



## REPORT TO CITY COUNCIL

Approved by:

Keith Helmuth, City Engineer

Arnaldo Rodriguez, City Manager

**Council Meeting of:** June 7, 2023

**Agenda Number:** B-5

### SUBJECT:

Maintenance of Drainage Improvements and Access Easement for Madera Industrial WHSE, LLC

### RECOMMENDATION:

Adopt a Resolution Approving Statement of Covenants Affecting Land Development for the Maintenance of Drainage Improvements and Access Easement for Madera Industrial WHSE, LLC

### SUMMARY:

On August 10, 2021, the City's Planning Commission approved Site Plan Review (SPR) 2021-24 to construct four pre-engineered metal multi-tenant industrial warehouse buildings ranging in size from 35,100 to 37,050 square feet. The site, located at Schnoor Avenue between Howard Road and Almond Avenue east of Fire Station 57, is approximately 17 acres; however, development is scheduled to occur on the southernmost 9 acres. Due to the lack of drainage facilities in the area, the developer wishes to construct private storm drainage improvements. To ensure maintenance by the developer or future parcel owners, the developer must enter into an agreement for the maintenance of temporary on-site drainage improvements, which states the property owner shall maintain the basin and allows for routine inspections by the City. Said agreement will be recorded against the property until such time that the City determines it is no longer required.

### DISCUSSION:

Typically, a developer must install permanent off-site public improvements to accommodate storm runoff caused by new development. Alternatively, if the City determines that a permanent facility is unavailable, a developer may, subject to the approval by the City, construct improvements on-site to contain storm runoff that would otherwise be directed to master planned public storm drainage facilities.

Storm runoff from this site is planned to go to the Evapco Basin (EV) located south of the project site. Per the Storm Drainage Master Plan, the EV basin is at capacity and requires a new basin to

the north. Due to the absence of the basin, the developer has constructed a temporary on-site basin capable of retaining runoff from the entire 17-acre parcel for a 100-year, 10-day storm. At present, defined plans do not exist that identify where such a new basin may be located; however, staff believes that this basin could be incorporated into a larger master plan basin. Regardless, additional analysis is needed to determine the precise location of the new basin.

The developer-installed on-site retention facility will require routine maintenance to protect the public health, safety, and welfare of persons and property on the subject site and downstream properties. The developer will be responsible for the operation, maintenance, and repair of the on-site drainage improvements and will be subject to inspections by the City. The covenant for maintenance of on-site drainage improvements would require that the property owner remedy any items, such as the removal of overgrown brush or the inability to percolate water as intended.

It is noted that the developer must still remit storm drainage impact fees because this is a temporary basin. When no longer needed because permanent facilities have been constructed, the City will require that the temporary basin be abandoned and backfilled. Moreover, the agreement stipulates that should the basin not be maintained, the City may undertake the work and invoice the owner. Non-payment would result in the ability of the City to record a lien against the parcel.

#### **FINANCIAL IMPACT:**

There will be no financial impact to the City for approving the Statement of Covenants Affecting Land Development for the Maintenance of Drainage Improvements and Access Easement. The developer has paid the required fees for plan checking and inspections of improvements needed for the project.

#### **ALTERNATIVES:**

The City Council may reject the Statement of Covenants Affecting Land Development for Maintenance of Drainage Improvements and Access Easement. The rejection will result in the City's inability to ensure that the on-site storm retention facilities are adequately maintained. It would also mean the development does not have City approved storm drainage plan to protect the development.

#### **ATTACHMENTS:**

1. Resolution  
Exhibit 1 – Covenant
2. Location Map

## **Attachment 1**

Resolution

**RESOLUTION NO. 23-\_\_\_\_\_**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
APPROVING A STATEMENT OF COVENANTS AFFECTING LAND  
DEVELOPMENT FOR THE MAINTENANCE OF DRAINAGE IMPROVEMENTS  
AND ACCESS EASEMENT FOR MADERA INDUSTRIAL WHSE, LLC, AND  
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF  
THE CITY**

**WHEREAS**, the property owner submitted plans to the City for authorization to construct four pre-engineered metal multi-tenant industrial warehouse buildings ranging in size from 35,100 to 37,050 square feet; and

**WHEREAS**, the subject site, located at Schnoor Avenue between Howard Road and Almond Avenue east of Fire Station 57, is approximately 17 acres; however, development is scheduled to occur on the southernmost 9 acres; and

**WHEREAS**, during the review of the project, City staff informed the applicant that permanent ponding basins were unavailable to serve the proposed project; and

**WHEREAS**, the Project requires the installation of certain off-site public improvements to address storm runoff caused by the development; and

**WHEREAS**, due to the lack of permanent facilities, the developer has elected to construct temporary on-site storm drainage facilities to contain storm runoff per the approved grading plans due to the Master Plan basin not existing as an alternative to constructing master plan improvements; and

**WHEREAS**, the City requires a new development project to enter into a covenant for the maintenance of any on-site storm drainage facilities by the parcel owner to ensure the protection of public health, safety, and welfare for persons and property located on the subject site and for properties located downstream from it including the City's storm drainage system; and

**WHEREAS**, the Project developer has agreed to enter into said agreement with the City to allow for proper routine inspections by authorized personnel for the installed temporary on-site storm drainage facilities; and

**WHEREAS**, the City's Planning Commission considered and approved Site Plan Review (SPR) 2021-24 (Project) on August 10, 2021; and

**WHEREAS**, the property owner shall abandon, including backfilling the temporary on-site basin upon the determination by the City that said basin is no longer needed to accommodate storm drainage.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA** hereby finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Statement of Covenants Affecting Land Development for the Maintenance of Drainage Improvements and Access Easement with Madera Industrial WHSE, LLC, attached hereto as Exhibit 1 and incorporated herein, is approved.
3. The Mayor is authorized to execute the agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**Exhibit 1**

Covenant

RECORDING REQUESTED BY:  
City of Madera

WHEN RECORDED RETURN TO:  
City of Madera  
City Clerk  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637  
Attention: City Clerk

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Fee Waived per Section 27383 & 27388.1(a)(2)(D) of the Government Code

APN: 009-330-011  
ADDRESS: 325 South Schnoor Avenue

**STATEMENT OF COVENANTS  
AFFECTING LAND DEVELOPMENT FOR THE  
MAINTENANCE OF DRAINAGE IMPROVEMENTS AND ACCESS EASEMENT**

RECITALS

A. **Madera Industrial WHSE LLC, a California limited liability company**, hereinafter referred to as "the Covenantor," is the owner of that certain real property in the City of Madera, County of Madera, State of California, hereinafter referred to as "the Subject Property," and whose legal description is more particularly described on Exhibit "A" attached hereto, and is commonly known as 325 South Schnoor Avenue, Madera, California, 93637 (APN 009-330-011).

B. A condition of approval of Site Plan Review 2021-24 for the development of the Subject Property is a requirement that the Covenantor have grading and drainage plans prepared for the development. Said grading and drainage plans were prepared by Nathan M. Gleaves, P.E., license number 67552.

C. Conditions of approval numbers 78 through 80 for Site Plan Review 2021-24 also require (i) that Covenantor install certain offsite public improvements to address off-site flow caused by the development on the Subject Property or that in the alternative, Covenantor can construct improvements on-site, such as an on-site retention facility, with sufficient capacity to contain what would otherwise be off-site flow caused by the development on the Subject Property by a 100-year storm event.

D. The Covenantor now desires to install an on-site facility to contain what would otherwise address off-site flow caused by the development on the Subject Property by a 100-year storm event. Such on-site improvements will require maintenance to ensure protection of the public health, safety, and welfare for persons and property located on the Subject Property and for benefitted properties located downstream from it including the City's storm drainage system. As such, the Covenantor and the City of Madera (City) now desire to enter into this Statement of Covenants ("Covenant") to ensure adequate storm water retention facilities are maintained for the Subject Property consistent with an approved grading plan for the Subject Property and in compliance with conditions of approval numbers 78 through 80 for Site Plan Review 2021-24.

COVENANT AND AGREEMENT

In consideration of the foregoing and to satisfy conditions of approval numbers 78 through 80 of Site Plan Review 2021-24 for the Subject Property by the City of Madera, the Covenantor hereby

covenants, promises and agrees with the City of Madera for the benefit of said City and benefited properties that:

1. Covenantor shall design, construct, and maintain on-site storm-water retention facilities to be used as temporary flooding and drainage facilities according to drainage and grading improvement plans prepared by the Covenantor and approved by the City Engineer ("Improvements") until the Engineer of the City determines such use is no longer necessary. Said Improvements shall comply with the following:

- a. The Subject Property be graded to capture all on-site storm runoff and that all such storm runoff shall be conveyed to on-site drain inlets that are connected to on-site infiltration trenches that will allow storm runoff to percolate into the soil.
- b. The Improvement system used to capture storm water shall be maintained in such manner that its capacity is equivalent to that which it was designed or greater than that which is required per the drainage calculations originally prepared by the Engineer of record.
- c. The Improvements shall be maintained at all times on the Subject Property sufficient to contain what would otherwise be off-site flow caused by the development on the Subject Property by a 100-year storm event.
- d. The Improvements shall be kept free of any nuisance in fact or in law, including any "nuisance" defined by the City of Madera Municipal Code.

Additional development on the Subject Property other than that approved under Site Plan Review 2021-24, or alteration of the Improvements including any on-site flows or approved stormwater retention facilities, is prohibited until an updated drainage improvement plan, and a grading improvement plan if required by the City Engineer, has first been prepared by the Covenantor and then approved by the City Engineer.

2. Covenantor shall be solely responsible for operation, maintenance, and repair of the Improvements, including without limitation and all costs associated therewith. Covenantor shall at all times operate, maintain, and repair the Improvements such that there is no interference with the City's storm drainage system or public right-of-way. Covenantor shall pay to City the cost of any maintenance or repair to City's storm drainage system or the public right-of-way resulting from Covenantor's operation, maintenance, and repair of the Improvements within 21 calendar days of written demand for said costs being mailed or delivered by the City to any property owner of the Subject Property at the address shown on the County assessor's property tax assessment records.

3. Covenantor acknowledges and agrees the City has the right to inspect the Improvements, including rights of entry on the Subject Property as reasonably necessary in City's sole discretion, to verify Covenantor is performing its respective obligations in accordance with this Covenant. In that regard, Covenantor shall grant a non-exclusive easement to City for ingress and egress over, under, across, and through the Subject Property. If in the discretion of the City the Covenantor is not adequately operating, maintaining, or repairing the Improvements, Covenantor shall promptly remedy the same within 21 days upon a written notice mailed or delivered by the City to any property owner of the Subject Property at the address shown on the County assessor's property tax assessment records or personal delivery of the same. If said obligations are not timely and fully completed within 21 days of the notice being mailed or delivered, Covenantor agrees the City has the option, but not the obligation, to enter the Subject Property



as authorized herein and per the non-exclusive easement and to undertake the repair, maintenance, or to take any other action to ensure the Improvements are operating as designed and approved. Notwithstanding, Covenantor agrees that the City may immediately, without prior notice, enter the Subject Property and undertake said repairs, maintenance, or operations of the Improvements if warranted to address imminent public health, safety, or welfare concerns as determined in the sole discretion of the City. Covenantor further agrees that any costs or expenses incurred by the City under Paragraph 2 or this Paragraph 3 of this Covenant shall be the sole obligation of Covenantor, and if not already paid as inspection fees or as another fee charged by the City, such costs or expenses must be paid by the Covenantor within 21 calendar days of a request for payment by the City being mailed or delivered to any property owner of the Subject Property at the address shown on the County assessor's property tax assessment records. If not timely paid, Covenantor consents to the recording of a lien on the Subject Property for any unpaid amount owing the City.

4. The Improvements shall be used as temporary flooding and drainage facilities until the Engineer of the City determines that such use is no longer necessary. The owner of the Subject Property on which the Improvements are located shall use commercially reasonable efforts to backfill said basin(s) within ninety (90) days after notice is given by the Engineer of the City that the basin(s) are no longer needed. Upon abandonment of the Improvements, the owner of the Subject Property shall be responsible also for abandonment of any pipeline and associated storm drain facilities as designated by the Engineer for the City. Thereafter, site drainage shall be consistent with the City's Storm Drain Master Plan.

5. To the furthest extent allowed by law, Covenantor agrees to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Covenantor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making or performance of this Covenant; (ii) the design, installation, operation, removal or maintenance of the work, including those associated with the Improvements, by Covenantor and Covenantor's employees, officers, agents, contractors or subcontractors; or (iii) the inspection, maintenance, or other work, including those associated with the Improvements, by City including that necessitated by Covenantor's failure to timely perform under this Covenant. Covenantor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

6. The waiver by either party of a breach by the other of any provision of this Covenant shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Covenant. No provisions of this Covenant may be waived unless in writing and signed by all parties to this Covenant. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

7. If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Covenant, including enforcement of a lien thereunder, the prevailing party in such proceeding or action shall be entitled to recover from the other party its

reasonable attorney's fees and legal expenses. For the purposes of this Covenant, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

8. Except as provided by Paragraph 7 regarding attorney's fees and legal expenses, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Covenant, it being expressly understood and agreed Covenantor's sole legal remedy for breach or violation of this Covenant by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Covenant.

9. All recitals and attachments to this Covenant, including the Exhibit referenced herein, and all subparts thereto, are incorporated herein by this reference.

10. The provisions of this Covenant shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any one provision thereof. The Courts shall liberally interpret this Covenant in favor of the City and any benefited properties.

11. This document shall constitute a covenant in favor of the City of Madera and shall run with the Subject Property and be binding upon Covenantors, its grantees, heirs, and successors and assigns. The Covenantor shall provide to every prospective purchaser of each lot of the Subject Property notice of this Covenant and its maintenance obligations.

12. This Covenant shall remain in full force and effect until such time as the City notifies the Covenantor that such maintenance responsibility is no longer required, and confirms there is authorized access for storm water drainage from the Subject Property into the City's storm water drainage system and adequate capacity within said system to accommodate off-site drainage flows from the Subject Property. The City Engineer of the City of Madera may then issue and record a release of this Covenant with the Madera County Recorder.

13. Any notice authorized, required, or permitted to be given hereunder shall be properly addressed to the party to be notified at the following address:

To City: City of Madera  
205 West 4th Street  
Madera, CA 93637  
Attn: City Engineer

To record owner of the Subject Property: To the address shown on the County assessor's property tax assessment records

Any notice shall be deemed to have been given upon actual receipt if sent by United States mail, postage prepaid, certified mail or registered mail, return receipt requested. Any notice delivered by hand delivery or sent by overnight courier shall be deemed received on the date of actual receipt or upon refusal of

delivery. Any address for notice may be changed by ten (10) days' prior written notice to the other party of such address change in the manner provided above.

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14. This Covenant requires Covenantor to obtain a subordination agreement from any person, entity, partnership, or corporation that may have a beneficial interest in the Subject Property. The subordination agreement(s) shall be substantially in the form set forth in Exhibit B and shall be recorded at the same time that this Covenant is recorded. Covenantor warrants there is no person, entity, partnership, or corporation that may have a beneficial interest in the Subject Property other than the Covenantor, and has provided documentation to the City confirming the same.

**IN WITNESS WHEREOF**, the parties duly executed this Covenant.

**CITY OF MADERA:**

By: \_\_\_\_\_  
Santos Garcia, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Alicia Gonzales, City Clerk

**APPROVED:**

By: \_\_\_\_\_  
Keith B. Helmuth, P.E.,  
City Engineer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

**COVENANTOR:**

Madera Industrial WHSE LLC, a California  
limited liability company

By: Granite WHSE Development Fund, L.P., its  
sole Member

By: GP Granite WHSE, LLC, its General  
Partner

By: WHSE Partners LLC, its Manager

By: \_\_\_\_\_  
Robert Boese, Member

By: \_\_\_\_\_  
Erin Volpp, Member

**NOTARY ACKNOWLEDGEMENT  
REQUIRED**

Exhibit "A" – Legal Description  
Exhibit "B" – Subordination

EXHIBIT A  
LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Madera, City of Madera and described as follows:

Lots 13 and 14 of Midvale Colony, in the City of Madera, County of Madera, State of California, according to the map thereof recorded April 8, 1909 in Book 2, Page 18 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom the South 675.0 feet of Lots 13 and 14, including the 30 foot road on the South according to the map of said Midvale Colony referred to above.

Also excepting therefrom that portion conveyed to the City of Madera, a municipal corporation in deed recorded July 12, 2004 as Instrument No. 2004029511 and re-recorded January 7, 2005 as Instrument No. 2005000957, both of Official Records.

Also excepting therefrom one-half of all oil, gas and mineral in and under said land, as reserved by Californian Lands, Inc., a corporation, in Deed recorded January 26, 1935 in Book 168, Page 112 and as modified by Quitclaim Deed recorded March 9, 1953 in Book 567, Page 582, both of Official Records.

(APN 009-330-011)

EXHIBIT B  
SUBORDINATION

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on November 12, 2021, in the office of the Madera County Recorder as Instrument No. 2021035377 of which the Deed of Trust in by and between Madera Industrial WHSE LLC, a California Limited Liability Company, as Trustor, Stewart Title Guaranty Company, as Trustee, and KH Funding CA, LLC, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing Statement Of Covenants Affecting Land Development For The Maintenance Of Drainage Improvements and Easement.

DATED: \_\_\_\_\_, 2023

BENEFICIARY

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Beneficiary to print/type document information, Name, Title and attach Notary Acknowledgment)

## **Attachment 2**

Location Map

# LOCATION MAP



**CITY OF MADERA**  
ENGINEERING DEPARTMENT  
428 E YOSEMITE AVE  
MADERA, CA 93638

*MADERA INDUSTRIAL WHSE, LLC*

DR BY: RR  
CH BY: \_\_\_\_\_  
DATE: 5/11/23  
SCALE: NTS  
SHT 1 OF 1