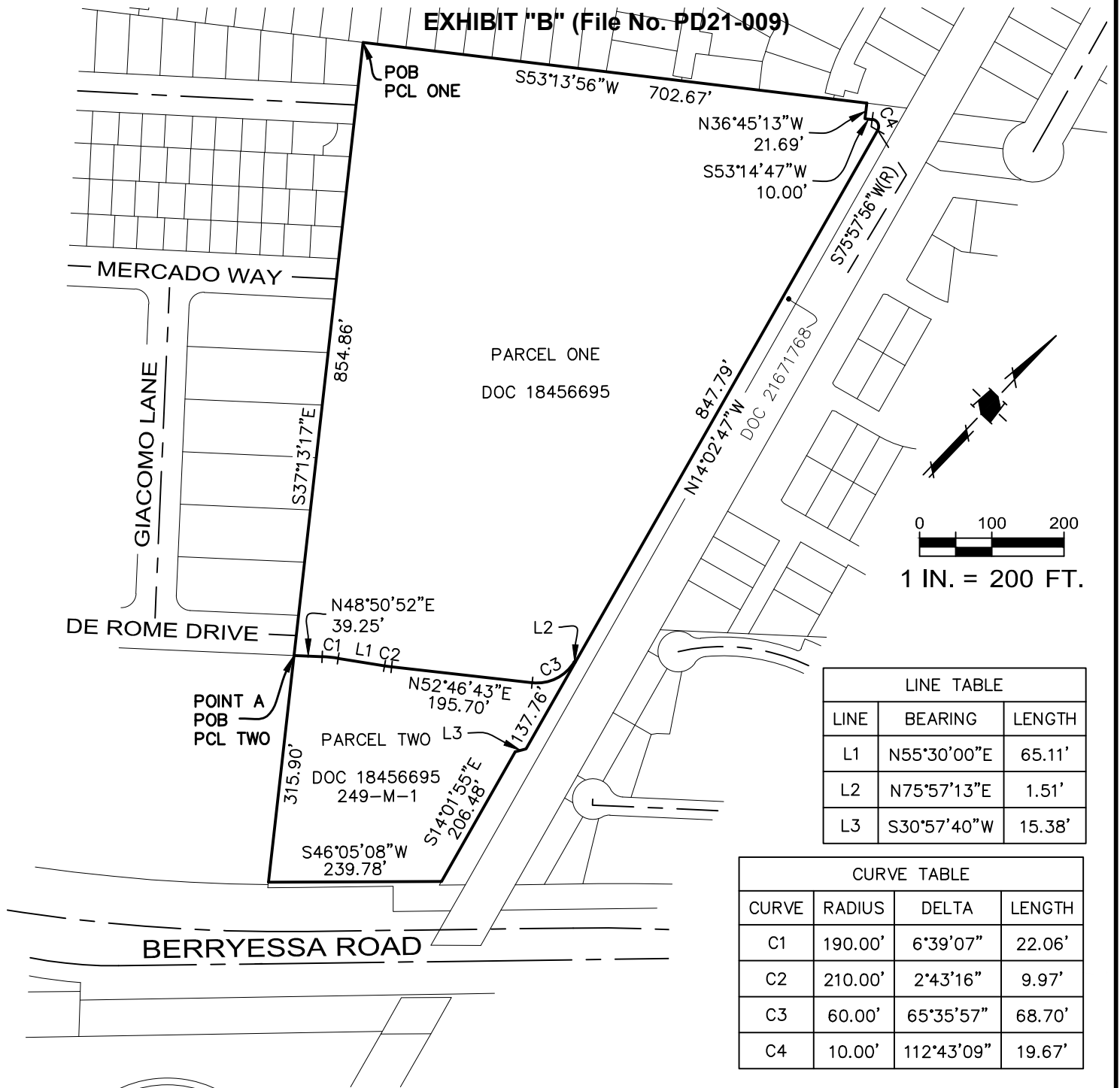
This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 4-18-23

  
Tracy L. Giorgetti, LS 8720



# EXHIBIT "B" (File No. PD21-009)



SHEET 1 OF 1

Date: 2023-04-18

Designed: DM

Drawn: RF

Checked: TG

Proj. Engr.: —

522100PL01



1570 Oakland Road  
San Jose, CA 95131

(408) 487-2200  
HMHca.com

SAN JOSE

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

CALIFORNIA

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.