

**EXHIBIT G – REVISED DRAFT SPECIAL USE PERMIT RESOLUTION**

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING A PERMIT APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW THE DEMOLITION OF TWO COMMERCIAL BUILDINGS AND THE REMOVAL OF NINE TREES (FOUR ORDINANCE-SIZE, FIVE NON-ORDINANCE-SIZE) FOR THE CONSTRUCTION OF AN APPROXIMATELY 107,079-SQUARE FOOT, SIX-STORY, 119-ROOM HOTEL WITH AN APPROXIMATELY 49 PERCENT PARKING REDUCTION AND AN ALTERNATIVE PARKING ARRANGEMENT ON AN APPROXIMATELY 0.69-GROSS ACRE SITE, LOCATED ON THE EAST SIDE OF SOUTH WINCHESTER BOULEVARD APPROXIMATELY 270 FEET SOUTH OF FIRESIDE DRIVE (1212-1224 SOUTH WINCHESTER BOULEVARD) (APN: 279-17-020 & 279-17-021)**

**FILE NO. SP20-016**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 9, 2019, a Special Use Permit application (File No. SP20-016) was filed by Henry Cord, on behalf of the property owner, Adam Askari, with the City of San José, for a Special Use Permit and Site Development Permit to allow the demolition of two existing commercial buildings and the removal of nine trees (four ordinance-size, five non-ordinance-size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel with an approximately 49 percent parking reduction and an alternative parking arrangement on an approximately 0.69-gross acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located on the east side of South Winchester Boulevard approximately 270 feet south of Fireside Drive (1212-1224 South Winchester Boulevard, San José, which real property is sometimes referred to herein as the “subject property”); and

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

herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Hearing Officer for the Director of Planning, Building and Code Enforcement conducted a hearing on said application on March 23, 2022, notice of which was duly given; and

**WHEREAS**, at said hearing, the Hearing Officer gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, the Director of Planning, Building and Code Enforcement approved the requested Special Use Permit and Site Development Permit, for which decision an appeal to the City Council was timely filed by a neighbor of the subject property; and

**WHEREAS**, on March 28, 2022, a timely appeal of the Director of Planning, Building and Code Enforcement's approval of the Environmental Determination was also filed by appellants Gaz Salihue, Shehana Marikar and other residents of the Hamman Park neighborhood, citing the reasons for the appeal being insufficient analysis within the Director's Determination of Consistency with the previously adopted Initial Study/Mitigated Negative Declaration, specifically the project's inconsistency with the General Plan designation of Neighborhood/Community Commercial, project's inconsistency with the Winchester Boulevard Urban Village Plan, fire safety, pedestrian/bicyclist safety, guest and valet drop off/pick-up zone operations, traffic on South Winchester Boulevard and Payne Avenue, rooftop solar, and the impact of the project's new impervious surface; and

**WHEREAS**, on April 1, 2022, a timely appeal of the Director of Planning, Building and Code Enforcement's approval of the Site Development Permit was filed by appellant

Shehana Makar, being a property owner within 1,000 feet of the subject project site, citing the reasons for the appeal being consistency with the General Plan and Winchester Boulevard Urban Village land use designation of Neighborhood/Community Commercial, consistency with applicable General Plan policies, side setback requirements, compatibility of building height with the surrounding neighborhood, fire safety, Building Division project review, pedestrian safety, passenger pick up/drop off operations, lack of parking, trash pick-up operations, security concerns, and traffic congestion; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a *de novo* administrative hearing on said concurrent applications, and the appeal of the Director of Planning, Building and Code Enforcement's decision, notice of which was duly given; and

**WHEREAS**, at said hearing, the City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendation of the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Winchester Hotel" dated received September 29, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

**WHEREAS**, this City Council has heard and considered the testimony presented to it at

the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

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

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

1. **Site Description and Surrounding Uses.** The subject 0.69-gross acre site is located on the east side of South Winchester Boulevard approximately 270 feet south of Fireside Drive. The subject site currently includes two existing commercial buildings previously used as single-family residences (the structure at 1212 South Winchester was built in 1948 and the structure at 1224 South Winchester was built in 1940). Access is currently provided from two driveways along South Winchester Boulevard. The site is surrounded by single family residences to the north and east, a senior care facility to the south, and an office building across South Winchester Boulevard to the west.
2. **Project Description.** The project includes the demolition of the two existing single-family residences and the removal of nine trees for the construction of an approximately 107,079-square foot, six-story, 119-room hotel. The existing buildings to be demolished are two commercial businesses, previously converted from single-family residences. Based on available building permits, the single-family residence at 1212 South Winchester Boulevard was legally converted from a residence to a business in November 2012.

The first floor of the building would contain the main lobby reception area, guest luggage storage, a coffee station and bar area, two offices, an employee break room, men's locker room, women's locker room, laundry facilities, fire control room, fire pump room, electrical room, and 12 guest rooms. The second floor would include common outdoor areas for hotel guests as well as the gym, jacuzzi, steam room, breakfast area, kitchen, and 18 guest rooms. Floors three through six would contain the remaining guest rooms and would range between approximately 270 to 700 square feet. The hotel would employ 10 staff in up to three shifts.

A total of 66 parking spaces would be provided in a subterranean garage, representing an approximately 49 percent reduction in the required number of vehicle parking spaces. The project includes an alternative parking arrangement with the installation of a vehicle lift system. The parking reduction would be supported with the implementation of a Transportation Demand Management (TDM) Plan. TDM measures to support the reduction in required vehicle parking include providing code required bicycle parking, on-site bicycles for guest use, guest shuttle services, on-site access to car-share vehicles for hotel employees and guests, on-site paid parking,

free annual VTA Smart Passes for employees, financial incentives for employees who bike or walk to work, and an on-site TDM coordinator and services.

Vehicular access to the subterranean garage would be provided from a right in/right out 27-foot-wide driveway on South Winchester Boulevard. The driveway would be located at the southern end of the building, adjacent to the loading and delivery area to the south. The project is also accessible to pedestrians from a 20-foot-wide sidewalk along South Winchester Boulevard. The project provides 66 vehicle parking spaces, 37 bicycle parking spaces, and eight motorcycle parking spaces in accordance with the Zoning Code.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood / Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. General office uses, hospitals and private community gathering facilities are also allowed in this designation. The subject site is also located within the boundaries of the Winchester Boulevard Urban Village Plan.

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

Fiscal Sustainability Policy FS-4.1: Preserve and enhance employment land acreage and building floor area capacity for various employment activities because they provide revenue, near-term jobs, contribute to our City's long-term achievement of economic development and job growth goals, and provide opportunities for the development of retail to serve individual neighborhoods, larger community areas, and the Bay Area.

Land Use Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

Land Use Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the city, including identified growth areas and areas where there is existing or future demand for such uses.

*Analysis: The site is in close proximity to Santana Row, a large employment and shopping destination located to the north of the subject site. The hotel use would provide a necessary service for existing and future demand from business travelers and visitors. The minimal front setback along South Winchester Boulevard and transparent ground floor design are incorporated into the project to facilitate*

*pedestrian and bicyclist access to the site. The TDM plan would further facilitate pedestrian and bicyclist access as it includes code required bicycle parking, on-site bicycles for guest use, free annual VTA Smart Passes for employees, financial incentives for employees who bike or walk to work, and an on-site TDM coordinator and services. Additionally, the project is conditioned to construct a 20-foot-wide sidewalk along the project frontage at South Winchester Boulevard.*

Land Use Policy LU-5.4: Encourage new and intensification of existing commercial development, including stand-alone, vertical mixed-use or integrated horizontal mixed-use projects, consistent with the Land Use/Transportation Diagram.

Attractive City Policy CD-1.1: Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.

Connections Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

Compatibility Policy CD-4.9: For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).

*Analysis: The project would facilitate the redevelopment of an underutilized site with a commercial land use designation. The hotel is designed to be compatible with the established neighborhood to the east as well as the commercial corridor along South Winchester Boulevard. The building massing is oriented towards South Winchester Boulevard. The building is set back 20 feet from the rear property line. Additionally, the building would incorporate a stepback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences. Blank walls would be mitigated with variations in color and materials as well as the addition of landscaping to the perimeter of the site. Materials would be varied, including natural wood paneling, architectural glazing, white sand stucco, and exposed gray concrete. The project would also include a 49 percent parking reduction and alternative parking arrangement (vehicle stackers). The parking reduction would be supported by a TDM plan to reduce vehicle trips and encourage multimodal transportation.*

#### **4. Winchester Boulevard Urban Village Conformance**

##### Land Use Designation

The Winchester Boulevard Urban Village was adopted by City Council on August 8, 2017 (Resolution No. 78306). The subject site has a land use designation of Neighborhood/Community Commercial on the land use plan of the Winchester Boulevard Urban Village. This designation is applied to smaller, shallow parcels fronting Winchester Boulevard and abutting single-family residences. Given the size

of the parcels, parking requirements in the zoning code and the urban design step down policies, these properties are appropriate for the location of smaller commercial businesses. Neighborhood/Community Commercial uses should have a strong connection to, and provide services and amenities for, the community. These uses should be designed to promote this connection with an appropriate urban form that supports walking, transit use and public interaction. Also, this designation supports the neighborhood servicing retail and small businesses along Winchester Boulevard.

#### Urban Village Goals and Policies

The project is consistent with the following goals and policies of the Winchester Boulevard Urban Village Plan.

Goal LU-1: Support new job generating and area-regional serving commercial development in the Winchester Urban Village by increasing the Village's commercial building square footage by at least 85 percent, or about 600,000 square feet.

Policy 3-4: Support a variety of commercial space to accommodate the needs of small, medium, and large companies.

Policy 3-15: New development along Winchester Boulevard should include ground floor commercial and/or active spaces such as lobbies fronting the street and wrapping the corner when located on a corner lot.

Policy 3-20: New development should support and enhance the pedestrian and bicycle environment and provide greater connectivity to the overall network.

*Analysis: The project would allow the development of a job-generating and area-regional-serving commercial project within the Winchester Boulevard Urban Village. The approximately 107,079-square foot hotel would increase the Village's commercial building square footage while serving those visiting the area for business or pleasure. The hotel would employ up to 10 staff in up to three shifts. The building is designed to improve pedestrian connectivity to the site. The primary entrance of the building is located along South Winchester Boulevard, with the lobby being immediately accessible from the newly constructed 20-foot-wide sidewalk.*

#### Winchester Boulevard Urban Village Design

Design Standard -1: Primary pedestrian entrances for both ground floor and upper story uses shall face Winchester Boulevard.

Design Standard- 2: Ground floor building frontages shall have clear, untinted glass or other glazing material on at least 60% of the surface area of the facade between a height of two and seven feet above grade

Design Standard-5: The minimum floor-to-ceiling height of the ground floor commercial space shall be a minimum of 15 feet and preferably 18 to 20 feet.



Design Standard-9: Buildings shall maintain facade quality of architectural articulation and finishes on all sides of a building that is visible to the public. Some of the architectural features of the main facade shall be incorporated into the rear and side elevations

Design Guideline-25: The massing of building should be broken up through height variation and facade articulation such as recesses or encroachments, shifting planes, creating voids within the building mass, varying building materials, and using windows to create transparencies. Street-facing facades should include vertical projections at least three feet in depth for a height of at least two stories for every 25 horizontal feet.

Design Standard-11: Non-occupiable architectural features such as roof forms, chimneys, stairwells and towers may project up to ten feet above the maximum height.

Design Standard-14: Where the existing sidewalk in front of a development project is less than the required sidewalk (20 feet along Winchester and Stevens Creek boulevards and 12-15 feet on all other streets; see Chapter 6), the project must make up the difference such that the entire required sidewalk width is publicly accessible and functions as a sidewalk.

*Analysis: As previously stated, the primary entrance would be located on the ground floor with direct access to the sidewalk along South Winchester Boulevard. The first-floor façade would be comprised of primarily clear untinted glass. As shown on Sheet A.30 of the plan set, the total transparency rate of the first-floor façade is approximately 63%. The floor to ceiling height of the ground floor would be 15 feet, consistent with Design Standard-5. The entire façade of the building would be well articulated with visual breaks and changes in depth on all sides of the building. Materials would be varied, including natural wood paneling, architectural glazing, white sand stucco, and exposed gray concrete. The rear of the building would be set back 20 feet from the residential area to the east. Additionally, the building would incorporate a stepback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences. Architectural projections such as the stairwell and elevator shaft would extend up to 9 feet above the top of roof, within the allowable 10-foot range. Finally, the project would be required to construct a 20-foot-wide sidewalk along South Winchester Boulevard to improve pedestrian access to the site.*

## 5. Zoning Ordinance Compliance.

### Land Use

Pursuant to Table 20-90, Section 20.120.110 of the Zoning Code, a hotel is a permitted use in the CP Commercial Pedestrian Zoning District. Therefore, a Site Development Permit is required to allow the demolition of the existing single-family houses and the construction of the hotel. Additionally, the project includes an alternative parking

arrangement (vehicle stackers). Pursuant to Section 20.90.200 of the Zoning Code, a Special Use Permit is required to permit the alternative parking arrangement.

#### Setbacks and Height

The project would conform with all required height and setback requirements of the CP Commercial Pedestrian Zoning District. Pursuant to Table 20-100, Section 20.40.200 of the Zoning Code, for projects located in the CP Commercial Pedestrian that also have an approved Urban Village Plan, the project must follow the development standards of said plan. Per the Winchester Boulevard Urban Village Plan, architectural projections such as stairwell and elevator shafts may extend up to 10 feet above the top of roof. As shown on the plan set, the architectural projections of the building would extend up to 9 feet, 6 inches above the top of the roof. As the project is located within the Winchester Boulevard Urban Village, the project conforms with the following development standards.

Standard	Required	Provided
Front setback, non-residential ground floor use	0-10 feet	0 feet
Side, interior setback	0 feet	5 feet (north), 6 feet (south)
Rear, adjacent to residential neighborhood land use designations	20 feet minimum	20 feet
Maximum height (top of roof)	65 feet	64 feet
Maximum height with architectural projections	75 feet	74 feet, 6 inches

#### Parking

Use: Hotel	Ratio	Required	Provided
Vehicle Parking	1 per guest room or suite, plus 1 per employee	129	66
Bicycle Parking	1 space plus 1 per 10 guest rooms	13	37
Motorcycle Parking	1 per 20 code required spaces	7	8

The project requires 129 vehicle parking spaces; the project provides only 66 spaces. Pursuant to Section 20.90.220 of the San José Municipal Code, a parking reduction of up to 50 percent of the code required parking spaces may be permitted for sites within a Growth Area with the implementation of a TDM Plan. The project would provide 66 vehicle parking spaces with the implementation of a TDM Plan to allow for an approximately 49 percent parking reduction. A TDM Plan, dated January 27, 2021,

was prepared by Hexagon Transportation Consultants, Inc, which reviewed the possibility of an approximately 49 percent parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the San José Municipal Code. The project would be required to provide on-site bicycles for guest use, guest shuttle services, on-site access to car-share vehicles for hotel employees and guests, on-site paid parking, free annual VTA Smart Passes for employees, financial incentives for employees who bike or walk to work, and an on-site TDM coordinator and services.

The project requires a total of 7 motorcycle parking spaces and 13 bicycle parking spaces. The project would provide 8 motorcycle parking spaces as well as 37 bicycle parking spaces.

In addition to the approximately 49 percent parking reduction, the project would utilize an alternative parking arrangement with the installation of vehicle stackers. An alternative parking arrangement requires the issuance of a Special Use Permit.

### Noise

Pursuant to Table 20-105 of Section 20.40.600 of the San José Zoning Code, the sound level generated by any commercial use adjacent to a property used or zoned for residential purposes may not exceed 55 decibels at the property line. The subject site is adjacent to residential uses to the north and east. Therefore, a noise study was prepared by WJV Acoustics, dated September 17, 2020. Noise measurements were taken at the shared property boundaries with the residential areas to the north and east. Additional noise measurements were taken from the terminus of Redoaks Drive, the rear of the Senior Care Facility to the south, and the church across South Winchester Boulevard to the northwest. Sources of operation noise from the hotel development would typically be limited to parking lot vehicle movements, outdoor human activity, and mechanical/HVAC system. The noise report notes that vehicle activity in a parking lot would generally produce a maximum noise level of 60 to 65 decibels at a distance of 50 feet. However, all vehicle movements would occur in a subterranean garage, and would therefore not be audible at any of the noise measurement locations. An exterior seating area would be located on the sixth floor of the building fronting Winchester Boulevard. The seating area would be entirely shielded from the residential area to the east by the hotel building. The seating area would be shielded from Winchester Boulevard with acoustical glass shielding. As no details for rooftop mechanical equipment have been provided, all mechanical equipment is conditioned to comply with the applicable standards of the Municipal Code in this Special Use Permit. No mechanical equipment may exceed the maximum noise level of 55 decibels adjacent to the residential property lines without the issuance of a Special Use Permit. As the subject site is located within 500 feet of a residence, no construction would occur outside of the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. No construction would occur on weekends.

## 6. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Staff followed Council Policy 6-30: Public Outreach Policy. A Community Meeting was held on August 10, 2020. Concerns raised at the community meeting included the suitability of a hotel at the site, proximity to residential areas, insufficient parking, the number of hotel staff (10), the height of the building, and traffic. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. An on-site sign was also posted on the project frontage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public..

## 7. Commercial Design Guidelines

The project was formally submitted in September 2019. The Citywide Design Standards and Guidelines did not become effective until March 24, 2021. Therefore, the project is subject to the Commercial Design Guidelines, adopted May 1988. The guidelines address issues of neighborhood compatibility, project function and aesthetics. The guidelines seek to assure that new commercial development preserves or improves the positive character of the existing neighborhood. The following guidelines apply to the project:

- Site Design and Organization
  - Buildings should generally be placed at their front setback lines in order to define and enliven the streets. Exceptions may occur in areas having an established pattern of wide setbacks from the street.
  - Only active building elevations, never blank walls or loading areas, should face public streets.
  - The site should be designed to accommodate all legitimate, anticipated circulation patterns, but those patterns should be defined by reduced areas of paving and well-placed landscape areas. Driveway cuts should be limited to one, occasionally two, per street.
  - All building elevations facing public streets, whether such elevations function as the front, side, or rear of the building should be architecturally detailed to avoid the appearance of the "back of the building"; buildings should contribute a positive presence to the street scene.

*Analysis: The building would be placed directly along the front setback of South Winchester Boulevard. The primary entrance would be located on the ground floor with direct access to the sidewalk along South Winchester Boulevard. The first-floor façade would be comprised of primarily clear untinted glass, providing views into the active lobby space. The entire façade of the building would be well articulated with visual breaks and changes in depth on all sides of the building. Materials would be varied,*

*including natural wood paneling, architectural glazing, white sand stucco, and exposed gray concrete. The approximately 0.69-gross acre site is large enough to accommodate the approximately 107,079-square foot hotel, service facilities, parking, and landscape areas. The building would front South Winchester Boulevard, with the primary building entrance and lobby area directly accessible from the newly constructed 20-foot-wide sidewalk. The project would include 37 bicycle parking spaces to allow access for bicyclists as well. All vehicle parking would be located in a subterranean garage.*

- Structures

- Transitions between existing and new buildings should be gradual. The height and mass of new projects should not create abrupt changes from those of existing buildings.
- Monotony of building design should be avoided. Variation in wall plane, roof line, detailing, materials, and siting may be used to prevent a monotonous appearance in buildings.
- Materials and colors should be varied where appropriate to provide architectural interest.
- Loading areas, access and circulation driveways, trash, and storage areas and rooftop equipment should be located as far as possible from adjacent residences and should never be located next to residential properties without fully mitigating their negative effects.

*Analysis: The rear of the building would be set back 20 feet from the residential area to the east. Additionally, the building would incorporate a setback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences. Blank walls would be mitigated with variations in color and materials as well as the addition of landscaping to the perimeter of the site. Materials would be varied, including natural wood paneling, architectural glazing, white sand stucco, and exposed gray concrete. All loading and trash facilities would be located in an enclosed loading and service area located at the southern end of the building along South Winchester Boulevard.*

- Landscaping

- All areas not covered by structures, service yards, walkways, driveways, and parking spaces should be landscaped.
- The perimeter of the site should be landscaped to provide parking lot screening, a buffer for adjacent uses, and an attractive view from the street.
- A mixed planting of trees, shrubs, and groundcover in the area between buildings and the sidewalk should be included

*Analysis: The project includes a detailed landscaping plan. Nine existing trees would be preserved on-site. An additional 46 new trees would be planted on site. Street trees would be planted along the project frontage along Winchester Boulevard and trees would be planted along the perimeter of the site to further soften the transition between the existing residences and the hotel.*

## **8. Environmental Review.**

On March 23, 2022, the Director of Planning, Building and Code Enforcement, approved the use of a Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration, previously adopted by the City Council (Resolution No. 80348) as the environmental clearance for approval of Special Use Permit No. SP20-016 authorizing the demolition of two commercial structures and associated sheds and parking areas, and the construction of a six-story hotel building with 119 guestrooms, a one-level underground parking garage, and the removal of nine trees, four of which are ordinance-size trees on a 0.69-gross acre site located at 1212-1224 South Winchester Boulevard (the "Project").

The Determination of Consistency concluded that approval of Special Use Permit No. SP20-016 and implementation of the Project would not result in any changes or new significant effects on the environment beyond those already identified in the previously adopted Initial Study/Mitigated Negative Declaration, nor will the Project result in an increase in the severity of significant effects identified in the previously adopted Initial Study/Mitigated Negative Declaration, and that identified mitigation measures would continue to reduce each of those significant effects to a less-than-significant level.

The Director of Planning, Building and Code Enforcement considered the Determination of Consistency and the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration in approving and issuing Special Use Permit No. SP20-016 on March 23, 2022 as the Special Use Permit No. SP20-016 was determined to be consistent with the approved Conforming Rezoning File No. C19-031 and the previously adopted Initial Study/Mitigated Negative Declaration.

## **9. Site Development Permit Findings.** Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

- 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 previously discussed, the construction of the hotel would be consistent with the General Plan and Winchester Boulevard Urban Village Land Use Designation of Neighborhood Community Commercial. The project is consistent with General Plan Policies related to fiscal sustainability, land use and employment, and community design. Additionally, the project is consistent with the Winchester*

*Boulevard Urban Village Plan policies for the creation of a vibrant commercial corridor, land use compatibility, and urban design. The project would also provide employment to approximately ten employees.*

- 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 in the Zoning Section above, a hotel is a permitted use within the CP Commercial Pedestrian Zoning District. The project would conform with all applicable height and setback requirements of the CP Zoning District. The project would also meet all parking requirements for vehicle, bicycle parking, and motorcycle parking. As discussed above, the project's operational noise would not exceed the 55-decibel threshold at the residential property line. The project would also mitigate the removal of the trees on site with the planting of 46 trees.*

- 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. A Community Meeting was held on August 10, 2020. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. An on-site sign was also posted on the project frontage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

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

*Analysis: There are no other uses that would be on the site other than the hotel and ancillary uses (hotel office, bar, lounge area, etc.). The hotel building is oriented towards the street with the primary pedestrian and vehicle entries along South Winchester Boulevard.*

- 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 hotel would be located along South Winchester Boulevard, with single-family residences to the east and north, a single-story commercial use to the south, and a three-story commercial use to the west, across South Winchester Boulevard. The project applicant coordinated the design on all sides of the building ensuring that varied materials, windows, and facade treatments were utilized on each side of the hotel building. The number of windows is reduced in the upper floors at the rear of the building. The rear of the building would be set back 20 feet from the residential area to the east. Additionally, the building would incorporate a stepback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences.*

- 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: Based on review of the project by the various City departments, there are no non-CEQA related impacts anticipated for the project with regard to noise, vibration, dust, drainage, erosion, stormwater runoff, or odor. The project development is not anticipated to create odor or unusual noise as the majority of the activity occurs indoors and is not an odor-producing use. Noise and ground vibration related to construction and demolition are the only anticipated noise impacts and these are expected to be temporary (24 months). Best management construction practices would be implemented to reduce the noise impact on the neighborhood, including designating a noise disturbance coordinator, limiting construction activity to Monday thru Friday 7:00 am to 7:00 pm and prohibiting unnecessary idling of construction equipment and vehicles. Similarly, the project would also incorporate best management practices to address fugitive dust including damp street sweeping to prevent storm water pollution and minimize erosion during construction. This project would be required to comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges. Therefore, with respect to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, the project will not have an unacceptable negative effect on adjacent property or 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: As shown on the approved plan set, the landscaping, irrigation systems, all walls and fences, exterior heating, ventilating, plumbing, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. All mechanical equipment would be screened from view and would not be visible from the street or surrounding buildings. The project will provide street trees along the ground floor of the project. Additionally, the project will install landscaping along the perimeter of the property. The trash facilities will be located on the ground floor and shielded by a roll-up door designed to mimic residential garage doors.*

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

*Analysis: The overall project is adequately accessible by the surrounding street network. The site is accessible to vehicular and pedestrian traffic from South Winchester Boulevard. All parking would be located in a subterranean garage accessible from South Winchester Boulevard. As previously discussed, the project would incorporate an approximately 49 percent parking reduction, which would be*



*supported by the implementation of a TDM Plan. The site is also served by VTA Bus Route 60, with the nearest stop located approximately 310 feet to the south of the site.*

**10. Special Use Permit Findings.** Section 20.100.820 of the San José Municipal Code specifies the required findings for the approval of a Special Use Permit.

- a. The special use permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies; and

*Analysis: The alternative parking arrangement (vehicle stackers) is consistent with the General Plan land use designation of Neighborhood Community Commercial as it would be incidental to the hotel use. The parking arrangement would be consistent with General Plan Policy CD-3.5 which encourages shared and alternative parking arrangements as well as reductions in vehicle parking.*

- b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: As discussed above, the project includes all required vehicle parking with a 49 percent parking reduction and includes all required bicycle parking. The project implements TDM measures to support the alternative parking arrangement and parking reduction.*

- c. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: There are no applicable City Council policies other than those discussed above.*

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety, or general welfare; and

*Analysis: The hotel project, including the alternative parking arrangement, would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area as the hotel would provide a necessary service to visitors and businesses in the surrounding area. The hotel use is not expected to generate excessive noise as all parking activity would occur in a subterranean garage with the entrance at the project frontage along South Winchester Boulevard. The project would not impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety or general welfare. The project would redevelop the existing site with a new*

*development. The project is consistent with the requirements of the Zoning Ordinance in terms of parking, height, setbacks, and use.*

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

*Analysis: As discussed above, the project site is adequate in size and shape to accommodate the development features in order to integrate the hotel use with the surrounding area as well as the planned uses and building forms as envisioned in the South Winchester Urban Village Plan.*

- f. The proposed site is adequately served:
  - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - ii. By other public or private service facilities as are required.

*Analysis: The overall project is adequately accessible by the surrounding street network. The site is accessible to vehicular and pedestrian traffic from South Winchester Boulevard. The site is also served by VTA Bus Route 60, with the nearest stop located approximately 310 feet to the south of the site. The site is served by all necessary public and private utilities.*

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

*Analysis: Demolition of the existing commercial structures and the construction of the hotel project would not have an unacceptable negative affect on adjacent property or properties as it complies with the General Plan, Zoning Ordinance, and Urban Village use, standards and policies. The project was evaluated per adopted stormwater requirements and has been found in compliance by providing on-site stormwater treatment measures as prescribed by the Department of Public Works. Additionally, the hotel development is not anticipated to create odor or unusual noise as the majority of the activity occurs indoors and the hotel use is not an odor producing use. Noise and ground vibration related to construction and demolition are the only anticipated noise impacts and these would be temporary for the duration of construction (approximately 24 months). Construction would not be allowed during the hours of 7:00 pm to 7:00 am Monday through Friday. No construction would be allowed on weekends.*

*Best management construction practices would be implemented to reduce noise, fugitive dust, and erosion and storm water runoff. With the implementation of the identified mitigation measures and standard permit conditions, the project's impacts would be less than significant.*

*Based on review of the project by the various City departments, there are no non-CEQA related impacts anticipated for the project with regard to noise, vibration, dust, drainage, erosion, stormwater runoff, or odor having an unacceptable negative effect on adjacent property or properties.*

**11. Alternative Parking Arrangement Findings.** In addition to any other findings required for a Special Use Permit, the City Council may approve such off-street parking facilities arrangements only upon making the following findings:

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

*Analysis: As discussed in the parking section above, the project would provide 66 required vehicle parking spaces with the implementation of a TDM Plan to allow for an approximately 49 percent parking reduction. The 66 vehicle parking spaces would be provided in the form of vehicle stackers located in the subterranean garage of the hotel building.*

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

*Analysis: The garage would be accessible only to guests, employees, and authorized vehicles. The vehicle stackers would be operated by the valet attendant, who would be responsible for parking and retrieving cars located in the subterranean garage.*

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

*Analysis: The garage would be located in the basement level of the building and would be immediately accessible from both the interior and exterior of the building.*

**12. Parking Reduction Findings.** To make the findings for a Reduction in the Required Off-Street Parking Spaces pursuant to San José Municipal Code Section 20.90.220, the City Council must determine that:

- a. The structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a Neighborhood Business District, or as an Urban Village, or as an area subject to an area development policy in the City's General Plan or the use is listed in Section 20.90.220G; and

- b. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
- c. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a Transportation Demand Management (TDM) program that contains but is not limited to one of the following measures:
  - i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or
  - ii. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA SmartPass system will satisfy this requirement).
- d. In addition to the requirements of Section 20.90.220 A, for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a TDM program that contains but is not limited to at least two of the following measures in Section 20.90.200 A.1.d.

*Analysis: The project requires 129 vehicle parking spaces. Pursuant to Section 20.90.220 of the Zoning Code, a parking reduction of up to 50 percent of the code-required parking spaces may be permitted for sites within a Growth Area with the implementation of a TDM Plan. The site is located within the Winchester Boulevard Urban Village. The project would provide 66 vehicle parking spaces with the implementation of a TDM Plan to allow for an approximately 49 percent parking reduction. A TDM Plan, dated January 27, 2021, was prepared by Hexagon Transportation Consultants, Inc, which for the project to achieve the approximately 49 percent parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures. The project would be required to provide on-site bicycles for guest use, guest shuttle services, on-site access to car-share vehicles for hotel employees and guests, on-site paid parking, free annual VTA Smart Passes for employees, financial incentives for employees who bike or walk to work, and an on-site TDM coordinator and services.*

**13. Tree Removal Permit Findings.** In order to make the Tree Removal findings pursuant to Section 13.32.100 of the San José Municipal Code the City Council must determine that:

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is

such that preservation of the public health or safety requires its removal.

- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

*Analysis: The project includes the removal of four ordinance-size and five non-ordinance-size trees. The trees to be removed are located within the proposed building footprint. Nine existing trees would be preserved. The trees to be removed include Mexican Fan Palm (2), Avocado (2), Cypress (2), Camphor (1), Locust (1), and Privet (1) The removal of all nine trees on-site requires the replacement of 32 trees (24-inch box trees) on site. Based on the approved plan set, 48 24-inch box trees would be planted on-site. The trees to be planted include a mix of Italian Oak, Western Redbud, Ginko, Japanese Maple, Crepe Myrtle, Strawberry Trees, Laurel, and California Fan Palms.*

**14. Demolition Permit Findings.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. The project includes the demolition of two existing single-story commercial buildings and associated sheds and parking areas for the construction of an approximately 107,079-square foot, six-story, 119-room hotel. The project is located in a commercial land use designation and is developed at a scale that does not preclude nearby residential developments and therefore would not affect the City's overall housing stock. While the project includes the construction of a hotel, the associated rezoning of the site from R-1-8 to CP would result in an increase of*

*residential capacity by 71 residential units. The CP Commercial Pedestrian Zoning District allows for a greater residential density through affordable mixed-use residential/commercial projects, residential care facilities, hotel supportive housing, and live/work uses. As discussed above, the demolition of the buildings would facilitate the construction of a project that is compatible with the surrounding neighborhood and is consistent with the General Plan, Winchester Urban Village Plan, and Zoning Code. The Initial Study/Mitigated Negative Declaration evaluated all structures on-site for potential historical significance. The project site consists of two existing structures (the structure at 1212 South Winchester Boulevard was built in 1948 and the structure at 1224 South Winchester Boulevard was built in 1940). As concluded in Section 4.5, Cultural Resources, of the Initial Study/Mitigated Negative Declaration, according to the City's Historic Resources Inventory, the project site does not contain historic resources defined under the Public Resources Code Section 15064.5. Neither of the two structures are listed in the City's Historic Inventory of City Landmarks and, because the property is not a known location of known important events and is not known or recorded to be associated with any persons important to national, state, or local history, the City's Historic Preservation Officer determined that a full historic report was not required for the project site. The nearest City Landmark is the Winchester Mystery House, which is approximately one mile north. The rehabilitation of the existing single-story commercial buildings would not be feasible as the two buildings could not facilitate the development of a commercial use at the scale or intensity of development appropriate for a project in the Winchester Boulevard Urban Village Plan. The demolition of any existing buildings on-site would not be approved until the issuance of a grading permit or the submittal of a complete Building Permit Application as conditioned in the Special Use Permit for the subject site.*

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

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Site Development Permit and Special Use Permit (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:

- a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement 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 by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
  4. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of two single-family residences and the removal of nine trees (four ordinance-size, five non-ordinance-size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel with an approximately 49 percent parking reduction and an alternative parking arrangement on an approximately 0.69-gross acre site.
  5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Special Use Permit plans entitled, "Winchester Hotel" dated September 29, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set".
  6. **Operations Management Plans.** The project is bound to the "Operations Plan 1212-1224 S. Winchester Blvd Hotel" dated September 27<sup>th</sup>, 2021.
  7. **Implementation of a Transportation Demand Management (TDM) Plan.** The project is required to implement the TDM Measures included in the TDM Plan prepared by Hexagon Transportation Consultants, Inc, dated January 27, 2021, as

amended, for the life of the project.

- a. Bicycle parking
  - b. On-site bicycles for guest use
  - c. Guest shuttle services
  - d. On-site access to car share vehicles for hotel employees and guests
  - e. On-site paid parking
  - f. Free annual VTA Smart Pass for employees
  - g. Financial incentives for employees who bike or walk to work
  - h. On-site TDM coordinator and services.
8. **Off-Site Parking Required.** Should the permittee fail to maintain a Transportation Demand Management Plan, the permittee will be required to apply for a Special Use Permit Amendment to allow an off-site, alternative parking arrangement in conformance with Chapter 20.90 of the Zoning Code, as amended.
9. **Lot Line Adjustment Required.** Prior to the issuance of a building permit, the permittee shall secure approval of a Lot Line Adjustment merging two lots into one lot and shall provide proof of recordation of the approved Lot Line Adjustment to the Planning Division.
10. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
11. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.



12. **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.
13. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
14. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
15. **Alternate Parking Arrangement Permitted.** This Permit shall allow the consideration of an alternative parking arrangement to facilitate the provision of sufficient parking.
16. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
17. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
18. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
19. **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.
20. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
21. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
22. **Mechanical Equipment.** The location and type of mechanical equipment shall be 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.
23. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m.
24. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.

25. **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.
26. **Sign Approval.** No signs are approved at this time. All signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
27. **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.
28. **Outdoor Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property
29. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
30. **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.
31. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
32. **Loading Activities.** All loading and delivery activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
33. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
34. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
35. **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.

36. **Demolition Permit.** A demolition permit may be issued for the demolition of the two existing single-family residences only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
37. **Valley Water Referral.** Prior to the issuance of grading permits, this project is required to contact Valley Water to confirm that there are no existing wells on the project site. To avoid impacts to groundwater quality, any wells found on-site that will not be used must be properly destroyed in accordance with Ordinance 90-1, which requires issuance of a well destruction permit or registered with Valley Water and protected during construction. Property owners or their representatives should call the Wells and Water Measurement Unit at (408) 630-2660 for more information regarding well permits and registration for the destruction of wells.
38. **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. 80348.
39. **Standard Environmental Conditions. Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.
- a. Air Quality
- The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
  - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.

- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. 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. **Santa Clara Valley Habitat Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form 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 [www.scv-habitatagency.org](http://www.scv-habitatagency.org).
- ii. **Tree Replacement.** The removed trees would be replaced according to tree replacement ratios required by the City, as shown below.

Table 4.4-2: 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
<p>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.</p>				

A 24-inch box tree = two 15-gallon trees  
Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

Since nine trees onsite would be removed, four trees would be replaced at a 5:1 ratio, one tree would be replaced at a 4:1 ratio, two trees would be replaced at a 3:1 ratio, and the remaining two trees would be replaced at a 2:1 ratio. As mentioned previously, there are four native trees on-site. The total number of replacement trees required to be planted would be ## trees. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

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.

Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

c. Cultural Resources

- i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commissions 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 Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- 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. Geology and Soils

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
  - vi. **Paleontological Resources.** 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 (PBCE) 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 PBCE.
- e. Hazards and Hazardous Materials
- i. **Asbestos and Lead-Based Paint.**

In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).

During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution

(NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.

1. Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
2. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
3. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

f. Hydrology and Water Quality

**Construction-related water quality.**

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.



- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- ix. The 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 Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

g. Noise

**Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following:

- i. Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.
- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.

- ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- x. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
- xi. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

**40. No Construction Pile Driving.** The project shall not include pile-driving activities or vibratory rollers during all phases of construction.

**41. Interior Noise Standard for Residential Development.** The permittee shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The permittee shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

**42. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.

**43. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This Permit file number, SP20-016 shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- d. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.

**44. Public Works Clearance.** 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 <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:** With the inclusion of the following conditions, the subject project will be in conformance with both the City of San José Transportation Analysis Policy (Council Policy 5-1) and the Santa Clara County Congestion Management Program and a determination for less than significant impacts can be made with respect to transportation impacts.
  - i. This project is subject to the City's I-280/Winchester Boulevard Transportation Development Policy (TDP). The I-280/Winchester Boulevard TDP requires new residential and commercial developments that generate PM peak hour trips projected to use the I-280 Winchester Blvd. northbound off-ramp to pay a Traffic Impact Fee (TIF). The 2022 TIF is \$30,407 for each project PM peak hour trip that is projected to use the I-280/Winchester Boulevard northbound offramp. This fee is subject to an annual escalation on January 1st per the Engineering News- Record Construction Cost Index for San Francisco. Based on 2022 rates and 4 trips, the project's TIF is approximately \$121,628. This fee must be paid prior to issuance of Public Works Clearance.
  - ii. Construct a 20-foot-wide sidewalk to connect to the existing sidewalk to the south of the project site.
  - iii. Any entrance gate must be located at least 50 feet from the back of sidewalk.
  - iv. Provide adequate valet staffing to operate the mechanical parking lifts in order to handle the rate of projected inbound vehicle trips without queuing onto the public street.
  - v. Install visible and/or audible warning signals at the exit driveway to alert pedestrians and bicyclists of vehicles exiting the driveway.

- vi. Prior to Planning approval, implement and submit a comprehensive Transportation Demand Management (TDM) plan to the Planning Project Manager for the 49 percent reduction in required parking spaces.
- c. **Urban Village Plan:** This project is located in the Winchester Boulevard Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grand Boulevard:** This project fronts Winchester Boulevard, which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- f. **Shoring:**
  - i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
  - ii. If tie-backs will be in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the permittee 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).

- iii. If tie-backs will be used along the adjacent properties (APN numbers 279-17-022, 028, 029, 030, 042), agreements between the permittee and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- g. **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 and source controls measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at:  
<http://www.sanjoseca.gov/home/showdocument?id=27405>
  - iv. Plant species for use within the Treatment Control Measure areas shall be selected in accordance with Appendix D of the C.3. Stormwater Handbook.
- h. **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).
- i. **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.
- j. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to the issuance of Public Works clearance.
- k. **Assessments:** This project includes a hotel use. The City of San José, on September 30, 2008 implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties were expected to participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The base special tax is 4 percent of gross rents, and may be subject to an additional

special tax up to 1 percent of gross rents. Please contact City of San José Development Services at (408) 535-6831 to coordinate the annexation process.

**I. Street Improvements:**

- i. Construct partial street section along Winchester boulevard frontage to include asphalt concrete conform to existing edge of pavement and a 20' attached sidewalk with curb and gutter and tree wells at the back of curb spaced 40' on center.
  - ii. Project two-way driveway width to be 26 feet.
  - iii. Install 3-inch conduit along Winchester Boulevard frontage for future City communications fiber optic cable.
  - iv. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
  - v. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - vi. Repair, overlay, or reconstruction of asphalt pavement will be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
  - vii. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee 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.
- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
    1. **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 within the Public right-of-way cannot 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).

2. **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.
  - ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
    1. Implementing the closures at the time the onsite activities dictate the need for the closure.
    2. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition m.i above.
  - iii. If the lane and parking closures are a part of the Revocable Permit Application, Permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanJoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- n. **Electrical:**
- i. 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.
  - ii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
- o. **Street Trees:**
- i. The recommended street tree species is Tilia Tomentosa to be planted in tree wells spaced 40 feet on center. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
  - ii. 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 are to be removed.

**35. Revocation, Suspension, Modification.** This Special Use Permit and 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, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Special Use Permit or 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.*



DRAFT