

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO MERGE FIVE PARCELS INTO ONE PARCEL AND TO RESUBDIVIDE UP TO 15 COMMERCIAL CONDOMINIUM UNITS ON A 3.57-GROSS ACRE SITE LOCATED AT THE NORTHWEST CORNER OF SOUTH ALMADEN BOULEVARD AND WOZ WAY (APNS: 264-28-019, 022-025, 028, 149, 152, 153, 160, 167-169, 172-176)

FILE NO. T21-015

WHEREAS, pursuant to the provisions of Chapter 19.13 of Title 19 of the San José Municipal Code, on April 15, 2021, an application (File No. T21-015) was filed by the applicant, BXP Almaden Associates LP, with the City of San José for a Vesting Tentative Map to merge five parcels into one parcel and to resubdivide up to 15 commercial condominium units on an approximately 3.57-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located on the northwest corner of South Almaden Boulevard and Woz Way (APNS: 264-28-019, 022-025, 028, 149, 152, 153, 160, 167-169, 172-176, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” and depicted in Exhibit “B,” entitled “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 hearing on said application on August 25, 2021, 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 19.13 of Title 19 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

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

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

WHEREAS, at said hearing, this City Council received in evidence a vesting tentative map plan set for the subject property entitled "Vesting Tentative Parcel Map, File No. T21-015" dated ~~received June 2021~~ revised September 9, 2021, 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 development 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;

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

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located at the northwest corner of Woz Way and South Almaden Boulevard. The approximately 3.57-gross acre site is a public parking lot with driveway access from Woz Way. The site is surrounded by the Convention Center to the east across South Almaden Boulevard, a 9-story office building to the north, the Guadalupe River and Trail to the west, and single-family residences approved for redevelopment with two office towers (File No. H20-004) to the south across Woz Way. The subject site consists of five parcels.
2. **Project Description.** The project is a Vesting Tentative Map to merge five parcels into one parcel and resubdivide up to 15 commercial condominium units, minimum 750 square feet, on this 3.57-acre lot. The building design and the development are covered under a Special Use Permit, File No. SP20-005.
3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Downtown. This designation supports uses such as office, retail, service, residential, medical office, hospital, and entertainment uses. All development within this designation is intended to enhance the “complete community” in Downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown land use designation allows a floor-area ratio (FAR) of up to 30.0.

The tentative map will facilitate future development on the property that is consistent with the Downtown land use designation and the development intensity is in line with Downtown development goals.

The associated development, 16-story high-rise office towers with ground floor retail spaces, would foster a complete community in Downtown by increasing jobs, providing active ground floor store fronts uses along streets and open space frontage, and a plaza. The development also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a FAR of 9.98. making it consistent with the Downtown land use designation.

The development is consistent with the following General Plan policies:

- a. Land Use Policy LU-1.2: Encourage walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

***Analysis:** The project limits vehicular circulation on site and promotes pedestrian connectivity. All the loading and parking activities are directed underground. The project's open pedestrian level design allows abundant pedestrian circulation around the building and provides direct connections from the South Almaden Boulevard sidewalk to the Guadalupe River Trail through two paseos. The project also includes a plaza at the corner of South Almaden and Woz Way, providing an attractive urban space. The project would also construct a 5-foot tree wells, a 5.5-foot wide raised bike lane, a 0.5-foot tactile strip and an 8-foot wide sidewalk along the South Almaden Boulevard frontage, and construct a 5-foot tree wells, a 6-foot wide raised bike lane, a 0.5-foot tactile strip, and a 32 to 38-foot wide sidewalk along the Woz Way frontage. In addition, the South Almaden Boulevard Convention Center crosswalk and the intersection of Woz Way and South Almaden Boulevard will be improved per the new plan line requested by the Department of Public Works and Department of Transportation to provide an enhanced pedestrian connection.*

- b. Downtown Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the General Plan.
- c. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

***Analysis:** The development's architecture and site plan layout are designed to complement and further enliven the surrounding Downtown area. The ground floor would provide retail and amenity space, and office lobbies along its street frontages, paseo, plaza, and the river trail, which adds to the Downtown amenities for residents, workers, and visitors. The project's design, massing, and on- and off-site improvements would create a focal point in Downtown by improving pedestrian and bicycle circulation, providing active ground floor uses and an intensive employment use in Downtown.*

The pedestrian orientation and amenities of the ground floor and site layout would support social interactions. The project's street frontage and river frontage would be lined with active uses including lobbies and retail spaces. The building's ground floor storefront is designed with high transparency to enhance safety and visibility between the public realm and private development.

- d. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

Analysis: The site is served by the Santa Clara Valley Transportation Authority (VTA) and is approximately 0.7 miles from Caltrain, Altamont Commuter Express (ACE), and Amtrak stations. The project area is served by many VTA bus routes with high-frequency service. The nearest bus stops are located at the San Carlos Street/Woz Way intersection (Route 23) and San Carlos/Convention Center intersection (Routes 23, 168, 523). The site is also within 1,000 feet of the Children's Discovery Museum Light Rail Station and Convention Center Light Rail Station. The project includes a Transportation Demand Management Plan that promotes transit ridership by incorporating a transit use incentive program. The additional ground floor retail space would provide residents and workers in the Downtown area with additional amenities which would help expand and further connect the pedestrian network and reduce automobile use.

The proximity of the intensive office development to a variety of public transportation options encourages transit use and helps enable workers to have a car-free commute. Furthermore, it is envisioned that employees in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site. Finally, the development's commercial/retail spaces would provide the surrounding Downtown neighborhood with additional nearby retail businesses.

- e. Downtown Urban Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San Jose and maximize development potential and overall density within the Downtown.
- f. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
- g. Downtown Urban Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings higher than 75 feet, to create distinctive silhouettes for the Downtown skyline.

Analysis (Policy CD-6.1 to 6.3): The project has a FAR of 9.98 with the maximum height of approximately 283 feet allowed by the Federal Aviation Administration (FAA), making this a dense commercial project. The significant density of the project would contribute to Downtown's growth as a vibrant urban area. The project has undergone extensive design review to ensure its scale, quality, and character strengthen Downtown's status as an urban center, as discussed in the Design Guidelines conformance section.

- 4. **Zoning Ordinance Conformance.** The project would merge five parcels into one parcel and resubdivide up to 15 commercial condominium units. The floor area of the commercial condominium unit will be in compliance with Zoning Code Section 20.175.042.c that requires the minimum unit size for non-residential condominium units

to be 750 square feet. As shown on the approved plans, the minimum size of the proposed commercial condominium unit is 750 square feet.

5. **Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Draft SEIR was circulated for public review and comment from July 31, 2020 through September 14, 2020. The EIR prepared for this project concluded that implementation of the proposed project would result in a significant and unavoidable impact on construction, operational, and cumulative PM2.5 air quality, cumulative biological resources, and cumulative noise and vibration.

Mitigation measures were also developed to lessen the following impacts to less than significant levels, including bird-safe design features, entering into a Site Cleanup Program with the Santa Clara county Department of Environmental Health, and implementing a construction noise logistics plan that includes specific measures for reducing nighttime construction noise.

Standard Permit Conditions are also required to ensure no impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, 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, protection of unknown subsurface resources, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction, and impacts to public facilities.

CEQA Alternatives

As required under CEQA, the Draft SEIR identified and evaluated alternatives to the project. Three critical factors considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered four project alternatives: 1) No Project-No New Development; 2) Reduced Development Alternative 1 (Option 1) – Reduced Square Footage with 35-Foot Setback; 3) Reduced Development Alternative 1 (Option 2) – Reduce Square Footage With 100-Foot Setback; and 4) Reduced Development Alternative 2 – Square Footage Reduction and Increase in Height.

The Reduced Development Alternative 1 (Option 1) – Reduced Square Footage With 35-Foot Setback Alternative was found to be the environmentally superior alternative because it would increase the riparian setback beyond what the project currently proposes without increasing air quality impacts. However, this alternative would not

meet one of the project objectives, which is to maximize the use of an underutilized infill site compared to the Project.

Public Comments

The City received 12 written comment letters during the public circulation period. Comments were submitted by five agencies, which were the California Department of Transportation (DOT) who submitted two letters, San Francisco Bay Regional Water Quality Control Board (SFBRWQCB), Santa Clara Valley Transportation Authority (VTA), Valley Water, and the County of Santa Clara Roads and Airports Department. The DOT asked for more information on potential traffic impacts on the adjacent highway and more information on project runoff in case of a 100-year flood event. The County Roads and Airports Department encouraged the City to do a cumulative traffic analysis and provide more on-site parking. The VTA requested impacts to light rail to be disclosed and supported the design of separated bike lanes between the sidewalk and drop-off zones and the inclusion of 319 bike parking spots. The SFBRWQCB expressed that mitigation measure BIO-1.1 may be infeasible in that it may be challenging to find 3.6 acres of riparian land to restore. Valley Water requested more information be provided regarding the storm water outfall alignments and riparian mitigation requirements.

The six organizations and individuals that commented on the SEIR were the California Native Plant Society (CNPS), Guadalupe-Coyote Resource Conservation District (GCRCD), Guadalupe River Park Conservancy, Santa Clara Valley Audubon Society (SCVAS), the Sierra Club Loma Prieta Chapter, and Jean Dresden. The CNPS expressed concerns over the project's encroachment within the minimum 100-foot setback, finding adequate land for mitigation measure BIO-1.1, and inconsistencies with the Santa Clara Valley Habitat Plan. The GCRCD requested that the City select an alternative in the SEIR that meets the 100-foot setback, and expressed concern over impacts to birds, riparian habitat health, local transportation impacts, and environmental awareness. The SCVAS voiced concerns over the project's compatibility with Council Policy 6-34, growth inducing impacts, consistency with Downtown Strategy 2040 findings, flooding, inadequate alternatives, and impacts to Discovery Meadows Park and the riparian habitat. The Sierra Club requested information on soil removal and staging operations and expressed concern over various air quality, biological resources, geology, hazards, hydrology, noise, utilities, mandatory findings of significance, and alternatives impacts. Jean Dresden expressed concern over shade impacts to Discovery Meadows and Guadalupe River Park, dewatering risks, and inadequate alternatives.

None of the comments received addressed an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address habitat agency conformance, storm water, park shading and other suggested texts from agencies.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the MMRP constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (FSEIR) are available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-directory/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/almaden-office-project>.

Response to Public Comments Addressed in First Amendment

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, the Draft SEIR does not need to be recirculated.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

Statement of Overriding Considerations

The City Council adopted and made a Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant and unavoidable impact of the Project is acceptable in light of the economic and social considerations noted below, because the benefits of the Project outweigh the significant and unavoidable impact of the Project. The City Council finds that the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant and unavoidable

environmental impact and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, Zoning Ordinance and the Downtown Strategy 2040 Area Plan.

Benefits of the Project:

- a. Major Strategy #3 Focused Growth: The Project site is located within an identified Growth Area, as specified in the Envision San José 2040 General Plan. The project proposes to significantly intensify the site with a mixed-use development composed of commercial and office in a pedestrian-friendly design and located in proximity to a variety of services, employment centers, educational institutes, and transit. The City's calculated employment to square footage ratio is one job per 300 square feet of developed commercial, industrial, retail, and office uses. The project would develop approximately 1,526,252 square feet of office and commercial space, which would add approximately 5,088 new jobs to the Downtown area. Planning such sites for higher density mixed-use development enables the City to provide economic and employment benefits consistent with the community objectives of the Envision San José 2040 General Plan.
- b. Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community: The Project introduces new employment opportunities by providing up to 1,487,115 square feet of office space and 39,137 square feet of active commercial uses at the ground floor, consistent with the rhythm and activities of the Downtown area. Employees will be able to partake in the commercial uses located on the ground floor and contribute to business growth in the Downtown area by increasing the customer base for downtown businesses.
- c. General Plan Land Use Goal LU-1.1, LU-3, LU-3.4, and LU-5.7: The Project encourages the use of alternative transportation options through its proximity to public transit and the inclusion of bicycle parking for employees and retail users as well as on-site showers and lockers for bicycle users. The project is located approximately 560 feet from the nearest Light Rail station, 600 feet from the nearest bus stop, and one-half mile from Diridon Station. The project proposes a separated bike lane between the sidewalk and drop-off zones along the eastern and southern project frontages on Almaden Boulevard and Woz Way to aid in bike lane connectivity. The Project would increase the number of employees that continuously visit the Downtown area, which would increase the survivability of retail and encourage new retail services and amenities to locate in the area. The ground floor of the development will have retail opportunities, active uses, and storefront designs to enhance the pedestrian experience in Downtown. The ground floor active uses will also provide easier

and more direct access to the Guadalupe River Trail. Ground floor retail amenities will not only serve the employees of the towers, but also workers and residents in the Downtown area. The project will also increase jobs and economic development and increase the City's jobs-to-employed ratio, providing approximately 5,088 new jobs.

- d. Downtown Urban Design Policy CD-6.1, CD-6.2, and CD-6.6: *The proposed project has a floor-area ratio (FAR) of 11.1, making it a very dense commercial project given the FAA restrictions on height for the parcel. This amount of density will contribute to the Downtown's growth as a vibrant urban area, and help the City actualize its vision for the Downtown core. The project has undergone extensive design review so that its scale, quality, and character strengthen Downtown's status as an urban center. The proposed project would contain two towers connected via podium levels. The ground floor would contain an open-air paseo with commercial amenities allowing pedestrians to pass through the building to access the Guadalupe River Trail and would enhance the pedestrian experience from ground-level. The proposed development will be a recognizable development from the sky, has a strong design presence and connectivity at street level, and offers a unique connected tower approach to development in Downtown San José.*

Each of the above benefits of the Project were weighed against its significant unavoidable impact identified in the EIR. The City Council determined that these benefits outweigh the adverse environmental effect of the Project and, therefore, further determined that the adverse environmental effect is acceptable and overridden.

6. FINDINGS

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

- a. **Subdivision Map Act Findings.** In accordance with San José Municipal Code Section 19.12.130, the City Council may approve the tentative map if the City Council cannot make any of the findings for denial in Government Code section 66474 and the City Council has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the City Council may approve the project if the City Council does not make any of the findings for denial in San José Municipal Code section 19.12.220. San José Municipal Code Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code.
- i. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
 - ii. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

- iii. That the site is not physically suitable for the type of development.
- iv. That the site is not physically suitable for the proposed density of development.
- v. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- vi. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- vii. 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 will merge five parcels into one parcel and resubdivide up to 15 commercial condominium units. Based on review of the Vesting Tentative Map and as discussed above, any such findings cannot be made to deny the subject subdivision in that: 1) the project is consistent with the General Plan as noted above; 2) the design of the units is consistent with the General Plan in that it identifies the consolidation of lots to avoid building construction over existing lot lines; 3) the project site is physically suitable for a vesting tentative map to merge five parcels into one parcel to support the office development which is consistent with the Downtown General Plan land use designation and allowed under the Downtown Primary Commercial Zoning District; 4) merging of the five parcels into one parcel will allow a larger building to be developed on-site that will not cross property lines in violation of the Building Code and meet the development intensity within Downtown; 5) the subdivision will not cause any environmental damage or substantially injure fish or other wildlife habitat in that the purpose of the subdivision is to merge five parcels to one large parcel for up to commercial condominium purpose and the project includes mitigation measures such as bird-safe design measures, on-site and off-site habitat restoration and riparian habitat monitoring plan and is required to comply with all the environmental conditions; 6) the Vesting Tentative map will not cause any public health issues in that it will merge existing five parcels to one parcel for up to 15 commercial condominium units and the associated office development is required to comply with all City regulations and Code requirements and implement mitigation measures; 7) the parcel combination will not conflict with any public easements, as the project will vacate an existing storm drain easement on site and provide a new storm drain easement per the storm drain realignment approved by the Department of Public Works.

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

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 applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire 30 months 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 the City Council.
3. **Development Rights - Vesting on Approval of Vesting Tentative Map.**
 - a. Pursuant to San José Municipal Code Section 19.13.070, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Government Code Section 66474.2. However, if Section 66474.2 of the Government Code is repealed, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.
 - b. Notwithstanding subsection 3.a., above, any permit, including a building permit, approval, extension, or entitlement may be made conditional or denied if any of the following are determined:
 - i. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
 - ii. The condition or denial is required in order to comply with state or federal law.

- c. The rights referred to herein shall expire if a final map is not approved prior to the expiration of the vesting tentative map as provided in Section 19.13.060. If the final map is approved, these rights shall last for the following periods of time:
 - i. An initial time period of one year. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this one-year initial time period shall begin for each phase when the final map for that phase is recorded. All of said final maps or parcel maps must be recorded within the time period set forth in Section 19.13.060 or the vesting tentative map approval shall expire for those parcels for which final maps or parcel maps are not timely recorded.
 - ii. The initial time period set forth in 3.c.i. shall be automatically extended by any time used for processing a complete application for a grading permit if such processing exceeds thirty days from the date a complete application is filed.
 - iii. A subdivider may apply to the Planning Director for a one-year extension at any time before the initial time period set forth in 3.c.i expires. If the extension is denied, the subdivider may appeal that denial to the City Council within fifteen (15) days.
 - iv. If the subdivider submits a complete application for a building permit during the periods of time specified in 3.c.i. through 3.c.iii., above, the rights referred to herein shall continue until the expiration of that permit, or any extension of that permit.
- 4. **Conformance to Plans.** Development shall conform to the approved Vesting Tentative Map plans entitled “Vesting Tentative Parcel Map, File No. T21-015” dated ~~received June 2021~~revised September 9, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City’s approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the “Approved Vesting Tentative Map Plan Set).”
- 5. **Compliance with Subdivision Ordinance.** The final map shall comply with all of the requirements for final maps in Chapter 19.16 of the San José Municipal Code and shall show and contain all of the data required by San José Municipal Code Section 19.16.110.
- 6. **Conformance with Other Permits.** The subject Vesting Tentative Map shall conform to and comply in all respects with the Special Use Permit File No. SP20-005 on which such Vesting Tentative Map is based. Approval of said Vesting Tentative Map shall automatically expire with respect to any portion of the lands covered by such Vesting Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Special Use Permit for such lands automatically expires or for any reason ceases to be operative.

7. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Vesting Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
8. **Improvement Contract.** In the event subdivider has not completed the improvements required for his proposed subdivision at the time the final map is submitted for approval, subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
9. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking in and upon all areas within the subdivision shown on the Vesting Tentative Map for the subdivision to be devoted to such purposes.
10. **Distribution Facilities.** The Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
11. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Vesting Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Final Map. Such easements so conveyed shall be shown on the Final Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
12. **Owner's Association.**
 - a. An Owners' Association consisting of all commercial condominium units shall be established prior to issuance of any Certificate of Occupancy for maintenance of all common areas, including pedestrian walkways, easements, landscaping, parking, ingress and egress, emergency access, open space, and the like. The subdivider shall provide to the Owners' Association a copy of the this Tentative Map, the accompanying Plan Set, any approved Amendments or Adjustments to the associated development permit, and a complete set of approved building and all improvement plans within thirty (30) days of completion of each construction phase.
 - b. The subdivider shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the city for compliance with the terms of

the City of San José Municipal Code, and shall upon city approval be recorded concurrently with the approved parcel or final map.

13. **Covenants, Conditions, and Restrictions (CC&Rs).** The Covenants, Conditions, and Restrictions document shall be reviewed and approved by the Director of Planning, Building and Code Enforcement prior to the approval of the Final Map.
14. **Final Map.** No Final Map or Tract Map shall be approved by City Council unless and until the appeal period for the development permit, City File No. SP20-005 has expired and all appeals have been exhausted.
15. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
16. **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 to the Department of Public Works prior to issuance of Public Works clearance.
17. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Vesting Tentative Map shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
18. **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 any Building permits, whichever occurs first, the permittee must 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: <http://www.sanjoseca.gov/devresources>.

- 1) **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.
- 2) **Transportation (see separate Traffic memo dated 6/1/2020):** This project does not require a CEQA transportation analysis because the project is located in the expanded Downtown Core and is covered under the San Jose Downtown Strategy 2040 EIR. With the inclusion of the following conditions, the subject project will be in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts.
 - a. The Woz Way/Locust Street/Almaden Boulevard Off-Site Development Improvements (as known as Woz Way Planline Improvement) prepared by the Department of Transportation dated May 2020 on file includes a new signal at Woz Way and Locust Street, curb extensions that would reduce the pedestrian crossing distance across Woz Way from 60 feet to approximately 45 feet, installation of a bike lane adjacent to the existing crosswalk across the west leg of the intersection, installation of bike lane protected landscaping/median island along both sides of Woz Way, and the installation of a new north-south crosswalk across the east leg of the intersection.
 - i) If the Woz Way Planline work has not been commenced by the 280 Woz Way (KT Urban) development (File No. H20-004) prior to building permit issuance for the Permittee's (2833 South Almaden) project (File No. SP20-005), Permittee shall construct all required public improvements for the Woz Way Planline work at its sole cost and expense, subject to the conditions below.
 - a) Permittee shall receive reimbursement for a portion of the total cost of the Woz Way Planline improvements from the owner of the 280 Woz Way development.
 - b) Permittee shall enter into a private agreement with the owner of the 280 Woz Way development project addressing the terms and conditions of the payment or reimbursement.
 - c) The Permittee's failure to receive reimbursement from the owner of the 280 Woz Way development project shall not in

any way relieve Permittee from its obligation to perform the identified Woz Way Planline improvement work.

- b. Per the queuing analysis, the northbound left-turn pocket at Almaden Boulevard/Balbach Street/Woz Way intersection must be extended for a total vehicle storage capacity of 200 feet. The extension of northbound left-turn pocket is needed for both the Permittee's project (2833 South Almaden) as well as the 280 Woz Way (KT Urban) development.
 - i) If the extension of the northbound left-turn pocket extension improvement has not commenced by the 280 Woz Way (KT Urban) development prior to any building permit issuance for the Permittee's Project, Permittee shall extend the northbound left-turn pocket at its sole cost subject to the conditions below.
 - a) Permittee shall receive reimbursement for a portion of the total cost of the northbound left-turn pocket extension from the owner of the 280 Woz Way development.
 - b) Permittee shall enter into a private agreement with the owner of the 280 Woz Way development project addressing the terms and conditions of the payment or reimbursement.
 - c) The Permittee's failure to receive reimbursement from the owner of the 280 Woz Way development project shall not in any way relieve Permittee from its obligation to extend the northbound left-turn pocket.

3) Grading/Geology:

- a. A grading permit is required prior to the issuance of a Public Works Clearance.
- b. 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.
- c. If the project hauls 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.

- d. Because this project involves a land disturbance of one or more acres, the Permittee 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.
- e. 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 be 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.

4) Shoring:

- a. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- b. 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 Permittee 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).
- c. If tie-backs are proposed for use along the adjacent properties, APN NO(s) 264- 28-159/157/177/162, agreements between the Permittee and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- 5) 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.

- a. 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.
 - b. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - c. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at: <https://www.sanjoseca.gov/home/showdocument?id=27405>.
 - d. For proposed outfall(s), the Permittee will be required to obtain a permit from the Department of Fish & Wildlife and a Clean Water Act Section 401 Water Quality Certification from the Regional Water Board. Additional permits from the Santa Clara Valley Water District and/or the U.S. Army Corps of Engineers may be required. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a Public Works Clearance.
- 6) **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).
- 7) **Flood: Zone X.** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
- 8) **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.
- 9) **Undergrounding:**
- a. The In-Lieu Undergrounding Fee shall be paid to the City for frontage adjacent to Woz Way prior to issuance of a Public Works Clearance. 100 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 31st 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 is issued.
 - b. The Director of Public Works may, at his discretion, allow the Permittee to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Woz Way. Permittee shall submit copies of executed

utility agreements to Public Works prior to the issuance of a Public Works Clearance.

- 10) **Assessments:** This project is located within the Basic Zone of the Downtown San José Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for the services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2018-19, commercial properties pay \$0.071914761 and residential properties pay \$0.048542190 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the County property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". Any questions may be directed to Department of Public Works at (408) 535-6831.
- 11) **Street Improvements:** All street improvements shall be to the satisfaction of the Director of Public Works. Lane configurations and intersection geometry shall substantially conform to the Proposed Street Cross-Section included in the Woz Way/Locust Street/Almaden Boulevard Off-Site Development Improvements (as known as Woz Way Planline Improvement) prepared by the Department of Transportation dated May 2020 on file. Any new, or modification to an existing, traffic signal will require a traffic signal "kick-off" coordination process prior to submitting the application for the Public Street Improvement permit. At least 30 days prior to submitting an application, send a request to begin the kick-off coordination with an electronic copy of a scaled conceptual traffic signal plan showing right-of-way, intersection geometrics, and signal layout
- a. Almaden Boulevard: The existing bike lane, parking lane, and sidewalk shall be reconstructed to include following typical configurations. The remaining street configuration shall not be altered:
 - i) 8-foot wide parking lane, 6-inch tall curb, 5-foot square tree wells, 5-foot 6-inch wide bike lane, 6-inch wide tactile strip, 8-foot wide sidewalk through zone (include tactile strip on both sides of bike lane when not adjacent to curb).
 - ii) The existing bike lane and parking lane, beyond the project frontage, shall be reconfigured to create a protected bike lane that conforms to the proposed configuration.
 - b. Woz Way: The existing bike lane, parking lane, and sidewalk shall be reconstructed to include following typical configurations. The remaining street configuration shall substantially conform to the Woz Way Planline

Improvement: 8-foot wide parking lane, 6-inch tall curb, 5-foot square tree wells, 6-foot wide bike lane, 6-inch wide tactile strip (include tactile strip on both sides of bike lane when not adjacent to curb). The remaining sidewalk configuration over the extent of APN No. 264-28-144 to be determined at implementation.

- c. Almaden Boulevard/Convention Center-Project Driveway Intersection:
 - i) Add third and fourth crosswalk legs
 - ii) Extend northbound left-turn lane on Almaden Boulevard to provide a total vehicle storage capacity of 225 feet
 - iii) Implement License Plate Reader (LPR) system that notifies project traffic when significant outbound Convention Center egress movements will impact outbound eastbound project traffic at the intersection.
- d. Almaden Boulevard/Woz Way-Balbach Street Intersection: Extend northbound left-turn lane on Almaden Boulevard to provide a total vehicle storage capacity of 200 feet.
- e. Woz Way/Locust Street Intersection: Provide enhanced access and connection to adjacent Guadalupe River Trail.
- f. Permittee 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.
- g. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- h. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

12) Storm Sewer:

- a. Abandon the existing storm sewer and structures, segment numbers 3802 and 52794, and construct new 36-inch public storm sewer main, rerouting the system to the north of the development site, connecting to the existing outfall structure in Guadalupe River; as conceptually depicted in the plan set associated with this Special Use Permit application ("SUP Storm Drain Work").
- b. Permittee agrees to begin construction of at least a portion of the SUP Storm Drain Work prior to the expiration of this Special Use Permit for the City to implement any storm sewer upgrades. If the City identifies any storm

sewer upgrades and is ready to commence construction of the storm sewer upgrades prior to Permittee commencing the SUP Storm Drain Work, Permittee shall begin construction of that portion of the SUP Storm Drain Work that is required for the City to complete the storm sewer upgrades.

- c. A vacation of an existing 60-foot Storm Drain Easement is required in order to accomplish the land use plan as shown. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. Upon vacation no further action by the City is required.
- d. Dedication of a new Storm Drain Easement is required over the proposed alignment and within the development site to accommodate maintenance access, to the satisfaction of the Director Public Works. Certain portions of this easement will require dedication from underlying fee owners not associated with this development. The City has acted in good faith with reasonable assurance from the Permittee that any affected owner has agreed to this dedication.
- e. Permittee has agreed to provide a voluntary contribution fee payment towards the future storm sewer upgrades described herein. Permittee shall make a payment to the City in the amount of two million five hundred thousand dollars (\$2,500,000) ("Voluntary Contribution") towards future storm sewer upgrades as follows:
 - i) A one-time payment of three hundred thousand dollars (\$300,000) to be paid to City within 60 days of this Special Use Permit approval.
 - ii) The remaining two million two hundred thousand dollars (\$2,200,000) to be paid on the earlier of (1) 60 days upon written request from the Director of Public Works; (2) prior to the expiration of this Special Use Permit or as extended by the Director of Public Works. Starting January 1, 2023, this fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco.

Any unspent or excess contribution paid by the permittee to City will be returned to Permittee either upon i) completion of any storm sewer upgrades and there is a determination by City of excess contribution, or ii) expiration of this Special Use Permit and permittee did not move forward with building permit and construction of the project.

- 13) **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>.

14) **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee 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.

a. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:

- i) **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).
- ii) **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.

b. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:

- i) Implementing the closures at the time the onsite activities dictate the need for the closure.
- ii) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii) above.

- c. If the proposed lane and parking closures are a part of the Revocable Permit Application, Permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- 15) **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans and the San Jose Complete Streets Design Standards & Guidelines. The City of San José recognizes that the Complete Streets Design Standards & Guidelines, in their current form, may have inconsistencies with some other City documents because in some cases this document proposes substantial changes to the process of designing and retrofitting City streets. This in turn necessitates updates to other City policies, procedures, and codes so that they can be brought in line with the vision and goals provided in these Complete Streets Design Standards & Guidelines. Work has been done or is underway to update the San Jose Downtown Streetscape Master Plan to be in conformance with these standards and guidelines.
- 16) **Electrical:**
- a. 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.
 - b. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
 - c. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas.
- 17) **Street Trees:**
- a. 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". Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - b. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

19. **Conformance to Mitigation Monitoring and Reporting Program.** This Project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].

20. **Standard Environmental Conditions**

a. **Air Quality**

- 1) Water active construction areas at least twice daily or as often as needed to control dust emissions.
- 2) 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.
- 3) 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.
- 4) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- 5) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- 6) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- 7) Replant vegetation in disturbed areas as quickly as possible.
- 8) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- 9) 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.
- 10) 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.
- 11) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints

b. **Biological Resources**

- 1) **Migratory Nest Protection.** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds,

including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

- 2) If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas (including the Guadalupe River riparian corridor) for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.
- 3) The Permittee shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee, prior to the issuance of any grading or building permit.

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

Table 3.2-2: Tree Replacement Ratios				
Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	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
¹ As measured 4.5 feet above ground level ² X:X = tree replacement to tree loss ratio ³ Ordinance-sized tree 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				

The species and exact number of replacement trees to be planted on a given project site would be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. The planting and maintenance of replacement and street trees will be made conditions of development approval.

- 5) **In-Lieu Mitigation.** In the event the project site does not have sufficient area to accommodate the required tree mitigation, implement one or more of the following measures, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
 - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- 6) **Tree Protection Standards.** The Permittee shall protect the trees within the riparian corridor during the construction per the following:
- Initial excavation of areas beneath the canopies of riparian trees shall be monitored by a Certified Arborist.
 - If roots larger than 1 inch in diameter are encountered during excavation beneath the canopies of riparian trees, the roots shall be manually

exposed and pruned approximately 3 inches back from new construction. Pruning shall then occur as follows:

- i. All pruning should occur manually.
 - ii. Roots should be exposed and cleanly cut with a sharp pruning instrument.
 - iii. A backhoe or other equipment that rips, tears, or pulls roots should not be used.
 - iv. Pruned root ends should not be painted.
 - v. Exposed root ends should be protected from drying out by ensuring that they remain in moist soil until permanent backfill is placed.
- 7) **Habitat Agency.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement 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.scv-habitatagency.org/.

c. Cultural Resources

- 1) **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 (PBCE) 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 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 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.
- 2) **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 Permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- a) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- b) The MLD identified fails to make a recommendation; or
- c) 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

- 1) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- 2) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- 3) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- 4) If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement 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 Permittee shall be responsible for

implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

e. Hazards and Hazardous Materials

- 1) **FAA Clearance Required.** The permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and "No Hazard Determination" expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

f. Hydrology and Water Quality

- 1) Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains
- 2) Suspend earthmoving or other dust-producing activities during periods of high winds
- 3) Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary
- 4) Water or cover stockpiles of soil or other materials that can be blown by the wind
- 5) Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks
- 6) Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers)
- 7) Replant vegetation in disturbed areas as quickly as possible
- 8) Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets, install a tire wash system if requested by the City
- 9) Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

- 10) **Construction General Permit Requirements.** Prior to initiating grading activities, the Permittee will file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The following construction BMPs may be included in the SWPPP:
- a) Restrict grading to the dry season or meet City requirements for grading during the rainy season.
 - b) Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
 - c) Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
 - d) Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
 - e) Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
 - f) Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.
- 11) The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction.
- 12) When the construction phase is complete, a Notice of Termination (NOT) will be filed with the RWQCB and the DTSC, in conformance with the Construction General Permit requirements. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

- 13) **Dewatering.** The proposed project involves dewatering activities; therefore, the SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent will be contained prior to discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater will be analyzed by a State-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the Permittee will work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.

g. Noise

- 1) 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. The Permittee shall retain a qualified acoustical consultant 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, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any building permits.

21. Revocation, Suspension, Modification. This Vesting Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

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In accordance with the findings set forth above, a Vesting Tentative Map Permit to use the subject property for said purpose specified above 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
FOR: PLANNING PURPOSES ONLY

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California and being all of Lot 1 and a portion of the Designated Remainder as shown on that certain Map of Tract No. 9468 filed for record May 18, 2004 in Book 770 of Maps at pages 7 and 8, Santa Clara County records being more particularly described as follows:

Beginning at the intersection of the easterly right-of-way line of Almaden Boulevard and the northerly right-of-way line of Woz Way as shown on said Tract Map;

Thence along the exterior boundary the following thirty-five (35) courses and distances:

1. South 58°38'40" West, 44.97 feet;
2. South 58°01'19" West, 55.04 feet;
3. South 59°16'50" West, 65.01 feet;
4. South 58°38'46" West, 45.01 feet;
5. South 58°38'02" West, 37.01 feet;
6. South 58°38'36" West, 38.01 feet;
7. South 58°38'46" West, 39.41 feet;
8. North 27°36'29" West, 30.86 feet;
9. North 5°48'44" West, 42.72 feet;
10. North 5°34'57" East, 40.97 feet;
11. North 5°44'39" East, 41.86 feet;
12. North 5°57'04" East, 41.26 feet;
13. North 5°38'03" East, 41.65 feet;
14. North 1°18'44" East, 41.23 feet;
15. North 5°26'20" West, 41.47 feet;
16. North 12°12'43" West, 27.24 feet;
17. North 12°13'17" West, 14.38 feet;

18. North 18°22'27" West, 41.42 feet;
19. North 24°51'33" West, 41.44 feet;
20. North 29°32'04" West, 41.48 feet;
21. North 29°59'09" West, 41.47 feet;
22. North 29°36'47" West, 41.64 feet;
23. North 30°09'01" West, 26.36 feet;
24. North 34°34'48" West, 60.61 feet;
25. North 43°47'51" West, 37.25 feet;
26. North 43°22'18" West, 31.51 feet;
27. North 41°51'14" West, 31.09 feet;
28. North 39°48'30" West, 31.74 feet;
29. North 35°21'57" West, 27.20 feet;
30. North 35°21'57" West, 40.21 feet;
31. North 60°06'26" East, 23.19 feet;
32. North 29°53'34" West, 18.00 feet;
33. North 60°06'26" East, 162.00 feet;
34. South 29°54'07" East, 204.34 feet;
35. South 29°54'32" East, 611.52 feet to the Point of Beginning;

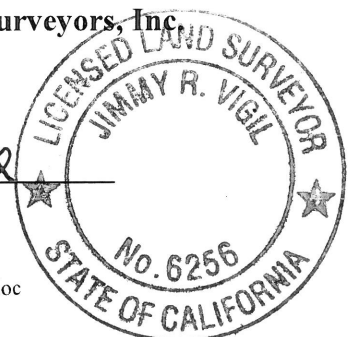
Containing 3.57± acres.

As shown on Exhibit "B" Attached hereto and by this reference made a part hereof.

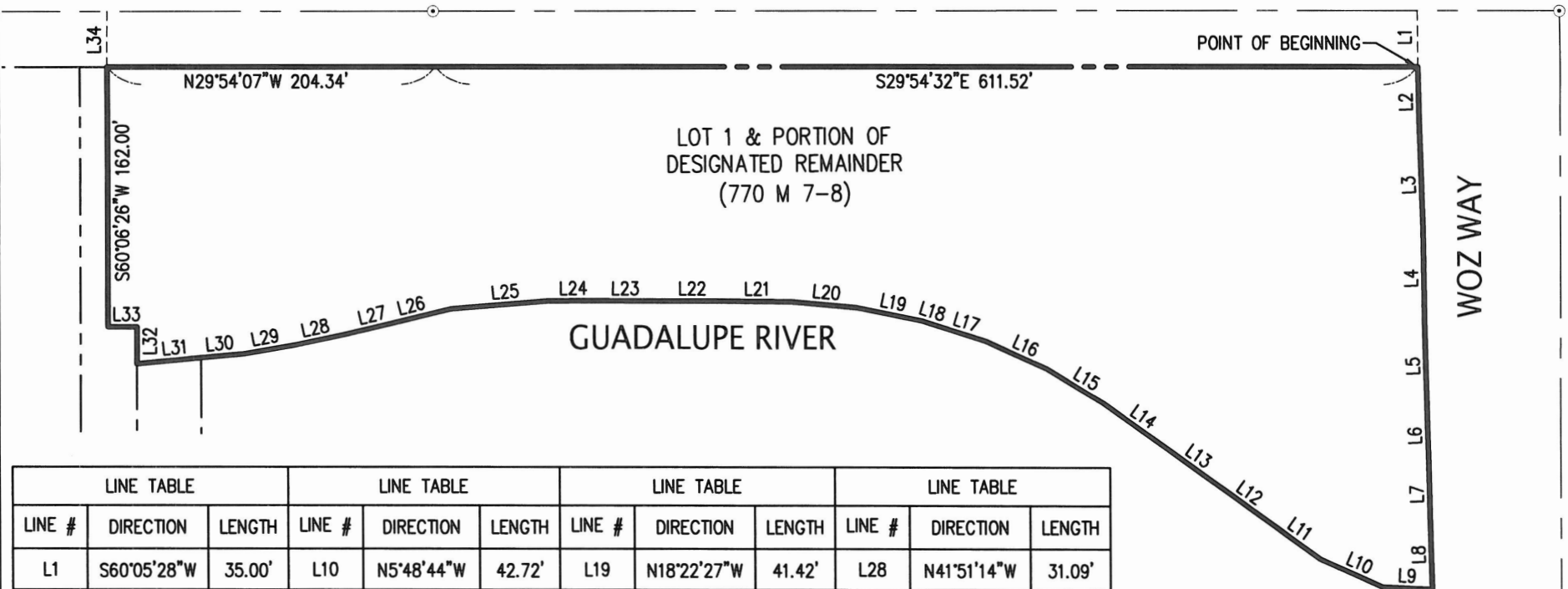
Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

1-29-19
Date

Jimmy R. Vigil
Jimmy Vigil, L.S. 6256



ALMADEN BOULEVARD

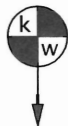


LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	S60°05'28"W	35.00'	L10	N5°48'44"W	42.72'	L19	N18°22'27"W	41.42'	L28	N41°51'14"W	31.09'
L2	S58°38'40"W	44.97'	L11	N5°34'57"E	40.97'	L20	N24°51'33"W	41.44'	L29	N39°48'30"W	31.74'
L3	S58°01'19"W	55.04'	L12	N5°44'39"E	41.86'	L21	N29°32'04"W	41.48'	L30	N35°21'57"W	27.20'
L4	S59°16'50"W	65.01'	L13	N5°57'04"E	41.26'	L22	N29°59'09"W	41.47'	L31	N35°21'57"W	40.21'
L5	S58°38'46"W	45.01'	L14	N5°38'03"E	41.65'	L23	N29°36'47"W	41.64'	L32	N60°06'26"E	23.19'
L6	S58°38'02"W	37.01'	L15	N1°18'44"E	41.23'	L24	N30°09'01"W	26.36'	L33	N29°53'34"W	18.00'
L7	S58°38'36"W	38.01'	L16	N5°26'20"W	41.47'	L25	N34°34'48"W	60.61'	L34	N60°05'53"E	35.00'
L8	S58°38'46"W	39.41'	L17	N12°12'43"W	27.24'	L26	N43°47'51"W	37.25'			
L9	N27°36'29"W	30.86'	L18	N12°13'17"W	14.38'	L27	N43°22'18"W	31.51'			



0 50' 100' 200'

Scale 1" = 100'



KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.

3350 Scott Boulevard, Building 22 Phone (408) 727-6665
Santa Clara, California 95054 Fax (408) 727-5641
www.kierwright.com

EXHIBIT B

PLAT FOR PLANNING PURPOSES

SAN JOSE

CALIFORNIA

DATE	01-29-19
SCALE	1" = 100'
BY	CCB
JOB NO.	A18140
SHEET	2 OF 2