

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE REMOVAL OF TWO ORDINANCE-SIZE TREES AND 10 NON-ORDINANCE-SIZE TREES, THE CONSTRUCTION OF A 21-STORY MIXED RESIDENTIAL AND COMMERCIAL BUILDING WITH A TOTAL OF APPROXIMATELY 721,286 SQUARE FEET, INCLUDING 30,794 GROSS SQUARE FEET OF COMMERCIAL/RETAIL SPACE, 194 RESIDENTIAL UNITS, 368,093 SQUARE FEET OF OFFICE SPACE, ONE LEVEL OF BELOW-GRADE LOADING AREA AND THREE LEVELS OF BELOW GRADE PARKING, AND EXTENDED CONSTRUCTION HOURS FROM 7 AM TO 10 PM, MONDAY TO FRIDAY, AND 7 AM TO 7 PM ON SATURDAYS OVER A PERIOD OF APPROXIMATELY 34 MONTHS ON AN APPROXIMATELY 1.25-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF SOUTH 2ND STREET, APPROXIMATELY 200 FEET SOUTHERLY OF EAST SANTA CLARA STREET (35 SOUTH 2ND STREET) (APN 467-22-121)**

**FILE NO. H20-037**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 18, 2020, an application (File No. H20-037) was filed by Isabella Glotman, on behalf of Westbank Projects (San Jose US) Corp. (doing business as Project Fountain Alley LLC), for a Site Development Permit to allow the removal of two ordinance-size trees and 10 non-ordinance-size trees, and the construction of a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,794 gross square feet of commercial/retail space, 194 residential units, 368,093 square feet of office space, one level of below-grade loading area and three levels of below grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months (the “project”) on an approximately 1.25-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located

on the west side of South 2nd Street, approximately 200 feet southerly of East Santa Clara Street (APN 467-22-121) (the “subject property”); and

**WHEREAS**, a legal description of the subject property is attached as Exhibit "A" and incorporated by reference; and

**WHEREAS**, at a duly noticed public hearing on November 16, 2022, the Planning Commission considered public comments and all evidence and testimony received at the public hearing regarding the project and recommended that the City Council approve the project; and

**WHEREAS**, this City Council received and considered the reports and recommendations of the City’s Planning Commission and City’s Director of Planning, Building, and Code Enforcement and conducted a duly noticed public hearing on the project, giving all persons full opportunity to be heard and to present evidence and testimony; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, “Fountain Alley, 35 South 2<sup>nd</sup> Street, San Jose, Site Development Permit File No. H20-037” dated revised on September 30, 2022, which is on file in the Department of Planning, Building, and Code Enforcement and available for inspection; said plan is incorporated by reference; and

**WHEREAS**, this City Council has heard and considered the testimony presented 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:

The foregoing recitals are hereby incorporated as findings as though set forth in the body of this Resolution. After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

**1. Site Description and Surrounding Uses.** The Fountain Alley Project site is located on the west side of South 2nd Street, approximately 200 feet southerly of East Santa Clara Street, and is currently developed as a surface parking lot. Fountain Alley is a public right-of-way with brick paving only allowing pedestrian and bicycle circulation between South 1st Street and South 2nd Street. The project site is situated in the San José Downtown Commercial National Register Historic District and is within 100 feet of nine designated City Landmarks.

The site is located in a commercial area, surrounded by retail, personal service, and restaurant uses to the north across Fountain Alley, restaurants, bars and night clubs to the west and south of the site, restaurants, bars, offices, and a theatre to the east across South 2nd Street. The Bank of Italy, a City Landmark, is located approximately 75 feet westerly from the west corner of the site.

**2. Project Description.** On November 18, 2020, Project Fountain Alley LLC filed a Site Development Permit to construct a 21-story mixed-use tower with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, one level of below-grade loading area and three levels of below grade parking on the subject site.

The building would have a maximum height of 289 feet in a curvilinear form. The ground floor consists of commercial retail spaces, office and residential lobbies and back of house spaces. The 194 residential units would be located on floors 2 to 11. The remaining floors (floors 12 to 21) would consist of office space. The 2nd floor would also include approximately 17,716 square feet of gym space for both the occupants in this building and for the general public. The project features a minimum 55.4-foot-wide outdoor plaza (“urban room”) framed by the two opposite building towers, which join into a single tower over the plaza at the 11th story. The urban room provides pedestrian connectivity from South Second Street to the Fountain Alley. The building incorporates a louvered façade around all floors, terraces (“green rooms”) at the office floors and extensive roof terrace at the top of the building. Vehicular access to the site would be via one driveway along South 2nd Street.

The project includes extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months. The project would also remove two ordinance-size trees and 10 non-ordinance-size trees on site.

**3. General Plan Conformance.** The subject site has an Envision San Jose 2040 General Plan designation of Downtown. This designation supports uses such as office, retail, service, residential, and entertainment uses. All development within this

designation is intended to enhance the “complete community” in Downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown land use designation allows a density of up to 800 dwelling units per acre (DU/AC) and a floor-area ratio (FAR) of up to 30.0.

*Analysis: The 21-story mixed use building with ground floor commercial fosters a complete community in Downtown by increasing jobs and providing active ground floor commercial use along street frontages. The project also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a density of 155.2 DU/AC and a FAR of 12.3, making it consistent with the General Plan land use designation of Downtown.*

The project site has a Downtown Employment Priority Area (EPA) Overlay because it is adjacent to the future BART station at East Santa Clara Street. The overlay applies to Downtown sites planned for intensive job growth located within approximately one block of the planned Downtown BART station on East Santa Clara Street.

The EPA Overlay requires a minimum Floor Area Ratio (FAR) of 4.0 for commercial (job generating) uses, including office, retail, service, hotel or entertainment uses, prior to allowing residential uses, as supported by the “Downtown” General Plan Land Use/Transportation Diagram designation.

The EPA Overlay supports development at very high intensities, where such high intensity is not incompatible with other policies within the General Plan, such as Historic Preservation policies.

*Analysis: The project includes approximately 30,790 gross square feet of commercial/retail space, and approximately 368,093 square feet of office space, which would result in a FAR of 7.34 for commercial uses, consistent with the EPA Overlay density requirements.*

The proposed project is also consistent with the following General Plan policies:

- a. Major Strategy #3 – Focus Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown), while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.
- b. Major Strategy #9 – Destination Downtown: Support continued growth in the Downtown as the City’s cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan’s economic, fiscal, environmental, and urban design/ placemaking goals.

*Analysis: As discussed above, the development of the site is consistent with the General Plan Downtown Designation and EPA Overlay, as the project would provide a high intensity mix of office, housing, and retail space to support employment and housing in the Downtown core.*

- c. Land Use Policy LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

*Analysis: The project's ground floor would include commercial retail spaces and residential lobbies along the South 2nd Street frontage and commercial retail spaces along Fountain Alley. The Urban Room, which is lined by commercial retail spaces and the office lobby, provides pedestrian connectivity from South 2nd Street through the site to Fountain Alley. This Urban Room would accommodate outdoor seating, planters, decorative paving, and water features to encourage and attract pedestrian activities. The setback area to the southern property line is also lined by commercial retail spaces with outdoor seating along the front to encourage pedestrian activities.*

- d. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

*Analysis: The ground floor would provide commercial retail spaces, residential and office lobbies along the street frontages and the Urban Room. The ground floor facades along these active frontages are designed with high transparency to enhance safety and visibility between the public realm and private development.*

- e. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

*Analysis: The project site is served by three frequent bus routes (Routes 23, 66, and 68) and two rapid bus routes (Routes 523 and 568). Two light rail transit (LRT) lines (Blue and Green Lines) are also provided along South 2nd Street with the Santa Clara and 2nd Street Light Rail Station locating at the project's South 2nd Street frontage. Future BART's Santa Clara Street Station is planned in close proximity to the project site.*

*The project includes a Transportation Demand Management (TDM) Plan that promotes transit ridership by incorporating at least three TDM measures. The proximity of the intensive mixed-use development to a variety of public transportation options encourages transit use and provides options for residents and employees to have a car-free commute. Furthermore, it is envisioned that residents and employees in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to*

*or on the project site.*

- f. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
- g. Downtown Urban Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown Skyline.
- h. Downtown Urban Design Policy CD-6.7: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown Skyline.

*Analysis: The project has a density of 155.3 DU/AC and a FAR of 12.3 with a maximum height of approximately 289 feet, making this a dense mixed-use project. The significant density and size of the project, including its distinctive design would contribute to strengthening Downtown's urban character. The tower has a unique curvilinear form that would contribute toward an interesting and dramatic skyline within the downtown.*

The project is not fully consistent with the following Historic Preservation policies and historic preservation related Urban Design policies:

- i. Land Use Policy LU-13.1: Preserve the integrity and fabric of candidate or designated Historic Districts.
- j. Land Use Policy LU-13.7: Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
- k. Community Design Policy CD-1.26: Apply the Historic Preservation Goals and policies of the General Plan to proposals that modify historic resources or include development near historic resources.
- l. Downtown Urban Design Policy CD-6.7: Recognize Downtown's unique character as the oldest part, the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.

*Analysis: The project site is situated in the middle of the San José Downtown Commercial National Register Historic District and within 100 feet of nine designated City Landmarks. This historic district contains architecturally and*

*historically significant buildings dating from the 1870s to the early 1940s. The buildings in this district are typically in rectilinear forms and are one- to four-story high except for the Bank of Italy (268 feet high at the highest point), which is approximately 75 feet westerly to the west corner of the site, and the approved 6-story commercial building at 30 South 1st Street (File No. H19-041).*

*The 289-foot-high building does not fully comply with the 2003 Historic District Design Guidelines in terms of building height, corner element, massing, rear facades, and facades as discussed in the Downtown Historic District Design Guidelines section. Due to the curvilinear form, the project design also does not meet the 2019 Downtown Design Guidelines and Standards-Historic Adjacency Standard 4.2.1.b, which requires to design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings, and two other design standards as discussed in the Downtown Design Guidelines and Standards section. Hence the SEIR concludes that the project would impact the overall integrity of this historic district. The project is therefore not fully consistent with the above policies.*

*As analyzed in the SEIR, there are no other alternatives that can reduce or avoid the impact to the historic district while meeting the project objectives.*

*Although the SEIR concludes that the project would result in significant and unavoidable impact to the overall integrity of the historic district, the project responds to the character of the historic district by providing strong connections with streets/alleys and respecting to the landmark Bank of Italy with the curvilinear-shape design and the project's "urban room" to avoid blocking views to Bank of Italy, as discussed in the Downtown Design Guidelines and Standards section.*

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

##### Land Use

The site is zoned DC Downtown Primary Commercial. Commercial and residential mixed uses are permitted under this zoning district. Section 20.100.610 of the Municipal Code requires a Site Development Permit for the construction of a building or structure on any site.

##### Height and Setbacks:

Section 20.70.210 does not establish a minimum setback for developments in the DC Downtown Primary Commercial Zoning District. The Zoning District only limits heights to that necessary to maintain the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. The building would be 289 feet in height. This permit includes conditions to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the development's height.

##### Parking

Per Table 20-140 of Zoning Code Section 20.70.020, multiple dwelling residential requires one vehicle space per unit and one bicycle space per four living units. Office requires one vehicle space per 400 net square feet of floor area, and one bicycle space per 4,000 net square feet office area. No parking is required for Commercial retail uses. Three bicycle parking spaces including two short-term spaces and one long-term spaces are required per Zoning Code Section 20.70.485.

Based on the project's 194 dwelling units and 368,093 gross square feet of office area (312,879 net square feet), the project requires 977 vehicle parking spaces and 131 bicycle parking spaces (49 for residential, 79 for office, and three for commercial). The project meets the bicycle parking requirement by providing a total of 478 bicycle parking spaces.

Per Zoning Code Section 20.90.220.A.1.a, a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The Santa Clara/2nd Street Light Rail Station is immediately adjacent to the project's South 2nd Street frontage. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section 20.90.220.A.1. Additionally, per Section 20.70.330.A, for projects within the Downtown Zoning District, a further 15% parking reduction and an additional 50% reduction may be granted for mixed use projects if 1) it is determined a TDM plan program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the program; and 2) the TDM would be maintained for the life of the project and it is reasonably certain the parking provided would be maintained to meet the required parking during the life of the building or use.

If applying the maximum parking reduction, the project would require 208 parking spaces. The project provides 294 vehicle parking spaces. A 70% parking reduction is requested. The project would be implementing a TDM plan. The TDM plan dated November 2022 prepared by Fehr & Peers conforms with Section 20.90.220 and Section 20.70.330. This TDM plan provides evidence that the TDM program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the TDM plan. The TDM measures include providing transit subsidies and/or transit passes to all residents and employees who desire to commute by transit, establishing a telecommute or flexible work schedule to encourage alternative transportation, designating an on-site TDM manager and providing TDM information and program management, and providing a guaranteed ride home program. In addition, the permit contains a condition (Condition No. 6) that requires the TDM plan to be implemented for the life and use of the building. Project Condition No. 7 also requires Planning review if any future parking reduction occurs. Therefore, with these project conditions, the project meets the parking requirement.

#### Off-Street Loading



Per Zoning Code Section 20.70.435, a total of 6 loading spaces (one for residential, two for retail, and three for office) are required. The project would provide seven loading spaces. The project meets the off-street loading requirement.

#### Extended Construction Hours:

Per Zoning Code Section 20.100.450, hours of construction within 500 feet of a residential unit are limited to Monday through Friday between 7:00 a.m. and 7:00 p.m., unless otherwise allowed in a development permit. The project site is within 500 feet of residential use. This development permit would allow extended construction hours from 7 a.m. to 10 p.m., Monday to Friday, and 7 a.m. to 7 p.m. on Saturdays through the entire construction period of approximately 34 months. The construction-related standard conditions included in the Resolution and mitigation measures included in the MMRP would apply to the project to limit noise and dust to reduce the construction impact to the nearby residential use, and the extended construction hours would have the beneficial effect of shortening the overall construction period, thereby reducing the duration of construction impacts. The mitigation measures include submitting a construction operations plan providing specifications of the equipment to be used during construction, having a qualified air quality specialist verify that the equipment included in the plan meets the standards specified in the MMRP, developing an odor control plan that addresses operating and maintenance procedures to minimize construction equipment emissions. The contact information of the construction disturbance coordinator is required to be posted at the construction site (Condition No. 13). Details are included in the MMRP and the Resolution.

#### Development Adjacent to Historic Landmarks.

Section 20.70.110 of the San José Municipal Code requires new structures, exceeding 150 feet in height, with a Floor Area Ratio of 6:1 or greater, and within 100 feet of a City Landmark to be reviewed by the Historic Landmarks Commission (HLC) prior to consideration of approval of a development permit for new construction.

The project has a FAR of 12.3 with a height of 289 feet and the site is located within 100 feet of nine City Landmarks. Therefore, Section 20.70.110 applies to the project. The project was discussed at the Design Review Committee (DRC) of the HLC on December 16, 2020 and at HLC on February 3<sup>rd</sup>, 2021.

Both the DRC and HLC commented that the street level and the storefront design were successful, the articulation of the retail spaces was well considered, and the exterior materials of the building related to the historic district. However, they were mainly concerned about the massing and scale of the building, the distinctive building form and its impact to the historic district. Specifically, they commented that the project was different from the historic context due to the curvilinear form, the louvres on the building, and the vegetated façades. They suggested stepping back some of the upper levels to provide relief from the massing at the top of the building and the building

massing and scale should relate more to the historic context.

## 6. Downtown Design Guidelines and Standards.

Section 20.70.500 of the San José Municipal Code requires any project in the DC Downtown Primary Commercial Zoning District be subject to the design guidelines adopted by the City Council.

- 1) **Chapter 3.2.2, Building Placement - Standards.** Place a ground level building facade along 70% of each parcel's Public Space-facing property lines (within 10 feet) or setback lines (within 3 feet).

*Because the ground floor plan curves away from the South 2nd Street and Fountain Alley property lines, the project does not meet Standard 3.2.2, which requires a ground-level building façade along 70% of each parcel's public space-facing property lines within 10 feet. Therefore, an exception to this standard is required.*

- 2) **Chapter 4.2.2, Massing Relationship to Context.** This chapter's sections and standards require transitions between high-rises and lower scale development, and consideration of how development would respond to historic context buildings.

- a) Standard 4.2.2.a, Height Transition: If a new building 100 feet tall or more is across the street from or adjacent to a historic building 45 feet tall or less, the new building must step back its street-facing façade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet.

*Analysis: The project site is surrounded by historic buildings which are less than 45 feet in height. Consistent with the adjacent buildings, the ground floors are placed at the property line along South 2nd Street. The upper floor walls are setback approximately 4.5 feet from the South 2nd Street property line to accommodate balconies. Although the project meets the intent by stepping the upper floor walls from the ground floor plane, the project design does not technically meet this Standard which requires a 5-foot setback. Therefore, an exception is required.*

- b) Standard 4.2.2.b, Width Transition: The historic building to the south of the project site (83 South 2nd Street) is built to the property line. *Therefore, this Standard does not apply to this project.*

- c) Standard 4.2.2.c, Rear Transition: If a new building 100 feet tall or more is across a parcel line interior to a block from a historic building 45 feet tall or less, the rear portion of new building must maintain a transitional height of 70 feet or less within the first 20 feet from the property line.

*Analysis: The building has a rear setback of 20.5 feet; therefore, the project meets this standard.*

- 3) **Chapter 4.2.4 History Adjacency.** This Standard requires incorporation of essential urban and architectural characteristics of historic context.

*This historic district features two-to-three story historic buildings (except Bank of Italy which is 268 feet high at the highest point) with large openings (storefront) on the ground floor and repetitive rectangular or arched punched windows on the upper floors. And the essential urban characteristic of the historic district is the connection with streets, paseos, alleyways, passages, courtyards and plazas.*

**Massing:**

- a) Relate Podium Level building massing to the scale of Historic Context buildings by breaking a large building into masses of similar scale to Historic Context buildings.

*Analysis: The project has an 18.7-foot-high podium that relates to the scale of the historic context buildings on the South 2nd Street and Fountain Alley. The “urban room” breaks up the massing into two approximately 140- and 200-foot-wide segments (respectively 70- and 100-foot-wide at the property line), which are similar to masses of the wider historic context buildings such as Bank of Italy at the west corner of the historic district and Security Building (84 S 1<sup>st</sup> Street) at the south corner of the historic district. Therefore, the project complies with this standard.*

- b) Design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings.

*Analysis: The project has a curvilinear building form while the typical building form in this district is rectilinear. The project does not meet this Standard. An exception is requested.*

- c) Use cornice articulation at the Podium Level at a height comparable to the heights of Historic Context buildings.

*Analysis: The project does not have a typical cornice articulation but provides a podium level with height of approximately 18.7 feet, which is comparable to the cornice heights of the Historic Context buildings along South 2nd Street. The upper floor horizontal louvers are also aligned with the adjacent building heights. Therefore, the project complies with this standard.*

- d) Maintain Streetwall continuity with Historic Context buildings that are on the same side of the same street by placing the street-side facade of a new building within 5 feet of the average Historic Context building Streetwall distance from the front property line.

*Analysis: The historic context building on the same side of the project is located to the south of the project site and was built to the property line. The project is setback approximately 18 feet from the southern property line at the pedestrian level. This is to accommodate an emergency access easement to allow Fire truck to access the site and backout. The project building is placed at the*

*property line and provides two streetwalls due to the “urban room”. The project generally complies with this Standard.*

**Façade:**

- e) Use articulation that creates facade divisions with widths similar to Historic Context buildings on the same side of the same block (if the new building is wider).
- f) Do not simulate historic architecture to achieve these guidelines and standards. Do not design new facades to create a false historic appearance or copy historic architectural features unless such features are integral to the design of the new construction.
- g) Place windows on facades visible from the windows of the adjacent Historic Context structure even if this requires that the facade be set back from the property line.

*Analysis: The widths of the Historic Context buildings facing South 2nd Street range from approximately 60 feet to 120 feet. At the first 10 levels, the South 2nd Street (east) façade of the building is divided into two sections by the “urban room.” The northern section is approximately 70 feet at the South 2nd Street property line and the southern section is approximately 100 feet at the South 2nd Street property line. These 70-foot and 100-foot divisions at the new building’s east façade would be comparable to the overall widths of the Historic Context buildings. In addition, the project incorporates vertical elements to further break the facade such as vertical plasters with smaller segments at the pedestrian level, vertical spandrels at Levels 2 to 11, stacked planters to emphasize the vertical from Levels 2 to 6. Therefore, project complies with e).*

*The building is contemporary in design and does not simulate historic architecture. The building includes storefronts and windows on all exterior walls which are visible from the windows of adjacent Historic Context buildings. The project complies with both Standards f) and g).*

**Elements:**

- h) Use some building materials that respond to Historic Context building materials, such as masonry, terra cotta, limestone, stucco, glass, mosaic, cast stone, concrete, metal, glass, and wood (trim, finishes and ornament only).
- i) The new materials should be compatible with historic materials in scale, proportion, design, finish, texture, and durability.

*Analysis: The Historic Context buildings exhibit a diverse collection of building materials including stucco, masonry, metals and ironwork, glass, and wood. The building primarily uses curtain wall glazing system with terracotta louvers, aluminum fascia panels, and brick. These new materials appear to be*

*compatible with the historic materials in scale, proportion, design, finish, texture, and durability. The project is consistent with Standards h) and i).*

### **Ground Floor:**

- j) Space pedestrian entries at similar distances to Historic Context building entries.
- k) Create a ground floor with a similar floor to ceiling height as nearby Historic Context buildings, provided the ground floor finish ceiling is no lower than the minimum height identified in this document.

*Analysis: The Historic Context buildings along South 2nd Street, South 1st Street, and Fountain Alley often have multiple pedestrian entries located with some of the closest within 20 feet to 30 feet of each other. The building has multiple pedestrian entries spaced at similar distances as the Historic Context building entries on each façade. The nearby Historic Context buildings have tall ground floors to accommodate commercial spaces. At 18 feet, 8 inches, the podium level of the new building is similar in height to the Historic Context buildings. Therefore, the project complies with Standards j) and k).*

Based on the above analysis, the project is consistent with the following Downtown Design Guidelines standards relating to historic context except Standards 3.2.2, 4.2.2.a and 4.2.4.b. Therefore, exceptions to these requirements are requested.

### **Exceptions**

The Downtown Design Guidelines include an exception process for design standards which cannot be met. The process identifies specific findings in Section 1.4 of the San José Downtown Design Guidelines (as amended on October 4, 2022) that are required to be made by decision makers in order to grant the requested design standard exceptions. These findings include:

- a) There is a physical constraint or unique situation that:
  - i. Is not created by the project applicant or property owner; and
  - ii. Is not caused by financial or economic constraints considerations.
- b) Approving the exception will not create a safety hazard or impair the integrity and character of the neighborhood in which the subject property is located.
- c) The proposed project meets the intent of the design standard to the extent physically feasible.

If any of above findings cannot be made, the decision-maker may still grant the exception if all the following findings are made:

- d) The project advances the Major Strategies of Chapter 1 of the General Plan;

- e) The project is consistent with the Values and Guiding Principles of Chapter 1.3 of the Design Guidelines;
- f) The project achieves the stated Rationale of the section of the Design Guidelines as set forth for each applicable Standard; and
- g) There are counterbalancing considerations that justify the inconsistency.

*The exceptions from the following Design Standards have been requested:*

- 1) Chapter 3.2.2. Building Placement: Place a ground level building facade along 70% of each parcel's Public-Space-facing property lines (within 10 feet) or setback lines (within 3 feet).

*This Standard applies to the ground level facades along both South 2nd Street and Fountain Alley. The DC zoning district does not require setbacks. Due to the curved footprint, approximately 50% of the ground level façade facing Fountain Alley is within 10 feet from the property line. The project does not meet this standard along Fountain Alley.*

*The project also does not meet this Standard along South 2nd Street. Approximately 52% of the ground level façade facing South 2nd Street is within 10 feet from the property line due to the curved footprint, "urban room," the requirement to access the underground parking garage from South 2nd Street, and the required emergency access easement along the southern property line.*

- 2) Standard 4.2.2.a, Height Transition: If a new building 100 feet tall or more is across the street from or adjacent to a historic building 45 feet tall or less, the new building must step back its street-facing façade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet.

*As discussed above, the project's upper floor facades step back 4.5 feet from the ground floor plane. Therefore, the project design does not meet this Standard which requires a 5-foot setback.*

- 3) Chapter 4.2.4 History Adjacency, Standard b: Design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings.

*The typical forms of the buildings within this historic district are rectilinear. The building is in curvilinear forms. The project does not meet this Standard.*

*Analysis: This curvilinear-form design, the "Urban Room," and the upper floor setback distance are design choices made by the project applicant/architect and not due to a physical constraint or a unique situation. Therefore, finding a) listed above cannot be made. Because finding a) cannot be made, findings d) to g) must be made in order to grant the exception request.*

*As analyzed in the General Plan conformance section, the project is consistent with*

*the Major Strategies #3 and #9 of Chapter 1 of the General Plan in that the project is a high intensity mixed residential and commercial development in Downtown. Therefore, finding d) can be made.*

*The value and guiding principles of the Downtown Design Guidelines and Standards are to enhance the local, City and regional economy, promote human and environmental health, and accentuate area's unique character and culture.*

*The project is a mixed-use tower with 194 dwelling units, approximately 368,093 square feet of office space and 30,790 square feet of commercial retail space. The project includes an Urban Room to allow pedestrian connectivity, including outdoor seating areas and landscape features; and commercial retail space on the ground floor with brick paving on the entire site to encourage and attract pedestrian activities to the site. Therefore, the project would enhance the local and City economy.*

*The building design includes exterior materials that relate to the historic district. The project would promote multimodal connectivity by encouraging residents and employees to use bicycles and public transit through the TDM program (Condition No. 6) and enhancing pedestrian circulation, as described above. Therefore, the project would promote human and environmental health.*

*Downtown San Jose has a collection of many modern and historic architectural designs and areas. The project, although located in a historic district, provides a unique jurisdiction in terms of shape, the vegetated facades, the Urban Room, and curvilinear curtain wall to help create a memorable destination in Downtown, strengthen Downtown as an urban core of the City, further the General Plan goals of elevating the diversity of design, and accentuate the area's unique character and culture.*

*Based on the above analysis, the project is consistent with the value and guiding principles of the design guidelines. Therefore, finding e) can be made.*

*The Rationale for Chapter 3.2.2 is to line the edges of blocks with buildings to frame the surrounding public space. Given its unique shape, the building would enhance the public space providing it with an opportunity for the public to use for wayfinding and gathering. With active uses lining along the public space along both South 2nd Street and Fountain Alley, the project achieves this Rationale of Chapter 3.2.2 of the Design Guidelines.*

*The Rationale for Chapter 4.2.2 is to create massing transition between high-rises and low-rise developments. As discussed above, to reduce the massing impact to the low-rise developments in this historic district, the project incorporates an inverse program to place office space on top of residential area to bring more detail and smaller-scale elements to the podium and pedestrian levels. In addition, the upper floor walls stepback from the ground facades 4.5 feet, which is only six inches less than the 5-foot stepback standard. The project also meets the Rear Transition Standard 4.2.2.c as discussed above. The project achieves this Rationale for Chapter 4.2.2 of the*

### *Design Guidelines.*

*The Rationale of Chapter 4.2.4 is to incorporate essential urban and architectural characteristics of historic context. The district features two-to-three story historic buildings (except Bank of Italy and the approved 6-story building at 30 S 1<sup>st</sup> Street to the west of the project site) with large openings (storefront) on the ground floor and repetitive rectangular or arched punched windows on the upper floors. And the essential urban characteristic of the historic district is the connection with streets, paseos, alleyways, passages, courtyards and plazas. The project continues the storefront along South 2nd Street and Fountain Alley on the ground floor, creates a plaza (Urban Room) to enhance the pedestrian connectivity, and uses materials to relate to the historic district. The project generally achieves this stated Rationale of Chapter 4.2.4 of the Design Guidelines.*

*Therefore, finding f) can be made.*

*Given the project's bold scale and design, the project is able to capitalize on location and provide a juxtaposition to the surrounding areas, presenting an innovative architectural design that would diversify the skyline in Downtown San Jose. The project also provides job and housing opportunities to strengthen Downtown as an urban center and enhance the economy, finding g) can be made.*

*Therefore, the exceptions to Standards 3.2.2, 4.2.2.a, and 4.2.4.b are granted.*

## **7. Downtown San Jose Historic District Design Guidelines**

The project site is within the San José Downtown Commercial National Register Historic District; therefore, the project was also reviewed under the [San José Historic District Design Guidelines \(2003\)](#), which sets forth design goals, principles and guidelines that are instructive and suggestive rather than prescriptive and preemptive. These Guidelines are intended to offer guidance and direction to the development review process. The Guidelines speak to building height, setbacks, design of a corner element, massing, façades, exterior materials, openings and entries, storefront ground floor design, pedestrian passageways, vehicular access, and parking for infill construction.

The project does not fully comply with the design guidelines. Specifically, the project does not comply with the following guidelines:

- Building Height: Maximum of four stories above grade, not to exceed 60 feet. Grand stories (floor-to-ceiling heights of 18 to 20 feet) permitted on first and second stories, when called for by use or program requirements. The building height of infill construction that fronts onto Fountain Alley shall not exceed the roofline height of any existing adjacent structure

*The building has frontage along Fountain Alley and is 289 feet in height.*

- Corner Element: At the corners of major intersections, and at the southwest corner



of Second Street and Fountain Alley, the use of a corner element can add distinction to a building's architecture and enhance character-defining settings.

*The project does not provide such corner element at the south corner of South 2nd Street and Fountain Alley.*

- **Massing:** Massing to be responsive in form and composition to prevailing character of the existing urban setting. At the same time, infill construction with extensive frontage on streets or alleys needs to be segmented into several smaller facades or buildings.

*The surrounding buildings in this district are typically rectangular in shape. The building mass is curvilinear in shape at the north and south ends. The building massing does not break to smaller segments that are compatible with the surrounding structures on the upper levels.*

- **Rear Facades:** To be articulated and punched in a manner compatible with existing adjacent rear facades

*Many of the existing adjacent rear façades have secondary entrances on the ground floor and rhythmically placed rectangular or arched punched openings on the upper floors. Absent of ornament, the walls are exposed brick or stucco clad. Some have attached metal stairways. The rear (west) façade of the building has glazed storefronts on the street level with multiple entries, and a wall glazing system on the upper floors. The building features a louvered façade wrapping around all sides forming a band of balconies at the residential floors and “green rooms” at the office floors. The new building’s rear façade is not compatible with the existing adjacent rear façades; therefore, the project does not comply with this guideline.*

The project partially complies with the façades guidelines which recommend spacing, sizing and rhythm of openings and fenestration to be compatible with neighboring structure, no blank facades front onto streets, alleyways, courtyards, light courts or facades of neighboring structures with openings, and all facades to include a base or bulkhead element. The project design incorporates transparent ground floor façade with vertical pilasters and smaller segments, which is compatible with the storefront appearance of South 2nd Street and Fountain Alley. Therefore, the ground floor façade complies with this guideline. However, the upper floor facades are not compatible with the neighboring structures which have repetitive rectangular or arched punched windows on the upper floors.

The project complies with the rest of the guidelines. With the strong pedestrian-oriented design, the project is also consistent with the ground floors design guidelines. The project incorporates recessed entries, and the ground floor storefronts have brick bulkheads, which meet the openings and entries design guidelines. With the terracotta louvers, brick base and brick paving, the project also meets the exterior materials guidelines. The building is placed at the property lines along South 2nd Street and

Fountain Alley. Setbacks are at the southern and western property lines due to the requirement for emergency access along the southern property line and the existing pedestrian access easement and building separation requirements along the western property line. The project therefore generally meets the intent of the setback and stepback guideline which suggests no setback and no stepbacks. The project also meets the pedestrian passageway guideline by providing an Urban Room on the ground level to provide pedestrian connectivity. The project includes one driveway from South 2nd Street for vehicular access to the underground parking garage and no surface parking lot will be provided. The project therefore complies with the vehicular access and parking guidelines.

8. **Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) was circulated from May 24, 2021 until June 24th, 2021. The Draft SEIR itself was circulated for public review and comment from June 17, 2022 through August 2, 2022.

The City received four written comment letters during the public circulation period. The only agency to comment was the Santa Clara Valley Water District (Valley Water), who submitted two comment letters. Valley Water requested to review the Project's Water Supply Assessment and recommended that a detailed dewatering analysis be conducted for the project to avoid the need for permanent dewatering. Valley Water also recommended that the City require the applicant to implement all available water and energy conservation measures. Two organizations also commented during the public circulation period, which were Adams Broadwell Joseph & Cardozo and the Preservation Action Council of San Jose (PAC SJ). Adams Broadwell Joseph & Cardozo discussed their concerns over the City's findings regarding hazards and hazardous materials, air quality, and greenhouse gas emissions. PAC SJ voiced overall opposition to the project, primarily because of the project's impact on the integrity of the historic district. PAC SJ also requested that the City include a more design oriented EIR alternative to address impacts to the historic district and recommended that the City require financial mitigation be paid from the applicant to go towards funding preservation projects within the historic district.

None of the comments received address an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address edits to air quality mitigation measures and CAL Green requirements.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program (MMRP) constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR are available for review on the project page on the City's Active EIR

website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/fountain-alley-commercial-development-project>. A copy of the signed MMRP is available from the Department of Planning, Building and Code Enforcement.

### *Identified Significant and Unavoidable Impacts*

The Draft SEIR found that the project would result in a significant and unavoidable impacts to Cultural Resources from impacts to the integrity of the San Jose Downtown Commercial Historic District. Due to the height, massing, and design of the project, there are no suggested feasible mitigation measures to reduce the impacts. Therefore, a Statement of Overriding Considerations is required.

### *Project Alternatives*

The Draft SEIR analyzed four project alternatives for the purpose of identifying an environmentally superior proposal. The four alternatives analyzed were a Location Alternative, No Project Alternative, Reduced Height (Four Stories) Alternative, and a Reduced Height (17 Stories and 20 Stories) Alternative.

### *Environmental Impacts and Mitigation Measures*

The Draft SEIR identified potential environmental impacts to air quality, biological resources, cultural resources, hazardous materials, and noise. With implementation of the mitigation measures specified in the MMRP prepared for the project, these impacts are reduced to less than significant levels. The impact to the integrity of the historic district is the only impact unable to be mitigated to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve a related MMRP for the project.

### *EIR Recirculation Unnecessary*

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address

significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, the Draft SEIR does not need to be recirculated.

## 8. FINDINGS

### 1) Site Development Permit Findings

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

*Analysis: As discussed above, the project is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial and residential uses at high densities. The project is in conformance with the allowable FAR and density for a project with a designation of Downtown Employment Priority Area. The combined, mixed use FAR would be approximately 12.3 (a maximum of 30 is allowed). The residential density would be approximately 155.2 DU/AC within the allowed maximum of 800 DU/AC. The commercial use FAR would be 7.34, which exceeds the 4.0 FAR requirement for EPA Overlay area. Although the project is not fully consistent with certain historic general plan policies and guidelines as discussed above, the project is consistent with General Plan Major Strategies and major land use goal and policies as it relates to the goals of the overall Downtown area, densifications, jobs and incorporating a structure that will provide a dramatic urban skyline.*

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed above, the project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District does not require any minimum setbacks. The project is subject only to the height limit necessary for the safe operation of the San Jose International Airport; and conditions of approval are included requiring a No Hazard Determination to be obtained from the FAA prior to issuance of Building Permits. The project requires 131 bicycle parking spaces, and the project provides 478 bicycle parking spaces. With maximum parking reduction by implementing a TDM plan, the project would require 208 parking spaces. The project would provide 294 parking spaces by implementing the TDM measures included in the TDM plan dated November 2022 prepared by Fehr & Peers. The project applicant is required to implement the TDM plan for the life and use of the building.*

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

*Analysis: Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the project. Signs describing the project have been posted on the project site since July 2021. A joint community and environmental scoping meeting was held on June 14, 2021 to inform the surrounding community of the project. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Following the City Council Policy on the Preservation of Historic Landmarks, the project was discussed at the HLC Design Review Committee in December 2020, and discussed at the HLC under "Early Referral" on February 3, 2021, due to the site being in a historic district and in close proximity to nine City Landmarks as discussed previously.*

- d. The interrelationship between the orientation, location, and elevation of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: The project does not contain multiple buildings or structures, but rather contains one single mixed-use tower with commercial retail uses and residential and office lobbies on the ground floor, gym space on Level 2, residential use from Levels two to 11, office use from Levels 12 to 21, and amenity space for office on the roof top. The loading area is located in the underground parking garage. These uses are compatible and well-integrated with each other.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: The ground floor would be strongly pedestrian-oriented. The project design incorporates transparent ground floor façade with vertical pilasters and smaller segments, which is compatible with the storefront appearance of South 2nd Street and Fountain Alley. The terracotta louvers align with the cornice lines and building heights of the adjacent buildings. The brick cladding and paving are also compatible with the buildings/sites in this area.*

*Although the SEIR concludes that the project would have a significant and unavoidable impact to the historic district mainly due to its height and massing, the project is compatible with the overall downtown character as defined by a growing number of high intensity developments. In addition to the existing and newly constructed high-rise buildings, multiple high-rise developments with several different architectural elements, scales, materials and context are either under construction, being proposed or have been approved within the Downtown area. As more new modern buildings are constructed adjacent to older and historic structures, the overall urban character has evolved and shifted to reflect*

*the juxtaposition of these dense, taller, pedestrian focused and urban structure with historic resources. This project is further contributing to the overall unique skyline of Downtown San Jose.*

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

*Analysis: The project is located within an urbanized area. As discussed in the SEIR, the implementation of the project would result in significant impact to Air Quality during construction. However, this construction impact is temporary, and would cease after the completion of construction activities for the project. In addition, the project would be required to adhere to standard building and grading permit conditions as well as air and water quality conditions of approval and mitigation measures during the construction phase, which would minimize related impacts during this project phase. The operation of the project is primarily commercial and residential and therefore would not be a generating source for excessive noise or odor. The project has been evaluated for compliance with the City's stormwater treatment requirements. The project would therefore not result in unacceptable negative effect on adjacent properties.*

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood

*Analysis: The building would conceal the plumbing, utility, and trash facilities within the building as shown on the project plans. The loading area would be located on the 1st Level of the underground parking garage. All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.*

- h. Traffic access, pedestrian access and parking are adequate.

*Analysis: As described above, the project contains parking consistent with the Zoning Ordinance with TDM measures, and has adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can easily access the building from the lobbies or commercial retail spaces along street frontages, Urban Room, and the outdoor activity areas. The project was reviewed by the Department of Public Works, Department of Transportation and Fire Department and was found to be consistent with regulations and standards for vehicle, emergency vehicle, and pedestrian access.*

- 2) Tree Removal.** Chapter 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees.

- a) That the trees affected are of a size, type and condition, and is in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- b) That the location of the trees with respect to proposed improvements unreasonably restricts the economic development of the parcel in question;
- c) That the condition of the trees with respect to disease, danger of falling, proximity to an existing or proposed structures, and/or interference with utility services, is such that preservation of the public health or safety requires their removal.

*Analysis: Two ordinance-size non-native trees (one Chinese Elm and one Bush Cherry), 10 non-ordinance-size Chinese Elm trees would be removed due to the requirement to fully excavate the site to construct the building foundation and below-grade parking and loading. These trees are in the middle of the project site. Preserving those trees would restrict the economic development of the site. Among the 10 non-ordinance-size trees, two trees are less than 19 inches in circumference and 8 trees have sizes ranging from 21 to 35 inches in circumference.*

*Per the tree replacement table below, 26 15-gallon replacement trees are required for the removal of these 12 trees. A 24-inch box tree can be used in lieu of two 15-gallon trees. The project would plant at least 14 24-inch box trees on site (equal to 32 15-gallon trees), which exceeds the tree replacement requirements.*

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 up 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  
 A 38-inch circumference equals 12.1 inches in diameter  
 A 24-inch box tree can be used in lieu of two 15-gallon trees

In accordance with the findings set forth above, a Site 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.

## CONDITIONS

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site Development 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 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. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development plans entitled, "Fountain Alley, Site Development Permit File No. H20-037" dated September 30, 2022, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Implementation of a Transportation Demand Management (TDM) Plan.** The project is required to implement the TDM Measures included in the TDM Plan prepared by Fehr and Peers dated November 2022, as amended, for the life of the project. Changes to the TDM Plan are permitted with issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

Transit Use Incentive Program for all on-site employees and residents (such as VTA SmartPass transit passes and/or Clipper Direct Program); and at least two of the following (a, b, and c):

- a. TDM Information Program Management (such as On-Site TDM Manager and TDM information provided to residents and employees in the building)
  - b. Guaranteed Ride Home Program
  - c. Telecommuting and Flexible Work Arrangements
7. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. This Permit authorizes the project to utilize a parking reduction pursuant to Section 20.90.220 of up to 50% and then a parking reduction pursuant to Section 20.70.330 for an additional 15% and 50% with the implementation of the TDM Plan. Any changes to the required vehicular or bicycle parking require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning. Changes in conformance with the Zoning Ordinance, as amended would not be withheld.
  8. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.

9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
10. **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.
11. **Tree Replacement.** The removal of one ordinance-sized tree and one non-ordinance-sized trees on site requires 16 15-gallon replacement trees to be planted on site.
12. **Extended Construction Hours:** This Permit allows extended construction hours from 7:00 a.m. to 10:00 p.m. Monday to Friday and 7:00 a.m. to 7:00 p.m. on Saturdays for the entire duration of construction (approximately 34 months).
13. **Construction Disturbance Coordinator.** Rules and regulation 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.
14. **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.
15. **Housing Department Conditions.**
  - a. Inclusionary Housing Ordinance Requirements. This Permit is subject to its Affordable Housing Compliance Plan as set forth by the Department of Housing, which includes the following conditions:
    - 1) Prior to earliest of approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may be issued except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.

- 2) Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO or its guidelines, and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.
  - 3) No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.
- b. Commercial Linkage Fee (CLF). For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area. A permittee is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) a fully completed, executed Satisfaction Plan, (b) all attachments to the Satisfaction Plan, (c) the required application processing fee and (d) complete an addendum to the Satisfaction Plan if the Project is requesting a secured deferred payment option or Affordable Housing Credits.
- 1) Permittee must strictly comply with each requirement of the approved CLF Satisfaction Plan Application (Plan), Processing Fee, and Agreement, and any other applicable requirements of the CLF.
  - 2) No building permit may issue until an Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the CLF and the proposed Plan to fulfill the CLF obligations.
  - 3) No scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.
  - 4) For Office or R/D Projects adding more than 100,000 square feet and have selected the secured deferred payment option the following applies: Prior to issuance of any building permits, the permittee must execute an agreement regarding deferred payment specifying the security to be provided and pay 20% of the fee, Prior to the scheduling of final building inspection, those projects must pay another 20% of the fee and submit the letter of credit or payment bond securing the outstanding amount for approval.

## 16. **Airport Conditions.**

- a. **FAA Clearance.** Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each roof-top corner and any additional highest point(s) of the structure. The data on the forms should be prepared by a licensed civil engineer or surveyor at a "1-A" accuracy standard using NAD83

latitude/longitude coordinates out to hundredths of seconds, and NAVD88 elevations rounded off to next highest whole foot.

- b. **FAA Clearance Permit Adjustment.** Prior to issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.
  - c. **Subsequent Permit Adjustments/ Amendments.** Any Permit Adjustment/Amendment application filed by the permittee that proposes to increase the maximum structure elevations or change the location of the structure's highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval.
  - d. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical construction, the property owner shall grant an Avigation Easement to the City of San José. Contact the San José Airport Department (408-392-1193) to initiate the easement dedication process.
  - e. **Construction Cranes.** Prior to issuance of a Building Permit for vertical construction, and prior to the required filing with the FAA for airspace obstruction review of temporary construction cranes for vertical construction, the permittee shall coordinate with the San Jose Airport Department to formulate an agreement on crane elevation and operational parameters. Compliance with an Airport-approved construction crane agreement shall become a condition of Building Permit issuance for vertical construction. Contact the San José Airport Department (408-392-1193) to initiate the construction crane agreement coordination.
17. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
  18. **Window Glazing.** Unless otherwise indicated on the Approved Plans, all windows shall consist of a transparent glass.
  19. **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.
  20. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
  21. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the

mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

22. **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.
23. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
24. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.
25. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
26. **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.
27. **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.
28. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
29. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping. The Permittee may request an exception/variance per Section 15.10.380, as amended, if needed in the future.
30. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. **Construction Plans.** This permit file number, H20-037, 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](http://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. **Emergency Address Card.** The project permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - f. **Project Addressing Plan.** Prior to issuance of any 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 the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - g. **Other.** Such other state or city adopted requirements as may be specified by the Chief Building Official.
31. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
32. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee 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 would not require a detailed CEQA Transportation Analysis because the project is located in the expanded Downtown Core and is covered under the San Jose Downtown Strategy 2040 EIR.
    - 1) A Local Transportation Analysis (LTA) has been performed for this project based on a net new 358 AM and 432 PM peak hour trips. See separate Traffic Memo dated 10/24/22 for additional information. The following conditions shall be implemented:

- i) Provide one (1) 38-foot wide right-in/right-out only driveway along South 2nd Street project frontage.
  - ii) Coordinate with VTA and the City of San Jose on the relocation of the VTA OCS support pole and the actuated “no-right-turn” electronic sign along the project frontage.
- c) **Private Improvements within Public Property:** The encroachment for balconies, windows and/or architectural features shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for balconies, windows and/or architectural features that comply with the San Jose Building Code. Property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirement(s) and prior to Building Permit issuance. The Encroachment Agreement shall be recorded against title to the property.
- d) **Grading/Geology:**
  - 1) A grading permit is required prior to the issuance of a Public Works Clearance.
  - 2) 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.
  - 3) If the project hauls more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - 4) Because this project involves a land disturbance of one or more acres, the Permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - 5) 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.

e) **Shoring:**

- 1) Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- 2) If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e., soldier beams).
- 3) If tie-backs are proposed for use along the adjacent property (467-22-002 through 009, -031, and -110), agreements between the Permittee and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

f) **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.

- 1) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- 2) A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- 3) Final inspection and maintenance information for the HM controls must be included on the final HM plans.



- g) **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).
- h) **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.
- i) **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 Public Works clearance.
- j) **Parks:** This residential project is subject to 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) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- k) **Assessments:** This project is located within the Premium Zone of the Downtown San Jose Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2021-2022, commercial properties pay \$0.134182419 and residential properties pay \$0.108146660 per building and lot square footages. The district is reaching the end of its ten-year term and there is a proposal to expand and renew the district. If the district renewal achieves voter approval, the assessment amount may change with future year assessments adjusted based on the terms of the new management plan and will continue to be collected through the Country property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". Any questions may be directed to Development Services at (408) 535-6831.
- l) **Street Improvements:**
  - 1) Prior to or concurrent with implementation review, Developer shall begin coordination with the Santa Clara Valley Transportation Authority (VTA) and the California Public Utilities Commission (CPUC) for the following:
    - i) CPUC approval (with VTA concurrence) of GO-88B for modification of the project access (driveway) along South 2nd Street project frontage

- ii) CPUC approval of GO-95 compliance (pole relocation)
  - iii) VTA Construction Access Permit approval (to perform work within 10' of VTA right-of-way)
  - iv) VTA Restricted Access Permit approval (to perform work within VTA right-of-way)
- 2) This project is located along the Downtown San Jose Transit Mall and any public improvements necessary of this project along South 2nd Street and Fountain Alley (i.e., trenching, etc.), shall conform to the following:
- i) Improvements and trench work within the sidewalk will require preservation of the existing granite pavers and granite curb. If the existing granite pavers become damaged the Developer shall be responsible to replace these pavers and should contact the Department of Transportation (DOT) at (408) 277-3689.
  - ii) The street traveled way is comprised of concrete panels and any re-grading of the curb, gutter and any other intrusion or damage to existing panels due to construction will require the removal and replacement of the entire concrete panel(s). Improvements to the roadway will be required to conform to the "Special Provisions for Roadway Repair within the San Jose Transit Mall."
- 3) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- m) **Downtown Construction:** This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- n) **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any sidewalk and lane closures to support the onsite construction activities.
- 1) The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
- i) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a

description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).

- ii) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- 2) Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
    - i) Implementing the closures at the time the onsite activities dictate the need for the closure.
    - ii) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 1.ii) above.
  - 3) If the lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- o) **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
  - p) **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.
  - q) **Street Trees:**
    - 1) The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning,

Design, and Construction of City Streetscape Projects”. Street trees shall be installed in existing tree wells. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

- 2) Replace any missing street trees in empty tree wells or park strips along South 2nd Street and match existing trees per City standards; refer to the current “Guidelines for Planning, Design, and Construction of City Streetscape Projects”. Obtain a DOT street tree planting permit for any street tree plantings.
  - 3) Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that will be removed.
  - 4) For existing street trees to remain, remove tiled pan lid and replace with non-compacted decomposed granite or mulch.
- r) **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (VTA). Coordination with VTA needed for transit stop improvements/impacts, CPUC (GO-88) clearance for driveway modification, and major structural analysis for relocation of LRT tension pole as part of driveway widening.
33. **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. [REDACTED].
34. **Conformance to Downtown Strategy 2040 Mitigation Measures.** This project shall conform to all applicable mitigation measures in the Downtown Strategy 2040 Final Environmental Impact Report (File No. PP15-102).
35. **Standard Environmental Permit Conditions.**
- a. Air Quality. The Permittee shall implement the following measures 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. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. 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.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources.

- i. Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table below, as amended.

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 up 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 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 tree = two 15-gallon trees  
 Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

- ii. In-Lieu Mitigation. 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. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:
    - a) 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, at the development permit stage.
    - b) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works building permit(s), in accordance to 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.
  - iii. The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee 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>.
- c. Cultural Resources.
- i. 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 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 shall examine the find. The archaeologist 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 and the City's Historic Preservation

Officer and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.

- ii. 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 permittee shall immediately notify the Director of Planning, Building or Code Enforcement or the Director's designee and the qualified archaeologist in consultation with a Native American representative, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall 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:
  - a) 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.
  - b) The MLD identified fails to make a recommendation; or
  - c) 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.

d. Geologic Resources:

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iv. The project shall be constructed in accordance with 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.

- v. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement 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 permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

e. Hydrology:

- 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 would 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 permittee 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.
- x. Construction General Permit Requirements. Prior to initiating grading activities, the permittee will file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project's



SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The following construction BMPs may be included in the SWPPP:

- a) Restrict grading to the dry season or meet City requirements for grading during the rainy season.
  - b) Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
  - c) Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
  - d) Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
  - e) Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
  - f) Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.
- xi. The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction (refer to Section 3.10.3.3 above).
  - xii. When the construction phase is complete, a Notice of Termination (NOT) shall be filed with the RWQCB and the DTSC, in conformance with the Construction General Permit requirements. The NOT shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.
  - xiii. Dewatering. The project involves dewatering activities; therefore, the SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent shall be contained prior to

discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater shall be analyzed by a state-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the permittee shall work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.

### 36. **Noise.**

- i. A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the City's 55 dBA DNL goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study shall be incorporated into the project prior to issuance of a building permit.
- ii. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- iii. Residential units along the eastern building façade shall require windows and doors with a minimum rating of 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- iv. A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels from all exterior sources during the design phase pursuant to requirements set forth in the state building code. The study shall establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study shall review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA DNL or lower and to reduce commercial interiors to 50 Leq(1-hr) or below. Treatments could include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during the final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted

to the City, along with building plans and approved design, prior to issuance of a building permit.

37. **Revocation, Suspension, Modification.** This Site 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 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Site 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**.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

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

#### NOTICE TO PARTIES

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