

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO MERGE FOUR PARCELS INTO ONE PARCEL ON AN APPROXIMATELY 0.60-GROSS ACRE SITE, LOCATED ON THE NORTHEAST CORNER OF WEST SAN CARLOS STREET AND JOSEFA STREET (495 WEST SAN CARLOS STREET) (APN: 259-47-013, 259-47-014, 259-47-015, 259-47-016)**

**FILE NO. T20-004**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on January 14, 2020, a concurrent application (File No. T20-004) was filed by the applicant, Paul Ring of the UC Keystone Owner, LLC, with the City of San José for a Tentative Map to subdivide four parcels into one parcel on an approximately 0.60-gross acre site, on that certain real property situated in the DC Downtown Zoning District and located on the Northeast corner of West San Carlos Street and Josefa Street (495 West San Carlos Street, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A" entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a Public Hearing on said application on August 11, 2021, notice of which was duly given; and

**WHEREAS**, at said hearing, the Planning Commission gave all persons a 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, the City Council conducted a Public Hearing on said application, notice of which was duly given; and

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Vesting Tentative Parcel Map T20-004 495 West San Carlos Street", dated May 01, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement, was available for review prior to the Planning Commission and Council hearings upon request, and is available on the City's website for inspection by anyone interested therein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The subject site is located on the northeast corner of West San Carlos Street and Josefa Street. The subject site is currently comprised of four residential units, a water tank building (“tankhouse”), three commercial buildings, seven trees (two ordinance-size and five non-ordinance-size) and is located on the northeast corner of West San Carlos Street and Josefa Street. The site is bordered by a commercial building and West San Carlos Street to the south, a restaurant and Josefa Street to the west, and apartments to the north and east (495 West San Carlos Street).
2. **Project Description.** The project is a Vesting Tentative Map to merge four parcels into one parcel to facilitate the construction of a building with up to a 175-room hotel on approximately 0.60-gross acre site.
3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Downtown. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. The Downtown land use designation is located throughout the Diridon Station Area to create a mixed-use urban neighborhood. Downtown has a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

Furthermore, the project’s consistency with the following General Plan Major Strategies, Policies, and Goals are analyzed below.

*General Plan Strategies and Policies*

Major Strategy #9 – Destination Downtown: The Destination Downtown Major Strategy plans for continued support for growth in the Downtown as the City’s cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan’s economic, fiscal, environmental, and urban design/placemaking goals. Downtown San José is the cultural heart of San José and it provides employment, entertainment, and cultural activities more intensely than in any other area. The Downtown also consists of valuable historic resources, buildings with distinctive architecture, and unique neighborhoods where residents have convenient access to urban activities and amenities. As San José’s largest and most vibrant urban area, Downtown contributes towards the positive identity of the City to the region, the nation and abroad.

Land Use and Employment Policy IE-1.2: Plan for the retention and expansion of a strategic mix of employment activities at appropriate locations throughout the City to support a balanced economic base, including industrial suppliers and services, commercial/retail support services, clean technologies, life sciences, as well as high technology manufacturers and other related industries.

Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas, create complete, mixed-employment areas that include business support uses, public and private amenities, child care, restaurants, and retail goods and services that serve employees of these businesses and nearby businesses.

*Analysis: As envisioned by the General Plan, Downtown projects need to facilitate the growth of Downtown as a regional job center. Downtown is intended to be a place for people to live, work, and visit. To accomplish this goal, there need to be opportunities for all types of uses, including hotel uses. The project would serve Downtown residents, employees, and visitors, while the hotel space would support existing and future Downtown businesses and entertainment venues as previously discussed, the merging of four parcels into one parcel would facilitate the proposed development. The redevelopment of the site would be consistent with the General Plan land use designation of Downtown as the project would provide hotel services to the public. The project would provide jobs and hotel services with the construction of up to a 175-room Hotel. The merging of four parcels into one parcel supports the use of the property in an integrated manner for the uses authorized in the General Plan and Zoning Code.*

4. **Diridon Station Area Plan.** The subject site is located within the Diridon Station Area Plan, which was amended by City Council on May 25, 2021. The subject site has a Downtown land use designation. The land use designations in the Diridon Station Area Plan define the uses and urban form of future development in the Diridon Station Area. These land use designations are not specific to this Master Plan but are existing designations within the Envision San José 2040 General Plan and are applied elsewhere in the city. The Downtown land use designation supports residential uses, as well as non-residential uses including office, retail, service, hotel, medical, and entertainment uses. This designation also supports residential and commercial uses in a mixed-use format.

As described in the Envision San José 2040 General Plan, the Downtown designation allows floor area ratios (FAR's) up to 30.0. While residential densities approaching 800 dwelling units to the acre may be achievable under the Diridon Station Area Plan through the development of housing projects that include very small units, new commercial development could not achieve the FAR's allowed under the General Plan given the height guidelines of this Plan and the need for new development to be compatible with the surrounding neighborhood. New development should, however, be built as relatively high densities/intensities consistent with the Plan's height

guidelines (Figure 3-2-1 in the Diridon Station Area Plan) and compatible with the surrounding residential neighborhood.

All development within this designation should support pedestrian and bicycle circulation and encourage transit ridership. Uses that are automobile oriented are discouraged and drive-through uses are not supported. To help activate the corridor, new residential development along West San Carlos Street should incorporate ground floor commercial uses along this street.

*Analysis: The merging of four parcels into one parcel supports the use of the property in an integrated manner for the uses authorized in the General Plan and Zoning Code. Pedestrian activity and bike access is key to the development of the Diridon Station Area as a vibrant, urban destination that takes advantage of the proximity to one of the most important transit hubs in the San José area. Park Avenue has been identified as a bicycle pathway in the plan, and the Project proposes amenities that celebrate and encourage bicycle ridership. Additionally, sidewalks are a critical element in the creation of good pedestrian environments. Wide sidewalks in good condition facilitate convenient and comfortable pedestrian access. They also provide space for seating and socializing as well as for landscaping amenities like planters and street trees. The Site Development permit H19-053 associated to this permit proposes street trees along West San Carlos and Josefa Street and planting at the building corner of West San Carlos Street and Josefa Street. Pedestrian access would be provided with the construction of an approximate 15-foot-wide sidewalk along West San Carlos Street and secured bicycle parking is also available within the ground level garage.*

5. **Zoning Ordinance Compliance.** The subject site is located in the DC Downtown Primary Commercial Zoning District. Pursuant to Table 20-270 of the Municipal Zoning Code, the Downtown Commercial Zoning District is a conforming zoning district within the General Plan Land Use Designation. The vesting tentative map is consistent with the zoning.
6. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report, Vesting Tentative Map, and Resolution is also posted on the City's website. Staff has also been available to respond to questions from the public.

A formally noticed Community Meeting with the Environmental Scoping was held on September 24, 2020, in accordance with State and County public health orders. The community meeting was coordinated with Council District 3, and Council District staff attended the community meeting. Comments from the public were received during the community meeting and addressed by staff.

Staff contact information has been available on the community meeting notices and project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public. The questions and comments from community members included concerns related to building, historic adjacencies, traffic, parking, lack of amenities for the neighborhood, and sustainability.

## **7. Environmental Review.**

The City of San José, as the lead agency for the proposed project, prepared a Supplemental Environmental Impact Report to the Downtown Strategy 2040 Environmental Impact Report for the Marriott Townplace Suites project.

The Draft SEIR identified potentially significant impacts during construction to air quality, biological resources, hazardous materials, and noise. Mitigation measures were developed to reduce these potentially significant impacts to less than significant levels. In addition, Standard Permit Conditions were also included to ensure that significant impacts do not occur.

A significant and unavoidable impact would result with demolition of two historic structures on the project site — a mixed-use building and a tankhouse. Mitigation measures to lessen the impact were identified and included in the SEIR. However, even with these mitigation measures, demolition or even relocation would still result in a significant and unavoidable impact if this project is implemented.

All mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP), and the MMRP and Standard Permit Conditions are made included in this Resolution as conditions of approval of the vesting tentative map.

The Draft SEIR was circulated for public review from April 5, 2021 through May 20, 2021. A total of four comment letters were received from the following:

- Santa Clara Valley Transportation Authority
- Kanyon Consulting LLC, on behalf of the Indian Canyon Band of Costanoan Ohlone People
- Lozeau Drury LLP, on behalf of Laborers International Union of North America Local Union 270
- Preservation Action Council of San José

Responses to the comments, revisions to the text in the Draft SEIR and supplemental information was provided in the First Amendment to the Draft SEIR. The comment letters did not result in any substantial changes to the project description, analyses, and/or impacts that was not previously disclosed in the SEIR. The First Amendment to the Draft SEIR and the Draft SEIR together comprise the Final EIR for this project. These documents are available in their entirety on the City's Environmental Review website at [www.sanjoseca.gov/activeeirs](http://www.sanjoseca.gov/activeeirs).

## 8. Findings:

The City Council concludes and finds, based on the analysis of the above facts, that:

A. Conformance with the Subdivision Ordinance and the Subdivision Map Act. In accordance with San José Municipal Code (SJMC) Section 19.12.130, the City Council may approve the vesting tentative map if the City Council cannot make any of the findings for denial in Government Code Section 66474, and the City Council has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the City Council may approve the project if the City Council does not make any of the findings for denial in San José Municipal Code Section 19.12.220. San José Municipal Code Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code, as set forth below.

- I. The City Council finds that the proposed subdivision shown on the Vesting Tentative Map, subject to the conditions listed below and the requirements for project design and improvements is consistent with applicable General and Specific Plans of the City of San José, in that:

*Analysis: As discussed in detail above, the tentative map is consistent with the General Plan and Diridon Station Area Plan.*

- II. The City Council has considered the proposed subdivision shown on the Vesting Tentative Map, with the imposed conditions, to determine whether to make any of the findings set forth in the subsections of Section 66474 of the Government Code of the State of California which states “A legislative body of a city or county shall deny approval of a vesting tentative map, or a parcel map for which a vesting tentative map was not required, if it makes any of the following findings:”
  - a) That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
  - b) That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
  - c) That the site is not physically suitable for the type of development.
  - d) That the site is not physically suitable for the proposed density of development.
  - e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
  - f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

- g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

*Analysis: The vesting tentative map is consistent with the General Plan goals, policies, and land use designation. The vesting tentative map complies with the General Plan goals and policies related to Major Strategies and design. The General Plan land use designation of Downtown allows for higher intensity commercial projects. The project site is physically suitable for a vesting tentative map to merge four parcels into one parcel to allow an associated Site Development Permit to construct a hotel within the Diridon Station Area Plan and complies within the Floor Area Ratio. The merging of the parcels meets the requirements for a property in the DC Downtown Primary Commercial Zoning District because it supports the use of the property in an integrated manner for the uses authorized in the General Plan and Zoning Code. Furthermore, the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible due to the proposed project being developed on the entire parcel. Merging of the four parcels into one parcel will allow a larger building to be constructed on-site that will not cross property lines in violation of the Building Code.*

*Based on a historic resources assessment prepared by Treanor HL, dated September 14, 2020, the SEIR evaluated all structures on-site for potential historical significance. The property at 497-499 W. San Carlos Street (APN 259-47-015) appears eligible for listing as a City Landmark due to age. In general, buildings less than 50 years old can be considered historic resources only if they constitute an exceptional achievement in architecture or engineering or are of otherwise exceptional importance. Constructed in 1981, the commercial structure at 491 W. San Carlos Street (APN 259-47-013) does not appear eligible for the national, state, or local registers since it does not represent exceptional importance at this time. Upon completion of the survey and archival work, the property at 493-495 and 495 ½ W. San Carlos Street (APN 259-47-014) does not appear individually eligible for listing on the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR) or as a San José City Landmark as the property was not found to possess sufficient historical significance. The property at 497-499 W. San Carlos Street (APN 259-47-015) does not appear individually eligible for listing on the NRHP or CRHR (Criterion C/3) as the property was not found to possess sufficient integrity under Criterion C/3 for its period of significance. The property does appear eligible as a City Landmark under criteria 1, 4, and 6, of the Secretary of the Interior's Standards for evaluating historic buildings, as a good example of an early 20th century mixed-use development on W. San Carlos Street in San José with its Mission Revival-inspired corner store and the*



*attached Neoclassical house, and, as a rare architectural type, the extant tankhouse on Josefa Street.*

In accordance with the findings set forth above, "Vesting Tentative Parcel Map T20-004 495 West San Carlos Street" dated December 17th, 2019 on file with the Department of Planning, Building and Code Enforcement to merge the subject property from four parcels to one parcel for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Vesting Tentative Map except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Vesting Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Vesting Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
  - a. Acceptance of the Vesting Tentative Map by the Subdivider; and
  - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 19 of the San José Municipal Code applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire four (4) years from and after the date of issuance hereof by the City Council. The date of issuance is the date this Vesting Tentative Map is approved by City Council.
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 Subdivider'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 by 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. **Conformance to Plans.** The development of the site and all associated development and improvements and shall conform to the Tentative Plan Sheets entitled, "Vesting Tentative Parcel Map T20-004 495 West San Carlos Street" dated May 01, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be

amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set”.

5. **Improvements.** The Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Vesting Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
6. **Improvement Contract.** In the event Subdivider has not completed the improvements required for the subdivision at the time the final map is presented for approval, Subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
7. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking in and upon all areas within the subdivision shown on the Vesting Tentative Map for the subdivision to be devoted to such purposes.
8. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Vesting Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Final Map. Such easements so conveyed shall be shown on the Final Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
9. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager 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.

10. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
11. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
12. **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 Title 19 and Chapter 20.100 of the San José Municipal Code.
13. **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 Subdivider will be required to have satisfied all of the following Public Works conditions. The Subdivider is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
  - a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
  - b. **Transportation (see separate Traffic memo dated 3/12/2021):** This project does not require a detailed CEQA transportation analysis because the project is located in the expanded Downtown Core and is covered under the San José Downtown Strategy 2040 EIR. With the inclusion of the following conditions, we conclude that the subject project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts.
    - i. Construct an ADA compliant ramp at the northeast corner of Josefa Street and San Carlos Street.
    - ii. Provide a fair-share contribution towards future improvements at the Josefa Street and San Carlos Street intersection. Subdivider has agreed to provide a voluntary fair-share contribution of \$55,000 towards multi-modal area improvements; addressing pedestrian connectivity crossing West San Carlos Street.

**c. Diridon Station Area Infrastructure Impact Fee:**

- i. Associated with the implementation of the Diridon Station Area Plan (Chapter 14.35 of Title 14 of the San José Municipal Code) this project is subject to the City's Diridon Station Area Basic Infrastructure Impact Fee. Projects located within the Diridon Station Area are required to pay an impact fee in categories of Transportation, Plaza, Sanitary Sewer and Storm Drainage.
- ii. The 2021 Infrastructure Impact Fee, that includes all infrastructure categories, is \$6.37 per square foot of Office/R&D, \$4.25 per square foot of Retail, \$3,068 per Hotel room and \$2,863 per residential unit. This fee is subject to an annual escalation on January 1st per the Engineering News-Record (ENR) Construction Cost Index for San Francisco. This fee must be paid prior to issuance of Public Works Clearance. Credits will be applied for any infrastructure built as identified in the Diridon Nexus Study by the developer.

- d. **Grand Boulevard:** This project fronts San Carlos Street/Stevens Creek Boulevard, which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

**e. Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- 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 2013 California Plumbing Code 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. 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.

- 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 and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at <http://www.sanjoseca.gov/home/showdocument?id=27405>
- 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 Public Works clearance.
- j. **Undergrounding:**
  - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Josefa Street prior to issuance of a Public Works Clearance. One hundred percent of the base fee in place at the time of payment will be due. Currently, the 2021 base fee is \$532 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance.

- ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Josefa Street. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- k. **Assessments:** The City of San José, on September 30, 2008 implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties were expected to participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The base special tax is 4% of gross rents, and may be subject to an additional special tax up to 1% of gross rents. Please contact Public Works Department – Development Assistance at (408) 535-6831 to coordinate the annexation process.
- l. **Street Improvements:**
  - i. Provide a 15-foot attached sidewalk with tree wells along W San Carlos Street.
  - ii. Provide a 10-foot attached sidewalk with tree wells along Josefa Street.
  - iii. Construct City standard wheelchair ramp at the northeast corner of Josefa Street and San Carlos Street.
  - iv. Subdivider shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - v. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
  - vi. Remove and replace curb, gutter, and sidewalk along project frontage.
- m. **Downtown Construction:** This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- n. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable

Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.

- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
  - **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
  - **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
  - Implementing the closures at the time the onsite activities dictate the need for the closure.
  - Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 13.n.i, above.
- iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

- o. **Strategic Neighborhood Initiative (SNI):** This project is located within the Delmas Park SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- p. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San José Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- q. **Electrical:**
  - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - 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 feet in commercial areas and 5 feet in residential areas.
  - iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.
- r. **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. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

14. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the applicable Supplemental Environmental Impact Report Mitigation Monitoring and Reporting Program (MMRP) approved for this project by City Council Resolution No. [REDACTED].

15. **Standard Environmental Conditions**

a. Air Quality

The Subdivider shall implement the following measures during all phases of construction to control dust and exhaust at the project site:



- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
  - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
  - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
  - vii. Replant vegetation in disturbed areas as quickly as possible.
  - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
  - x. Maintain and properly 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.
- b. Biological Resources

**Replacement.** Replace all trees to be removed at the following ratios:

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Table 3.2-1: Tree Replacement Ratios				
Circumference of Tree to be Removed <sup>1</sup>	Type of Tree to be Removed <sup>2</sup>			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more <sup>3</sup>	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
<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 38 inches in 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 Tree Removal Permit is required for removal of trees of any size. One 24-inch box tree = two 15-gallon trees				

- i. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at [www.habitatagency.org](http://www.habitatagency.org).
- c. Cultural Resources
  - i. 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 shall examine the find. The archaeologist 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 the 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 Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Subdivider shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following condition 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:
  - 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.
  - The MLD identified fails to make a recommendation; or
  - The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. Geology and Soils

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.

- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iv. Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
  - v. The project shall be constructed in accordance with 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.
  - vi. 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.
  - vii. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Subdivider shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.
- e. Hydrology and Water Quality
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
  - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
  - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
  - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.

- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily with water sweepers.
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.
- ix. The Subdivider shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

f. Hazards and Hazardous Materials

- 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 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 BAAQMD regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
  - Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, 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 waste being disposed.
- vii. Prior to the issuance of a development permit for any project structures that would exceed the FAA imaginary surface applicable to the project site, the following actions shall be accomplished (2040 General Plan Policies TR-14.2 and CD-5.8):
- The Subdivider shall comply with the notification requirements of Federal Aviation Regulations, Part 77, and receive a “Determination of No Hazard” from the FAA.
  - Conditions set forth in the required FAA determination of No Hazard regarding roof-top lighting or marking shall be incorporated into the final design of the structure.

g. Noise

- i. Prior to the issuance of building permits, mechanical equipment shall be selected and designed to meet the City’s 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City’s noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning or Director’s designee for review and approval prior to the issuance of any building permits.

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

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

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

***NOTICE TO PARTIES***

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

**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 13 and 14, as shown on that certain Map entitled "Map of Lots in the Sunol Partition in Rancho Los Coches, as subdivided by Jas. A. Clayton & Co.", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 8, 1900, in Book F2 of Maps, Page 2.

APN: 259-47-014, 259-47-015



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TRACT ONE:

Lots 15 and 16, as shown on that certain Map entitled, "Map of Lot 6 of the Sunol Partition of the Los Coches Rancho as subdivided by James A. Clayton & Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 8, 1900, in Book of Maps Lettered F2, Page 2.

APN: 259-47-013

TRACT TWO:

Lot 12, as shown on that certain Map entitled, "Map of Lot 6 of the Sunol Partition of the Los Coches Rancho as subdivided by James A. Clayton & Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 8, 1900, in Book of Maps Lettered F2, Page 2.

APN: 259-47-016

APN: 259-47-013, 259-47-016

Your Reference:

Chicago Title Company

## **EXHIBIT A LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

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[APN: 259-47-014, 259-47-015](#)

## **EXHIBIT "A"**

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

## LEGAL DESCRIPTION

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[APN: 259-47-013](#)

### TRACT TWO:

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[APN: 259-47-016](#)

[APN: 259-47-013, 259-47-016](#)

## EXHIBIT "A"

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