

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE FOUNTAIN ALLEY MIXED-USE PROJECT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of San José (“City”), acting as lead agency under the California Environmental Quality Act (“CEQA”), prepared and circulated an Environmental Impact Report for the Downtown Strategy 2040 (“Downtown Strategy 2040 EIR”) to update and replace the Downtown Strategy 2000 Environmental Impact Report and analyze the environmental impacts of increased downtown development capacity under the Downtown Strategy Plan 2040 and Envision San José 2040 General Plan; and

WHEREAS, on December 18, 2018, in connection with the adoption of the Downtown Strategy 2040 Plan (Planning File No. PP15-102), the City Council certified the Downtown Strategy 2040 EIR and adopted a mitigation monitoring and reporting program pursuant to CEQA; and

WHEREAS, the City has now prepared and circulated a Supplemental Environmental Impact Report (“SEIR”) to analyze the environmental impacts of the Fountain Alley Mixed-Use Project, a Site Development Permit (Planning File Nos. H20-037; ER20-242), under the Downtown Strategy 2040 EIR, which proposes the removal of an existing parking lot and construction of a 21-story curvilinear mixed-use building with up to 194 dwelling units, approximately 31,959 square feet of ground floor retail, and 405,924 square feet of office

space on an approximately 1.25-acre site located west of 2nd Street, between East Santa Clara Street and West San Fernando Street (APN: 467-22-121) in the Fountain Alley area of the City of San José (the “Project”); and

WHEREAS, a First Amendment to the Draft SEIR was prepared to include responses to comments received during the public comment period and to make any technical or text changes to the Draft SEIR; and

WHEREAS, the First Amendment and the Draft SEIR together comprise the Final SEIR for the Project (collectively, “Final SEIR”); and

WHEREAS, the Final SEIR concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce some but not all of those significant impacts to a less-than-significant level; and

WHEREAS, on November 16, 2022, the Planning Commission of the City of San José reviewed the Final SEIR and recommended the City Council find the Final SEIR was completed in accordance with the requirements of CEQA and further recommended the City Council adopt a resolution certifying the Final SEIR; and

WHEREAS, as required under CEQA, a program to monitor and report on the implementation of measures to mitigate or avoid significant effects on the environment has been prepared for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, in connection with the approval of a project for which an environmental impact report has been prepared, which identifies one or more significant environmental effects of the project, the decision-making body of a public agency is required under

CEQA to make certain findings regarding those effects and adopt a mitigation or monitoring program and overriding statement of consideration for any impact that may not be reduced to a less than significant level;

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

1. That the foregoing recitals, the Downtown Strategy 2040 EIR, and the Final SEIR are incorporated herein as if set forth in the body of this Resolution.
2. The City Council finds and certifies the Final SEIR has been prepared and completed in compliance with CEQA.
3. The Final SEIR was presented to the City Council, the City Council reviewed and considered the information contained therein prior to approving the Project, and, as lead agency for the Project, the City Council finds the Final SEIR reflects the independent judgment and analysis of the City of San José and designates the Director of Planning, Building and Code Enforcement at 200 East Santa Clara Street, 3rd Floor Tower, San José, California 95113 as the custodian of records on which the decision of the City is based.
4. The City Council recognizes the Final SEIR contains additions, clarifications, modifications, and other information in response to comments on the Draft SEIR or obtained after the Draft SEIR was issued and circulated for public review and hereby finds such changes and additional information would not result in: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft SEIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project, or (iii) any feasible alternative considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project.
5. The City Council finds and determines that recirculation of this Final SEIR for further public review and comment is not warranted or required under CEQA.
6. The City Council makes the following findings with respect to potentially significant environmental impacts, as identified in the Final SEIR, with the understanding that all the information in this Resolution is intended as a summary of the full administrative record supporting the Final SEIR.

FOUNTAIN ALLEY MIXED USE PROJECT ENVIRONMENTAL EFFECTS FOUND NOT TO BE SIGNIFICANT

Through project scoping and the environmental analysis contained within the Final SEIR, it was determined that the Project would not result in a potential significant effect on the environment with respect to aesthetics, agricultural and forestry resources, energy, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, minerals, population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, and wildfire. A summary of the reasons for this determination can be found in Chapters 4.1, 4.2, 4.6, 4.7, 4.8, 4.10, 4.11, 4.12, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, and 4.20 of the Draft SEIR. No further findings are required for these subject areas.

FINDINGS FOR SIGNIFICANT BUT MITIGATED IMPACTS

Air Quality

Impact: **Impact AIR-1:** Construction activities associated with the proposed project would expose the project maximum exposed individuals (MEIs) to a cancer risk of 32.44 cases per one million (for infants) and a maximum-annual PM_{2.5} concentration of 0.46 µg/m³ which exceeds BAAQMD significance thresholds of 10 cases per one million for cancer risk and 0.3 µg/m³ for PM_{2.5}, respectively.

Mitigation: **MM AIR-1.1:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director's designee. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

- For all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total, use equipment that meet U.S. Environmental Protection Agency (EPA) Tier 4 Final emission standards for particulate matter (PM₁₀ and PM_{2.5}).

- If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 70 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.
- Use of alternatively fueled or electric equipment.
- Stationary cranes and construction generator sets shall be powered by electricity.
- Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 70 percent or greater. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

Finding: With implementation of the required Standard Permit Conditions for dust and Mitigation Measure AIR-1.1, the construction cancer risk would be reduced to 4.72 cases per one million for infants, the maximum annual PM_{2.5} concentration would be reduced to 0.10 µ/m³, and the Hazard Index (HI) would be less than 0.01. With mitigation, the construction cancer risk, maximum annual PM_{2.5} concentration, and HI would not exceed BAAQMD's single-source thresholds of 10 cases per one million for cancer risk, 0.3 µg/m³ for PM_{2.5}, or an HI greater than 1.0. Therefore, the proposed project would have a less than significant construction community risk impact.
Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)

Facts in Support of Finding: As required by Mitigation Measure AIR-1.1, the project applicant shall prepare and submit a construction operations plan to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The construction operations plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards listed in Mitigation Measure AIR-1.1. With implementation of Mitigation Measure AIR-1.1 and the required standard permit conditions identified in the SEIR, the infant cancer risk would be reduced to 4.72 cases per one million and 0.010

$\mu\text{g}/\text{m}^3$, which is below the BAAQMD single source threshold of 10.0 per million and $0.3 \mu\text{g}/\text{m}^3$, respectively. Therefore, the project would have a less than significant community risk impact from construction.

Biological Resources

Impact: **Impact BIO-1:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

Mitigation: **MM BIO-1.1:** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/ construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter preconstruction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

Prior to any tree removal, or approval of any grading or demolition permits (whichever occur first), the applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

Finding: With implementation of the identified mitigation measures, the project's impact to nesting birds and raptors would be less than significant. **Same**

Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)

Facts in Support of Finding: Removal of vegetation on-site would result in impacts to nesting birds if they are present on-site and construction activities cannot be scheduled outside of the breeding season (construction to occur between September 1st through January 31st, inclusive). To reduce the impacts on these species, where construction occurs between February 1st and August 31st, inclusive, the proposed project would implement bird surveys and buffer areas per Mitigation Measures BIO-1.1. This would protect birds from disturbance and reduce the abandonment of nests and/or loss of eggs during construction. With implementation of Mitigation Measure BIO-1.1, the project's impact to nesting birds and raptors would be less than significant.

Cultural Resources

Impact: **Impact CUL-1:** Project ground disturbing activities could result in a substantial adverse change in the significance of unknown archaeological resources.

Mitigation: **MM CUL-1.1: Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to submit evidence that a Cultural Awareness Training program has been provided to construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American 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.

MM CUL-1.2: Sub-Surface Monitoring. A qualified archaeologist, in collaboration with a Native American monitor, 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 also be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, the applicant shall notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified archeologist and Native American monitor would be present on the project site during.

MM CUL-1.3: Treatment Plan. A qualified archeologist in collaboration with a Native American monitor, 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 prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading permits. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Monitoring schedules and individuals
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information)
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Security approaches or protocols for finds.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-1.4: Evaluation. The project applicant shall notify the Director of Planning, Building, and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are

not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center, and the Director of Planning, Building, and Code Enforcement or the Director's designee.

Finding: With implementation of the identified Standard Permit Condition and Mitigation Measures CUL-1.1 to CUL-1.4 listed above, the proposed project would result in a less than significant impact to subsurface archaeological resources. **Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: Construction of the proposed project would disturb the subsurface soils on-site particularly during site preparation. The project site is within a defined area of archeological significance and this disturbance would have the potential to impact archaeological resources. These resources include tribal cultural resources. The mitigation incorporated as part MM CUL-1.1 through MM CUL-1.4 would require work to stop on-site if these resources were encountered and would provide training and evaluation of resources if encountered. This would ensure that the resources are properly identified and preserved during construction on the project site.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Construction activities associated with the proposed project could expose construction workers and nearby land uses to soil and/or groundwater contamination (e.g., tetrachloroethene) from the former coffee roaster business.

Mitigation: **MM HAZ-1.1:** Prior to the issuance of any demolition or grading permit(s), the project applicant shall retain a qualified environmental professional to conduct a Phase II soil, soil gas and/or groundwater investigation to determine if the soil, soil gas, and groundwater from former uses of the site have contaminants in concentrations above established construction/trench worker and residential or commercial Regional Water Quality Control Board Environmental Screening Levels (ESLs). If the Phase II results indicate soil, soil gas and/or groundwater contamination above regulatory environmental screen levels, the project applicant must enter into the Santa Clara County Department of Environment Health (SCDEH) Site Cleanup Program

(SCP) to obtain regulatory oversight from SCCDEH. Any further investigation and remedial actions must be performed under regulatory oversight to mitigate the contamination and make the site suitable for the proposed residential development. A report of the findings and of applicable regulatory oversight will be provided to the Director of Planning, Building and Code Enforcement or Director's designee and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.

MM HAZ-1.2: If soil, soil gas, or groundwater contamination is identified, the project applicant shall implement appropriate management procedures, such as removal of the contaminated soil and implementation of a Site Management Plan (SMP), Removal Action Workplan (RAP), or equivalent document under regulatory oversight from the SCCDEH or State Department of Toxic Substances Control (DTSC). Copies of all environmental investigations shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department.

The SMP shall be prepared by a qualified hazardous materials consultant and include the following:

- Management practices for handling contaminated soil or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site.
- Preliminary Remediation Goals (PRGs) for environmental contaminants of concern to evaluate the site conditions following SMP implementation.
- A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction

The SMP shall be prepared and submitted to SCCDEH or DTSC for review and approval prior to issuance of grading permits and commencement of cleanup activities. The approved SMP shall detail procedures and protocols for management of soil containing environmental contaminants during site development activities.

The approved SMP or No Further Action letter (or equivalent assurance) from SCCDEH or DTSC documenting completion of cleanup activities shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any grading permit.

Finding: Implementation of Mitigation Measures HAZ-1.1 and HAZ-1.2 would reduce the potential exposure of construction workers and surrounding land uses to on-site contamination sources. **Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: With the implementation of Mitigation Measure HAZ-1.1 and HAZ-1.2 the project would identify and remediate any hazardous conditions on-site. The measure would require entrance into the SMP with the SCCDEH to evaluate past uses of the site. Based upon this review, the SCCDEH may require a Phase II Environmental Site Assessment, a Soil and Groundwater Management Plan, and/or other studies to ensure the proposed development is safe for construction workers and future site occupants. If required, A Phase II investigation would be conducted on-site to determine whether there is soil, soil gas and/or groundwater contamination above regulatory environmental screen levels present on-site. If contamination is found at levels exceeding regulatory environmental screening levels, the applicant would be required to obtain regulatory oversight from the Santa Clara County Department of Environmental Health and implement appropriate management procedures, such as removal of the contaminated soil and implementation of a Site Management Plan, Removal Action Workplan, or an equivalent document. Preparation of and compliance with a site management plan, removal action plan or equivalent document would reduce potential impacts to construction workers to a less than significant level.

Noise and Vibration

Impact: **Impact NOI-1:** Construction noise would exceed ambient levels of 64 to 69 dBA L_{eq} by five dBA or more for a period of more than one year, which would be considered a significant construction noise impact under General Plan Policy EC-1.7.

Mitigation: **MM NOI-1.1:** Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of

construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval.

As part of the noise logistics plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:

- Construction shall be limited to the hours of 7:00 AM to 7:00 PM 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 uses.
- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- Prohibit all unnecessary idling of internal combustion engines. Staging areas and stationary noise-generating equipment shall be located as far as possible from sensitive receptors (a minimum of 200 feet, where feasible).
- The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities.
- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
- A "noise disturbance coordinator" shall be designated to respond to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. A

telephone number for the disturbance coordinator shall be conspicuously posted at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Finding: With implementation of the Standard Permit Condition identified in the SEIR and Mitigation Measure NOI-1.1, the project would result in a less than significant construction noise impact. **Less Impact than Approved Project With Mitigation Incorporated (Significant Unavoidable Impact)**

Facts in Support of Finding: The proposed project would be constructed in 34 months, which exceeds the 12-month construction noise threshold. The applicant would be required to submit and implement a construction noise logistics plan which would include: 1) specific hours of construction, 2) noise and vibration minimization measures, 3) posting and notification of construction schedules, equipment to be used, and 4) designation of a noise disturbance coordinator. The noise logistic plan would be submitted to the Director or Director's designee of the Department of Planning, Building and Code Enforcement prior to the issuance of any grading or demolition permits. This mitigation measure is a requirement of the Downtown Strategy 2040 EIR. Adherence to MM NOI-1.1 would minimize impacts to neighboring properties from temporary increases in ambient noise levels resulting from future construction activities. Implementation of Mitigation Measure NOI-1.1 would reduce construction noise impacts to a less than significant level.

Impact: **Impact NOI-2:** Construction vibration levels may exceed General Plan Policy EC-2.3's vibration limits 0.08 in/sec PPV threshold by 0.13 in/sec PPV for historic buildings within 60 feet of the project site.

Mitigation: **MM NOI-2.1:** Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures:

- A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Use of heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building (where possible).
- Document conditions at all historic structures located within 60 feet of construction prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:
 - Vibration limits shall be applied to vibration-sensitive structures located within 60 feet of any construction activities identified as sources of high vibration levels.
 - Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.

- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affect structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities. The survey shall be submitted to the City of San José Director of Planning, Building, and Code Enforcement or Director's designee.

Mitigation: MM NOI-2.2: Prior to commencement of any construction activities, including any ground disturbing activities, the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage).

The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer or equivalent of the City of San José Department of Planning, Building and Code Enforcement prior to demolition and Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the construction contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include:

- Guidelines for operation of construction equipment adjacent to historical resources;
- Means and methods to reduce vibrations levels from excavation and construction;
- Requirements for monitoring and documenting compliance with the HRRP; and
- Education/training of construction workers about the significance of the adjacent historical resources.

Mitigation: MM NOI-2.3: The Historic Architect shall establish a “Monitoring Team” comprised of at least one qualified Historic Architect and one qualified structural engineer for the duration of the site monitoring process. The Monitoring Team shall monitor the adjacent historical resources and any changes to existing conditions shall be reported, including, but not limited to, expansion of cracks, new spalls, or other exterior deterioration during construction phase and any changes to the existing conditions shall be reported.

In addition, the Monitoring Team shall prepare a site visit report documenting all site visits. The Monitoring Team shall submit the site visit reports and documents to the City’s Historic Preservation Officer no later than one week after each reporting period (as defined by the HRRP). The City’s Historic Preservation Officer shall determine the frequency of the reporting period. The structural engineer shall consult with the Historic Architect if any problems related to the character-defining features of the historic resources occur. The Director of Planning, Building and Code Enforcement or the Director’s designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at their discretion.

If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, the Monitoring Team shall inform the project applicant (or the applicant’s designated representative responsible for construction activities), the Director of Planning, Building and Code Enforcement or the Director’s designee, and the Historic Preservation Officer of the potential impacts immediately. The project applicant shall implement the Monitoring Team’s recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger historic resources. In the event of damage to a nearby historic resource during construction, the project applicant shall ensure that repair work is performed in compliance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and shall restore the character-defining features in a manner that does not affect the structure’s historic status. The Monitoring Report shall also include, but is not limited to, the following:

- Summary of the construction progress;
- Identification of substantial adverse impacts related to construction activities;

- Problems and potential impacts to the historical resources during construction activities;
- Recommendations to avoid any potential impacts;
- Actions taken by the project applicant in response to the problem;
- Progress and the level of success in meeting the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties for the project as noted above for the character-defining features, and in preserving the character-defining features of nearby historic properties; and
- Inclusion of photographs to explain and illustrate progress.
- In addition, the Monitoring Team shall submit a final document associated with monitoring and repairs after completion of the construction activities to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any Certificate of Occupancy (temporary or final).

Finding: With implementation of Mitigation Measures NOI-2.1 to NOI-2.3, impacts from ground-borne vibration to the surrounding historic structures would be less than significant. **Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: Implementation of Mitigation Measure NOI-2.1 would require the proposed project to implement a vibration monitoring plan, which would control high vibratory activities near sensitive structures. Construction vibration levels would be dependent on the location of individual pieces of equipment relative to the adjacent structures. Further, construction vibration impacts are assessed based on damage to adjacent structures, not receptors at the nearest property lines. Therefore, MM NOI-2.1 would reduce vibratory impacts to adjacent historic buildings by prohibiting the use of heavy vibration-generating equipment within 60 feet of adjacent buildings, establishing a vibration monitoring schedule, and including contingency measures and construction stop requirements if vibration levels approach indicated thresholds. The noise report prepared for the proposed project determined that these measures would reduce vibratory impacts to below 0.08 in/sec PPV for historic structures and would not result in damage to nearby sensitive structures. NOI-2.2 and NOI-2.3 would further protect adjacent historic structures from vibratory impacts by establishing a historic monitoring team to establish existing conditions of the

historic structures compared to any changes during and after construction activities, including these findings in a report. Therefore, with the implementation of Mitigation Measure NOI-2.1, NOI-2.2, and NOI-2.3, the proposed project would result in a less than significant vibratory impact.

SIGNIFICANT ENVIRONMENTAL IMPACTS

Cultural Resources

Impact: The proposed project would impact the overall integrity of the San Jose Downtown Commercial Historic District (Historic District) as it does not comply with the 2003 Historic District Design Guidelines (e.g., building height, corner element, massing, façades, rear façades, and setbacks and stepbacks) and the 2019 Guidelines and Standards.

Mitigation: There is no proposed mitigation measure that could reduce the significant and unavoidable impact to the Historic District.

Finding: The proposed project would have a significant and unavoidable impact on the Historic District as it does not meet the 2003 Historic District Design Guidelines or the 2019 Guidelines and Standards. **(Significant Unavoidable Impact)**

Facts in Support of Finding: The City of San Jose concluded that the proposed project would have a significant impact on the Historic District because it does not meet the 2003 Historic District Design Guidelines or the 2019 Guidelines and Standards. The project would not meet the 2003 Historic District Design Guidelines and the 2019 Guidelines and Standards for the following reasons:

- The project site takes up two thirds of the South Second Street frontage and South Second Street is the only street in the Historic District where both sides of the street are included in the district. This site makes it particularly important to the district.
- The buildings within the Historic District relate to one another visually and spatially. The proposed development is centrally located and would be visible from all points in the Historic District. Its features, size, scale, proportion, and massing would significantly erode the cohesive character of the Historic District.
- All existing new construction generally relates to the features, size, scale, proportion, and massing of contributing buildings in the

Historic District and generally appears consistent with the 2003 Historic District Design Guidelines.

- The proposed building does not comply with the building height, corner element, massing, facades, rear facades, and setbacks and stepbacks which are key elements of the 2003 Historic District Design Guidelines.

The significant and unavoidable impact to the Historic District is a result of the project's height, massing, facades, and setbacks, therefore, there are no feasible mitigation measures that could reduce this impact beyond redesigning the project. The project as proposed would result in a significant unavoidable impact to the Historic District.

FINDINGS CONCERNING ALTERNATIVES

To comply with CEQA, it is important to identify alternatives that reduce any anticipated significant impacts from the project and try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a common-sense approach, meaning the alternatives should be reasonable, "foster informed decision making and public participation," and focus on alternatives that avoid or substantially lessen significant impacts.

The alternatives analyzed in the Draft EIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects.

The objectives for the project as are follows:

1. Support the development of downtown as a regional job center, consistent with the Envision San José 2040 General Plan, Strategy 2000, and Metropolitan Transportation Commission (MTC) goals for transit-oriented development near regional transit expansion projects:
 - a. Develop a mixed-use building that achieves financial viability through large floor plates where at least 10 floors are used for office use and no more than 10 floors are used for residential use.
 - b. Provide a mix of residential and office use to contribute to around-the-clock activation of the project's retail and neighboring commercial use.
 - c. Replace a surface parking lot in downtown San José with a development that connects the numerous surrounding paseos and alleyways by creating a place to be in downtown San José and establishing the desired transit-oriented density.

2. Create a new Class A office space typology with convenient access to outdoor space to attract the best tenants and support the City's economic development goals.
3. Provide future residents access to downtown jobs, retail and entertainment, and various public transit modes such as bikeways, Santa Clara Valley Transportation Authority (VTA) light rail and buses, and a planned Bay Area Rapid Transit (BART) extension.
4. Locate residential units in the lower portion of the building with a more introspected scale and variety contributing to the neighborhood's urbanity and relating to the historical context, with more extensive office in the upper portion of the building to meet commercial requirements and register the development on the skyline.
5. Provide a ground-floor configuration with retail use, residential and office lobbies, storefront, and landscape design to enhance the pedestrian experience.
6. Provide bicycle parking for residents to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community.
7. Support San José Climate Smart goals by providing sustainable energy, reduce water usage by recycling greywater, offer natural ventilation for residential and commercial users, provide electric vehicle (EV) car parking to reduce greenhouse gas emissions.
8. Provide an architecturally-distinguished high-rise residential and commercial project in the downtown area that contributes an iconic design to the skyline of downtown San José.
9. Provide on-site parking and loading in amounts adequate to meet anticipated demands of tenants that would reside and work in such a prominent project.

The following alternatives were considered and rejected:

- Location Alternative

The following are evaluated as alternatives to the Proposed Project:

1. No Project Alternative
2. Reduced Height (Four-Stories), Two Buildings Alternative
3. Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative

1. No Project - No Development Alternative and Development under Downtown General Plan Designation

- A. **Description of Alternative:** The No Project – No Development Alternative would retain the existing parking lot on-site. This alternative would have no new significant impacts because there would be no development on the site.
- B. **Comparison of Environmental Impacts:** The No Project Alternative– No Development Alternative would avoid all of the project’s environmental impacts.
- C. **Finding:** While this alternative would have no new significant impacts because there would be no development on the site, the alternative would not meet any of the project objectives. In addition, this alternative would not meet the City’s strategies and goals of the Downtown Strategy 2040 by redeveloping the site with a high-density mixed-use development.

2. Reduced Height (Four-Stories), Two Buildings Alternative

- A. **Description of Alternative:** The purpose of the Reduced Height (Four-Stories), Two Buildings Alternative is to lessen or avoid the project’s significant, impact to the Historic District, in addition to any construction-related air quality and noise impacts. This alternative would replace the proposed 21-story curvilinear building (up to 267 feet to the top of the roof) with two, four-story rectangular-shaped buildings (up to 60 feet in height) with a 10-foot-wide alleyway located in between the two buildings. No residential dwelling units are proposed under this alternative.
- B. **Comparison of Environmental Impacts:** The Reduced Height (Four-Stories), Two Buildings Alternative would reduce the significant impact on Cultural Resources (the Historic District) compared to the proposed project and would be designed to achieve substantial compliance with the 2003 Historic District Design Guidelines and the Secretary of the Interior’s Standards for Rehabilitation. With implementation of all identified mitigation measures and Standard Permit Conditions, all other impacts would remain the same or less than the proposed project because of similar ground disturbance and major construction activities would still occur for a period of greater than one year due to the size of the project.
- C. **Finding:** The Reduced Height (Four-Stories), Two Buildings Alternative would meet project objectives 1c, 2, and 7 by replacing the existing surface parking lot with a mixed-use development (office and retail). This alternative would not meet project objectives 1a, 1b, 3, 4, 5, 6, 8, and 9 to develop a high-rise mixed-use building that includes residential uses. The Reduced Height (Four-Stories), Two Buildings Alternative would reduce the significant impact on Cultural Resources,

but all other impacts would remain the same or less than the proposed project because the alternative would still result in a ground disturbance and major construction activities would still occur for a period of greater than one year due to the size of the project.

3. Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative

- A. **Description of Alternative:** The purpose of the Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative is to lessen or avoid the project's significant impact to the Historic District, in addition to any construction-related air quality and noise impacts. This alternative would replace the 21-story curvilinear building proposed under the project with two buildings that would be 17-stories and 20-stories tall, and would consist of a mix of residential, office, and ground floor retail uses.
- B. **Comparison of Environmental Impacts:** The Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative would lessen the impact on Cultural Resources (Historic District) compared to the proposed project due to the reduced height and massing; however, this alternative would not be in conformance with Standard 9 of the Secretary of the Interior's Standards for Rehabilitation and would partially comply with the 2003 Historic District Design Guidelines and the 2019 Design Guidelines and Standards. Therefore, the impact would remain significant and unavoidable. With implementation of all identified mitigation measures and Standard Permit Conditions, all other impacts would remain the same as the proposed project because of similar ground disturbance and major construction activities would still occur for a period of greater than one year due to the size of the project.
- C. **Finding:** The alternative would meet project objectives 1b, 1c, 2, 3, 5, 6, 7, and 9 b; however, it would not meet project objectives 1a, 4, and 8. The Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative would lessen the impact on Cultural Resources but would still be considered significant and unavoidable. Additionally, all other impacts would remain the same as the proposed project because the similar extent of ground disturbance and construction period length.

Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the No Project – No Development Alternative. The No Project – No Development

Alternative would retain the site in its current condition. Retaining the status quo on the site would avoid all construction and operational impacts associated with the project, including the significant and unavoidable impact to the Historic District. Therefore, the No Project – No Development Alternative is the environmentally superior alternative; however, it would not achieve any of the project objectives.

CEQA Guidelines Section 15126.6 (e)(2) states that “if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. Beyond the No Project – No Development Alternative, the Reduced Height (Four-Stories), Two Buildings Alternative would be the environmentally superior alternative.

The Reduced Height (Four-Stories), Two Buildings Alternative is the environmentally superior alternative because it would be substantially compliant with the Secretary of the Interior’s Standards for Rehabilitation, 2003 Historic District Design Guidelines, and 2019 Design Guidelines and Standards and would lessen or potentially avoid the impact of the project on the Historic District. This alternative would meet three out of the 11 project objectives as it would replace the existing parking lot with a mixed-use development but would not be able to provide large floor plates, would not include residential, and would not contribute to the downtown skyline or the City’s density goals for the downtown core.

STATEMENT OF OVERRIDING CONSIDERATIONS

- A. **Significant Unavoidable Impact.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with historic resources.
- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the project outweigh its significant adverse environmental impact of the project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, the Downtown Strategy 2040, and the Downtown Urban Design Guidelines.

C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the project, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. **Envision San José 2040 General Plan Strategies, Goals, and Policies.**

- a. Major Strategy #3 Focused Growth: The Project site is located within an identified Growth Area, as specified in the Envision San José 2040 General Plan. The project proposes to significantly intensify the site with a mixed-use development composed of residential and commercial in a pedestrian-friendly design and located in proximity to a variety of services, employment centers, educational institutes, and transit. Planning such sites for higher density mixed-use development enables the City to provide economic, employment, and residential benefits consistent with the community objectives of the Envision San José 2040 General Plan.
- b. Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community: The Project will support the continued growth of the Downtown as a vibrant urban center for living and working by adding up to 194 residential units, 368,093 square feet of office space, and 30,790 square feet of retail space. The Project's location in the Downtown core will allow residents and retail employees the opportunity to take advantage of a wide variety of commute options including walking, bicycling, bus and light rail. Focusing residential and commercial growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/placemaking goals.
- c. General Plan Land Use Goals LU-1.2, LU-2, LU-3.1, LU-3.4, LU-5.7, LU-10.1, and LU-10.4: The Project will provide a mixed-use environment with up to 194 residential units, 368,093 square feet of office space, and 30,790 square feet of retail space which will aid in maximizing social interaction and furthering the vision of the Envision General Plan. Ground floor retail amenities will not only serve the residents and employees of the development, but also other visitors to the Downtown area. The Project's location in the Downtown will encourage walking for the residents and employees, which will minimize vehicular miles traveled. The Project is located approximately 0.8 miles from Diridon Transit Center which provides connections between local and regional bus routes, light rail lines, and commuter rail lines. The closest bus service operates directly adjacent to the Project on South 2nd Street. The Project will focus new residential and office growth in an identified Growth Area to maximize use of existing transit

infrastructure, provide for more efficient delivery of City services, and foster the development of a more vibrant, walkable urban core.

2. Downtown Strategy 2040 Guiding Principles and Priorities

- a. Make Downtown a memorable and creative metropolitan center, where people live, work, learn, play, shop, dine, and engage in public life; Create an accessible, walkable, bike-friendly, transit-rich Downtown; and Develop commercial uses in the Downtown, particularly active ground-floor retail uses, and those that generate sales tax revenue. The Project will contribute to the enhancement of the Downtown core by providing retail and high-density housing uses. Future residents and employees of the Project would enjoy access to existing and planned jobs, restaurants, cultural centers, public parks, and shopping opportunities that are in the Downtown area. Two floors of retail are proposed and would provide shopping and dining services that are easily accessible to pedestrians, residents, and visitors. The Project would provide on-site bicycle parking and is situated on a roadway with existing Class III bike facilities. Additionally, the Project is within walking distance of bus stops and a light rail stop, which would incentivize alternative modes of transit.

3. Downtown Urban Design Guidelines and Policies

- a. Downtown Urban Design Policy CD-6.1, CD-6.4, CD-6.6, CD-6.7: The proposed project has a floor-area ratio (FAR) of 12.3 and 155.2 dwelling units/acre, maximizing the development potential and overall density of the parcel. This amount of density will contribute to the Downtown's growth as a vibrant urban area, and help the City actualize its vision for the Downtown core. The proposed project features an archway at the center of floors one to 10 which would provide pedestrian connectivity from South Second Street to the Fountain Alley pedestrian paseo. The public passage includes landscaping and seating that will welcome and facilitate the movement of pedestrians and bicyclists throughout downtown. The proposed development will be a recognizable development from the sky and will have a strong design presence and connectivity at street level.

The City Council has weighed each of the above benefits of the Project against its unavoidable environmental risks and adverse environmental effects identified in the Final EIR, and hereby determines that those benefits outweigh the risks and adverse environmental effects of the Project and, therefore, further determines that these risks and adverse environmental effects are acceptable and overridden.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit “A” and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program (“MMRP”) for the Project required under California Public Resources Code Section 21081.6 and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation for responsibility for mitigation implementation and the agency responsible for the monitoring action.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, 3rd Floor Tower, San José, CA 95113.

ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk