

From: [Colli, Garrett J. \(Perkins Coie\)](#)
To: [Hill, Egan](#)
Subject: VTM Resolution
Date: Wednesday, April 14, 2021 3:11:47 PM
Attachments: [VTM Resolution 4.14.21.docx](#)

[External Email]

Hi Egan,

Please see attached for a clean draft of the VTM Resolution.

Thank you,

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RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A VESTING TENTATIVE MAP, SUBJECT TO CONDITIONS, TO SUBDIVIDE [135] PARCELS INTO NO MORE THAN [178] PARCELS AND ALLOW UP TO 5900 RESIDENTIAL CONDOMINIUMS AND 20 COMMERCIAL CONDOMINIUMS ON AN APPROXIMATELY 85-ACRE SITE, GENERALLY BOUNDED BY LENZEN AVENUE AND THE UNION PACIFIC RAILROAD TRACKS TO THE NORTH, NORTH MONTGOMERY STREET, LOS GATOS CREEK, THE GUADALUPE RIVER, BARACK OBAMA BOULEVARD, AND ROYAL AVENUE TO THE EAST, AUZERAIS AVENUE TO THE SOUTH, AND DIRIDON STATION AND THE CALTRAIN RAIL TRACKS TO THE WEST.

FILE NO. _____

WHEREAS, pursuant to the provisions of Chapter 19.13 of Title 19 of the San José Municipal Code, on _____, a concurrent application (File No. _____) was filed by the applicant, Google LLC ("Applicant" or "Subdivider"), with the City of San José ("City") for a Vesting Tentative Map to subdivide 136 lots into no more than 178 lots and allow up to 5,900 residential condominiums and 20 commercial condominiums on an approximately 85-acre site, on that certain real property within the Light Industrial, Heavy Industrial, Industrial Park, Commercial Neighborhood, Commercial General, Downtown Primary Commercial, Public Combined Industrial / Commercial and Planned Development zoning districts and which is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west, in San José, which real property is sometimes referred to herein as the "subject property"); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said concurrent applications on April 14, 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 20.100.140 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Vesting Tentative Map for Condominium Purposes Downtown West," dated _____, said plan (hereafter the "Vesting Tentative Map") is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, The application for the Vesting Tentative Map sought approval of, and this Resolution shall confer the right to, file multiple phased final maps pursuant to Government Code Section 66456.1; and

WHEREAS, the City Council of the City of San José has considered, approved, and certified the Final Environmental Impact Report for the Downtown West Mixed Use Plan (Resolution No. _____) ("FEIR") and adopted related findings, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations under separate Resolution No. _____ on May ___, 2021 prior to making its determination on the proposed General Plan Amendment or other Project approvals; and

WHEREAS, this Resolution approving the Vesting Tentative Map is a companion to the following approvals relating to the Downtown West, referred to hereafter collectively as the "Project Approvals": City approval of an override of the Santa Clara County Airport Land Use Commission's inconsistency determination (Resolution No. ____); General Plan amendment (Resolution No. ____); amendments to the DSAP (Resolution No. ____); approval of the Development Agreement for the Downtown West Mixed-Use Plan ("Development Agreement") (Ordinance No. ____); approval of a Planned Development Rezoning, including a General Development Plan (Ordinance No. ____); approval of a Planned Development Permit ("PD Permit") (Resolution No. ____); amendments to Title 20 of the City of San José Municipal Code (Ordinance No. ____); amendments to the boundaries for Historic Landmarks (San José Water Company at 374 West Santa Clara Street, and Southern Pacific Depot Historic District) (Resolutions No. ____ and ____); approving an amendment to Historic Preservation Permit (HP16-002) (Resolution No. ____); and approving Major Encroachment Permits (Resolution No. ____). ;

WHEREAS, the Development Agreement includes the Project's Infrastructure Plan as Exhibit I thereto.

WHEREAS, The Planned Development Permit includes the Downtown West Design Standards and Guidelines ("DWDSG"), which establishes certain street and open space design standards, and the Downtown West Improvement Standards ("DWIS"), which establishes certain horizontal improvement design and engineering standards, both as applicable to the subject property;

WHEREAS, Pursuant to Ordinance No. _____ the City Council approved waivers of, and modifications to, provisions of the City of San José Municipal Code including provisions of Titles 11, 13, 15, 19, and 20 thereof, and which waivers and modifications pertain to the development contemplated by the Vesting Tentative Map and related improvements;

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.

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

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

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

1. **Site Description and Surrounding Uses.** The subject site, comprised of 136 lots, is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west, in San José. The approximately 85-acre site is comprised of manufacturing, light industrial, and business services uses with limited residential and commercial uses. The subject property is within the Diridon Station Area Plan.
2. **Project Description.** The Project consists of up to 7.3 million gross square feet (gsf) of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to two event and conference centers totaling up to 100,000 gsf; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use; a potential "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails; and various other improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods.

This Vesting Tentative Map facilitates this development through the subdivision of 136 existing lots into as many as 178 lots, including air space lots, and allows up to 5,900 residential condominiums and 20 commercial condominiums.

3. **General Plan Conformance.** The subject site consists of the Downtown and Commercial Downtown land use designations on the General Plan Land

Use/Transportation Diagram (as amended by Ordinance No. ____). The Downtown land use designation allows office, retail, service, residential and entertainment uses at very high intensities, unless incompatible with other major policies within the General Plan. The Downtown land use designation allows a density of up to 800 dwelling units per acre. The Commercial Downtown land use designation allows office, hotel, retail, service, and entertainment uses. Residential uses are not allowed in the Commercial Downtown designation.

The project, including the proposed subdivision as shown on the Vesting Tentative Map, conforms to the General Plan goals and policies for the reasons set forth in Exhibit [____] of Resolution No. ___, which findings are incorporated herein by reference.

4. **Diridon Station Area Plan Conformance.** The subject site is within the boundaries of the Diridon Station Area Plan ("DSAP") as amended by Ordinance ___. The Project, of which the Vesting Tentative Map is a component, is consistent with the following key DSAP goals:
 - a. Create an urban district in the Station Area that maximizes height potential. The Station Area should accommodate a mix of uses including commercial and office, residential and active uses.

The Project consists of a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood and destination. The development program optimizes development density, which consists of up to 7.3 million gsf of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to 100,000 gsf of event and conference center space; a potential "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks and open spaces. The DWDSG includes standards and guidelines that distribute land uses throughout the Project site in a manner that is compatible with adjacent uses, surrounding neighborhoods, and adjacent open spaces. Residential uses are generally located near existing residential neighborhoods and office uses are generally located along the existing rail track. The City Council approved a policy to allow for greater height limits in Downtown, including within the DSAP in March 2019. The Project proposes allowable building heights that range from 160 feet to 290 feet above ground level (AGL), contingent on required Federal Aviation Administration (FAA) review clearance. The allowable building height in several blocks within the Project site are set lower than the maximum height allowable to establish variation in the skyline and to better respond to contextual adjacencies, including historic resources, existing single-family residential neighborhoods, and Los Gatos Creek and the open space program.

- b. Establish and strengthen connections to surrounding districts and within the planning area for pedestrians, bicyclists, and motorists, with emphasis on east-west connectivity across SR-87 and the rail corridor.

The Project, located adjacent to Diridon Station, enhances connections to nature, surrounding neighborhoods, and the greater Bay Area region, by strengthening links to Downtown and surrounding neighborhoods. The Project includes improvements to the public realm, including maximizing space for active streetscape - which includes sidewalk, bike lanes and planting areas - to optimize connections to nearby regional transit services. Streets designed in Downtown West prioritize pedestrians and bicyclists with generous sidewalks, protected bike lanes, and traffic calming measures in alignment with the City's Complete Streets Design Standards and Guidelines. The Project's proposed street network extends the existing street network to enhance connections to the surrounding neighborhood and proposes mid-block passages to optimize walkability. The Project also proposes improvements to east-west connectors, including West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, West St. John Street (new street), West Post Street (new street), and Auzerais Avenue, to provide pedestrian and bicycle priority streets to link neighborhoods east and west of the rail corridor.

The Vesting Tentative Map directly promotes the DSAP policy, as the Subdivider will complete both publicly-dedicated and privately-owned street and other public realm improvements as contemplated by the DSAP within each phased final map area as part of Subdivider's completion of horizontal improvements to serve the subdivision.

c. Prioritize pedestrian circulation and transit.

The Project prioritizes pedestrian space within streets to promote walkability. The street network supports walking, biking, and public transit access and ridership to and from Downtown West. The pedestrian network is enhanced with active street elements, protected bike lanes, and dynamic lanes. These sidewalk zones improve pedestrian experience and increase safety for people walking and biking within Downtown West and to adjacent neighborhoods. The DWDSG further enhance transit access and ridership by leveraging the Project's proximity to Diridon Station, a regional transit hub.

The Vesting Tentative Map directly promotes the DSAP policy, as the Subdivider will complete both publicly-dedicated and privately-owned improvements to enhance pedestrian circulation and transit as contemplated by the DSAP within each phased final map area as part of Subdivider's completion of horizontal improvements to serve the subdivision.

d. Provide a range of commercial and residential uses.

The Project provides a balanced mix of commercial and residential uses that create a vibrant, mixed-use transit-oriented neighborhood. Commercial uses include up to 7.3 million gsf of commercial office space; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; and up to 100,000 gsf of event and conference space. The active uses, which are distributed throughout the Project site, help establish an active public realm. Other

commercial land uses are distributed throughout the Project to be compatible with adjacent uses and the surrounding neighborhood.

The Project proposes up to 5,900 residential units. Residential uses are generally located near existing residential neighborhoods within areas with the Downtown land use designation as further set forth in the DWDSG. The Project also provides for a robust affordable housing program, as further set forth in the Development Agreement for the Downtown West Mixed-Use Plan. The Project's affordable housing program, which assumes development of 4,000 residential units, furthers Google's and the City's shared goal that development within the DSAP result in twenty-five percent (25%) of all residential units as affordable housing.

The Vesting Tentative Map directly implements the DSAP policy by facilitating the development of the residential and commercial uses described above.

- e. Enhance and expand access to open space and recreational opportunities in the Station area and establish an open space system integrated with Los Gatos Creek and Guadalupe River Park.

The Project will provide a total of approximately 15 acres of parks and open space, consisting of both City-Dedicated Open Space (Los Gatos Creek Multi-Use Trail and City-Dedicated Park) and Project Sponsor-Owned Open Space (Privately-Owned Public Park, semi-public open space, Los Gatos Creek Riparian Setback, Los Gatos Creek Riparian Corridor, Mid-Block Passages). The open space program includes a park or plaza at nearly every major intersection, near each neighborhood, and no more than one block away from any location in the Project. The open space program integrates with the surrounding communities and provides areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails. The open space network also improves access and connectivity along the riparian corridors and supports biodiversity within a high-density urban context through ecologically beneficial landscape design. As set forth in the DWDSG, the design character of open spaces ranges from natural to more urban, with each open space relating to its adjacent surroundings.

The Vesting Tentative Map directly implements the DSAP policies, as Subdivider will be required to complete open space areas within each phased final map area consistent with the requirements of the Development Agreement and the Parkland Agreement.

5. **Zoning and Planned Development Conformance.** The Project includes the rezoning of the subject property from Light Industrial, Heavy Industrial, Industrial Park, Commercial Neighborhood, Commercial General, Downtown Primary Commercial, Public Combined Industrial / Commercial and Planned Development zoning to the Downtown West Planned Development (PD) Zoning District (Ordinance No. ____). The land use regulations and development standards for development within the Downtown West PD Zoning District are reflected in the Downtown West General Development Plan ("GDP"). The GDP establishes the permitted uses, development standards, and use regulations applicable to the Downtown West PD Zoning District. The Downtown West

PD Zoning District consists of three (3) sub-areas, identified as Sub-Area 1, Sub-Area 2, and Sub-Area 3 in the GDP, which are generally depicted in the GDP.

The PD Permit implements the GDP and applies to Sub-Areas 1 and 3. The DWDSG, which is a component of the PD Permit, establishes design standards, guidelines, and specifications that apply to the design and development of vertical, open space, and horizontal improvements within Downtown West. These include minimum lot sizes, setback requirements, maximum building heights, open space requirements and site coverage requirements and parking requirements, among other zoning controls. In addition, the PD Permit includes the DWIS, which establishes certain engineering and design controls for horizontal improvements and utility systems. Sub-Area 2, as generally depicted in the GDP, is not included within the PD Permit. Development within Sub-Area 2 shall be subject to the requirements of the base zoning district until the issuance of a subsequent Planned Development development applications for conformance with the GDP and PD Permit requirements through the Downtown West PD Zoning District Design / Conformance Review ("Conformance Review") process. This procedure, which is described in the PD Permit's Conformance Review Implementation Guide, requires confirmation from the City that future ministerial permit applications for vertical improvements, open space and street and utility construction are consistent with the operative provisions of the GDP and PD Permit.

The Vesting Tentative Map is consistent with the Downtown West PD Zoning District and facilitates the development of the Project site consistent with the standards of the Downtown West PD Zoning District. The Vesting Tentative Map proposes commercial, residential, mixed-use, open space and other land uses contemplated in the Downtown West PD Zoning District. The Vesting Tentative Map also proposes development lots, lot configurations, public and private street network and alignment, and open space areas consistent with the block plan, open space plan, and circulation plan in the Downtown West PD Zoning District.

6. **Environmental Review.** The City of San José, as the lead agency for the proposed Project, prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA, which the Final Environmental Impact Report is comprised of the Draft Environmental Impact Report for the Project and appendices thereto (the "Draft EIR"), the comments and responses to comments, and the revisions to the Draft EIR (collectively, all of said documents are referred to herein as the "FEIR"). On April __, 2021, the Planning Commission of the City of San José reviewed the FEIR and recommended to the City Council that it found the environmental review for the proposed Project was completed in accordance with the requirements of CEQA. On __, prior to making a determination on the Vesting Tentative Map, the City Council reviewed, considered, and certified the FEIR; made findings pursuant to CEQA; adopted the Mitigation Monitoring and Reporting Program; and adopted a Statement of Overriding Considerations for significant and unavoidable impacts of the Project that would remain even with the implementation of the mitigation measures specified in the FEIR under separate Resolution No. __.
7. **Government Code Section 66412.3.** In approving this Vesting Tentative Map, the City has considered the housing needs of the region. Approval of the Vesting Tentative Map will facilitate the ability to develop up to 5,900 residential units, which will significantly

enhance the City's supply of housing. The FEIR documents that the proposed residential development will be sufficiently serviced by infrastructure, including new infrastructure to be installed by Subdivider, and that public services are also sufficiently available. The proposed development will not adversely impact the City's fiscal resources, as documented by the Fiscal Impact Memorandum prepared for the Project and on file with the City. Finally, environmental resources will be protected through application of required mitigation measures described in the FEIR's Mitigation Monitoring and Reporting Program which are applicable to the Vesting Tentative Map as a condition of approval.

8. **Government Code Section 66473.1.** The design of the subdivision reflected on the Vesting Tentative Map provides, to the extent feasible, for passive and natural heating and cooling opportunities. The majority of the subdivision includes lots that are of a size and configuration to permit substantial southern exposure. As for passive or natural cooling opportunities, the Project's buildings will be designed in phases with open spaces and parks in order to account for optimized shading, taking into account both open space / park and building design requirements and complementary design elements.
9. **Vesting Tentative Map 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 determines that the proposed Vesting Tentative Map is consistent with the General Plan and any applicable Specific Plans; if the City Council cannot make any of the findings for denial in Government Code Section 66474 and if the City Council determines that the environmental review for the project has been completed in accordance with CEQA. Additionally, the City Council may approve the project if the City Council finds the Vesting Tentative Map complies with the Zoning Ordinance, pursuant to SJMC Section 19.40.040, and does not make any of the findings for denial in SJMC Section 19.12.220. For the following reasons, the City Council finds that the proposed Vesting Tentative Map conforms with the City's Subdivision Ordinance and the Subdivision Map Act.
 - 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 project is consistent with the General Plan and the DSAP as amended.
 - 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 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:"

1. Government Code Section 66474(a) - That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

Analysis: As detailed above, the Vesting Tentative Map is consistent with the General Plan and the applicable specific plan, the DSAP, as amended.

2. Government Code Section 66474(b) - That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

Analysis: As detailed above, the design and improvement of the subdivision is consistent with the General Plan and the applicable specific plan (both as amended), and conformance of design will be further assured through satisfaction of the Conformance Review Procedures mandated by the PD Permit.

3. Government Code Section 66474(c) - That the site is not physically suitable for the type of development.

Analysis: The site is physically suited for the type of development. The FEIR evaluated potential environmental impacts associated with the development. All required mitigation measures in the FEIR's Mitigation Monitoring and Reporting Program apply to the Vesting Tentative Map as a condition of approval. The FEIR and corresponding mitigation measures address, among other issues, geotechnical and soils considerations, flooding, hazards, and hazardous materials. The site is in an area of Downtown San José that accommodates manufacturing, light industrial, and business service land uses mixed with limited residential and commercial uses. Located adjacent to Diridon Station, development of the Project will enhance connections to nature, surrounding neighborhoods, and the greater Bay Area region, strengthening links to Downtown and surrounding neighborhoods. Development of the site, which is primarily vacant, will revitalize the site with a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood.

4. Government Code Section 66474(d) - That the site is not physically suitable for the proposed density of development.

Analysis: The site is physically suited for the density of development, including up to 5,900 residential condominium units and the anticipated commercial development. Potential impacts associated with density and development intensity were evaluated in the FEIR, and as described above, compliance with all applicable mitigation measures is a condition of approval of the Vesting Tentative Map. The site is in an area of Downtown San José that accommodates manufacturing, light industrial, and business service land uses mixed with limited residential and

commercial uses. Located adjacent to Diridon Station, development of the Project will enhance connections to nature, surrounding neighborhoods, and the greater Bay Area region, strengthening links to Downtown and surrounding neighborhoods. Development of the site, which is primarily vacant, will revitalize the site with a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood.

5. Government Code Section 66474(e) - That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Analysis: Neither the design of the subdivision nor of the proposed improvements are likely to cause substantial environmental damage or to substantially and avoidably injure fish or wildlife or their habitat subject to the incorporation of mitigation as otherwise required in the conditions of approval. The FEIR incorporates a comprehensive evaluation of biological resources, including fish and wildlife and their habitat. The required mitigation measures identified in the Mitigation Monitoring and Reporting Program would reduce any of the biological impacts to less than significant and is included in the Vesting Tentative Map as a condition of approval.

6. Government Code Section 66474(f) - That the design of the subdivision or type of improvements is likely to cause serious public health problems.

Analysis: Neither the design of the subdivision nor of the type of improvements are likely to cause serious public health problems. Issues of public health, including, e.g., geotechnical and soils stability, hazardous and hazardous materials, and air quality impacts were evaluated in the FEIR. All required mitigation measures identified in the Mitigation Monitoring and Reporting Program apply to the Vesting Tentative Map as a condition of approval.

7. Government Code Section 66474(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. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

Analysis: Neither the design of the subdivision nor of the types of improvements will conflict with easements acquired by the public at large for access through, or use of, property within the subdivision. Easements will be abandoned pursuant to Government Code Section 66434(g) where indicated on the Vesting Tentative Map pursuant to statutory procedures. Other easements will be relocated to avoid conflicts as shown on the Vesting Tentative Map. Further, as shown on the Vesting Tentative Map, Subdivider will be required to dedicate new public easements for access through and use of portions of the subject property.

- (b) San José Municipal Code (SJMC) Section 19.12.220. - The director may disapprove a tentative map because of design, flood hazard, inundation, lack of adequate access, lack of adequate water supply or fire protection, insufficient sewage or drainage facilities, geological hazards, when the only practical use which can be made of the property thereon is a use prohibited by any ordinance, statute, law or other valid regulation, or because of failure to comply with the requirements of the Subdivision Map Act or of this Title 19.

Analysis: As described above, design or improvement of the proposed subdivision is not consistent with the General Plan and the site is physically suitable for the proposed type of development and density of development. The design and improvement of the proposed site will provide adequate access, water supply, fire protection, and sewage or drainage facilities to serve the subdivision. As set forth in Section 5 above, the Vesting Tentative Map is consistent with the Downtown West PD Zoning Ordinance.

10. **Incorporation of Vesting Tentative Map Notes.** All of the "General Notes" on Sheet TM-1 of the Vesting Tentative Map are hereby adopted and incorporated by reference into these findings. For ease of reference, an enlarged copy of the General Notes appearing on Sheet TM-1 of the Vesting Tentative Map is attached hereto as Exhibit B.

11. **Waiver of Section 19.12.020 of the San José Municipal Code.** SJMC Section 19.12.020 provides that when filing a tentative map, the subdivider shall provide a statement to the Director of Public Works stating as follows:

A) that he is the owner of the property proposed for subdivision; or B) that he has an option or contract to purchase the property proposed for subdivision or the portion thereof which he does not own; or C) that he is the authorized agent of one who meets the requirements of subsection A) or B) of this section.

The subdivision includes areas (e.g., certain public streets) which, as of the effective date of this Resolution, are subject to fractionalized ownership interests, and for which it is impracticable for Subdivider to provide the statement contemplated by Section 19.12.020. As such, the City Council approves a waiver of Section 19.12.020 as applied to any properties included within the subdivision and for which Subdivider has not

provided the statement contemplated by Section 19.12.020, pursuant to its authority under Section 19.04.050, subject to the following:

- a. Based on the reasons described above, it is impracticable for the Subdivider to observe the strict letter of Section 19.12.020.
- b. The modification or waiver does not violate the spirit or purpose of the Subdivision Map Act or of Title 19 of the San José Municipal Code. The Subdivision Map Act requires only that owners of properties authorize final maps (not tentative maps). As for Title 19, the Subdivider has provided the requisite statement as to all properties for which the Subdivider can practicably provide it. Notice of the Vesting Tentative Map approval was duly noticed with sufficient opportunity for review and public comment. Filing of phased final maps will require the authorization of the owners of subdivided properties.
- c. This waiver is reasonably necessary and expedient for the preservation and enjoyment of a substantial property right, that being the Subdivider's ability to subdivide the property and develop the Project in a manner consistent with the Project approvals. This waiver will not be detrimental to the public welfare based on the considerations otherwise described in this finding.

12. Waiver of Section 19.16.110(G) of the San José Municipal Code. SJMC Section 19.16.110(G) generally requires the subdivider to show the location, name, width, and purpose of proposed "pedestrian ways" on the face of a final map. The Project Approvals, including the Development Agreement, PD Permit (including the DWDSG) and the Parkland Agreement include detailed procedures for the identification and final design of pedestrian ways, including such pedestrian ways that may be located within private streets or privately-owned publicly accessible open space areas. The precise location of pedestrian ways may not be practicably capable of being fixed at the time of approval of a phased final map. As such, the City Council approves a waiver of Section 19.16.110(G) for privately-owned pedestrian ways, pursuant to its authority under Section 19.04.050, subject to the following:

- a. Based on the reasons described above, it is impracticable for the Subdivider to observe the strict letter of Section 19.16.110(G).
- b. The waiver does not violate the spirit or purpose of the Subdivision Map Act or of Title 19 of the San José Municipal Code. Any publicly-dedicated easements will be shown on phased final maps and concurrently offered to the City for dedication. This waiver applies only to private pedestrian ways that may be subject to a right of public access. To the extent that the Project Approvals contemplate privately-owned pedestrian ways with rights of public access within any phased final map area, the Director may require terms reasonably necessary to ensure that the public's right of access is established after recordation of the final map as part of the associated Improvement Agreement.
- c. This waiver is reasonably necessary and expedient for the preservation and enjoyment of a substantial property right, that being the Subdivider's ability to develop the Project in a manner consistent with the Project approvals, and this waiver will not be detrimental to the public welfare, based on the considerations otherwise described in this finding.

- 13. Waiver of Section 19.36.030 of the San José Municipal Code.** Section 19.36.030 generally requires that streets must be consistent with the Complete Streets requirements as described in Section 13.05. However, the City Council has determined, pursuant to the Project Approvals, that certain modifications to the Complete Streets requirements shall apply as to street designs within the Downtown West PD Zone, including as are described in the DWDSG and the DWIS. As such, the City Council approves a waiver of Section 19.36.030, pursuant to its authority under Section 19.04.050, subject to the following:
- a. Based on the reasons described above, it is impracticable for the Subdivider to observe the strict letter of Section 19.36.030.
 - b. The waiver does not violate the spirit or purpose of the Subdivision Map Act or of Title 19 of the San José Municipal Code. The waiver does not diminish Subdivider's obligation to improve public and private streets, and instead simply confirms that the Project Approvals, to the extent that they diverge from the Complete Streets requirements, shall govern street design.
 - c. The waiver is reasonably necessary and expedient for the preservation and enjoyment of a substantial property right, that being the Subdivider's ability to develop the Project in a manner consistent with the Project approvals, and this waiver will not be detrimental to the public welfare, based on the considerations otherwise described in this finding.
- 14. Modification of Section 19.040.050 of the San José Municipal Code.** Section 19.40.025 authorizes the merger of up to four contiguous parcels into one parcel provided that the requirements of the Code provision are satisfied. One such provision, Section 19.40.025(C), provides that the merger must be a requirement of a development permit issued under Title 20 San José Municipal Code. Given the scope of the Vesting Tentative Map, the long-term project buildout, and the ongoing design and review processes contemplated by the Project Approvals, it is foreseeable that Subdivider may need to merge certain parcels to facilitate the project buildout even if such merger is not a condition of a development permit. The City Council approves a modification of Section 19.04.050, pursuant to its authority under Section 19.04.050, to eliminate the application of Section 19.04.050(C) to the Subdivider for purposes of voluntary lot mergers, subject to the following:
- a. Based on the reasons described above, it is impracticable for the Subdivider to observe the strict letter of Section 19.040.050(C).
 - b. The modification does not violate the spirit or purpose of the Subdivision Map Act or of Title 19 of the San José Municipal Code. Subdivider will otherwise be required to comply with the provisions of Section 19.040.050 in seeking any voluntary mergers. These provisions include submission of an application, Public Works Director review, an evaluation of the need to secure land dedications or easements, and public hearing requirements.
 - c. The waiver is reasonably necessary and expedient for the preservation and enjoyment of a substantial property right, that being the Subdivider's ability to develop the Project in a manner consistent with the Project approvals, and this

waiver will not be detrimental to the public welfare, based on the considerations otherwise described in this finding.

15. **Effect of Rezoning.** As described above, Subdivider's application for approval of this Vesting Tentative Map was filed concurrent with an application to modify the subject property's zoning. Pursuant to Government Code Section 66498.3, this Vesting Tentative Map shall confer a vested right to proceed with the development in substantial compliance with the Downtown West PD Zone as of the Effective Date (described below) of this Resolution.
16. **Abandonment of Public Streets and Easements.** Certain existing public streets and public easements are indicated on the Vesting Tentative Map as being subject to abandonment pursuant to Government Code Section 66434(g). In approving this Vesting Tentative Map, this City Council has determined that the referenced public streets and easements shall be abandoned, that such abandonment will be described on the face of associated phased final maps including by reference to recording data or other official records creating the streets or easements, and that abandonment will be certified by the Director of Public Works pursuant to Government Code Section 66434(g). At the time of approval of phased final maps including such streets and easements, and provided that the requirements of Government Code Section 66434(g) and the conditions of approval in this Resolution are satisfied, these streets and easements shall be unnecessary for present or prospective public use. The City Council further finds that incorporation of the underlying properties into the adjacent parcels, as described in the Vesting Tentative Map, free of the public street interest and identified public easements, is assumed as part of the Project and is essential for the City and the public to realize the full measure of the Project's public benefits.
17. **Conveyance by Exchange.** Subdivider proposes to exchange with the City approximately 5.43 acres of real property for use as future public rights-of-way ("Subdivider Property") in exchange for approximately 4.88 acres of real property currently designated as public right-of-way and which will be abandoned as otherwise described in this Resolution ("City Property"). The City Property may include areas not owned in fee by the City as of the effective date of this Resolution. The Subdivider Property is depicted on the Vesting Tentative Map as "Public Street Dedication" and the City Property is depicted on the Vesting Tentative Map as "Public Street to be Abandoned." The City Council has considered the proposed exchange of the Subdivider Property for the City Property, through direct negotiation, pursuant to Section 4.20.050 of the Municipal Code, and finds that the conveyance of the Subdivider Property in fee to the City constitutes full consideration at fair market value in exchange for the conveyance of the City Property in fee to Subdivider. In making this determination, the City Council has considered the fact that the properties involved in the exchange are similarly situated in terms of their historic use as rights-of-way, their proximate location, and the potential future use of the properties. The City Council takes note of the fact that the Subdivider will deliver over one additional half-acre of land to the City compared to what the City will transfer to the Subdivider, and that the land transferred to the City will include significant new public improvements as contemplated by the Project approvals. The [Director of Economic Development] shall take all actions reasonably necessary to effectuate the exchange as a series of conveyances completed generally concurrent with phased final map approvals. Actions reasonably necessary to complete the exchange may include, but shall not be limited to, ensuring the adequacy of title of exchanged properties prior to the completion of any conveyance to or from the City, and

the execution of any associated documents, including but not limited to, final maps, deeds, escrow materials, and easements.

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 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.

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 Resolution or other approval and the provisions of the San José Municipal Code applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** Pursuant to Government Code Section 66452.6(a), the Vesting Tentative Map shall expire upon the expiration of the term of the Development Agreement.
3. **Conformance to Plans.** The development of the subject property and all associated development and improvements shall conform to the approved Vesting Tentative Map Plans entitled "Vesting Tentative Map for Condominium Purposes - Downtown West" dated __ 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.
4. **Compliance with Subdivision Ordinance.** Subject to any modifications or waivers therefrom approved pursuant to the Project Approvals or this Resolution, or as may be subsequently authorized pursuant to Title 19 of the San José Municipal Code, all final maps shall comply with the requirements for final maps in Section 19.16.
5. **Conformance with Other Permits.** The subject Vesting Tentative Map shall conform to and comply in all respects with the PD Permit upon 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 has not yet been recorded if, prior to recordation of a final map thereon, the PD Permit for such lands ceases to be operative for any reason and the Subdivider either fails to timely appeal, or any appeal is not resolved in favor of the Subdivider.
6. **Improvements.** Subdivider shall, before approval and recording of any phased final map, improve or agree to improve the land within and appurtenant to the subdivision in

accordance with Title 19 of the Municipal Code and the Project Approvals to the reasonable satisfaction of the Public Works Director, .

7. **Improvement Agreement.** In the event Subdivider has not completed the public improvements required for the proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into a subdivision improvement agreement ("Improvement Agreement") with the City of San José in accordance with Section 19.32.130 of the San José Municipal Code and provide associated improvement security and insurance as required therein.
8. **Publicly-Dedicated Easements.** Subdivider shall dedicate public use easements on the phased final maps for public utilities, emergency access, sanitary sewers, drainage, flood control channels, water systems, and any easements required for publicly-dedicated open space, streets, or pedestrian ways as contemplated by the Project Approvals.
9. **Multiple Final Maps.** As described above, Subdivider may file multiple phased final maps for the area included within the Vesting Tentative Map, provided that the following conditions are addressed prior to the filing of each final map:
 - a. All fees associated with development and a part of this approval shall be apportioned and paid for each portion of this subdivision for which a Final Map is being filed, including but not limited to, undergrounding of utilities, drainage, area and sewer treatment plan.
 - b. All property dedications, public improvements, and fees required to be paid pursuant to the Development Agreement and/or the Parkland Agreement specifically, as applicable, have been satisfied or are addressed in the Improvement Agreement associated with the final map.
 - c. All public streets on which each Final Map has frontage shall be improved or bonded to be improved to the satisfaction of the Director of Public Works.
 - d. All grading, drainage, and easements for drainage, adequate to protect each lot for which a Final Map is requested, and surrounding parcels which could be impacted by such design or lack of design, shall be guaranteed.
 - e. Any and all off-site improvements necessary for mitigation of impacts brought about by this project shall be apportioned to the degree possible to guarantee adequate mitigation for each area for which a Final Map is being filed consistent with the FEIR and the Project Approvals.
10. **Sewage Treatment Demand.** Pursuant to Section 15.12 of Title 15 of the San José Municipal Code, acceptance of this Vesting Tentative Map 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 Vesting Tentative Map 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 Vesting Tentative Map 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.

11. **Parkland Dedication Ordinance.** The Project is subject to a Parkland Agreement for purposes of Subdivider's satisfaction of parkland dedication and fee payment obligations under Section 19.38 of the Municipal Code. Prior to the approval of any phased final map, Subdivider shall demonstrate that it has complied with any applicable requirements of the Parkland Agreement relating to the development contemplated for the phased final map area, including any required offers of dedication or payment of fees.

12. **Conformance to Mitigation Monitoring and Reporting Program.** The project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by Resolution No. _____ as such requirements may be applicable to any phased final map.

13. **Procedure for Subsequent Review of District Systems.** The Project's Planned Development Permit, including the Infrastructure Plan, the Downtown West Development Standards and Guidelines (DWDSG), the Conceptual Infrastructure Plan Sheets, and the Downtown West Improvement Standards (DWIS) contemplate that the Subdivider may pursue implementation of a privately-owned electric distribution system ("Microgrid"), privately-owned wastewater collection and treatment, recycled water distribution, and thermal systems, (with the Microgrid and each of the other systems each referred to individually as a "District System" and collectively as the "District Systems") to provide utility service to the Project. If the Subdivider seeks to implement any District System in lieu of municipal or regional public utility service otherwise available within any proposed phased final map area, the following procedures shall apply.

a. **District Systems Criteria.** The operation and management of any District System shall reflect the following Criteria to ensure that Project residents (including owners, tenants, and businesses) and the City can rely on any District System to provide reliable, continuous utility service at equitable rates for the life of the Project, with the Criteria described below and referred to hereafter as the "District Systems Criteria."

i. **Service.** The District System will provide consistent and continuous utility service equivalent to that which would be expected for comparable utility service otherwise available to San José residents ("Service Standard").

Criteria Check Point: The consistent and continuous service will be confirmed through the embedment of a Service Standard equivalent to comparable utility service available in San José. The Service Standard will be included in the District Systems Transactional Documents (as defined below).

- ii. Rate Control. Rates for service charged to residential tenants or owners (i.e., condominium) and retail tenants whether reflected in sales prices, utility charges, rent or other consideration, shall be consistent with any rate schedule, limits or mechanisms established by any governing state or federal agency, or, in the absence of an applicable control, rates shall not exceed rates for comparable service from other utility providers available to San José residents ("Rate Control") or comparable building level thermal service.

Criteria Check Point: Rate Control will be confirmed via a guarantee clause in District Systems Transactional Documents addressing supply arrangements. Rate Control, as with other applicable District Systems Criteria, will be made enforceable by residential tenants and owners through the District Systems Transactional Documents. Buildings shall be sub-metered for District System service.

- iii. Customer Service Administration / Resolution of Performance and Operational Procedures.

Criteria Check Point: The District Systems Transactional Documents will include terms to ensure that the operator will implement clear procedures for communication with customers to resolve customer service, billing, performance, and other issues, including with dispute resolution mechanisms and performance standards as appropriate. This may include, for example, a structure included in the District Systems Transactional Documents that requires the operator to respond to any questions or complaints concerning service or billing within an established time period (e.g., fifteen days), and to identify procedures for prompt resolution (and reimbursement where relevant) of customer service or billing issues.

- iv. Exclusivity and Tenure. The District Systems operator/owner will have the exclusive right and obligation to service the buildings that will ultimately be constructed within the subdivision boundary shown on the associated phased final map, and building owners and lessees will be required to exclusively contract with the District Systems operator/owner to procure available services. The private arrangement and enforcement between District Systems operator/owner and building owners and lessees would not limit the City's authority pursuant to its general police powers to address public health and safety, or to secure payment for any unpaid services provided by the City to the properties including a covenant to pay for City services.

Criteria Check Point: The District Systems Transactional Documents will include enforceable covenants that require the owners or lessees, including at both the building and unit or parcel level, as applicable, to contract with the District Systems operator/owner for electric service, sanitary sewer collection, recycled water, and thermal heating and cooling service if and when available from the District Systems operator/owner. The District Systems Transactional Documents will require the District

Systems operator/owner to exclusively supply services within the Project boundary and to all owners or lessees within the Project boundary unless otherwise described in the Infrastructure Plan and identified prior to approval of the subject phased final map. Tract Improvement Plans, as evaluated pursuant to the Preliminary Review Process, will confirm that the District Systems are routed to each applicable building and sized to provide the necessary service.

- v. Continuity of Utility Supply. The District System will be continuously operated notwithstanding the failure of any for-profit operator of the District System, including if the District System operates at a loss.

Criteria Check Point: The District Systems Transactional Documents will include an obligation for the owners of all commercial office buildings which are connected to District Systems ("Office Building Owners") to assume the obligations of the District systems operator/owner and to provide continuous service on equivalent terms as specified in these conditions of approval (including with respect to Rate Control and the Service Standard) to residential owners and tenants and retail tenants in the event of a failure of the District Systems operator or as applied to a given District System. A standard for "failure" giving rise to an obligation for the Office Building Owners to assume the obligations of the District Systems operator/owner will be described in the Draft District Systems Contractual Terms.

- vi. Safety. The District System will be operated safely and in accordance with applicable law and industry standards including, but not limited to, compliance with and maintenance of valid permits.

Criteria Check Point: Inclusion of a safety statement and accompanying safety plan to address applicable City, state, and federal standards and guidelines relative to safe operation of the District Systems. The statement and plan will be included within the Transaction Documents.

- vii. Qualified Operator. Each District System will be operated by a professional operator with at least five (5) years technical experience and qualifications in safely operating the same utility in urban communities and in accordance with applicable law and industry standards ("Qualified Operator"). This Criteria shall apply to Subdivider and to any successor operator or Subdivider assigns.

Criteria Check Point: Inclusion of clause confirming minimum experience and the confirmation that all applicable certifications and qualifications will be required prior to contracting the operator within the District Systems Transactional Documents.

- viii. Capital Replacement. The District Systems owner/operator will be obligated to ensure that the systems are replaced pursuant to appropriate capital replacement schedules to maintain the equipment for continuous operation.

Criteria Check Point: Inclusion of a clause within the District Systems Transactional Documents confirming the obligation of the District Systems operator to fund and replace the capital plant in a timely manner to ensure continuous operation of the systems.

- ix. Capital improvements. The right of the Office Building Owners to call on capital improvements to improve efficiency and performance of the District Systems from the District Systems owner/operator, subject to review on constraints and negotiations on funding and charges.

Criteria Check Point: Inclusion of a clause within the District Systems Transactional Documents confirming the right of the Office Building Owners to call on improvements to improve the efficiency and performance of the system.

- x. Obligations of Commercial Office Building Owners. As otherwise described in these conditions, the Office Building Owners will bear ultimate responsibility for assuring certain performance obligations of the District Systems relative to owners and tenants within the Project, including the Service Standard, Rate Control, continuity of supply, and the timely completion of capital replacement and improvements. These obligations will apply notwithstanding any Assignment of the District Systems.

Criteria Check Point: The District Systems Transactional Documents will obligate all the Office Building Owners (which may include one or more commercial owners' associations) to ensure that the District Systems owner/operator operates the subject District System(s) consistent with the Service Standard and Rate Control requirements, and that the owner/operator provides continuous service. The District Systems Transactional Documents will require the Office Building Owners to implement capital replacement and improvement obligations. Further, the District Systems Transactional Documents will include dispute resolution procedures and remedies for owners and tenants receiving service from District Systems to ensure that such residents and tenants have a means of addressing any noncompliance by the Office Building Owners. The District Systems Transactional Documents will document the extent to which the Office Building Owners will control major encroachment permits for District Systems. To the extent Subdivider proposes to assign major encroachment permits to an Office Building Owner or a commercial owners' association, Subdivider will document to the Director of Public Works' reasonable satisfaction that the proposed assignee is capable of implementing the terms of the major encroachment permit and has the organizational capability and access to sufficient capital to perform the obligations of the permittee.

- xi. Limitations on Assignment. Subdivider's right to assign the District Systems infrastructure and associated rights and obligations (each an "Assignment") will be consistent with the following, and which will be reflected in enforceable covenants that extend in perpetuity.

1. Assignment and Assumption Agreement: Any Assignment will require execution of an "Assignment and Assumption Agreement" which evidences that the assignee has assumed all rights and obligations of the assignor pertaining to the subject District Systems as required by these conditions of approval and the operative District Systems Transactional Documents. No Assignment shall be effective until the assignor or assignee provides an executed copy of the Assignment and Assumption Agreement to the Public Works Director.
2. Evidence of Qualified Operator: Concurrent with the submittal of the executed Assignment Assumption Agreement, the assignor or assignee shall provide documentation to the Public Works Director confirming that the assigned District System will continue to be operated by a Qualified Operator subsequent to the Assignment. No Assignment shall be effective until the assignor or assignee provides the documentation required pursuant to this condition.
3. Permitted Assignments: Google may assign to (i) Alphabet, Lendlease or any Google/Alphabet/Lendlease affiliates/related entities) or (ii) any third-party assignees that is an owner/investor in the infrastructure sector, with appropriate operational and asset management capabilities, directly or via an operating partner. Any such assignments would not require City's consent but would require prior sixty (60) days written notice to City except assignment of permits or other regulatory obligations under federal, state or local laws must be in compliance with these laws.

xii. Private Systems - No City Obligations / Notice to Owners. By seeking permits for the construction of the District Systems and buildings that rely on District Systems, Subdivider is voluntarily electing to proceed with these systems to meet the objectives of the Project. Subdivider acknowledges that the District Systems are private, and that the City has no role in funding, constructing, operating, maintaining, or replacing the District Systems except as may be expressly agreed to by the City (i.e., with respect to a possible role in owning or operating the Microgrid as otherwise described in these conditions of approval and the Development Agreement). Subdivider shall be solely responsible for funding, constructing, operating, maintaining, replacing, and assuring continuity of service via the District Systems and for resolving disputes among the owner/operator and any entities receiving service from the owner/operator.

Criteria Checkpoint: Subdivider's agreement with these terms shall be manifested by Subdivider accepting the Vesting Tentative Map subject to this condition. Subdivider shall also be required to document to the Public Works Director's reasonable satisfaction, and as part of the Implementation Plan (as described below), that notice will be provided to future owners that includes the following: (1) a description of any service that is provided to the subject building by a District System: (2) a statement that the District System is privately owned and operated, and

that the City of San José has no responsibility for providing the service or to address disputes relating to the service; and (3) the identity of the District Systems owner/operator, the Qualified Operator and all necessary information regarding terms for service and dispute resolution.

- b. Implementation Plan Confirmation. Subdivider shall submit an "Implementation Plan" to the Public Works Director, including the components described below, concurrently with the Subdivider's submittal of a Vertical Improvement Conformance Review Application for a development phase. The Public Works Director will review the Implementation Plan for purposes of confirming that the Implementation Plan satisfies the Check Point Criteria and that it includes all components described below. The Public Works Director will notify the Subdivider in writing within thirty (30) days as to whether the Implementation Plan incorporates the Check Point Criteria and includes the components listed in this condition. Subdivider will not submit its first Preliminary Improvement Plans (35% plans) to the Public Works Director until the Public Works Director provides confirmation that the Implementation Plan satisfies the requirements of this condition.
 - i. Identification of Proposed District Systems. The Implementation Plan will identify any District System that the Subdivider proposes to implement as part of the development phase. For phases subsequent to the initial phase, the Implementation Plan will describe in concept form how the District System will interconnect with the same system as approved and/or constructed within prior phases.
 - ii. Summary of Regulatory Requirements, Status and Schedule. District Systems will be subject to all applicable federal, state and regional requirements applicable to the District Systems at the time of implementation. The Implementation Plan will include a summary of any required regulatory authorizations necessary to construct or operate any District System, along with the status of any regulatory authorizations. To the extent that any authorizations have not been obtained at the time of the Implementation Plan submittal, the summary will provide a schedule and any necessary supporting information to describe the timing of anticipated regulatory authorizations relative to Subdivider's schedule for completing improvement plans, filing a phased final map, and obtaining building permits.
 - iii. Index of "District Systems Transactional Documents". An index describing the draft documents that will govern the operation of the District System and its relationship to the commercial and residential properties comprising the development phase. This may include, for example, residential covenants, conditions and restrictions ("CC&Rs"), commercial CC&Rs, ground leases, licenses, supply contracts, and various deeds relating to real or personal property (collectively, the "District Systems Transactional Documents"). It is anticipated that parties to the District Systems Transactional Documents will include, but may not be limited to, Google, residential and commercial building owners, ground lessees, and the District Systems operator. The index will identify the specific documents that will implement the respective Check Point Criteria.

- iv. “Draft District Systems Contractual Terms”. A summary that includes a series of draft contractual terms to be reflected in the District Systems Transactional Documents (“Draft District Systems Contractual Terms”). The Draft District Systems Contractual Terms will be evaluated for purposes of documenting satisfaction of the Check Point Criteria.
 - v. Confirmation of District Systems Criteria through Horizontal Preliminary Review. Subdivider will provide the following to the Public Works Director prior to, or concurrent with, the submittal of 95% plans pursuant to the Horizontal Preliminary Review Process.
 - vi. Proposed Final District Systems Transactional Documents. Subdivider will submit proposed forms of the District Systems Transactional Documents to the Public Works Director for the purpose of confirming that the proposed forms do not result in inconsistency with the District Systems Criteria. The forms may include redactions where necessary to avoid disclosure of nonpublic proprietary information.
 - vii. Confirmation of Regulatory Authorizations. Subdivider will submit copies of any regional, state or federal authorizations, approvals or acknowledgements identified in the Implementation Plan, or to the extent not obtained by the time of the 95% plan submittal, documentation to establish that said authorizations, approvals or acknowledgments will be obtained before Subdivider provides service to any end users to the Public Works Director’s reasonable satisfaction.
- c. Public or Subdivision Improvement Agreement. The Public or Subdivision Improvement Agreement for any phased final map will include an obligation for Subdivider to provide a copy of the final form of any District Systems Transactional Document that is required to be recorded to the Public Works Director for final confirmation that the relevant terms are included prior to recordation of the subject District Systems Transactional Document. The forms may include specific redactions where necessary to avoid disclosure of nonpublic proprietary information.

14. Obligations Specific to Microgrid. Subject to all other conditions of approval in this Resolution, Subdivider may pursue the following three alternatives for the Microgrid, as further described below. If Subdivider elects to proceed with the Microgrid, Subdivider will identify which of the following alternatives it seeks to implement as part of its Implementation Plan.

- a. Municipally-Owned Microgrid. A local publicly-owned electric utility would operate the Microgrid pursuant to the operative provisions of State and local law (“Municipal Ownership”). If Subdivider wishes to pursue Municipal Ownership, the City will engage with Subdivider in good faith to evaluate the viability of this approach; provided however, that nothing in this Resolution shall be interpreted to commit the City to own or operate the Microgrid (or any component thereof) without future City and Subdivider review and approval. City acknowledges that as part of Municipal Ownership for the Microgrid, Subdivider would not be required to seek encroachment authorization for Microgrid infrastructure to occupy public rights-of-way or to seek franchise authorization.

- b. **Pacific Gas & Electric Company ("PG&E") Integration.** PG&E may own or operate components of the Microgrid, including particularly the distribution component, consistent with PG&E's status as a regulated public utility.
- c. **Privately-Owned Microgrid.** Subdivider may pursue a privately-owned Microgrid, meaning that Subdivider would not transfer the Microgrid infrastructure to either PG&E or the City. Under this option, Subdivider will own and operate the Microgrid. Prior to approval of a phased final map, Subdivider shall demonstrate to the Public Works Director's reasonable satisfaction that Subdivider's proposal for ownership and operation of the Microgrid is consistent with all applicable State, federal and City requirements. If, as a result of Subdivider's engagement with California Public Utilities Commission ("CPUC"), CPUC determines that Subdivider may own and operate the Microgrid without any CPUC regulation or oversight provisions, then Subdivider will be required to seek City Council approval prior to proceeding with construction of the privately-owned Microgrid to address applicable regulations concerning the safe operation of the Microgrid and the distribution of electricity to owners and tenants.

15. Automatic Waste Collection System. Use of the proposed Automatic Waste Collection System ("AWCS"), as described in the Project's Infrastructure Plan and evaluated in the Final Environmental Impact Report, is not authorized as of the Effective Date of this Resolution. Should Subdivider wish to use the AWCS to provide solid waste collection and disposal services within the proposed subdivision, Subdivider shall be required to separately obtain any required State approvals as well as authorizations required for the operation of that system pursuant to the Municipal Code.

16. PG&E Property. The subdivision depicted on this Vesting Tentative Map includes an approximately 0.18 acre-parcel, described as "Parcel #1" in the deed recorded November 25, 1926, in Book 797, page 336 of Santa Clara County Records, generally located at the intersection of Cahill Street and West San Fernando] ("PG&E Property"), which is owned by Pacific Gas & Electric Company ("PG&E") and which is subject to the jurisdiction of the California Public Utilities Commission ("CPUC") under California Public Utilities Code Section 851. PG&E authorized the inclusion of the PG&E Property within the boundary of the Vesting Tentative Map provided that CPUC subsequently confirms that the PG&E Property may be included within the proposed subdivision. As such, Subdivider shall be required to provide documentation demonstrating that CPUC has provided the requested authorization to the Public Works Director. If Subdivider fails to provide this documentation within twenty-four months of the effective date of this Resolution, the PG&E Property shall be automatically deemed to be excluded from the boundary of the subdivision shown on this Vesting Tentative Map, and Subdivider shall not be permitted to file a phased final map that reflects the parcelization shown on Sheets _____. Upon a request of the Subdivider, and subject to the written consent of PG&E, the Public Works Director may extend the twenty-four month period described in the preceding sentence for an additional period not to exceed twelve months.

17. Commercial and Industrial Common Interest Development Act / Municipal Code

Section 20.175. The Vesting Tentative Map authorizes up to twenty commercial condominiums to be identified on future phased final maps and created through condominium plans. As of the Effective Date of this Resolution, Subdivider has neither determined whether it will seek approval of any of these commercial condominiums on future phased final maps nor whether such condominiums will be subject to the Commercial and Industrial Common Interest Development Act (rather than Davis-Sterling Act regulated units in a mixed-use building) and Municipal Code Section 20.175 (hereafter "CCID Units"). Per Municipal Code Section 20.175.050, CCID Units may only be approved if the City finds: (A) the proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole; (B) the proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and (C) the proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interests therein. Any CCID units would need to be consistent with the General Development Plan, the PD Permit, and all other operative project controls. Further, any such units would be a component of the overall Project, which will generate significant commercial development within and adjacent to the project and stimulate other commercial activity within the City. As such, the City Council finds that CCID units may be authorized provided that the Subdivider satisfies the following conditions prior to the filing of any phased final map which includes CCID units:

- a. Subdivider, at its sole cost, shall submit for prior review and approval by the Planning Director, governing documents for the common interest development that include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms, including enforcement by the City, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Prior to approval of the parcel or final map by the city, the applicant shall submit the proposed governing documents to the city for review for compliance with the requirements of this chapter. To the extent that such documents are not recorded concurrent with the associated final map, the City will require terms in the related Public Improvement Agreement to ensure that the requisite documents are recorded after the recordation of the final map.
- b. Subdivider shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which will be reviewed by the Planning Director for compliance with the terms of Section 20.175 and Title 19. To the extent that such documents are not recorded concurrent with the associated final map, the City will require terms in the related Public Improvement Agreement to ensure that the requisite documents are recorded after the recordation of the final map.

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

EFFECTIVE DATE

The effective date of this Vesting Tentative Map shall be the effective date of the Downtown West Planned Development Zoning Ordinance (Ordinance No. _____).

Exhibit A

Legal Description

Exhibit B

(General Notes from Vesting Tentative Map Sheet TM-1)

GENERAL NOTES

1. WATER POLLUTION CONTROL PLAN- PURSUANT TO CHAPTER 15.12 OF THE SAN JOSE MUNICIPAL CODE, NO VESTED RIGHT TO A BUILDING PERMIT SHALL ACCRUE AS A RESULT OF THE GRANTING OF ANY LAND DEVELOPMENT APPROVALS AND APPLICATIONS WHEN AND IF THE CITY MANAGER MAKES A DETERMINATION THAT THE CUMULATIVE SEWAGE TREATMENT DEMAND ON THE SAN JOSE-SANTA CLARA WATER POLLUTION CONTROL PLANT REPRESENTED BY APPROVED LAND USES IN THE AREA SERVED BY SAID PLANT WILL CAUSE THE TOTAL SEWAGE TREATMENT DEMAND TO MEET OR EXCEED THE CAPACITY OF THE SAN JOSE-SANTA CLARA WATER POLLUTION CONTROL PLANT 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. SUBSTANTIVE CONDITIONS DESIGNED TO DECREASE SANITARY SEWAGE ASSOCIATED WITH ANY LAND USE APPROVAL MAY BE IMPOSED BY THE APPROVING AUTHORITY.
2. THIS SUBDIVISION IS SUBJECT TO THE REQUIREMENTS OF THE PARKLAND DEDICATION ORDINANCE (CHAPTER 19.38 OF TITLE 19 OF THE SAN JOSE MUNICIPAL CODE), FOR THE DEDICATION OF LAND FOR PARKS PURPOSES, UNDER THE FORMULAE CONTAINED WITHIN THAT CHAPTER AND AS MORE PARTICULARLY DESCRIBED IN THE PARKLAND AGREEMENT INCLUDED AS EXHIBIT E TO THE DEVELOPMENT AGREEMENT FOR THE PROJECT.
3. THIS SUBDIVISION WILL CONFORM TO THE STREET TREE PLAN OF SECTION 6.12 OF THE DOWNTOWN WEST DESIGN STANDARDS AND GUIDELINES.
4. DEMOLITION PERMITS MAY BE ISSUED PRIOR TO ISSUANCE OF FINAL BUILDING PERMITS AND RECORDATION OF PHASED FINAL MAPS.
5. ALL DIMENSIONS DEPICTED HEREON ARE APPROXIMATE AND ARE SUBJECT TO REVISION AT FINAL MAP(S) STAGE.
6. NO WELLS EXIST ON THIS SITE.
7. NO NEW STREET NAMES HAVE BEEN APPROVED AT THIS TIME.
8. ALL EXISTING BUILDINGS WILL BE REMOVED, PRIOR TO SUBDIVISION OF PROPERTY, UNLESS OTHERWISE NOTED.
9. EXISTING INTERIOR LOT LINES TO BE REMOVED UNLESS OTHERWISE NOTED.
10. THE LOCATIONS OF PUBLICLY-DEDICATED EASEMENTS SHOWN HEREON ARE APPROXIMATE AND WILL BE FINALIZED ON PHASED FINAL MAPS.
11. PROPOSED PRIVATE ACCESS WAYS MAY ALSO INCLUDE PUBLIC ACCESS EASEMENTS (PAE), PUBLIC SERVICE EASEMENTS (PSE), EMERGENCY VEHICLE

ACCESS EASEMENTS (EVAE), AND ANY PRIVATE UTILITIES AND IMPROVEMENTS THAT DO NOT CONFLICT WITH ANY PUBLIC EASEMENTS.

MISCELLANEOUS NOTES

1. THIS VESTING TENTATIVE MAP ("VESTING MAP") IS FILED IN ACCORDANCE WITH GOVERNMENT CODE SECTION 66452.
2. SUBDIVIDER RESERVES THE RIGHT TO FILE MULTIPLE FINAL MAPS (EACH A "PHASED" FINAL MAP") PURSUANT TO GOVERNMENT CODE SECTION 66456.1.
3. PURSUANT TO GOVERNMENT CODE SECTION 66498.3, THIS VESTING TENTATIVE MAP IS FILED CONCURRENT WITH AN APPLICATION TO CHANGE THE ZONING OF THE PROPERTY INCLUDED WITHIN THE PROPOSED SUBDIVISION TO A PLANNED DEVELOPMENT ZONING DISTRICT TOGETHER WITH A GENERAL DEVELOPMENT PLAN AND PLANNED DEVELOPMENT ("PD") PERMIT (COLLECTIVELY, THE "ZONING APPLICATION"). THE PD PERMIT INCLUDES THE DOWNTOWN WEST STREET STANDARDS AND GUIDELINES ("DWDSG"), THE DOWNTOWN WEST IMPROVEMENT STANDARDS ("DWIS"), CONCEPTUAL INFRASTRUCTURE PLAN SHEETS AND CONFORMANCE REVIEW IMPLEMENTATION GUIDE. APPROVAL OF THIS VESTING MAP SHALL CONFER A VESTED RIGHT TO PROCEED WITH DEVELOPMENT PURSUANT TO THE ZONING APPLICATION (PURSUANT TO TITLE 20 OF THE CITY OF SAN JOSE ["CITY"] MUNICIPAL CODE AS CONTEMPLATED BY GOVERNMENT CODE SECTION 66498.3(A) PROVIDED THAT THE ZONING APPLICATION IS APPROVED.

NOTES RELATING TO CONDOMINIUMS

1. THE PROPERTY COVERED BY THIS VESTING MAP HAS BEEN APPROVED BY THE CITY FOR CREATION OF CONDOMINIUMS CONSISTING OF UP TO 5,900 RESIDENTIAL UNITS ("TOTAL APPROVED RESIDENTIAL CONDOMINIUM UNITS") AND 20 COMMERCIAL UNITS ("TOTAL APPROVED COMMERCIAL CONDOMINIUM UNITS"). THE ESTABLISHMENT OF CONDOMINIUMS AND SEPARATION OF THREE-DIMENSIONAL PORTIONS OF THE PROPERTY FROM THE REMAINDER THEREOF SHALL NOT CONSTITUTE A FURTHER SUBDIVISION AS DEFINED IN GOVERNMENT CODE SECTION 66424 AND, PURSUANT TO THE AUTHORITY OF GOVERNMENT CODE SECTION 66427(E), MAY OCCUR BY ONE OR MORE CONDOMINIUM PLANS WITHOUT FURTHER APPROVAL BY THE CITY COUNCIL.
2. SUBDIVIDER SHALL BE PERMITTED TO ASSIGN UNITS FROM THE TOTAL APPROVED RESIDENTIAL CONDOMINIUM UNITS AND THE TOTAL APPROVED COMMERCIAL CONDOMINIUM UNITS TO SPECIFIC LOTS AS SHOWN ON PHASED FINAL MAPS. UPON SUCH ASSIGNMENT AND RECORDATION OF THE ASSOCIATED PHASED FINAL MAP, ANY ASSIGNED UNITS SHALL BE DEBITED FROM THE TOTAL APPROVED RESIDENTIAL CONDOMINIUM UNITS AND TOTAL APPROVED COMMERCIAL CONDOMINIUM UNITS AS APPLICABLE. NO FURTHER CITY APPROVAL SHALL BE REQUIRED FOR SUBDIVIDER TO CONSTRUCT RESIDENTIAL OR COMMERCIAL UNITS THROUGH SUBSEQUENT CONDOMINIUM PLANS FOR THE SUBJECT LOTS PROVIDED THAT THE NUMBER OF RESIDENTIAL OR COMMERCIAL UNITS ASSIGNED TO ANY GIVEN LOT DOES NOT EXCEED THE NUMBER OF UNITS DEPICTED ON THE ASSOCIATED PHASED FINAL MAP. THE CUMULATIVE NUMBER OF RESIDENTIAL CONDOMINIUM UNITS AND COMMERCIAL CONDOMINIUM UNITS ASSIGNED TO LOTS

ON PHASED FINAL MAPS MAY NOT AT ANY TIME EXCEED THE TOTAL APPROVED RESIDENTIAL UNITS AND TOTAL APPROVED COMMERCIAL UNITS.

3. PURSUANT TO THE _____, APPROVED ON _____ 2021 ("DA"), SUBDIVIDER IS AUTHORIZED TO CONSTRUCT UP TO _____ SQUARE FEET OF COMMERCIAL USES WITHIN THE SUBDIVISION. THERE IS NO UNIT-BASED LIMITATION ON COMMERCIAL DEVELOPMENT. AS SUCH, "TOTAL APPROVED COMMERCIAL CONDOMINIUM UNITS," WHICH INCLUDE RETAIL, OFFICE AND RENTAL APARTMENT AND OTHER COMMERCIAL USES, ARE DESCRIBED HEREIN SOLELY FOR THE PURPOSE OF DESCRIBING APPROVED COMMERCIAL CONDOMINIUM UNITS.

4. IN THE EVENT THAT SUBDIVIDER ALLOCATES RESIDENTIAL OR COMMERCIAL CONDOMINIUM UNITS TO A LOT ON A PHASED FINAL MAP AND THOSE UNITS ARE NOT CONSTRUCTED, SUBDIVIDER MAY REQUEST A CERTIFICATE OF CORRECTION PURSUANT TO GOVERNMENT CODE SECTION 66469 TO RECONCILE THE NUMBER OF RESIDENTIAL OR COMMERCIAL CONDOMINIUM UNITS ASSIGNED TO THE LOT ON THE PHASED FINAL MAP WITH THE AS-BUILT CONSTRUCTION. ANY SUCH REDUCTION IN UNITS SHALL BE CREDITED TO THE TOTAL APPROVED RESIDENTIAL UNITS OR TOTAL APPROVED COMMERCIAL UNITS AS APPLICABLE.

NOTES RELATING TO ALTERNATIVE SHEETS AND OPEN SPACE DEDICATIONS

1. SHEETS 10A, 10B, 11A, 11B (EACH AN "ALTERNATIVE SHEET" AND COLLECTIVELY THE "ALTERNATIVE SHEETS") DEPICT ALTERNATIVE LOT CONFIGURATIONS PROPOSED FOR APPROVAL PURSUANT TO THIS VESTING MAP. THE ALTERNATIVE LOT SIZES AND CONFIGURATIONS DEPICTED ON THE ALTERNATIVE SHEETS ADDRESS FLEXIBILITY FOR OPEN SPACE AREAS (BOTH PRIVATELY-OWNED AND DEDICATED OPEN SPACE) CONTEMPLATED BY THE DWDSG. FOR EACH ASSOCIATED PHASED FINAL MAP, SUBDIVIDER SHALL DEMONSTRATE THAT LOTS DEPICTED ON THE PHASED FINAL MAP SUBSTANTIALLY CONFORM WITH A CORRESPONDING ALTERNATIVE SHEET.

2. LOTS A, B, E, F, H, I, P, Q, R AND A PORTION OF LOT 19 (A FUTURE AIRSPACE PARCEL), AS SHOWN ON THE ALTERNATIVE SHEETS, ARE PROPOSED FOR DEDICATION TO THE CITY PURSUANT TO CHAPTER 19.38 OF THE CITY CODE. THESE LOTS ARE APPROXIMATE AND WILL BE DIMENSIONED ON PHASED FINAL MAPS. SAID LOTS MAY BE ADJUSTED TO EXPAND OR CONTRACT TO ACCOUNT FOR FINAL OPEN SPACE PROGRAMMING, STREET OR UTILITY ENGINEERING, AND VERTICAL DESIGN, PROVIDED (1) THAT THE SUM TOTAL OF THE OPEN SPACE LOTS DEDICATED TO THE CITY CONCURRENT WITH PHASED FINAL MAPS (AND SUBJECT TO ANY DELAYED DEDICATIONS AS PERMITTED IN AN AGREEMENT PURSUANT TO GOVERNMENT CODE SECTION 66462) SHALL NOT BE LESS THAN 4.8 ACRES AND (2) ANY RECONFIGURATION IS CONSISTENT WITH APPLICABLE STANDARDS IN THE DWDSG.

3. ALL PUBLIC OPEN SPACE DEDICATIONS PURSUANT TO THIS VESTING MAP ARE SUBJECT TO TERMS OF THE PARKLAND AGREEMENT FOR TENTATIVE MAP NO. PT20-027 BETWEEN THE CITY OF SAN JOSE AND GOOGLE LLC AND RESTRICTIONS AND COVENANTS RELATING TO PRIVATE RECREATIONAL IMPROVEMENTS ("PARKLAND AGREEMENT"). MODIFICATIONS TO LOTS SHOWN HEREON MAY BE REQUIRED TO IMPLEMENT THE PARKLAND AGREEMENT, OR, TO FACILITATE MODIFICATION OF OPEN SPACE LOTS AS REQUIRED OR PERMITTED BY THE DWDSG AND/OR THE

DEVELOPMENT AGREEMENT. ANY SUCH MODIFICATIONS SHALL BE REFLECTED ON PHASED FINAL MAPS WHICH SHALL BE DEEMED TO SUBSTANTIALLY CONFORM WITH THIS VESTING MAP NOTWITHSTANDING ANY MODIFICATION TO LOTS FOR THE PURPOSES DESCRIBED IN THIS NOTE.

NOTES RELATING TO MID-BLOCK PASSAGES, PRIVATE STREETS AND ANY NON-DEDICATED OPEN SPACE AREAS

1. PRIVATELY-OWNED OPEN SPACES: OPEN SPACE AREAS OTHER THAN THOSE IDENTIFIED AS PUBLICLY-DEDICATED OPEN SPACES (I.E. LOTS A, B, E, F, H, I, P, Q, R AND A PORTION OF LOT 19) SHALL BE PRIVATELY OWNED UNLESS THE CITY COUNCIL, THROUGH A SUBSEQUENT PROCESS, AGREES TO ACCEPT THE DEDICATION OF THESE AREAS PURSUANT TO TITLE 19 OF THE MUNICIPAL CODE. ALL PRIVATELY-OWNED OPEN SPACES SHOWN HEREON AND SUBJECT TO SECTION 4.5 OF THE DWDSG ARE SUBJECT TO ADJUSTMENT PURSUANT TO DWDSG STANDARD S4.5.3 AND OTHER AUTHORIZED RELIEF UNDER THE GENERAL DEVELOPMENT PLAN WITHOUT THE NEED TO AMEND THIS VESTING MAP OR TO FILE A NEW VESTING TENTATIVE MAP OR TENTATIVE MAP. FINAL LOCATIONS OF PRIVATELY-OWNED OPEN SPACE AREAS DEPICTED HEREON AND ANY RIGHTS OF PUBLIC ACCESS AS REQUIRED BY THE DWDSG OR THE CITY CODE SHALL BE ESTABLISHED PURSUANT TO COVENANTS, EASEMENTS OR RESTRICTIONS TO BE RECORDED PRIOR TO ISSUANCE OF CERTIFICATES OF OCCUPANCY FOR BUILDINGS ON LOTS THAT INCLUDE PRIVATELY-OWNED OPEN SPACES.

2. STANDARDS 4.9.2, S5.5.5, and S6.3.4 PROVIDES FOR THE RECONFIGURATION OF CERTAIN LOTS AND OPEN SPACE AREAS PURSUANT TO THE REQUIREMENTS OF SAID STANDARD. ANY LOTS, EASEMENTS OR PRIVATELY-OWNED OPEN SPACE AREAS SHOWN ON THIS VESTING MAP MAY BE ADJUSTED AS A RESULT OF THE IMPLEMENTATION OF DWDSG STANDARD S5.5.2 WITHOUT THE NEED TO AMEND THIS VESTING MAP OR TO FILE A NEW VESTING TENTATIVE MAP OR TENTATIVE MAP.

3. MID-BLOCK PASSAGES ("MBP"): MID-BLOCK PASSAGES ARE PRIVATELY-OWNED AREAS SUBJECT TO PUBLIC ACCESS AS DESCRIBED IN THE DWDSG. MID-BLOCK PASSAGES ARE SHOWN ON THIS VESTING MAP IN CONCEPTUAL LOCATIONS. FINAL LOCATIONS AND ACCESS CONTROLS WILL BE DESCRIBED IN COVENANTS, EASEMENTS OR RESTRICTIONS TO BE RECORDED PRIOR TO ISSUANCE OF CERTIFICATES OF OCCUPANCY FOR BUILDINGS ON LOTS SUBJECT TO MID-BLOCK PASSAGES.

4. PRIVATE STREETS: PRIVATE STREETS ARE PRIVATELY-OWNED AREAS INTENDED FOR VEHICULAR AND PEDESTRIAN TRAVEL, AND WHICH ARE INTENDED TO BE KEPT CLOSED FROM PUBLIC ACCESS (WITH THE EXCEPTION OF ANY PUBLICLY-DEDICATED EASEMENTS SHOWN HEREON), EITHER THROUGH PHYSICAL CLOSURE, SIGN POSTING, OR BOTH. DEPICTIONS OF PRIVATE STREETS ON THIS VESTING MAP ARE SHOWN IN APPROXIMATE LOCATIONS. FINAL LOCATIONS WILL BE DEPICTED ON COVENANTS, EASEMENTS OR RESTRICTIONS RECORDED CONCURRENT WITH OR SUBSEQUENT TO PHASED FINAL MAPS.

5. ANY LOT SHOWN HEREON THAT INCLUDES A MID-BLOCK PASSAGE, PRIVATELY-OWNED SPACE OR PRIVATE STREET SHALL BE SUBJECT TO A CONDITION

OF APPROVAL STATING THAT ANY VERTICAL CONSTRUCTION ON SUCH LOT SHALL BE LIMITED TO "BUILDABLE ZONES" AS DEFINED IN STANDARD S5.5.1 OF THE DWDSG.

NOTES RELATING TO AIR SPACE LOTS

1. THIS VESTING MAP AUTHORIZES PHASED FINAL MAPS THAT VERTICALLY SUBDIVIDE AIR SPACE INTO SEPARATE AIR SPACE LOTS FOR PURPOSES OF ACCOMMODATING SEPARATE OWNERSHIP OR USES. ANY SUCH AIR SPACE LOTS SHALL BE DIMENSIONED ON THE ASSOCIATED PHASED FINAL MAP.
2. THIS VESTING MAP AUTHORIZES SUBDIVIDER TO VERTICALLY SUBDIVIDE LOT 19 INTO AIR SPACE LOTS TO SEPARATE THE PROPOSED SURFACE-LEVEL PARK FROM THE SUBSURFACE, SUCH THAT SUBDIVIDER MAY OFFER THE RESULTING PARK AIR SPACE LOT TO THE CITY FOR DEDICATION WHILE RETAINING THE SUB-SURFACE AIR SPACE LOT. IN THE EVENT SUBDIVIDER ELECTS THIS OPTION, SUBDIVIDER SHALL EXECUTE AN AGREEMENT WITH THE CITY PURSUANT TO GOVERNMENT CODE SECTION 66462 TO ADDRESS (1) THE TIMING OF THE DELIVERY OF THE DEED FOR THE PARK AIR SPACE LOT; (2) RESERVATION OF EASEMENTS NECESSARY TO ENSURE COMPATIBILITY OF USES; AND (3) COMPLETION OF ANY REQUIRED IMPROVEMENTS TO SERVICE THE PARK AIR SPACE LOT.

NOTES RELATING TO STREETS

1. ALL STREETS DESCRIBED ON THIS MAP AND REPRESENTED BY A TYPICAL CROSS SECTION ON SHEETS TM-14 THROUGH TM-20 SHALL CONFORM TO THE CORRESPONDING CROSS SECTION SHOWN ON THIS VESTING MAP . TO THE EXTENT ANY STREET OR ANY STREET ELEMENT IS NOT SHOWN HEREON, SAID STREET OR ELEMENT SHALL COMPLY WITH THE MOBILITY CHAPTER OF THE DWDSG.
2. MINOR STREET ALIGNMENT ADJUSTMENTS MAY BE SHOWN ON PHASED FINAL MAPS.
3. ANY IMPROVEMENTS REQUIRED TO SERVICE THE SUBDIVISION DEPICTED HEREON SHALL CONFORM TO THE DWIS AND ANY RELATED ORDINANCES APPLICABLE TO IMPROVEMENTS WITHIN THE DOWNTOWN WEST PD ZONE.
4. SUBDIVIDER MAY BE REQUIRED TO COMPLETE FOCUSED LOCAL TRANSPORTATION ANALYSES (EACH AN "FLTA") PRIOR TO THE APPROVAL OF ANY PHASED FINAL MAP AND ASSOCIATED IMPROVEMENT PLANS. ANY MODIFICATION TO LOTS, PUBLIC EASEMENTS, OR IMPROVEMENTS SHOWN HEREON AS A RESULT OF ANY FOCUSED FLTA SHALL BE PERMITTED WITHOUT THE NEED TO AMEND THIS VESTING MAP OR APPROVAL OF A SEPARATE TENTATIVE MAP OR VESTING TENTATIVE MAP.
5. SUBDIVIDER SHALL IDENTIFY THE PROPERTY LINE CORNER RADIUS AT THE INTERSECTION OF ANY TWO STREETS ON PHASED FINAL MAPS . TO THE EXTENT THAT ANY CORNER RADIUS IS LESS THAN TWENTY-FOUR FEET, THE PUBLIC WORKS DIRECTOR, WILL, PURSUANT TO TITLE 19.36.070 OF THE MUNICIPAL CODE, AUTHORIZE THE PROPOSED RADIUS, BOTH AS APPLIED TO THE PHASED FINAL MAP AND TO ANY ASSOCIATED IMPROVEMENT PLANS, IF SUBDIVIDER DEMONSTRATES

THE SAFE AND EFFICIENT MOVEMENT OF TRAFFIC THROUGH THE INTERSECTION, THROUGH AN FLTA OR SIMILAR ANALYSIS.

NOTE RELATING TO DISC PROCESS AND POTENTIAL CONDEMNATION

1. ANY MODIFICATION TO LOTS, PUBLIC EASEMENTS OR IMPROVEMENTS SHOWN HEREON AS A RESULT OF THE PROCEDURE DESCRIBED IN DWDSG STANDARDS S4.5.9, S4.9.2, S5.5.4, S5.5.5, S6.3.3 AND S6.3.4 AND/OR SECTION 4.2.2 OF THE DEVELOPMENT AGREEMENT RELATING TO CONDEMNATIONS SHALL BE PERMITTED WITHOUT THE NEED TO AMEND THIS VESTING MAP OR APPROVAL OF A SEPARATE TENTATIVE MAP OR VESTING TENTATIVE MAP.

2. LOTS A & B SHALL BE OFFERED FOR DEDICATION TO THE CITY AS OPEN SPACE PURSUANT TO THE ASSOCIATED PHASED FINAL MAP. AS OF THE APPROVAL OF THE VESTING MAP, IT IS ANTICIPATED THAT THE ACREAGE OF LOTS A & B WILL BE 0.91 ACRES (TM4), AND THAT SUBDIVIDER WILL PROVIDE AN EXECUTED GRANT DEED TO THE CITY CONCURRENT WITH THE ASSOCIATED PHASED FINAL MAP AT THE TIME OF APPROVAL OF SAID MAP, AND SUCH GRANT DEED AND OFFER OF DEDICATION WILL BE RECORDED TO TRANSFER LOTS A & B TO CITY UPON ACCEPTANCE BY THE CITY IN ACCORDANCE WITH THE [PARKLAND AGREEMENT BETWEEN THE CITY AND SUBDIVIDER DATED _____, 2021].

IN THE EVENT THAT ANY PORTION OF LOTS A & B ARE CONDEMNED PRIOR TO THE CITY'S ACCEPTANCE OF LOTS A & B, SUBDIVIDER SHALL DEDICATE THE NON-CONDEMNED PORTION OF THE AREA SHOWN HEREON AS LOTS A & B TO THE CITY, AND SHALL COOPERATE AS NECESSARY WITH THE CITY TO EFFECTUATE THE DEDICATION.

NOTE RELATING TO PUBLICLY-DEDICATED EASEMENTS

1. PROPOSED PUBLIC SERVICE EASEMENTS ("PSE ") AND EMERGENCY VEHICLE ACCESS EASEMENTS ("EVAE") DEPICTED HEREON ARE APPROXIMATE AND WILL BE DIMENSIONED IN PROPOSED FINAL LOCATIONS ON ASSOCIATED PHASED FINAL MAPS. ADDITIONAL PSES , PUBLIC ACCESS EASEMENTS (PAES) AND EVAES MAY BE REFLECTED ON PHASED FINAL MAPS TO ACCOUNT FOR INFRASTRUCTURE DESCRIBED IN FINAL IMPROVEMENT PLANS.