

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF THE SAN JOSE MUNICIPAL FIRING RANGE, THE REMOVAL OF 33 ORDINANCE-SIZE AND 65 NON-ORDINANCE-SIZE TREES, AND THE ADDITION OF 204,193 SQUARE FEET TO AN EXISTING ICE RINK FACILITY WITH LATE NIGHT USE AND AN OFF-SITE, ALTERNATING USE AND ALTERNATIVE PARKING ARRANGEMENT ON AN APPROXIMATELY 21.23-GROSS ACRE SITE, LOCATED AT THE SOUTHEAST CORNER OF SOUTH 10TH STREET AND EAST ALMA AVENUE (1500 SOUTH 10TH STREET)**

**FILE NO. CP19-024**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 8, 2019, an application (File No. CP19-024) was filed by the applicant, Sharks Ice, LLC, with the City of San José for a Conditional Use Permit to allow the demolition of the San José Municipal Firing Range, the removal of 33 ordinance-size trees and 65 non-ordinance-size trees and the addition of 204,193 square feet to an existing ice rink facility with late night use on an approximately 21.23-gross acre site, on that certain real property situated in the R-2 Residential Zoning District and located on the southeast corner of South 10th Street and East Alma Avenue (1500 South 10th Street, San José, which real property is sometimes referred to herein as “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, 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 recommendation of 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, "S4A Rinks 5 & 6 Addition" dated received November 4, 2019, said development plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

After considering 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 21.23-gross acre site is located on a corner lot occupied by the existing 179,687 square feet ice rink facility, the San José Municipal Firing Range and the San José Municipal Stadium (Excite Ballpark). The subject site is surrounded by an abandoned railroad right-of-way and the San José Central Service Yard to the south. To the east of the subject site, across Senter Road, is Kelley Park. The San José State University South Campus is across East Alma Avenue to the north of the subject site and includes the Spartan Golf

Complex and a 1,500-space parking garage that is currently under construction. A surface parking lot, hockey repair shop, and charter bus company are located across South 10th Street to the west of the subject site. The site currently has 1,015 vehicle parking spaces and is accessed by four driveways, two on South 10th Street and two on East Alma Avenue. The ice rink currently employs 13 full-time and 292 part-time staff for a total staff of 305 employees. The project site has three existing access driveways, one on South 10th Street and the remaining two on East Alma Avenue. A fourth, exit-only driveway, is also located along South 10th Street, roughly halfway between the southern property line and the intersection of 10th Street and Alma Avenue.

- 2. Project Description.** The project includes the demolition of the existing San José Municipal Firing Range, the removal of 33 ordinance-size trees, 65 non ordinance-size trees, the construction of two additional ice rinks and a medical office at the existing 179,687-square foot Solar4America Ice facility. The addition includes a community/practice ice rink (Rink 5) and a competition arena for the San Jose Barracuda AHL minor league hockey team (Rink 6). Approximately 3,000 square feet of the existing facility would be demolished resulting in an approximately 377,800-square foot facility. Rink 5 would be two stories in height to allow for approximately 100 spectator seats. The project arena, Rink 6, would be three stories in height to allow capacity for approximately 4,213 spectators. The arena would include associated ancillary uses such as locker rooms, team training areas, restrooms, reception and ticket lobbies, concessions, commissary and merchandise sales, bar, restaurant, and lounge concepts, and security and event offices, support services, and loading dock and utility areas. Approximately 20,000 square feet of the addition would include medical office uses to be leased to a third-party tenant and would include a reception and lobby area, restrooms, offices, exam and physical therapy rooms, and support services. The addition would require approximately 30 new full-time employees during business hours, including medical office staff. Large events at Rink 6 could require up to 150 additional workers. The project also includes the installation of one 680-1,000kW emergency generator with a 660-gallon fuel tank and sound attenuating enclosure to be located on the eastern side of the facility.

The northernmost existing access driveway on South 10th Street would be moved to the southern edge of the subject site to accommodate the addition. The existing curb cut that serves the San José Municipal Firing range would be also be removed. The westernmost driveway along East Alma Avenue would be relocated approximately 90 feet to the west. The existing easternmost access driveway, serving the San José Municipal Stadium (Excite Ballpark) would remain.

The project requires an off-site, alternating use and alternative parking arrangement to meet the required 2,185 off-street parking spaces. The project provides 599 vehicle parking spaces on-site, with an additional 68 alternating use of common parking facilities provided by the development of the medical office building. The remaining

1,586 required off-street parking spaces would be provided by a Memorandum of Understanding for an alternative parking arrangement between Sharks Ice, LLC and San José State University. The “Primary Term” of the parking agreement commences upon completion of the ice rink expansion project and continues for approximately 28 years, which is coterminous with the 30-year initial term of the amended lease for the ice rink facility. The agreement allows for the parking agreement to be transferred to the City or other operator of the Ice Center.

- 3. General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Public/Quasi Public. This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices and airports. Joint development projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/ restaurant complex - are allowed. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses. Private community gathering facilities, including those used for religious assembly or other comparable assembly activity, are also appropriate on lands with this designation. The appropriate intensity of development can vary considerably depending on potential impacts on surrounding uses and the particular Public/Quasi-Public use developed on the site.

The project is consistent with the following General Plan Policies:

Land Use Policy LU-1.9 – General Land Use: Preserve existing Public/Quasi-Public lands in order to maintain an inventory of sites suitable for Private Community Gathering Facilities, particularly within the Residential Neighborhoods, Urban Villages, and commercial areas, and to reduce the potential conversion of employment lands to non-employment use.

*Analysis:* The project would expand Public/Quasi-Public lands and would maintain the inventory of sites suitable for private community gathering. The existing ice rink facility operates as a private recreational facility that serves the general public. The addition to the facility would provide increased space for recreation as well as entertainment with the addition of the arena. Therefore, both the existing site and the project conform to the Public/Quasi-Public General Plan Land Use Designation.

Land Use Policy LU-4.1 – Commercial Lands: Retain existing commercial lands to provide jobs, goods, services, entertainment, and other amenities for San José’s workers, residents, and visitors.

*Analysis:* Based on the information provided in the Operations Plan for Solar4America Ice, the facility currently employs 13 full-time staff and 292 part-time staff. The addition

*to the facility would employ an additional 30 full-time staff. An additional 150 workers would be required for concessions, ticket sales, security, and restaurant staff for up to four hours during large events at Rink 6. Therefore, the project would expand the number of jobs, as well as add entertainment uses with the addition of the arena at Rink 6.*

Transportation Policy TR-1.4 – Balanced Transportation System: Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes giving first consideration to improvement of bicycling, walking and transit facilities and services that encourage reduced vehicle travel demand.

Analysis: *The project includes the extension of the sidewalk into the site, to create a 10-foot sidewalk. This will allow better pedestrian access to the site as well as accommodate the increased pedestrian traffic with the addition of the arena and the parking garage. The addition to the facility also requires additional bicycle parking spaces which will be provided throughout entrances to the site.*

#### 4. **Zoning Ordinance Conformance.**

The project conforms to the development standards as set forth in the Public/Quasi-Public Zoning District. The PQP Public/Quasi Public Zoning District is intended to provide for publicly serving uses on lots that are designated Public/Quasi-Public on the General Plan Land Use/Transportation Diagram. The publicly serving land uses within this district can include schools, colleges, research institutions, corporation yards, homeless shelters libraries, fire stations, water treatment facilities, convention centers with integrated hotels and restaurants, auditoriums, museums, governmental offices, airports, stadiums, and other publicly-oriented institutional land uses with incidental commercial uses supporting such publicly-oriented institutional land uses. The existing facility and land is owned by the City of San José and operated by Sharks Ice, LLC. The PQP Public/Quasi-Public Zoning District would allow the property to be used and developed in accordance with the allowable uses in Table 20-90, including commercial indoor recreation, a stadium with more than 2,000 seats, and a private medical office.

**Setbacks and Height:** Development standards for the PQP Public/Quasi-Public Zoning District require a minimum 10-foot front setback, with minimum 10-foot side and rear corner setbacks. The subject site is located on a corner lot. The irregular shape of the lot results in the site having two frontages on South 10th Street and East Alma Avenue. The single rear lot line follows the path of the abandoned railroad right-of-way adjacent to the south and east of the subject site. The existing building and addition would maintain a 74-foot minimum front setback on South 10th Street and a 94-foot minimum front setback on East Alma Avenue. The addition to the facility would result in a 40-foot minimum rear setback. The maximum allowed height in the PQP Zoning District is 65 feet. The project would have a maximum height of 62 feet 10

inches. Therefore, the project conforms to the development standards of the PQP Public/Quasi-Public Zoning District.

**Vehicle Parking:** The existing ice rink facility currently provides 1,015 vehicle parking spaces. Pursuant to Section 20.90.060 of the Zoning Ordinance, the total required vehicle parking for the expanded ice rink facility is 2,185 parking spaces. To facilitate the addition to the ice rink facility 416 vehicle parking spaces would be removed resulting in a total of 599 off-street parking spaces provided on-site. The remaining 1,586 required parking spaces would be accommodated by an off-site parking garage with an alternating use parking arrangement with San Jose State University. The offsite alternative parking arrangement is discussed below.

Land Use	Vehicle Parking Requirement	Total Required	Bicycle Parking Requirement
Recreation, Commercial Indoor (85,000 square feet)	1 per 80 square feet of recreational area	1,063 spaces	1 per 1,600 square feet of recreational area
Sports Arena (4,213 fixed seats)	1 per 4 fixed seats on the premises	1,054 spaces	1 per 60 fixed seats on the premises
Medical Office (20,000 square feet)	1 per 250 square feet of floor area	68 spaces	1 per 4,000 square feet of floor area
	<b>Total:</b>	<b>2,185 spaces</b>	<b>130 spaces</b>

**Bicycle Parking:** Pursuant to Section 20.90.060 of the Zoning Ordinance, the project requires 130 bicycle parking spaces. A total of 120 bicycle parking spaces will be provided on-site. Four long-term bicycle parking spaces and 116 short term bicycle parking spaces will be provided. The project includes an off-site alternative parking arrangement with San José State University to meet the required number of bicycle parking spaces. The offsite alternative parking arrangement is discussed below.

**Offsite Alternating Use and Alternative Parking Arrangement:** Pursuant to Section 20.90.200 of the Zoning Ordinance, the project requires an off-site, alternating use and alternative parking arrangement to meet the required 2,185 off-street parking spaces. As previously stated, 599 vehicle parking spaces would be provided on-site. The remaining 1,586 required off-street parking spaces would be provided through an alternative parking arrangement between Sharks Ice, LLC and San José State University. Pursuant to the Memorandum of Understanding between the two organizations, up to 2,350 off-site vehicle parking spaces would made be available to the ice rink facility. 1,500 spaces would be available to the ice rink facility through a parking garage located at the northeast corner of East Alma Avenue and South 10<sup>th</sup> Street. The parking garage is currently being constructed by San José State University and is expected to be completed in December 2020, well before the completion of the

addition to the ice rink facility. The SJSU Park and Ride Lot, located at 1291 South 7<sup>th</sup> Street, would also provide an additional 850 spaces for the ice rink facility. The “Primary Term” of the parking agreement commences upon completion of the expansion project and continues for approximately 28 years, which is coterminous with the 30-year initial term of the amended lease for the ice rink facility. The agreement allows for the parking agreement to be transferred to the City or other operator of the Ice Center. Alternating uses of common parking facilities will be provided through the 68 spaces provided for the medical office. The medical office will not be in operation during evenings or events at the arena (Rink 6). Ten additional bicycle parking spaces will be provided at the San José State University garage.

**Tree Removals:** The project includes the removal of a total of 98 trees to facilitate the addition to the facility. Thirty-three trees to be removed are ordinance-size, and 65 trees are non-ordinance size. The number of trees to be re-planted on-site is 66. An additional 39 trees will be planted as street trees at the discretion of the Department of Transportation. The remaining 27 trees required for replanting will be mitigated by the applicant by paying the off-site tree replacement fee. If fewer than 39 street trees are planted, the remaining trees will be mitigated by the applicant by paying the off-site replacement fee.

#### 5. **City Council Policy 6-27: Evaluation of 24-Hour Uses**

On November 30, 1984, the City Council approved an amendment to the Zoning Ordinance that required all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit. This ordinance change was established to assure compatibility of late night and early morning uses (e.g., bars, nightclubs, gasoline service stations, fast food restaurants, convenience stores and grocery stores) with surrounding land uses. These general guidelines include:

- a. Area Use Compatibility: Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area.

*Analysis: The existing ice rink facility currently operates from 6am to 2am daily. The hours of operation at the facility will not change. In the Police Memo prepared for the project, dated November 14, 2019, the Police Department stated that they are neutral to the late-night use at the subject site. The site is surrounded by non-residential uses. Excite Ballpark, home of the San José Giants is located on the same property as the existing facility, to the east of the subject site. The South Campus of San José State University is located to the north of the subject site. The new San José State University parking garage, which will be shared with the ice rink facility, is currently under construction to the north. Kelly Park is located to the east of the site. The nearest residential area is located approximately 1,300 feet to the north of the site. Furthermore, the recreational activities and sporting events would take place entirely indoors. Therefore, given the surrounding uses,*

*and the distance from the subject site to the nearest residential areas, the facility would operate without detriment to nearby residential uses.*

- b. Use Separation: Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used. Exceptions to the 300-foot separation may be made if the project site is located in the Downtown Core Area or in transition areas where the proximate residential uses are not zoned or planned for residential uses in the long term. The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the site and project use based on the intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria.

*Analysis: The nearest residential use is approximately 1,300 feet to the north of the subject site and designated parking area. The subject site is surrounded by non-residential uses. Therefore, this guideline does not apply.*

- c. Outdoor Activities: Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area.

*Analysis: All recreational activities and sporting events at the facility will take place indoors. Therefore, this guideline does not apply.*

- d. Police Issues: Crime statistics and police safety issues that are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use.

*Analysis: Based on a Police Memo, dated November 14, 2019, the Police Department is neutral to the issuance of a Conditional Use Permit for the late-night operation of the facility. The Police Memo recognized that the facility has operated with hours of 6:00am to 2:00am since the facility was constructed in 1993.*

- e. Restroom Facilities: Restroom facilities required by other codes or policies shall remain open and be available during late night business hours.

*Analysis: The facility currently exists as a late-night use; therefore, the operations of the facility related to restroom use would not change and would remain available to facility users and guests during operating hours.*

- f. Lighting: Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Typically, light levels of 1.5 or greater foot-candles average illumination at ground surface are encouraged. Twenty-four-hour



uses may be required to install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium. Higher lighting levels may be required for 24-hour uses in the Downtown Core Area on a case-by-case basis.

*Analysis: The subject site is located in a well-lit area that contains ample street light and parking lot light, as well as exterior light. According to the Operations Plan provided, all lighting issues, such as inadequate lighting or burned out lights, would be addressed by maintenance.*

- g. Cleaning and Maintenance: Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on-and off-site litter may be required on a case-by-case basis.

*Analysis: The project site and all public streets and spaces within 100 feet of the site will be well maintained, clean and free of litter. No mechanical blowers, vacuums or other noise generating equipment would be used between the hours of 10:00 p.m. and 7:00 a.m.*

- h. Site Improvements: As a function of the review process for 24-hour uses, the physical condition of the site should be considered. Aesthetic improvements and maintenance conditions may be required to prevent blight.

*Analysis: The project includes a 204,193-square feet addition to an existing ice rink facility. Numerous site improvements would be made in addition to the expansion, including landscaping improvements as well as public improvements to increase the width of the sidewalks from 8 feet to 10 feet on South 10th Street and East Alma Avenue.*

- i. Mitigation Management Plan: A mitigation management plan should be required for all mitigated 24-hour uses to ensure compliance with conditions of approval. The plan should be realistic, practical and enforceable. The plan should include detailed provisions for response to neighborhood complaints; control of noise, litter, graffiti, etc., and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.

*Analysis: An operations and mitigation management plan was provided by the applicant which addresses concerns related to trash, litter, graffiti, and site maintenance. The plan also addresses security issues and a Police presence for large events. San Jose Police personnel would be hired for large events in addition to the security staff on-site. Included in the security plan is the presence of "serve safe" trained staff who will be serving alcohol. Security cameras would be placed inside and outside of the facility. As previously stated, the Police Department is neutral to late night use at the subject site.*

## 6. California Environmental Quality Act (CEQA).

An Initial Study (IS) and Mitigated Negative Declaration (MND) with associated Mitigation Monitoring and Reporting Program (MMRP) were prepared by the City of San José's Department of Planning, Building and Code Enforcement for the subject Conforming Rezoning and Conditional Use Permit. The documents were circulated for public review and comments from November 20, 2019 to December 12, 2019. Three formal comment letters and/or emails were received from the public. The comments included concerns regarding nearby trail access and recommendations for lead clean-up compliance during demolition activities. The comments did not result in any substantial changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. The public comments on the IS/MND have been addressed by the City in a formal Responses to Comments document.

As stated in the IS/MND, the primary environmental issues that require mitigation measures are biological resources and hazards and hazardous materials. The IS/MND includes mitigation measures that would reduce the identified potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions included in the IS/MND regarding emergency generator emissions, tree protection, and transportation demand management are included as conditions of approval to ensure all potential impacts have been addressed.

The entire IS/MND is available on the Planning website at: <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies>.

## 7. Conditional Use Permit. Section 20.100.700 of the Zoning Ordinance specifies the required findings for approval of a Conditional Use Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies.

*Analysis: As discussed above, the project would further the policies of the General Plan in that it would continue to provide and increase private recreational space as a Public/Quasi-Public Use. The ice rink facility has provided recreational space at the subject site since 1993. The addition to the site would allow the facility to increase the area dedicated to recreational space. Furthermore, the addition to the ice rink facility would increase the number of jobs provided at the subject site with the additional recreational, arena, and medical office uses.*

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed above, the project conforms with all setback, height, and parking requirements for a site in the Public/Quasi-Public Zoning District. The existing building, and addition, would meet all setback requirements for the PQP Zoning District. The maximum height of the building would be 62 feet 10 inches, which would conform with the maximum allowable height of 65 feet. The project would meet the parking requirements pursuant to Section 20.90.060 of the Municipal Zoning Code through an alternative parking arrangement with San José State University which is currently constructing a 1,500-space parking garage at the northwest corner of South 10<sup>th</sup> Street and Alma Avenue.*

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counter Conditional Use Permit balancing considerations justify the inconsistency.

*Analysis: As discussed above, the facility complies with all guidelines of City Council Policy 6-27 for 24-Hour Uses. The ice rink facility has operated with late-night use since it began operations in 1993. The facility is not located within 1,000 feet of residential uses and is surrounded by Industrial, Public/Quasi-Public, and Open Space uses. The Operations Plan provided details including site maintenance, security, loitering, lighting, noise, hours of operation, and police presence. Therefore, the project would comply with the relevant guidelines for Council Policy 6-27. Additionally, the project complies with City Council Policy 6-16 for Uses of Public Property. The subject site and building is owned by the City of San José and operated by Sharks Ice, LLC. Pursuant to Section 2B of Council Policy 6-16, independent private use of a public facility requires a Conditional Use Permit.*

- d. The proposed use at the location requested will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety or general welfare.

*Analysis: The ice rink facility has existed since 1993. The project would expand upon that use by adding an additional ice rink, arena, and medical office. These additional uses would be compatible with the surrounding area. There are no residential uses within 1,000 feet of the project site.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.

*Analysis: The existing facility is located on a 21.23-gross acre site. The project would expand the building into the parking lot area at the southern portion of the subject site. The subject site is large enough to accommodate the addition as well as provide site improvements such as landscaping features. The parking that*

would be removed to facilitate the addition to the facility would be replaced and expanded with an alternative parking arrangement with San Jose State University, which is constructing a 1,500-space parking garage at the northeast corner of South 10th Street and East Alma Avenue. Existing landscaping will be maintained along the periphery of the site and new landscaping will include a mix of trees, shrubs, and groundcover which will be well-integrated with the design of the building and overall uses on site.

- f. The proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate, and by other public or private service facilities as are required.

*Analysis: The site is accessible from existing driveways on South 10th Street and East Alma Avenue. The existing southern driveway on South 10th Street would be moved to the southern edge of the subject site and would allow for access to the front and rear parking areas. The existing northern driveway entrance on South 10th Street would remain. The existing western driveway entrance on East Alma Avenue would be moved to the west. The existing eastern driveway entrance on East Alma Avenue would remain. A Transportation Impact Analysis was prepared by Hexagon Traffic Consultants, Inc on November 12, 2019 and analyzed the potential traffic impacts related to the project. According to the transportation study, the project would not generate additional traffic that would exceed the capacity of the existing highways and streets in the vicinity.*

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

*Analysis: An Initial Study and Mitigated Negative Declaration (IS/MND) was prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Based on the environmental analysis of the project in the IS/MND, the demolition of the Municipal Firing Range, removal of 98 trees, and construction and operation of the project were determined to not have unacceptable negative effects on adjacent properties. The project site includes an existing ice rink facility, Excite ballpark, and associated parking that is located adjacent to Happy Hollow Park and Zoo, industrial uses, and San Jose State University facilities. There are no sensitive receptors in the vicinity and the closest residential property is located 1,300 feet from the site. The addition to the ice rink facility is not anticipated to create unusual or substantial operational noise, vibration, or odors as the majority of the project development will occur indoors. Standard permit conditions and mitigation measures have been included to limit the impacts resulting from temporary construction activities, including for noise, dust, drainage, and erosion. In addition to the Mitigated Negative Declaration prepared pursuant to the California Environmental Quality Act (CEQA), the project*

*will also be required to conform to adopted stormwater requirements in the City's Post-Construction Urban Runoff Management Policy (Policy 6-29).*

8. **Offsite Alternating Use and Alternative Parking Arrangement:** In addition to any other findings required for a Special Use Permit, the City Council may approve such off-street parking facilities arrangements only upon making the following findings, as specified in Section 20.90.200 of the San José Municipal Zoning Code.

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in Section 20.90 of this title;

*Analysis: Pursuant to Section 20.90.060 of the Municipal Zoning Code, the required number of vehicle parking spaces is 2,185. As previously stated, 2,350 vehicle parking spaces would be provided through the parking garage located at the northeast corner of East Alma Avenue and South 10<sup>th</sup> Street and the SJSU Park and Ride Lot located at 1291 South 7<sup>th</sup> Street.*

- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and

*Analysis: The Primary Term of the parking agreement commences upon completion of the addition to the ice rink facility and continues for approximately 28 years, which is coterminous with the 30-year initial term of the amended lease for the ice rink facility. Further, there is a condition requiring the permittee to continue to meet the City's parking requirements for the life of the project.*

- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Analysis: The parking garage is located directly north of the ice rink facility across East Alma Avenue. The Park and Ride Lot is located within walking distance approximately 1,140 feet to the west of the ice rink facility.*

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

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**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be

suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Use Authorization.** Subject to all conditions herein, this Conditional Use Permit authorizes the following:
  - a. The utilization of an alternative off-site parking arrangement to allow the use of approximately 2,350 vehicle parking spaces through an agreement between Sharks Ice, LLC and San José State University. The Primary Term of the parking agreement commences upon completion of the addition to the ice rink facility and continues for approximately 28 years thereafter to be coterminous with the 30-year initial term of the amended lease for the ice rink.
  - b. The late-night use (6:00 AM to 2:00 AM hours of operation) at the subject ice rink facility on an approximately 21.23-gross acre site.
6. **Offsite Parking Agreement.** Prior to the issuance of any building permits, a fully executed and signed copy of the parking agreement shall be provided to the City of San José demonstrating the permittee has met the parking requirements for this project. Further, the project shall continue to meet the off-street parking requirements set forth in Section 20.90.200 of the Zoning Code, as may be amended, for the life of the project. Should the parking agreement expire, terminated, or otherwise no longer be in effect, the project shall continue to be required to conform to all applicable parking requirements of the San José Municipal Zoning Code, as may be amended.
7. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "S4A Rinks 5 & 6 Addition," dated received November 4, 2019, on file with the Department of Planning, Building and Code Enforcement as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.

10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
  - b. The operator of the proposed use shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
15. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the enclosure such as paint, roof, lighting and landscaping.
16. **Fences.** All fences shall conform in every respect to the fence regulations, for heights, setbacks and materials, per Section 20.30.600 of the San José Municipal Code.
17. **Lighting.** All on-site exterior, unroofed lighting shall conform to the Outdoor Lighting Policy (Council Policy 4-3) as amendment. All proposed lighting shall require issuance of a Permit Adjustment.
18. **Tree Replacement.** The permittee is required to pay Off-Site Tree Replacement Fees to the City prior to the issuance of Public Works grading permits in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fees to plant trees at alternative sites.
19. **Demolition.** This permit allows the demolition of buildings and structures as noted in the Approved Plans. The demolition of the building and structures may occur after the issuance of the Conditional Use Permit.



**20. Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number *CP19-024* shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- d. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday.

**21. Operations Management Plan.** The project shall operate in a manner consistent with the approved Operations Management Plan, incorporated herein by this reference as if fully set forth herein.

**22. Fire Department Clearance.** Hazmat clearance and compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

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

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:** A Transportation Impact Analysis was prepared by Hexagon Traffic Consultants, Inc on November 12, 2019, that analyzed the potential traffic impacts related to the project. According to the transportation study, the project would not generate additional traffic that would exceed the capacity of the existing highways and streets in the vicinity.

- i. In alignment with State of California Senate Bill 743 (SB743), the City of San Jose Policy, Transportation Impact Policy - Council Policy 5-3 has been replaced with a new Transportation Analysis Policy - Council Policy 5-1. Council Policy 5-1 replaces the transportation impacts threshold from Level of Service (LOS) under Council Policy 5-3 to Vehicle Miles Traveled (VMT). The new Transportation Analysis Policy went into effect on March 29, 2018.
  - ii. The City has determined in writing that the proposed project submitted a complete Universal Planning Application, and an approved transportation work scope was issued by the Department of Public Works prior to the Effective Date. The project proceeded with a traffic impact analysis that complies with the existing Council Policy 5-3.
  - iii. A Traffic Impact Analysis has been performed for this project based on 413 PM peak hour trips. We conclude that the subject project will be in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
- c. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. If the project hauls more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydrmodification Management area and is not required to comply with the City's Post-Construction Hydrmodification Management Policy (Council Policy 8-14).
- f. **Flood: Zone D** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to the issuance of the Public Works clearance.
- h. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for frontage adjacent to Alma Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2019 base fee is \$489 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.

i. **Street Improvements:**

- i. Construct 10-foot wide attached sidewalk with 4'x5' tree wells on Alma Avenue and 10th Street frontages.
  - ii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - iii. Close unused driveway cut(s).
  - iv. Project driveway widths to be 26 feet.
  - v. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - vi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- j. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- l. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

**24. Downtown Financing Plans.** The San José City Council ("City") approved the (i) Envision San Jose General Plan 2040 ("General Plan") in 2011, (ii) Diridon Station Area Plan ("Diridon Plan") in 2014, and (iii) Downtown Strategy 2040 ("Downtown Strategy") in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San Jose.

The City is in the process of developing financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based

Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof.

The City is in the process of amending the Diridon Plan and updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee may include expanding the impact fee to other areas of Downtown. The City Council has also directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. Further, the City is developing a Downtown Transportation Plan that may require funding to construct the public improvements identified in the Downtown Transportation Plan. These efforts are ongoing and there will continue to be other similar efforts to study various funding mechanisms for public improvements, affordable housing, and other amenities and services in the Downtown.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above

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

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

Based on all of the above facts and findings for this Conditional Use Permit application, this project to allow the demolition of the San José Municipal Firing Range, the removal of 33 ordinance-size trees and 65 non-ordinance-size trees and the addition of 204,193 square feet to an existing ice rink facility with late night use on the subject site is hereby **approved**.

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**EFFECTIVE DATE**

The effective date of this Conditional Use Permit shall be the effective date of the Conforming Rezoning Ordinance for File No. C19-029 passed for publication on \_\_\_\_\_ (the "Conforming Rezoning Ordinance") and shall be no earlier than the effective date of said Conforming Rezoning Ordinance.

ADOTPED this \_\_\_\_ day of \_\_\_\_\_, 2020 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

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

**NOTICE TO PARTIES**

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

**LEGAL DESCRIPTION**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING AT AN IRON PIPE SET ONE FOOT BELOW THE SURFACE OF THE GROUND AT THE POINT OF INTERSECTION OF EASTERLY LINE OF THE PROPOSED EXTENSION OF TENTH STREET WITH THE CORPORATE LIMITS SOUTH OF THE CITY OF SAN JOSE, CALIFORNIA, SAID POINT OF BEGINNING BEING DISTANT ALONG SAID EASTERLY LINE OF SAID EXTENSION OF TENTH STREET SOUTH 30° 40' EAST 1088.67 FEET FROM AN IRON PIPE SET ONE FOOT BELOW THE SURFACE OF THE GROUND AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF HUMBOLDT STREET WITH THE PROLONGATION SOUTHERLY OF THE EASTERLY LINE OF TENTH STREET, AND RUNNING THENCE FROM SAID POINT OF BEGINNING SOUTHERLY ALONG SAID EASTERLY LINE OF SAID PROPOSED EXTENSION OF TENTH STREET SOUTH 30° 40' EAST 1028.03 FEET TO AN IRON PIPE SET IN THE NORTHERLY LINE OF LANDS OR RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD COMPANY; THENCE EASTERLY AND NORTHERLY ALONG THE NORTHERLY AND WESTERLY LINE OF LANDS OR RIGHT OF WAY OF SAID WESTERN PACIFIC RAILROAD COMPANY NORTH 49° 53' 30" EAST 708.42 FEET TO A 4" X 4" POST; THENCE CURVING TANGENTIALLY TO THE LEFT ON A CURVE OF 523.89 FEET RADIUS, THROUGH AN ANGLE OF 87° 30' 30", FOR A DISTANCE OF 799.83 FEET TO A 4" X 4" POST; THENCE TANGENT TO SAID CURVE, NORTH 37° 37' WEST 334.34 FEET TO AN IRON PIPE SET IN SAID CORPORATE LIMITS SOUTH OF THE CITY OF SAN JOSE, CALIFORNIA, AND FROM WHICH A BRASS PLUG SET FLUSH AT THE POINT OF INTERSECTION OF SAID CORPORATE LIMITS SOUTH WITH THE CENTER LINE OF SENTER ROAD BEARS NORTH 59° 20' EAST 130.96 FEET; AND THENCE LEAVING SAID LANDS OR RIGHT OF WAY OF SAID WESTERN PACIFIC RAILROAD AND RUNNING WESTERLY ALONG SAID CORPORATE LIMITS SOUTH OF THE CITY OF SAN JOSE, CALIFORNIA, SOUTH 59° 20' WEST 1092.29 FEET TO THE POINT OF BEGINNING AND BEING SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP SHOWING A PART OF THE LANDS OF THE HEIRS OF JAMES PHELAN, DECEASED, IN AND ADJOINING THE CITY OF SAN JOSE", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JUNE 30, 1936 IN BOOK 2 OF MAPS, PAGE 3.

EXCEPTING THEREFROM ALL THE LAND LYING WITHIN THE LIMITS OF ALMA AVENUE, 80.00 FEET WIDE, AS SAID ALMA AVENUE WAS FIXED AND ESTABLISHED BY DECREE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA, DATED DECEMBER 21, 1931 AND RECORDED IN BOOK 603 OF OFFICIAL RECORDS, PAGE 175.

APN: 477-38-003

*First American Title Insurance Company*

**EXHIBIT "A"**  
**(File Nos. C19-029; C19-024)**