

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE REMOVAL OF 33 TREES (13 ORDINANCE-SIZE AND 20 NON-ORDINANCE-SIZE WITH 7 REPLACEMENT TREES) FOR THE CONSTRUCTION OF UP TO 14 MULTIFAMILY RESIDENTIAL UNITS INCLUDING THE RECONSTRUCTION AND CONVERSION OF AN EXISTING SINGLE-FAMILY HOUSE INTO A DUPLEX AND THE CONSTRUCTION OF 12 TOWNHOUSES CONFIGURED IN FOUR THREE-STORY BUILDINGS ON AN APPROXIMATELY 0.63-GROSS-ACRE SITE, LOCATED AT THE NORTHEAST CORNER OF MITZI DRIVE AND RANCHERO WAY (4146 MITZI DRIVE) (APN: 299-16-001)

FILE NO. PD22-020

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 2, 2022, an application (File No. PD22-020) was filed by the owner, Ciyavash Moazzami, with the City of San José for a Planned Development Permit to allow the removal of 33 trees (13 ordinance-size, 20 non ordinance-size, 7 replacement trees) for the reconstruction of an existing single-family house and the construction of 12 townhouses configured in four three-story buildings on an approximately 0.63-gross-acre site, on that certain real property situated in the UR(PD) Urban Residential Planned Development Zoning District and located at the northeast corner of Mitzi Drive and Rancho Way (4146 Mitzi Drive, APN: 299-16-001), San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a Public Hearing on said application on August 9, 2023, 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 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 Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "4146 Mitzi Drive Site & Historic Graves House Reconstruction" dated March 16, 2023, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

- 1. Site Description and Surrounding Uses.** The subject 0.63-gross-acre site is located at the at the northeast corner of Mitzi Drive and Ranchero Way (4146 Mitzi Drive). The project site was originally developed with the Graves House, a single-family residence constructed in 1868. The site is surrounded by single-family residences across Mitzi Drive to the west and multifamily apartments to the north, east, and south.

Based on the Historic Report, dated July 11, 2018, the Graves House was built in 1868 by Sylvester and Catherine (Kate) Graves, early California Pioneers. The two lived on and operated a ranch on the property until the 1890's. During the next 10 years, Sylvester and Kate expanded the ranch to over 350 acres. By 1890, they reduced their ranch to 265 acres and sold the portions of the property on the north side of Williams Road and west of Saratoga Avenue. The larger portions of the ranch were devoted to general farming, including approximately 60 acres devoted to prunes, apricots, peaches, and cherries. The house was originally surrounded by orchards and was approached from Saratoga Avenue by a shaded driveway 300 yards in length. The entry driveway existed until after World War II, when the land adjacent to Saratoga Avenue was sold and subdivided for the construction of the existing single-family neighborhood in 1953. By the mid 1950's the remaining orchard lands had been subdivided and were developed with a mix of single-family houses and apartment complexes, leaving the Graves House standing on the existing 0.63-acre site that exists today. The site was eventually annexed to the City of San José on August 1, 1980.

On October 7, 2020, a Special Use Permit (File No. SP18-033) was approved for the on-site relocation and conversion of the Graves house and to allow the construction of a four-story 40-unit multifamily building with subterranean parking on the subject site. The applicant subsequently determined that the construction of the 40-unit multifamily building was no longer financially feasible. Therefore, on August 2, 2022, the owner submitted an application for the construction of a for-sale townhouse project and the on-site relocation of the Graves House. During the development review process for the application, the Graves House was partially destroyed in a fire on November 29, 2022. Significant architectural materials and features in reusable

condition were salvaged and the remainder of the burned house was demolished between May 11th and May 17th 2023 (Building Permit File No. 2023-086171) as a threat to public health and safety as determined by the Building Official.

As a result, the portion of the project description involving the Graves House was changed to include the on-site salvage and reconstruction of the Graves House in a manner that would be consistent with the Secretary of the Interior's Standards and Guidelines for Reconstruction. The salvage and reconstruction work consists of Historic Preservation Guidance to assist the architect with architectural documents for the salvage work and historic replica reconstruction at the new location. The Special Use Permit is still valid until October 6, 2024, or until the Planned Development Permit is approved, which would supersede the Special Use Permit.

- 2. Project Description.** The project consists of the reconstruction and conversion of the existing Graves House into a duplex and the construction of 12 townhouse units configured in four, three-story buildings. The development would be served by a private driveway accessible from a 26-foot-wide driveway along Rancho Way.

As discussed above, the Graves House was partially destroyed in a fire on November 29, 2022. The reconstructed Graves House would be relocated to the northwest corner of the site, approximately 75 feet from its original location. The house would retain its original orientation, facing Mitzi Drive. The project includes the on-site salvage and reconstruction of the residence to meet the Secretary of the Interior's Standards and Guidelines. The work includes Historic Preservation Guidance to assist the architect with architectural documents for the salvage work and historic replica reconstruction at the new location. The house would be converted from a single-family residence to a duplex with units on each floor of the two-story building. The rear portion of the building includes an attached two-car garage serving the two units as well as two surface parking spaces.

The 12 townhouse units would be located to the south and east of the Graves House and would be configured in four, three-story buildings (Buildings A-D). Building A consists of two units and is located at the intersection of Mitzi Drive and Rancho Way. Building B consists of 7 units and is located at the southernmost portion of the site along Rancho Way. Buildings C and D consist of two units each and are located at the northeastern portion of the site. Vehicle parking is provided in two-car garages for each townhouse unit, accessible from the 21-foot-wide private driveway.

Off-site improvements include the widening of Rancho Way to achieve a 60-foot-wide street section and a 12-foot-wide detached sidewalk on the project frontage. The widening of Rancho Way would allow for street parking along the project frontage. A 10-foot-wide sidewalk would also be constructed on the Mitzi Drive frontage.

A Vesting Tentative Map is included as part of the application to subdivide one existing parcel into two parcels and to allow up to 14 residential condominiums. The Graves House would be located on the northernmost parcel while the townhouses would be located on the southernmost parcel. A Homeowner's Association would be

established to ensure the maintenance of all common areas (common open space, private street, common walls, and roofs) in the development.

- 3. General Plan Conformance.** The site is designated Urban Residential on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation allows for medium density residential development and a fairly broad range of commercial uses, including retail, offices, hospitals, and private community gathering facilities, within identified Urban Villages, in other areas within the City that have existing residential development built at this density, within Specific Plan areas, or in areas in close proximity to an Urban Village or transit facility where intensification will support those facilities. Any new residential development at this density should be in Growth Areas or, on a very limited basis, as infill development within areas with characteristics similar to the Urban Village areas (generally developed at high-density and in proximity to transit, jobs, amenities and other services). The allowable density for this designation is further defined within the applicable Zoning Ordinance designation and may also be addressed within an Urban Village Plan or other policy document. This designation is also used to identify portions of Urban Village areas where the density of new development should be limited to a medium intensity in order to provide for a gradual transition between surrounding low-density neighborhoods and other areas within the Urban Village suitable for greater intensification. The allowable density/intensity for commercial projects is a floor-area ratio (FAR) of 1.0 to 4.0 with a minimum FAR of 1.0. Residential/commercial mixed-use development shall require a minimum of 30 DU/AC with a maximum FAR of 4.0. Developments in this designation would typically be three to four stories of residential or commercial uses over parking.

Chapter 5, page 6 of the General Plan states that identified residential densities and FAR are prescriptive, except when explicit exceptions are noted or when lower intensities are required in order to avoid significant aesthetic and other possible impacts under the California Environmental Quality Act (CEQA) (e.g., lower intensity development is needed to be compatible with a National Register or City Landmark Historic District).

Analysis: The project consists of the reconstruction of the Graves House, which is eligible for listing in the California Register of Historical Resources and listed in the San José Historic Resources Inventory as a Candidate City Landmark. The reconstructed house would be used as a two-unit residential building in addition to 12 newly constructed townhouse units. The Urban Residential land use designation requires a minimum residential density of 30 dwelling units per acre (DU/AC). The proposed project includes a gross residential density of approximately 22.2 DU/AC (26 net DU/AC). However, the proposed project's construction at a lower residential density may be permitted as it is compatible with the adjacent historic resource and the surrounding neighborhood. The neighborhood to the west consists of single-family homes, while the neighborhood to the north, south, and east consist of multistory multifamily apartment buildings. The reduced residential density is necessary to

accommodate the relocation and reconstruction of the historic resource while also allowing the construction of a compatible project that blends with the varying density, massing, and scale of the surrounding neighborhood.

The project is consistent with the following General Plan Goals and Policies:

Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than may be practical through implementation of a conventional Zoning District. These development standards and other site design issues implement the design standards set forth in the Envision General Plan and design guidelines adopted by the City Council. The second phase of this process, the Planned Development permit, is a combined site/architectural permit and conditional use permit which implements the approved Planned Development zoning on the property.

Land Use Policy LU-9.8: When changes in residential densities in established neighborhoods are proposed, the City shall consider such factors as neighborhood character and identity; historic preservation; compatibility of land uses and impacts on livability; impacts on services and facilities, including schools, to the extent permitted by law; accessibility to transit facilities; and impacts on traffic levels on both neighborhood streets and major thoroughfares

Housing Policy H-1.2: Facilitate the provision of housing sites and structures across location, type, price and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs.

Community Design Policy CD-4.4: In non-growth areas, design new development and subdivisions to reflect the character of predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.

Land Use Policy LU-13.6: Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.

Land Use Policy LU-13.8: Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.

Analysis: The Planned Development Zoning would allow for specifically tailored development standards to facilitate a project providing multifamily housing while reconstructing and preserving a historic resource. The

development standards include reduced setbacks along the street-facing portion of the property. The setback reduction will allow for the project to achieve an appropriate residential density while accommodating the relocation and reconstruction of the Graves House and space for driveways, walkways, landscaping, and fire access. The project would provide housing in the form of for-sale townhouses. The subject site is not located in a growth area. Therefore, the new townhouse development is designed to serve as a transition between the primarily single-family development to the west and the higher density multifamily development to the north, south, and east. The new townhouses are designed to be compatible with the adjacent Graves House through the use of similar colors, materials, roofline, façade articulation, and general orientation. The new townhouses include black composite shingle roofing, espresso vinyl windows, matching gutter, downspouts, corner boards and trim siding, white stucco, light gray and dark gray horizontal siding, and matching garage door style and color. The new townhouses incorporate decks/balconies and patios into the street facing façade to emulate the decorative decks and porches at the street facing façade of the Graves House. The townhouses also incorporate breaks in the pitched roof, as well as smaller decorative roof elements over the decks, similar to the changes in roofline at the Graves House. The massing of the townhouses is broken up into segments of roughly the same width as the street facing façade of the Graves House. The street facing townhouse building adjacent to the Graves House along Mitzi Drive has the same height as the adjacent historic resource. Additionally, the salvage and reconstruction of the Graves House would be conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Reconstruction.

4. Zoning Ordinance Compliance.

General Development Plan

The project site would be rezoned to a UR(PD) Planned Development Zoning District per File No. PDC22-088. Subject to the project's Development Standards, the newly created UR(PD) Planned Development Zoning District would allow for the development of attached townhouses, the reconstruction of the Graves House, and the incidental, administrative, permitted, special, and conditional uses of the UR Urban Residential Zoning District with the issuance of a Planned Development Permit or Planned Development Permit Amendment.

Setbacks and Height

The table below highlights the proposed Development Standards as outlined in the General Development Plan of the UR(PD) Planned Development Zoning District File No. PDC22-088.

Development Standard	Required	Graves House	Townhouses
Minimum Residential Density (net)	26 DU/AC	26 DU/AC	
Minimum Lot Size	4,000 square feet	4,117 square feet	19,338 square feet
Minimum Front Setback (Mitzi Drive)	6 feet	8 feet	8 feet
Minimum Side, Interior Setback	3 feet	3 feet	7 feet
Minimum Side, Corner Setback (Ranchero Way)	0 feet	Not applicable	2 feet
Minimum Rear, Interior Setback	2 feet	4 feet	Not applicable
Minimum Rear, Corner Setback	4 feet	Not applicable	4 feet, 1 inch
Maximum Building Height	45 feet	35 feet	36 feet, 6 inches
Maximum Number of Stories	3	2	3

Analysis: As shown above, the project conforms with all required height and setback standards pursuant to the General Development Plan of the UR(PD) Planned Development Zoning District.

Parking

Pursuant to the General Development Plan of the Planned Development Zoning District, the project is required to provide parking at the following ratios.

Parking Type	Ratio	Required	Provided
Vehicle Parking	2 vehicle spaces per unit	28 spaces	28 spaces
Bicycle Parking	1 space per 4 units (may be provided in garage per Section 20.90.250)	4 spaces	14 spaces
Motorcycle Parking	1 motorcycle space per 4 units (may be provided in garage)	4 spaces	14 spaces

Analysis: The project conforms with all minimum parking requirements pursuant to the General Development Plan of the UR(PD) Planned Development Zoning District. 28 vehicle parking spaces are required and 28 are provided. Additionally, 4 bicycle parking spaces and 4 motorcycle parking spaces are required and 14 bicycle and 14 motorcycle parking spaces are provided. Bicycle parking spaces are provided in the individual enclosed garages assigned to each multifamily dwelling unit pursuant to Section 20.90.250.

Private Open Space

Unit	Open Space (60 square feet per unit required)
Graves House (Unit A)	168 square feet
Graves House (Unit B)	145 square feet
Townhouse Plan 1	96 square feet
Townhouse Plan 2	183 square feet
Townhouse Plan 3	180 square feet
Townhouse Plan 4	193 square feet
Townhouse Plan 5	92 square feet

Analysis: Pursuant to the General Development Plan of the UR(PD) Planned Development Zoning District, a minimum of 60 square feet of private open space is required to be provided per unit. As shown in the table above, all residential units have a minimum of 92 square feet of private open space. All private open space is provided in the form of a deck, porch, or private yard.

Tree Removals

The project is subject to the following tree replacement ratios as shown in the table below.

Table: Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box replacement tree = two 15-gallon replacement trees

The project includes the removal of 33 trees. Of the trees to be removed, 13 are ordinance-size and 20 are non-ordinance-size. Based on the arborist report prepared by Bo Firestone Consulting and Design, dated January 10, 2022, the trees to be removed are located within the project buildings' footprint or driveways necessary for site circulation. Two of the trees are native species. The trees to be removed are 15 Mexican fan palms, seven White ash, five blackwood acacia, three Holly oak, one Coast Live Oak, one Valley oak, and one Siberian elm. One tree requires replacement at a 5:1 ratio, 12 trees require replacement at 4:1 ratio, one tree requires replacement at a 3:1 ratio, 15 trees require replacement at 2:1 ratio, and four trees require replacement at a 1:1 ratio. Therefore, the removal of the 33 trees on-site requires the replacement of either 90 15-gallon trees or 45 24-inch box trees on site. The total number of replacement trees to be planted on site is 7 24-inch box trees (equal to 14

15-gallon trees), a deficit of 76 replacement trees. Therefore, the applicant is required to pay in-lieu fee (\$775 per tree) for the replacement trees. Based on the current Planning Fee Schedule, the estimated cost for the in-lieu fee for the remaining replacement trees is \$58,900. The applicant is required to pay the fees prior to issuance of Grading or Building Permits, whichever comes first.

5. Citywide Design Standards and Guidelines Consistency

The project is consistent with following provisions of the Citywide Design Standards and Guidelines:

- Section 2.2.1 – Pedestrian and Bicycle Access Location
 - Standard 2 - All ground floor residential units fronting a street or paseo must have either one or a combination of:
 - A primary front door access from the street or paseo; or
 - A patio, balcony, or similar private open space placed along the street or paseo. The enclosure/railing for such an amenity must be at least 50 percent transparent and must be integrated in the design of the development.
 - Standard 3 - Locate primary building entrances for residential buildings on a development site such that they are within 15 feet of a public sidewalk or publicly-accessible open space, uninterrupted by parking lots or vehicular circulation areas.

Analysis: Primary front door access for all street facing units is provided from either Mitzi Drive or Rancho Way (both public streets). All units have a minimum 3-foot-deep frontage zone in the form of a patio at the front door.
- Section 2.2.2 – Driveways and Vehicle Drop-offs
 - Standard 3 - For corner parcels or properties with two intersecting streets, provide the vehicular and driveway access on the secondary street or the street with lesser pedestrian, bicycle, and vehicular circulation.
 - Standard 4 – Provide garage entrances for individual residences from private street.

Analysis: The subject site is located at the intersection of Mitzi Drive and Rancho Way. All vehicle access is provided from a 26-foot-wide driveway along Rancho Way, the secondary street frontage. All parking is provided in the form of private two car garages located at the rear of each building, away from the street, and accessible from a private 20-foot-wide driveway.
- Section 3.1.3 – Historic Adjacency
 - Standard 1 - Design buildings that are taller than the adjacent historic buildings such that the new massing located on the same property or that

shares a property line with the historic building steps down to its height, irrespective of the other surrounding buildings.

- Standard 3 - Use historic materials that match nearby historic buildings on at least 25 percent of a street, paseo or public open space facing façade and on 10 percent of other façades that are visible from the public realm. Historic materials include masonry, brick, limestone, terra cotta, cast stone, mosaic, concrete, and wood (trim, finishes, and ornament only).
- Guidelines 2 - Articulate the building façade and use elements like windows, bays, sunshades, and doors to create façade patterns similar in scale and proportion to historic buildings in the surrounding area.

Analysis: The new townhouses are designed to be compatible with the adjacent Graves House through the use of similar colors, materials, roofline, façade articulation, and general orientation. The new townhouses include black composite shingle roofing, espresso vinyl windows, matching gutter, downspouts, corner boards and trim siding, white stucco, light gray and dark gray horizontal siding, and matching garage door style and color. The new townhouses incorporate decks/balconies and patios into the street facing façade to emulate the decorative decks and porches at the street facing façade of the Graves House. The townhouses also incorporate breaks in the pitched roof, as well as smaller decorative roof elements over the decks, similar to the changes in roofline at the Graves House. The massing of the townhouses is broken up into segments of roughly the same width as the street facing façade of the Graves House. The street facing townhouse building adjacent to the Graves House along Mitzi Drive has the same height as the adjacent historic resource. Additionally, the salvage and reconstruction of the Graves House would be conducted in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

- Section 3.3.3 – Decks and Balconies

- Standard 2 - Occupied decks and balconies must be at least six feet wide and four feet deep to encourage outdoor seating.
- Standard 5 - When balconies are provided in a project, at least 25 percent of residential units facing secondary streets and public open spaces must have balconies.

Analysis: All units include both ground floor patios and decks/balconies on the upper floors. Decks range in depth from four feet to 7.5 feet and in width from 7 feet to 9.5 feet.

- Section 4.2.2 – Residential Frontages

- Standard 1 - Include a minimum three-foot-deep frontage zone at building entrances for residential and mixed-use developments. This transition space

is useful for any doors opening out to the sidewalk and for providing stoops for raised residential units.

Analysis: All street facing facades include a three-foot-deep frontage zone at the building entrance, in addition to an occupiable patio along both Mitzi Drive and Rancho Way.

6. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. An on-site sign has been posted on the project frontage since September 12, 2022. A formally noticed Community Meeting was held on Monday, April 10, 2023 to introduce the proposed project to the community. Community concerns included a lack of parking in the surrounding neighborhood, the deterioration of the Graves House, construction equipment staging and parking, and vehicle speeding in the neighborhood. Community members also praised the applicant for their attempt to reconstruct the Graves House and preserve an important historic resource in West San Jose. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on Jul 14, 2023. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

7. Environmental Review.

An Addendum to the Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the subject Planned Development Rezoning, Planned Development Permit, and Tentative Map (File Nos. PDC22-088, PD22-020, & T22-030) in compliance with the California Environmental Quality Act (CEQA). The nature and operational characteristics of the proposed multi-family residential project same as the project analyzed in the Mitzi Place Apartments Project IS/MND for the original Special Use Permit which was adopted by the Director of Planning, Building and Code Enforcement on October 7, 2020. No substantive revisions are needed to the adopted IS/MND because no new significant impacts or impacts of substantially greater severity would result from the proposed project. There have been no changes in circumstance in the project area that would result in new significant environmental impacts or substantially more severe impacts than what was identified in the adopted IS/MND, and no new information has come to light that would indicate the potential for new significant impacts or substantially more severe impacts than were previously discussed. Therefore, no further evaluation is required.

In accordance with California Public Resources Code Section and 21166; and CEQA Guidelines Section 15162 through 15164, and as set forth in the analysis below, the Modified Project qualifies for an addendum. The project will be required to implement the mitigation measures and environmental conditions identified in the IS/MND for the

original project, and therefore, this project's site modifications were determined to not have a significant effect on the environment.

8. Planned Development Permit Findings: Section 20.100.940 of the San José Municipal Code specifies the required findings for the approval of a Planned Development Permit.

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and

Analysis: As discussed in Section 3, General Plan Conformance, the project is consistent with the Urban Residential General Plan Land Use Designation. The project is consistent with General Plan policies regarding Community Design, Housing, Land Use, and Implementation. The project consists of the reconstruction of the Graves House, a Candidate City Landmark, to be used as a two-unit residential building in addition to 12 townhouse units. The Urban Residential land use designation requires a minimum residential density of 30 dwelling units per acre (DU/AC). The project only proposes a residential density of approximately 22.2 DU/AC (26 net DU/AC). However, the construction of proposed project at a lower residential density may be permitted as it is compatible with the adjacent historic resource and the surrounding neighborhood. The reduced residential density is necessary to accommodate the relocation and reconstruction of the historic resource while also allowing the construction of a project that is compatible in terms of density, massing, and scale of the surrounding neighborhood. The new townhouse development is designed to serve as a transition between the primarily single-family development to the west and the higher density multifamily development to the north, south, and east.

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

Analysis: As stated in Section 4, Zoning Ordinance Conformance, the project conforms with the Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC22-088). The newly created URPD) Zoning District would allow for the construction of attached townhouses, the reconstruction of the Graves House and the administrative, permitted, special, and conditional uses of the UR Urban Residential Zoning District. The project conforms with all required lot sizes, setbacks, heights, private open space, and parking requirements of the Planned Development Zoning District. Additionally, the project is consistent with all applicable tree removal replacement requirements.

- c. The Planned Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

Analysis: Council Policy 6-30: Public Outreach Policy was implemented to inform the public of the project. An on-site sign has been posted on the project frontage

since September 12, 2022. A formally noticed Community Meeting was held on Monday, April 10, 2023, to introduce the project to the community. Community concerns included a lack of parking in the surrounding neighborhood, the deterioration of the Graves House, construction equipment staging and parking, and vehicle speeding in the neighborhood. Community members also supported the reconstruction of the Graves House and preservation of an important historic resource in West San Jose. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on July 14, 2023.

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures, and other uses on-site are appropriate, compatible and aesthetically harmonious; and

Analysis: The orientation, location, mass, and scale of building volumes and elevations are appropriate, compatible, and aesthetically harmonious. The southern and westernmost townhouse buildings are oriented towards Rancho Way and Mitzi Drive. The relocated and reconstructed Graves House is located at the northernmost portion of the property, facing Mitzi Drive and the existing single-family houses to the west. The new townhouses are designed to be compatible with the adjacent Graves House by using similar colors, materials, roofline, façade articulation, and general orientation. The new townhouses include black composite shingle roofing, espresso vinyl windows, matching gutter, downspouts, corner boards and trim siding, white stucco, light gray and dark gray horizontal siding, and matching garage door style and color.

- e. 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 CEQA, will not have an unacceptable negative effect on adjacent property or properties.

Analysis: All environmental impacts related to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor would be temporary and only occur during construction. The project also includes standard environmental permit conditions to reduce and mitigate impacts regarding air quality, dust, emissions control, water quality, and noise. Additionally, the project must comply with the 'City's Post-Construction Urban Runoff Management Policy (City Council Policy 6-29), which requires the implementation of Best Management Practices, including site design measures, source controls, and numerically sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges. Therefore, the project would not have an unacceptable impact on adjacent properties. The project is located within 500 feet of residences. Therefore, construction hours are limited to between 7:00 am to 7:00 pm Monday through Friday. The project is required to appoint a Construction Disturbance Coordinator to address any construction-related complaints from surrounding residents.

9. Tree Removal Permit Findings. Section 13.32.100 of the San José Municipal Code specifies the required findings for live tree removals.

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

Analysis: The project includes the removal of 33 trees. Of the trees to be removed, 13 are ordinance-size and 20 are non-ordinance-size. Based on the arborist report (Exhibit J) prepared by Bo Firestone Consulting and Design, dated January 10, 2022, the trees to be removed are located within the project buildings footprint or proposed driveways necessary for site circulation. Two of the trees are native species. The trees to be removed are 15 Mexican fan palms, seven White ash, five blackwood acacia, three Holly oak, one Coast Live Oak, one Valley oak, and one Siberian elm. One tree requires replacement at a 5:1 ratio, 12 trees require replacement at 4:1 ratio, one tree requires replacement at a 3:1 ratio, 15 trees require replacement at 2:1 ratio, and four trees require replacement at a 1:1 ratio. Therefore, the removal of the 33 trees on-site requires the replacement of either 90 15-gallon trees or 45 24-inch box trees on site. The total number of replacement trees to be planted on site is 7 24-inch box trees (equal to 14 15-gallon trees), a deficit of 76 replacement trees. Therefore, the applicant is required to pay in lieu fee (\$775 per tree) for the replacement trees. Based on the current Planning Fee Schedule, the estimated cost for the in-lieu fee for the remaining replacement trees is \$58,900. The applicant is required to pay the fees prior to issuance of Grading or Building Permits, whichever comes first.

In accordance with the findings set forth above, a Planned Development 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 **granted**. This City Council expressly declares that it would not have granted 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Planned Development Permit ("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 Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a 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 City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment 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 in 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 makes a determination that such action 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 Permit allows the removal of 33 trees (13 ordinance-size, 20 non-ordinance-size, 7 replacement trees) and the construction of up to 14 multifamily residential units, including the reconstruction and conversion of an existing single-family house into a duplex and the construction of 12

three-story townhouses configured in four three-story buildings on an approximately 0.63-gross acre site.

6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, “4146 Mitzi Drive Site & Historic Graves House Reconstruction” dated October March 16, 2023, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the “approved plans” or the “Approved Plan Set.”
7. **Planned Development District Effectuated.** This Planned Development Permit effectuates the portion of the Planned Development Zoning (File No. PDC22-088) as reflected in the Permit’s Approved Plan Set and the corresponding legal description.
8. **Previous Permits Superseded.** This Permit supersedes the previously issued Special Use Permit (File No. SP18-033).
9. **Homeowner’s Association.** A Homeowner’s Association shall be established for maintenance of all common areas, including but not limited to walkways, driveways/courtyards, common roofs, and landscaping. A copy of the Development Permit, the accompanying Approved Plans, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner’s Association by the Permittee no later than 30 days upon completion of each phase.
10. **No Tract Sales Office/Model Homes Approved.** This Permit does not include the approval of a tract sales office/model homes complex. Said use requires a Permit Adjustment approved by the Director of Planning.
11. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the “NO DUMPING - FLOWS TO BAY,” applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately-maintained streets within the property are present and maintained.
12. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
13. **Garage Parking Spaces for Attached Residential Unit Projects.** All garage parking spaces shown on the Approved Plans are to be used only for parking of residential unit vehicles and shall be kept free and clear of all obstructions. No conversion of any garages to living space, storage, or any other use is permitted.

14. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
15. **Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
16. **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 of San José.
17. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
18. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
19. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
20. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
21. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund

of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

22. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
23. **Construction Disturbance Coordinator.** Rules and regulations pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
24. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
25. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
26. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
27. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
28. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
29. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
30. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
31. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
32. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.

33. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.

34. **Fence Standards.** Fences shall be erected in accordance with the standards established on the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the City of San José Municipal Code.

35. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (“MMRP”) approved for this development by City Council Resolution No. _____.

37. Historic Preservation Conditions

- a. The Graves House shall be reconstructed and shall incorporate the original materials and architectural features salvaged from the building significantly damaged by fire. The architectural salvage and reconstruction of the Graves House shall be conducted in accordance with the approved plans under the direct supervision of a qualified historic architect.
- b. A certificate of occupancy for the townhouses shall not be issued until the Graves House has been reconstructed and the building permit completed.

38. Standard Environmental Permit Conditions

a. Air Quality

- i. Construction Related Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - (i) Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - (ii) Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - (iii) Remove visible mud or dirt track-out onto adjacent public roads using wet-power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - (iv) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - (v) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - (vi) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - (vii) Limit all vehicle speeds on unpaved roads to 15 mph.
 - (viii) Replant vegetation in disturbed areas as quickly as possible.

- (ix) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- (x) Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- (xi) All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.
- (xii) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources

- i. Santa Clara Valley Habitat Plan. The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.
- ii. Tree Replacement

Table: Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box replacement tree = two 15-gallon replacement trees

- iii. 33 trees onsite would be removed. One tree requires replacement at a 5:1 ratio, 12 trees require replacement at 4:1 ratio, one tree requires replacement at a 3:1 ratio, 15 trees require replacement at 2:1 ratio, and four trees require replacement at a 1:1 ratio. The total number and size of replacement trees required to be planted on-site is 7 24-inch box trees. The permittee is required to pay Off-Site Tree Replacement Fees to the City for 76 replacement trees that could not be planted on-site because of insufficient area.
- iv. Prior to the issuance of building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for 76 off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
- v. If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment
 - (i) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
 - (ii) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

c. Cultural Resources

- i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in

Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - (i) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - (ii) The MLD identified fails to make a recommendation; or
 - (iii) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may

include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee.

d. Greenhouse Gas Emissions/Energy

- i. Proof of Enrollment in SJCE. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement, or Director's designee, proof of enrollment in the San Jose Community Energy GreenSource program (approximately 95% carbon free power) or TotalGreen program (approximately 100% carbon free power)] assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act (CEQA). If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

e. Geology and Soils

i. Seismic Hazards

- (i) A Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The City Geologist will review the Geotechnical Report and issue a Geologic Clearance.
- (ii) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- (iii) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- (iv) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- (v) The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the

City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

- (vi) If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.

f. Hazards and Hazardous Materials

i. Asbestos and Lead-Based Paint

- (i) In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- (ii) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- (iii) All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- (iv) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- (v) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

g. Hydrology and Water Quality

i. Construction-related Water Quality

- (i) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.

- (ii) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- (iii) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- (iv) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- (v) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- (vi) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- (vii) Vegetation in disturbed areas shall be replanted as quickly as possible.
- (viii) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- (ix) The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

h. Noise

- i. Construction-related Noise. Noise minimization measures include, but are not limited to, the following:
 - (i) Pile Driving is prohibited.
 - (ii) Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
 - (iii) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - (iv) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - (v) Prohibit unnecessary idling of internal combustion engines.

- (vi) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- (vii) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- (viii) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- (ix) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- (x) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- (xi) Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

38. Housing.

- a. Conditions of approval for Inclusionary Housing Ordinance Requirements for Residential Developments.
 - i. The Residential Development will construct fourteen (14) For-Sale Town Homes.
 - ii. The developer has selected to comply with the Inclusionary Housing Ordinance (IHO) through Payment of an In-Lieu Fee (5.08.520) Compliance option and will not provide any Inclusionary Units.
 - iii. The development is in the West Valley part of the Inclusionary Housing Ordinance Area and will be subject to Strong Market area prices.
 - iv. The in-lieu fee is subject to change July 1 of each year and the Permittee is responsible for paying the current amount.
 - v. The developer must pay the in-lieu fee prior to receiving its certificate of occupancy.

39. 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 No. PD22-020 shall be printed on all construction plans submitted to the Building Division.
- b. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street
- e. *Other.* Such other requirements as may be specified by the Chief Building Official.

40. Bureau of Fire Department Clearance for Issuing Permits: Prior to the issuance of any Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.

41. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Final Subdivision Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions. The Subdivider is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works Permits may be found at the following: <http://www.sanjoseca.gov/devresources>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:** This project does not require a detailed CEQA Transportation Analysis nor a Local Transportation Analysis. The project is expected to result in less-than- significant transportation impacts and the projected traffic for the project was reviewed and found to be minimal.
- c. **Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- 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.
 - iii. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).

- 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 issuance of Public Works clearance.
- h. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code).
- i. **Street Improvements:**
 - i. Construct curb, gutter, and sidewalk along the Rancho Way project frontage with a 12-foot-wide ADA compliant detached sidewalk section. This includes a 0.5-foot wide curb, 6.5-foot-wide park strip, and 5-foot-wide sidewalk. A street easement dedication to achieve a 60' street section along Rancho Way project frontage will be required.
 - ii. Construct new curb, gutter and sidewalk along the Mitzi Drive project frontage with a 10-foot-wide ADA compliant detached sidewalk section. This includes a 0.5-foot-wide curb, 4.5-foot-wide park strip, and 5-foot-wide sidewalk.
 - iii. Proposed Driveway width along Rancho Way project frontage to be 26 feet wide per City Standard Detail R-5.
 - iv. Install new handicap ramps at the project corner and southeast corner of Mitzi Drive and Rancho Way per City Standard Detail R-10.
 - v. Relocation of the existing street furniture (i.e., utility cabinet, utility pole, etc.) along Mitzi Drive to City Standards. Coordination with the utility companies will be required.
 - vi. 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.
 - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - viii. 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. **Strong Neighborhoods Initiative (SNI):** This project is located within the Blackford SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
 - k. **Sanitary:** The project is required to submit plan and profile of the sewer mains with lateral locations for final review and comment prior to construction.
 - l. **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.
 - m. **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 streets 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 the park strip along the Mitzi Drive and Rancho Way project frontages. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - n. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
42. **Revocation, Suspension, Modification.** This Planned Development 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 Planned Development 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.

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

EFFECTIVE DATE

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC22-088 passed for publication on [REDACTED], 2023 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

EXHIBIT "A" (File No. PDC22-088)

FOR ZONING PURPOSES

4146 Mitzi Drive

San Jose, California

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

Beginning at a point on the easterly line of Mitzi Drive, as said Mitzi Drive is shown on the Map entitled, "Tract No. 924, Hollywood Park Unit No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book 41 of Maps, Pages 18 and 19, distant South 0°15'00" East 210.56 feet; thence North 89°40'05" East 30.00 feet from the interception of the center line of Mitzi Drive with the center line of Piper Drive to the Point of Beginning; thence along the Easterly line of Mitzi Drive South 0°15'00" East 5.38 feet; thence along a curve to the right with a radius of 155.00 feet, through an angle of 26°58'13", an arc distance of 72.96 feet; thence leaving the Easterly line of Mitzi Drive South 48°51'06" East 87.18 feet; thence South 75°41'38" East 61.20 feet; thence South 83°30'58" East 39.00 feet; thence North 76°13'53" East 44.60 feet; thence North 04°48'38" East 143.65 feet; thence South 89°40'56" West 202.54 feet to the Point of Beginning.

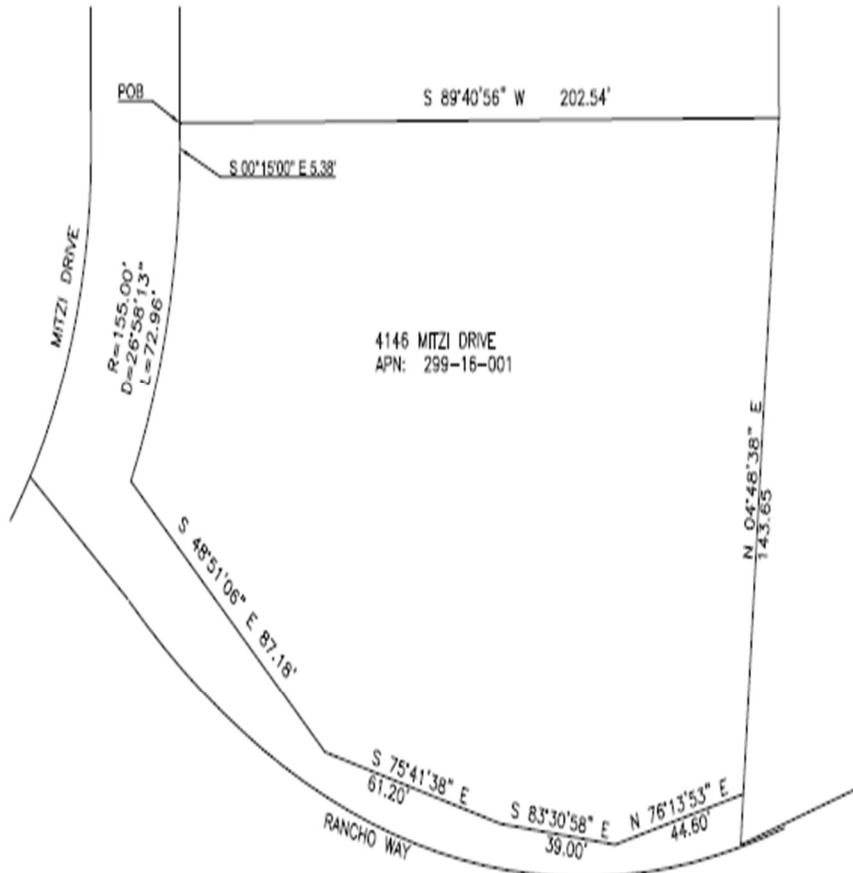
END OF DESCRIPTION

APN: 299-16-001

DRAFT—Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

BASIS OF BEARINGS:

THE BEARING OF N 00°15'00" W TAKEN ON THE CENTERLINE OF MITZI DRIVE AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO 924, HOLLYWOOD PARK UNIT 2, FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN BOOK 41 OF MAPS, PAGES 18 AND 19 WAS TAKEN AS THE BASIS OF BEARING.



LEGEND

- NEW PROPERTY LINE
- CENTER LINE
- ADJACENT PROPERTY LINE
- POB POINT OF BEGINNING



JULY 5, 2023



SCALE 1" = 40 FEET



EXHIBIT "B"	PLAT TO ACCOMPANY LEGAL DESCRIPTION	SCALE 1" = 40'	SHEET
		DATE JUNE 2023	
V&H ENGINEERING, LLP SAN JOSE, CA 95118	FOR: PLAT 4168 MITZI DRIVE	PROJECT J-050	2
		DRAWN CM	
SAN JOSE	CALIFORNIA	CHECKED DVL	OF 2 SHEETS 07.05.23

DRAFT—Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.