

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A HISTORIC PRESERVATION PERMIT TO ALLOW THE DEMOLITION OF NON-CONTRIBUTING BUILDINGS ON SITE AND THE CONSTRUCTION OF A RESIDENTIAL BUILDING WITH UP TO 415 MULTIFAMILY UNITS LOCATED ON THE SOUTHWEST CORNER OF NORTH 4TH STREET AND EAST ST. JOHN STREET (77 AND 95 NORTH 4TH STREET AND 128 EAST ST. JOHN STREET) (APN 467-20-060) IN THE ST. JAMES SQUARE CITY LANDMARK DISTRICT

FILE NO. HP-007

WHEREAS, pursuant to the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, on July 29, 2021, an application for a Historic Preservation Permit (File No. HP21-007) was filed by the applicant, Paul Ring, on behalf of property owners, Tamara Current, Sara McVey, and Erik Hayden with the City of San José, to allow the demolition of three non-contributing buildings and to allow the construction of 415 multifamily residential unit building as part of the Icon-Echo Mixed-Use Project within the St. James Square City Landmark District, situated on that certain real property located on the southwest corner of North 4th Street and East St. John Street (77 and 95 North 4th Street and 128 East St John Street, 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,” 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 13.48 of Title 13 of the San José Municipal Code, the Historic Landmarks Commission (HLC) conducted a Public Hearing on said application on October 5, 2022, notice of which was duly given; and

WHEREAS, at said hearing, the HLC gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter and the HLC recommended that the City Council deny the Historic Preservation Permit (HP Permit); and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission also conducted a Public Hearing on the Project on October 26, 2022, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter and the Planning Commission recommended that the City Council approve the Project applications; and

WHEREAS, pursuant to and in accordance with Chapter 13.48 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the Planning Commission, HLC, and the 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, "Icon Echo – Office & Residential" dated March 18, 2022, 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 property is on the southwest corner of North 4th Street and East St. John Street and includes one parcel (APN 467-20-060) that is located within the St. James Square City Landmark District (Landmark District). The Landmark District (HD84- 36) is listed in the San José Historic Resource Inventory under the theme Social, Arts, and Recreation for the Early American Period (1846-1870). St. James Square is surrounded by buildings significant for their civic design and uses from the 1860s through 1930s. The character-defining features of the St. James Square City Landmark District include buildings with monumental designs surrounding St. James Square (park): two- to four-stories with a rectangular plan; buildings setback on platforms above street grade, hipped or gabled roofs; vertical building orientation through pilasters, columns, window shapes, and corner towers; building clad with brick, plaster, wood, stone, terra cotta, clay roof tiles, white, grey, earth tones, red clay roof tiles, and brown asphalt shingles; buildings with entries and punched windows with architectural detailing; buildings with decorative cornices; and signage cut into the wall surface.

The subject property contains three buildings located at 128 East St. John Street (constructed in 1922), 77 North 4th Street (constructed in 1927), and 95 North 4th Street (constructed in 1948). These buildings are non-contributing buildings to the Landmark District and do not display any of the district's character-defining features of monumental massing, vertical orientation, architectural detailing, and associated materials.

The subject property is surrounded by commercial uses across East St. John Street to the north, multifamily residential uses and a parking garage across North 4th Street to the east, commercial uses to the south, and a mix of office and residential uses to the west on North 3rd Street.

2. **Project Description.** The Icon-Echo Mixed-Use Project (“the Project”) consists of the construction of two towers, including the Icon office tower and the Echo residential tower. The 24-story Icon office building would be located on the southern portion of the site, with frontage along East Santa Clara Street and North 4th Street. The Icon office building includes approximately 525,000 square feet of office space and up to 8,500 square feet of ground floor retail space along East Santa Clara Street. The Icon office building would have a maximum height of 282 feet.

The 27-story Echo residential tower would be located on the northern portion of the site, with frontage along East St. John Street and North 4th Street. The Echo residential tower would include 415 multifamily residential units, ground floor lobby/amenity space, leasing space, as well as additional amenity space on the upper levels. The maximum height of the Echo residential building would be 267 feet. The Icon and Echo buildings would be connected by structured parking, with one level of subterranean parking and eight levels of above ground parking. There would be four levels of parking below the Echo residential tower and eight levels of parking below the Icon office tower. The garage would be accessible from a 27-foot-wide two-way driveway along North 4th Street and car parking would be shared between the residential tower and office tower.

The Project requires a Historic Preservation Permit because the subject property is located within the Landmark District and the applicant is constructing a new building and demolishing the existing buildings at 128 East St. John Street, 77 North 4th Street, and 95 North 4th Street.

3. **General Plan Conformance.** The Project site is in the Downtown designation, within the Downtown Employment Priority Area Overlay (EPA Overlay). The EPA Overlay designation is applied to a portion of Downtown sites planned for intensive job growth because of the area’s proximity and good access to the future Downtown BART station. The EPA Overlay is generally applied to sites located within approximately one block (walking distance) of the planned Downtown BART station on East Santa Clara Street as shown on the Land Use/ Transportation Diagram. The overlay boundary is intended to respect property lines and not split parcels. Due to proximity to the future BART station, the EPA Overlay supports development at very high intensities, where such high intensity is not incompatible with other policies within the General Plan, such as Historic Preservation policies. The EPA Overlay does not change the uses or densities otherwise allowed within the base “Downtown” land use designation. The EPA Overlay, however, requires a minimum Floor-Area Ratio (FAR) of 4.0 for commercial (job generating) uses, including office, retail, service, hotel or entertainment uses, prior to allowing residential uses, as supported by the “Downtown” General Plan Land Use/ Transportation Diagram designation. Typically, the base land use designation will be “Downtown” with an allowed FAR of up to 15.0 (3 to 30 stories) and density of up to 800 DU/AC. The Downtown Employment Priority Area allows for a maximum residential density of 800 DU/AC and a residential/commercial mixed use FAR between 4.0 to 30.0.

Analysis: The project requires a minimum commercial FAR of 4.0 and a maximum FAR of 30.0 in a mixed use residential/commercial format. The commercial FAR of the project is be approximately 5.80. The combined, mixed use FAR is approximately 15.13. The residential density is be approximately 198 Dwelling Units per Acre (DU/AC). Therefore, the project conforms with the required Floor to Area Ratio (FAR) and allowable residential density of the site.

The Project is consistent with the following General Plan Policies:

- a. Land Use Policy LU-13.4: Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.

Analysis: The Project was referred to the HLC for comment on October 6, 2021, as outlined in the Background section of this staff report and design modifications were made to the Project in response to HLC comments.

- b. Land Use Policy LU-13.15: Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.

Analysis: An application was made for an HP Permit which has been processed in conformance with Chapter 13.48 (Historic Preservation Ordinance) of the San José Municipal Code, and a Supplemental Environmental Impact Report ("SEIR") was prepared for the Project, which was analyzed in conformance with the California Environmental Quality Act ("CEQA"). There are no applicable federal historic preservation regulations.

- c. Land Use Policy LU-13.22: Require the submittal of historic reports and surveys prepared as part of the environmental review process.

Analysis: TreanorHL prepared three reports for the Project as part of the historic preservation and environmental review process including the Icon Echo Project Historic Resources Assessment, Icon Echo Project St. James Square Historic District Design Guidelines and the Secretary of the Interior's Standards Compliance Review, and the Icon Echo Project Downtown Design Guidelines, Standards Compliance Review and CEQA Analysis.

The Project is not consistent with the following Envision San José 2040 General Plan policies:

- a. Land Use Policy LU-13.1: Preserve the integrity and fabric of candidate or designated Historic Districts.
- b. Land Use Policy LU-13.7: Design new development, alterations, and rehabilitation/ remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures

(including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.

Analysis for “a” and “b”: Professional evaluation of the Standards and Guidelines by TreanorHL and the Historic Preservation Officer concluded that the Echo residential tower would not be compatible with the features, size, scale, proportion, and massing of contributing buildings in the St. James Square City Landmark District. As a result, the Echo residential tower would alter the surroundings and historic integrity of design, feeling and association of the St. James Square City Landmark District. The Envision San José 2040 General Plan includes “Focused Growth” as a major strategy and Downtown is designated as a Growth Area which promotes intensification in this area. The General Plan also includes Destination Downtown as a major strategy and supports focused growth downtown. Ambitious job and housing growth capacity is planned for the Downtown supported by regional transit systems and the development of Downtown as a regional job center. The SEIR for the Envision San José 2040 General Plan disclosed that intensification of the Downtown could result in the demolition of historic resources and a cumulative impact was identified and mitigation measures adopted. The significant impact of the Project on the historic district is analyzed in the SEIR to disclose specific project impacts. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable,” and the City Council may adopt a statement of overriding consideration.

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

Analysis: The Project is designed in general conformance with the historic adjacency standards of the San José Downtown Design Guidelines and Standards, with the exception of Section 4.2.2 – Massing Relationship to Context. The applicants are requesting an exception to the Standard A (Height Transition) for the Icon office building which is located across East Santa Clara street from the San José Downtown Commercial Historic District. The building is required to incorporate a step back at the East Santa Clara Street frontage for a minimum of 5 feet at an elevation between 25 and 50 feet. Instead, the applicants are proposing a 25-foot setback - five times greater than the minimum requirement - beginning at a height of 80 feet for the majority of the façade along East Santa Clara Street. A smaller portion at the western end of the Icon office building adjacent to the

historic Alliance Building also includes a 25-foot step back, beginning at a height of 20 feet. The applicants assert that the Project site is physically constrained by the 8-level parking podium, which is required to be lined with active edges of office and retail uses along East Santa Clara Street and a portion of North 4th Street. The applicants assert that in order to be economically viable and to be able to operate as functional spaces, these areas must be connected to the building core and be a minimum of 40 feet high. The applicants note that the Project provides step backs at varying heights in order to break down the scale of the massing. The City Council will be the decision-making body on whether to approve the design exception request.

4. **Zoning Ordinance Consistency.** The Project site is located in the DC Downtown Primary Commercial Zoning District. Pursuant to Section 20.70.100, Table 20-140 of the Zoning Ordinance, office, multifamily residential, retail, and shared parking/alternative parking arrangements are all permitted uses in the DC Zoning District.

Analysis: The residential and commercial office uses planned for the Project are consistent with the zoning designation for the subject site.

5. **Standards and Guidelines.** The Historic Preservation Ordinance (Section 13.48.250) states that in making the required findings, the application shall be reviewed in accordance with the approved standards and guidelines. TreanorHL evaluated the Echo residential tower for consistency with the Secretary of the Interior's Standards for Rehabilitation (Standards) in the Icon Echo Project St. James Square Historic District Design Guidelines and the Secretary of the Interior's Standards Compliance Review report.

Secretary of the Interior's Standards for Rehabilitation

The TreanorHL report concluded that the Echo residential tower partially conforms with the Standards. Standards 1-7 are not applicable since construction of the residential tower does not propose any direct alterations or additions to historical resources within the Project site. The Echo residential tower would not conform with Standard 9 because it would not be compatible with the features, size, scale, proportion, and massing of the contributing buildings in the Landmark District and would only be compatible in materials. The Echo residential tower would comply with Standard 10. Detailed conformance analysis with Standards 9 and 10 is outlined below.

Standard 9: New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Analysis: Contributing buildings in the Landmark District are constructed of a variety of materials including brick, plaster, stone, wood, and terra cotta. The Echo residential tower would consist of aluminum-framed glazing system, metal cladding, concrete, cementitious panels, and glass which would be compatible with the historic district. Contributing buildings in the Landmark District have hipped or gabled roofs visible from the street. The Echo residential tower would have a flat roof, which is not compatible with the historic district, and would have vertical recessed windows on the third and fourth floors of the northern and eastern façades. Additionally, the northern façade (above the fifth floor) would consist of full-height window/door assemblies that are not typical features of the historic district. Entrances and windows with architectural elements and decorative cornices are among the characteristics of contributing buildings in the Landmark District. The Echo residential tower would include metal cladding and ribbed cementitious panels around the north facing windows on the third and fourth floors, but the entrance (or the windows of the lower levels of the northern façade) would not include any architectural features of the Landmark District. Overall, the project design would not be compatible with the architectural features of the Landmark District. Additionally, the Echo residential tower would not be compatible with the Landmark District in terms of size, scale, proportion, and massing. The Landmark District consists of two-to-four story buildings that are rectangular in plan and large in mass. The district contributors within the Landmark District are set back on platforms above the street level from the sidewalk. The Echo residential tower would be set back less than four feet at the northeast corner of the podium while upper floors would have no set back. Additionally, the residential tower would step down two stories in height at the district-facing northern façade. For these reasons, the Echo residential tower is not consistent with Standard 9.

Standard 10: New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Analysis: If the Echo residential tower were removed in the future, the Landmark District and its environment would be unimpaired. Any future removal of the new construction would restore the integrity of the historic district and its environment given that the Echo residential tower is not compatible with the historical resource in terms of features, size, scale, proportion, and massing. Therefore, the Echo residential tower is consistent with Standard 10.

St. James Square Historic District Design Guidelines

The Project was also evaluated by TreanorHL for conformance with consistency with the St. James Square Historic District Design Guidelines (Guidelines) in the Icon Echo Project St. James Square Historic District Design Guidelines and the Secretary of the Interior's Standards Compliance Review report. The report concluded that the Echo residential tower does not conform with the Site Layout/Setbacks, Surface Treatment (fenestration and detailing), Detailing, and Landscaping guidelines. The signage

would be separately reviewed for compatibility and conformance with the sign ordinance. Detailed analysis is outlined below.

General Character

Analysis: The Echo residential tower is large and bulky in scale and would occupy the eastern half of the block within the Landmark District. The new building has two street-facing façades; however, only the northern façade facing East St. John Street is part of the Landmark District streetscape. The northern façade would comply with this guideline as the façade is well balanced. The eastern façade is not part of the Landmark District's streetscape; therefore, the front symmetry requirement is not applicable. The architectural features of the Echo residential tower include two-story high storefronts at the podium level, vertically oriented double-height windows with textured panels in-between on the third and fourth floors which are compatible with the proportions of the Landmark District. The openings on the upper floors would not be compatible with the Landmark District. Overall, the Echo residential tower complies with this guideline even though it does not meet the General Character guideline (i.e., the front symmetry requirement).

Site Layout/Setbacks

Analysis: The Echo residential tower is not directly adjacent to a contributing building in the Landmark District; therefore, the recommendations regarding adjacent historic structures are not applicable. The surrounding contributing buildings within the Landmark District boundaries are setback 10 to 30 feet on platforms above street grade and utilize steps as a main entrance feature. At the northern property line, the residential tower is set back five feet at the street level while the upper floors are built out to the property line which does not comply with the guideline. Off-street parking is provided within the new development on the basement level through the fourth floor of the residential tower which would not have any frontage onto St. James Park. The Echo residential tower complies with the parking recommendations of this guideline. As for the service function recommendations, the generator room would be accessed from North 4th Street and not directly from East St. John Street. The service facilities would be located behind cementitious panel or metal clad walls, metal doors, and concrete planters. The residential tower would comply with the service function recommendations. Overall, the Echo residential tower would not comply with the Site Layout/Setbacks guideline.

Building Form and Scale

Analysis: The Echo residential tower does not front directly on St. James Park or on diagonal corners; therefore, the height recommendation is not applicable. The residential tower is not adjacent to any contributing buildings to the Landmark District; therefore, the massing recommendation is not applicable. The residential tower would have flat roofs at various levels and would comply with the roof recommendation. The pedestrian entrance to the residential tower is from East St. John Street at the

northeast corner of the building. While a typical courtyard is not part of the project, the project design includes multiple landscaped open space areas (e.g., fifth floor of the Northern Tower). Overall, the Echo residential tower complies with the Building Form and Scale guideline.

Surface Treatment

Analysis: The Echo residential tower has a solid appearance with cementitious panel cladding and vertically oriented, rectangular windows on the eastern façade and floors three and four of the northern façade. The northern façade of the residential tower above the fifth floor consists of full-height window/door assemblies framed by cementitious panels. None of the windows appear to be tinted, dark, or mirrored. The 80-foot-wide western façade is clad in cementitious panels with 22-foot-wide balconies at the center which break up the monolithic appearance of this façade. The residential lobby and office area at the northeast corner of the northern façade would be fully glazed; however, the western part of this façade (as well as most of the east façade) at street level would have no windows. Overall, the Echo residential tower does not comply with the Fenestration guideline since the wall-to-window ratio does not meet the recommendation and the western wall facing the park would have monolithic appearance.

Materials

Analysis: The materials to be used in the Echo residential tower would be compatible with the historic materials in scale, proportion, design, finish, texture, and durability. Therefore, the Echo residential tower complies with the Materials guideline.

Detailing

Analysis: At the podium level, the northeast corner of the Echo residential tower would be fully glazed; however, the rest of the podium level would be solid with doors or vehicular entries providing access to the parking or service areas behind. The historic structures within the Landmark District have architectural elements and/or detailing at the entrances and windows, and highly decorative cornices. The residential tower is contemporary in style and it does not incorporate any typical historic detailing. While the roof mounted mechanical equipment is not incorporated within the overall design, it would not be visible from the streets and sidewalks surrounding the park due to its height. Overall, the Echo residential tower does not comply with the Detailing guideline due to the articulation of the lower levels.

Colors

Analysis: The contributing buildings in the Landmark District share a neutral color palette including white, grey, and earth tones. The neutral colors proposed for the residential tower would complement the district. The Echo residential tower complies with the Colors guideline.

Signs:

Analysis: Based on the latest plans provided by the applicant, no signage is shown for the Echo residential tower. The signage will be reviewed for compatibility with the Sign Ordinance as part of a separate process.

Landscaping

Analysis: The Echo residential tower would not have deep setbacks similar to the district contributors. The site plan and renderings show street trees along East St. John Street and North 4th Street, as well as planters along parts of the East St. John Street and North 4th Street façades. The residential tower would not comply with the Landscaping guideline since it does not have any landscaped setbacks within the area of historic sensitivity.

6. **City Council Policy on the Preservation of Landmarks.** In accordance with the City Council Policy on the Preservation of Landmarks (“Early Referral”), the Project was referred to the HLC on October 6, 2021. The HLC commented that there should be stronger consideration of St. James Square and design changes would advance the features of the Echo residential tower and make it more compatible with its surroundings. The HLC recommended reducing the scale of the project.

The applicants responded in a subsequent submittal that the Project is consistent with San José's Downtown zoning, general plan and FAR requirements. In their response submittal, the applicants asserted that the size and scale of the building would preclude conformance with the Secretary of Interior Standards for Rehabilitation within the current zoning regulations for the site and absolute conformance with the standards and guidelines would render the project infeasible. The applicants asserted that designing the Echo residential tower with two-story to four-story massing within the St. James Square City Landmark District would eliminate most of the residential units and the financial requirements to purchase the land, construction, etc. and would render the project economically infeasible. In addition, the applicants asserted that the site of the Echo residential tower does not front onto the St. James Park itself and is situated in a transitional zone on the north side of the block that does not directly influence the experience of St. James Square itself.

In response to HLC and staff design comments, the applicants stepped down the north wing of the Echo residential tower two floors to create a sky deck on Level 23 overlooking St. James Square. The applicants asserted that this change in the massing responds to the transitional aspect of the site on the northern edge of the St. James Square City Landmark District. The applicants noted that the design of the Echo residential tower has tripartite massing (base-middle-top) that they asserted helps to integrate the larger-scale building into its context at the outer edge of the historic district. In their response submittal, the applicants asserted that the podium level has a height, massing, proportion, and scale that relates to the historic context, while the skyline level is separated from the podium level by a 15-foot-high continuous

massing break at +50 feet. The applicants asserted that the revised the design of the Echo residential tower further articulates and activates the base of the building within the St. James Square City Landmark District with the relocation of the loading dock to the North 4th Street side of the building, and the provision of an additional setback and street planting along St. John Street. In the upper levels of the Echo residential tower overlooking the park, the applicants noted the design features a "woven facade" on the east and west sides that they asserted frames an open network of balconies ("lanai") and sunrooms overlooking St. James Square to take full advantage of north-facing views and to create a facade with depth, shadow and step backs. The applicants further developed the pattern and material articulation of the "woven facade" in response to HLC comments. The applicants noted that the secondary and tertiary elements were reorganized to pick up horizontal lines of shear from the Icon office building and asserted this design modification adds another layer of interest.

7. **Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) was circulated from September 29, 2021 to October 29, 2021, and the Draft SEIR was circulated for public review and comment from June 17, 2022 to August 1, 2022.

Summary of Environmental Impacts Reduced to Less than Significant with Mitigation

The Draft SEIR identified potential environmental impacts related to cumulative construction air quality, biological resources, nesting migratory birds, previously undocumented historic-era and Native American archaeological resources, exposure to hazards and hazardous materials due to potential contamination associated with historical use of the site, and construction-related noise and vibration, and tribal cultural resources. With implementation of the mitigation measures specified in the MMRP prepared for the project, these impacts are reduced to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve the associated MMRP for the project.

Summary of Environmental Impacts Determined to be Significant and Unavoidable

The Draft SEIR found that the project would result in a significant and unavoidable impacts to Cultural Resources due to the proposed Echo residential tower's lack of compatibility with the Landmark District in terms of features, size, scale, proportion, and massing (Secretary of Interior Standards, Standard 9) and because the proposed Echo residential tower does not conform with the Site Layout/Setbacks, Surface Treatment (fenestration and detailing), Detailing, and Landscaping guidelines of the Guidelines. As a result, the proposed Echo residential tower would impact the design, feeling, and association of the Landmark District and impair the overall historic integrity of the district by introducing incompatible infill.

Significant and unavoidable impacts were also identified for Land Use and Planning in the Draft SEIR because the proposed Echo residential tower would not comply with General Plan Policies LU-13.1, LU-13.7, and LU-13.8, which were adopted for the purpose of avoiding or mitigating impacts to historic resources and significant, unavoidable shade and shadow impact on St. James Park.

In compliance with CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen. The Statement of Overriding Consideration found that the economic and social benefits of the project, as listed in the associated CEQA Resolution, outweigh its significant environmental impacts.

Project Alternatives

The Draft SEIR analyzed six project alternatives, including a No Project – No Development Alternative and Location Alternative, which was considered but rejected, and four design alternatives: (1) Reduced Height of Northern and Southern Towers Alternative, (2) Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative, (3) Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative, and (4) 20-Foot Setback of Northern Tower Alternative. The four design alternatives were crafted based on their ability to reduce the impacts summarized above and to identify an environmentally superior proposal. The analysis of the four design alternatives in the Draft SEIR includes discussion of the potential impacts of alternative height and massing for the purpose of decision-making.

Beyond the No Project – No Development Alternative, the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative would be the environmentally superior alternative because setback, size, scale, proportion, and massing of this alternative would be compatible with the Landmark District, and features such as fenestration and architecture features could be refined to achieve maximum conformance with the Standards and Guidelines. The significant reduction in height and significant increase in setback would avoid the significant impact of the proposed Northern Tower to the Landmark District. While the reduction in height for the Northern Tower (under the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative) would help reduce the shade and shadow impact to St. James Park, the Southern Tower would still be 268 feet tall and would continue to exceed the 10 percent threshold for shade and shadow.

Summary of Comments Received

The City received six written comment letters during the public circulation period. Comments were submitted by six agencies and organizations, which were the Valley Water; Bay Area Air Quality Management District (BAAQMD); Santa Clara Valley

Transportation Authority (VTA); Kanyon Sayers-Roods of Kanyon Consulting, LLC; Preservation Action Council of San José (PACSJ), and Adams Broadwell Joseph & Cardozo. The main concerns raised by commenters are as follows:

- Impacts to the St. James Square City Landmark District
- Cumulative impacts to City historic resources
- Cumulative construction air quality impacts
- Construction noise impacts
- Concurrent construction of Downtown projects and related coordination
- Necessity of Native American and archaeological monitors during construct activities
- Conformance with the City's Greenhouse Gas Reduction Strategy
- On-site contamination associated with historic uses of the project site
- Questions on baselines conditions for analysis, trip generation estimates, and assumptions for air quality analysis

None of the comments received addressed an issue of adequacy of the Draft SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address clarifications to the text of the Draft SEIR, the applicant's commitment to enroll in San José Clean Energy's TotalGreen program (100% renewable energy), and other suggested text revisions from commenters.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program (MMRP) constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (Final SEIR) are available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/icon-echo-mixed-use-project/-fsiteid-1#!/>.

EIR Recirculation Unnecessary

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

environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, recirculation of the Draft SEIR is not required.

8. **Historic Preservation Permit Findings:** In accordance with Section 13.48.240(B) of the Historic Preservation Ordinance, the required findings for the issuance of a HP Permit are:
- a. The work will not be detrimental to a historic district or to a structure or feature of significant architectural, cultural, historical, aesthetic, or engineering interest or value; and
 - b. The work is consistent with the spirit and purposes of the Historic Preservation Ordinance.

Demolition

The buildings located at 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street are non-contributing buildings to the Landmark District and do not display any of the district's character-defining features of monumental massing, vertical orientation, architectural detailing, and associated materials. Therefore, the demolition of these buildings would not be detrimental to the Landmark District and their removal would be consistent with the spirit and purposes of the Historic Preservation Ordinance.

New Construction

Section 13.48.240(B) of the Historic Preservation Ordinance requires that the work will not be detrimental to a historic district of significant architectural, cultural, historical, aesthetic, or engineering interest or value, and the work will be consistent with the spirit and purposes of the Historic Preservation Ordinance. In making these findings Section 13.48.250 the Historic Preservation Ordinance states the Historic Preservation Permit application shall be reviewed in accordance with the approved standards and guidelines. Professional evaluation of the Standards and Guidelines by TreanorHL and the City's Historic Preservation Officer concluded that the design of the Echo residential tower would not be compatible with the features, size, scale, proportion, and massing of contributing buildings in the Landmark District because the building design is not in conformance with Standard 9 of the Secretary of the Interior's

Standards for Rehabilitation and the Site Layout/Setbacks, Surface Treatment (fenestration and detailing), Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines as summarized below. The Echo residential tower would have a flat roof which is not compatible with the historic district and the project design would not be compatible with the architectural features of the Landmark District. The Landmark District consists of two-to-four story buildings that are rectangular in plan and large in mass. The district contributors within the Landmark District are set back on platforms above the street level from the sidewalk. The Echo residential tower would be set back 5 feet at the northeast corner of the podium while upper floors would have no set back and would be built out to the property line when surrounding contributing buildings have deep setbacks of 10 -30 feet on platforms above grade. With a minimal street setback, there is no landscaped setback provided to achieve landscape unity within the Landmark District. The Echo residential tower has a greater wall to window proportion with the 80-foot-wide west façade largely solid and clad with cementitious panels and a monolithic appearance facing St. James Square. The podium level of the Echo residential tower, with the exception of the northeast corner, would be solid with doors or vehicular entries providing access to the parking or service areas behind. The contributing buildings within the Landmark District have architectural elements and/or detailing at the entrances and windows, and highly decorative cornices. The Echo residential tower does not incorporate any typical historic detailing or articulation of the lower levels. Therefore, the new construction within the boundaries of the Landmark District would alter the surroundings and historic integrity of design, feeling and association of the Landmark District.

General Plan historic preservation land use policies LU-13.1 and LU13.7 envisage the preservation of the integrity of designated historic districts and the design of new development within a designated historic district to be compatible with the character of the historic district and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties and appropriate State of California requirements regarding historic buildings. The construction of the Echo residential tower does not conform to the Standards and Guidelines or General Plan historic preservation land use policies LU-13.1 and LU13.7. Section 13.48.010 of the Historic Preservation Ordinance outlines the purpose and declaration of policy of the ordinance and discusses the importance of general harmony in style, form, proportion and texture between buildings of historic design and those of more modern design to advance the preservation and protection of historic or architecturally worthy neighborhoods. The new construction would not protect and enhance the cultural and aesthetic heritage of the Landmark District which makes San José distinct and serves as a visible reminder of its history. Therefore, the required findings in Section 13.48.240(B) **cannot** be made that the work will not be detrimental to a historic district and the work is consistent with the spirit and purposes of the Historic Preservation Ordinance.

9. **Hardship.** Section 13.48.260 of the Historic Preservation Ordinance states that if the City Council is unable to make the findings required under Section 13.48.240 for issuance of a Historic Preservation permit (either with or without conditions), the City Council may nevertheless issue a Historic Preservation permit (either with or without conditions) if it finds that denial of the Historic Preservation permit would cause immediate and substantial hardship on the applicant because development in accordance with the chapter is infeasible from a technical, mechanical, structural or economic standpoint. Since the required findings required under Section 13.48.240 cannot be made, the applicant submitted evidence to support a claim of economic hardship.

The Project consists of a 525,000 square foot office building (Icon) and a 415-unit residential tower (Echo). The Echo residential tower and Icon office tower is proposed to be financed and constructed separately. The applicant asserts that the mixed-uses of the Project, as shown in the approved development plans, are financially viable. The applicant reported that the office and residential return on costs metrics are 7.5% and 5.0%, respectively and that these returns are important to attract equity from investors and construction financing from a bank. If the cost metrics as shown cannot be met, the project would be infeasible from an economic standpoint.

The applicant evaluated three different alternative designs (Scheme A, B and C) for the Echo residential tower that could potentially increase conformance with the goals of the Standards and Guidelines and enhance compatibility of the residential building with the Landmark District. The documentation submitted by the applicant illustrates and compares the total costs for the Project and anticipated financial returns on the three design alternatives.

In Scheme A, the Echo residential tower would be set back 20 feet from East St. John Street (where a 10-foot street setback is currently proposed) and the height of the building would be reduced from 265 feet to 70 feet. The residential tower would be six stories high and connected via a podium on the basement floor to the fourth floor. This alternative also proposes a reduction in the width of the building along North 3rd Street facing St. James Square and would consist of one level of below-grade parking, four levels of above-grade parking, and residential and fitness space on the upper floors (floors five and six). The office tower would remain as proposed because it is located outside the Landmark District. The 70-foot height and 20-foot setback from East St. John Street could potentially achieve compatibility with the Landmark District because the building could be conceptually compatible in size, scale, proportion, and massing to the historic district, which is the source of the detriment to historic integrity of the district. The historic district features two-story to four-story buildings, generally rectangular in plan that are large in bulk and mass and setback from the street between 10 and 30 feet (often on platforms). While this alternative has not been fully developed to level of detail as the Project, the massing study indicates the reduced height and setback from East St. John Street could conceptually conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties because

the height, form, massing and setback of the residential building could be generally compatible with the contributing buildings in the Landmark District. In addition, this alternative could comply with the Site Layout/Setbacks and Landscaping sections of the St. James Square Historic District Design Guidelines with the significantly increased setback where landscaping could be placed. Since the setback, size, scale, proportion, and massing of this alternative could be compatible with the historic district, features, such as fenestration and architecture features, could be refined to achieve maximum conformance with the Standards and Guidelines, but the reduction in height and setback alone could sufficiently avoid the detriment of the proposed new construction to the Landmark District. The applicant reported that this design would result in a reduction of 385 units to 30 units and when 385 residential units are removed from the project, the return on costs would drop from 5.00% to a negative 4.03%.

In Scheme B, the Echo residential tower would be reduced in height for the portion of the building along North 4th Street from 268 feet to 135 feet for the majority of the building along East St. John Street, the corner nearest to St. James Square around which the historic district is centered and would setback 10 feet from East St. John Street from a 40-foot podium height where a 5-foot, one story recess is currently proposed above the fifth floor. This alternative also proposes a reduction in the width of the building along North 3rd Street facing St. James Square. Under this alternative, the residential tower would be approximately 13 stories and 15 stories high and connect to the office tower via a podium on the basement floor to the fourth floor. This alternative would consist of one level of below-grade parking, four levels of above-grade parking, eight and ten floors of residential space, and one floor of fitness space. The office tower would remain as proposed because it is located outside the Landmark District. While this alternative has not been fully developed to the level of detail as the Project, the massing study indicates the size and scale of the building could be reduced and the proportion and massing could be more responsive to the St. James Square Historic District Design Guidelines. The 10-foot setback above the fifth floor creates the visual appearance of a podium level which more closely relates to the historic district featuring two to four story buildings that are generally rectangular in plan and large in bulk and mass. The variation in height of the building could reduce the massing and scale of the 135-foot portion of the residential building would be similar in height to the adjacent Tetra Tech building, a non-contributing building in the historic district on the corner of East St. John Street and North 3rd Street. As a result, this alternative could achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and could be more compatible with the contributing buildings in the Landmark District. This alternative would not comply with the Site Layout/Setbacks and Landscaping sections of the St. James Square Historic District Design Guidelines because it provides no setback from the property line or opportunity for landscaping in front of the building. While this alternative could reduce and vary the building heights and improve the massing of the building by visually creating a podium level and street wall along East St. John Street, the Echo

residential tower could be less detrimental to the Landmark District. The applicant reported that this alternative would reduce the number of residential units by 190 to 225 units and with the removal of 190 residential units, the return on costs drops by 323 basis points to 1.77%. As in Scheme A, the applicant asserted that the Icon office development would assume the residential soft costs spent to date, property taxes, site, demo and parking costs and the Icon office development return would decrease to 6.55%.

In Scheme C, the Echo residential tower would have no height reduction along North 4th Street and a minor reduction in height along East St. John Street, and would have a 20-foot setback of the building along East St. John Street from a 40-foot podium height. This alternative is also a reduction in the width of the building along North 3rd Street facing St. James Park. Under this alternative, the residential tower would be 23 stories and 25 stories high and connected to the office tower via a podium on the basement floor to the fourth floor. This alternative would consist of one level of below-grade parking, four levels of above-grade parking, 18 and 20 floors of residential space, and one floor of fitness space. The office tower would remain as proposed because it is located outside the Landmark District. This alternative would reduce the height of the portion of the Echo residential tower facing St. James Square by two stories. The building would be set back 20 feet from East St. John Street from a 40-foot podium height where a 5-foot, one story recess is currently proposed above the fifth floor. While this alternative has not been fully developed to the level of detail as the Project, the massing study indicates the size and scale of the building could be reduced and the proportion and massing could be more responsive to the St. James Square Historic District Design Guidelines. The 20-foot setback above the fifth floor creates a more significant podium level than the reduced height alternative to 160 and 135 Feet, which would even more closely relate the building to the historic district featuring two to four story buildings that are generally rectangular in plan and large in bulk and mass. The minor variation in height of the portion of the residential tower facing St. James Square could slightly reduce the massing and scale residential building, but it would greatly exceed the height of the adjacent Tetra Tech building, a non-contributing building in the historic district, and the contributing buildings in the historic district. As a result, this alternative could achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and could be more compatible with the contributing buildings in the St. James Square City Landmark District. This alternative would not comply with the Site Layout/Setbacks and Landscaping sections of the St. James Square Historic District Design Guidelines because it provides no setback from the property line or opportunity for landscaping in front of the building. By slightly reducing the building height, this alternative could improve the massing of the building and could create a truer podium level and street wall along East St. John Street and the Echo residential tower could be less detrimental to the Landmark District. This alternative would reduce the Echo residential tower by 70 units to 345 units. Under Scheme C, the return on cost would drop 112 basis points to 3.88%.

The three alternatives described above would result in a loss of residential units, square footage and amenities. The applicant asserted that as the number of residential units decrease resulting from the conceptual conformance or partial conformance with the Standards and Guidelines, the return on cost would dramatically decrease, and would make the return on cost for the office tower development decrease and both buildings would be financially infeasible to construct. The applicant asserted that a return on costs below 5.0% would not attract the necessary capital to build the residential development, and the office development would no longer be financially viable as its return on costs would drop below the necessary 7.5%. In summary, the design alternatives for the Echo residential tower to conceptually conform or partially conform with the Standards and Guidelines would result in returns that create economic hardship and would make the Project as a whole financially infeasible.

The City Council is unable to make the required findings required under Section 13.48.240 for issuance of a Historic Preservation permit that that the work will not be detrimental to a historic district and the work is consistent with the spirit and purposes of the Historic Preservation Ordinance. Therefore, in accordance with the findings set forth above, a **Historic Preservation Permit** to conduct said work specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted** under Section 13.48.260 of the Historic Preservation Ordinance, and, finding that denial of the Historic Preservation permit would cause immediate and substantial hardship because development in accordance with Chapter 13 is infeasible from a technical, mechanical, structural or economic standpoint, the City Council approves the hardship request. 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Historic Preservation Permit Limitations.** This Historic Preservation Permit does not authorize any land uses. Land uses are separately regulated by Title 20 of the San José Municipal Code (Zoning Ordinance).
2. **Acceptance of Permit.** Per Section 13.48.270(D), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Chapter 13.48 applicable to such Permit.

3. **Timing.** No work on the buildings may be implemented unless and until this Historic Preservation Permit is released to the Building Division.
4. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the permittee's intent to fully comply with said conditions.
5. **Conformance to Plans.** Construction and development shall conform to the conditions in this Historic Preservation Permit, and plans, entitled "Icon-Echo Office and Residential, San José, CA," dated January 31, 2022, last update dated March 18, 2022, on file with the Department of Planning Building, and Code Enforcement. If there are inconsistencies among the Permits and the plans, this Permit take precedence.
6. **Salvage.** Preservation organizations and other interested parties shall be contacted at least 30 days prior to demolition activities and given the opportunity to examine the buildings located at 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street and to salvage any architectural and building elements. Documentation of the salvage offer/s shall be submitted to the City's Historic Preservation Officer.
7. **Interpretation/Commemoration:** In consultation with a qualified architectural historian and design professional, and under the direction of the Historic Preservation Officer, the permittee shall develop an interpretive and/or commemorative program of the St. James Square City Landmark District that may include one or more interpretive displays, artworks, electronic media, smartphone apps, and other means of presenting information regarding the history and development of the historic district. The program may concentrate on those contextual elements that are specific to the buildings that will be demolished or the greater historic district. Display panels, if included in the interpretive program, shall be placed at, or as near as possible to, the location where the buildings were historically located. The conceptual interpretive program shall be reviewed and approved by the Historic Preservation Officer prior to the issuance of demolition permit(s) for 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street and shall be fully implemented and/or installed before the issuance of a certificate of occupancy for the Echo residential tower.
8. **No Signage Approval.** Any signage shown on the Approved Plan Set is conceptual only. Signs are subject to review and approval through the submittal of a Sign Permit application (Permit Adjustment) <https://www.sanjoseca.gov/home/showpublisheddocument?id=15381>.
9. **Plan Modifications.** Any modifications to the approved plans will require a Historic Preservation Permit Amendment or Adjustment at the discretion of the Director of Planning, Building and Code Enforcement.
10. **Permit Expiration.** This Permit shall automatically expire in four years from and after the date of issuance hereof by the Director of Planning, Building and Code Enforcement, if within such time period, a Building Permit has not been obtained, pursuant to and in accordance with the provision of this Permit. The date of issuance

is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Historic Preservation Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Chapter 13.48 of the Municipal Code (Historic Preservation Ordinance). The Historic Preservation Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

11. Conformance with Municipal Code. No part of this approval shall be construed to permit violation of any part of the San José Municipal Code.

12. Conformance Required with Approved Mitigation, Monitoring and Reporting Program. This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].

13. Standard Environmental Permit Conditions

a. Air Quality

- i. Construction-related Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - (i) Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - (ii) Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - (iii) Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - (iv) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - (v) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - (vi) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - (vii) All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - (viii) Replant vegetation in disturbed areas as quickly as possible.
 - (ix) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - (x) Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.

- (xi) 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.
- (xii) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources

- i. The project shall be required to implement the following measures:
 - (i) Tree Replacement. Trees removed for the project shall be replaced at ratios required by the City, as provided in the table below, as amended:

Tree Replacement Ratios				
Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
*x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. ** A 24-inch box replacement tree = two 15-gallon replacement trees Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.				

- (a) The proposes 39 trees for removal: 11 trees would be replaced at a 4:1 ratio, 19 trees would be replaced at a 2:1 ratio, and five trees would be replaced at a 1:1 ratio with 15-gallon containers. Additionally, the two native trees would be replaced at a 5:1 ratio with 15-gallon containers. No tree replacement would be needed for the two orchard trees since they are less than 19 inches. The project would be required to plant a total of 97 trees per the City's tree replacement policy. 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 or Director's designee.
- (b) If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building

and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:

- (i) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
 - (ii) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- (ii) Tree Protection Standards. The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
- (iii) Santa Clara Valley Habitat Plan. The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form for private projects: (https://scv-habitatagency.org/DocumentCenter/View/1367/PvtScreeningForm_v3_12_212020) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at: <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>

c. Cultural Resources

- i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a

- 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (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:
- (i) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - (ii) The MLD identified fails to make a recommendation; or
 - (iii) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

- iii. Salvage. Preservation organizations and other interested parties shall be contacted at least 30 days prior to demolition activities and given the opportunity to examine the buildings located at 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street and to salvage any architectural and building elements. Documentation of the salvage offer/s shall be submitted to the City's Historic Preservation Officer.
- iv. Interpretation/Commemoration: In consultation with a qualified architectural historian and design professional, and under the direction of the Historic Preservation Officer, the Permittee shall develop an interpretive and/or commemorative program of the St. James Square City Landmark District that may include one or more interpretive displays, artworks, electronic media, smartphone apps, and other means of presenting information regarding the history and development of the historic district. The program may concentrate on those contextual elements that are specific to the buildings that will be demolished or the greater historic district. Display panels, if included in the interpretive program, shall be placed at, or as near as possible to, the location where the buildings were historically located. The conceptual interpretive program shall be reviewed and approved by the Historic Preservation Officer prior to the issuance of demolition permit(s) for 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street and shall be fully implemented and/or installed before the issuance of a certificate of occupancy for the Echo residential tower.

d. **Geology and Soils**

- i. Seismic Hazards.
 - (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 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.
- ii. Dewatering. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- iii. 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 shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

e. Greenhouse Gas Emissions

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

f. Hazards and Hazardous Materials

- i. Asbestos and Lead-Based Paint.
 - (i) In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing

materials (ACMs) and/or lead-based paint (LBP).

- (ii) During demolition activities, all building materials containing LBP 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 LBP or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
 - (iii) All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
 - (iv) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
 - (v) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- ii. Polychlorinated Biphenyls. In conformance with City of San José permitting requirements, consistent with Regional Water Quality Control Board (RWQCB) regulations, the project applicant shall be required to submit a polychlorinated biphenyls Screening Assessment Form when applying for a demolition permit to demolish the existing building(s) on the project site and shall comply with any resulting sampling and abatement procedures as directed by federal and state agencies.
 - iii. FAA Clearance Required. Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

g. Hydrology and Water Quality

- i. Construction-related water quality.

- (i) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- (ii) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- (iii) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary.
- (iv) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- (v) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
- (vi) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- (vii) Vegetation in disturbed areas shall be replanted as quickly as possible.
- (viii) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- (ix) The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- ii. Construction General Permit Requirements. Prior to initiating grading activities, the project applicant will file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The SWPPP may include, but is not limited to, the following construction BMPs:
 - (i) Restrict grading to the dry season or meet City requirements for grading during the rainy season.
 - (ii) Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
 - (iii) Cover soil, equipment, and supplies that could contribute non-visible

pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.

- (iv) Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
 - (v) Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
 - (vi) Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.
 - (vii) The proposed project involves dewatering activities; therefore, the SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent will be contained prior to discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater will be analyzed by a state-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the applicant will work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.
- iii. The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction.
 - iv. When the construction phase is complete, a Notice of Termination (NOT) will be filed with the RWQCB and the DTSC, in conformance with the Construction General Permit requirements. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

h. Noise and Vibration

- i. Construction-related Noise. Noise minimization measures include, but are not limited to, the following:
 - (i) Pile driving is prohibited.
 - (ii) Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a

development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

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

Interior Noise Standard for Residential Development. The project applicant 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 project applicant 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

14. **Revocation.** This Historic Preservation Permit is subject to revocation for violation of any of its provisions or conditions.

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

- a. *Construction Plans.* This permit file number, *HP21-007* shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

In accordance with the findings set forth above, a Historical Preservation Permit 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.

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT A POINT ON THE EASTERLY LINE OF NORTH THIRD STREET WHERE THE DIVIDING LINE BETWEEN THE LOTS 2 AND 3 IN BLOCK 2, RANGE 4 NORTH OF THE BASE LINE IN SAID CITY OF SAN JOSE AS SO DESIGNATED UPON THE OFFICIAL MAP OR PLAT OF SAID CITY INTERSECTS SAID EASTERLY LINE AND RUNNING THENCE SOUTHERLY AND ALONG SAID EASTERLY LINE OF THIRD STREET 131.56 FEET; THENCE AT RIGHT ANGLES EASTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF ST. JOHN STREET 137.50 FEET; THENCE AT RIGHT ANGLES NORTHERLY AND PARALLEL WITH THE EASTERLY LINE OF THIRD STREET 131.56 FEET; THENCE AT RIGHT ANGLES WESTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF ST. JOHN STREET 137.50 FEET TO THE POINT OF COMMENCEMENT.

PARCEL TWO:

COMMENCING AT A POINT ON THE WESTERLY LINE OF FOURTH STREET DISTANT THEREON 137.84 FOOT SOUTHERLY FROM THE POINT OF INTERSECTION OF SAID WESTERLY LINE OF FOURTH STREET WITH THE SOUTHERLY LINE OF ST. JOHN STREET, SAID POINT OF COMMENCEMENT BEING ALSO THE POINT OF INTERSECTION OF SAID WESTERLY LINE OF FOURTH STREET WITH THE DIVIDING LINE BETWEEN LOTS 1 AND 4 BLOCK 2 RANGE 4 NORTH OF THE BASE LINE OF THE CITY OF SAN JOSE; THENCE AT RIGHT ANGLES WESTERLY ALONG THE SAID DIVIDING LINE BETWEEN SAID LOTS 1 AND 4, 137.84 FEET, MORE OR LESS, TO THE COMMON CORNER FOR LOTS 1, 2, 3 AND 4 IN SAID BLOCK 2 RANGE 4 NORTH, SAID POINT BEING ALSO THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY ROBERT S. FIELD AND WIFE TO F. W. GROSS, ET AL, TRUSTEES OF THE FIRST PRESBYTERIAN CHURCH OF THE CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA, BY DEED DATED OCTOBER 15, 1906 AND RECORDED IN LIBER 308 OF DEEDS, PAGE 231, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE AT RIGHT ANGLES SOUTHERLY AND ALONG THE DIVIDING LINE BETWEEN LOTS 3 AND 4, AND THE EASTERLY LINE OF THE LANDS OF THE PRESBYTERIAN CHURCH 131.56 FEET TO THE MOST EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY D.B. MOODY AND WIFE TO F.W. GROSS, ET AL AS TRUSTEES OF THE FIRST PRESBYTERIAN CHURCH OF THE CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA, BY DEED DATED NOVEMBER 24, 1906 AND RECORDED IN LIBER 311 OF DEEDS, PAGE 337; THENCE AT RIGHT ANGLES EASTERLY AND PARALLEL WITH SAID DIVIDING LINE BETWEEN LOTS 1 AND 4, 137.84 FEET, MORE OR LESS, TO A POINT ON THE SAID WESTERLY LINE OF FOURTH STREET; THENCE NORTHERLY ALONG THE SAID WESTERLY LINE OF FOURTH STREET 131.56 FEET TO THE PLACE OF COMMENCEMENT, AND BEING A PORTION OF LOT 4 IN BLOCK 2 RANGE 4 NORTH OF THE BASE LINE OF THE CITY OF SAN JOSE.

PARCEL THREE:

BEGINNING AT A POINT IN THE EASTERLY LINE OF THIRD STREET, DISTANT THEREON 269.40 FEET SOUTHERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF THIRD STREET WITH THE SOUTHERLY LINE OF ST. JOHN STREET, AND SAID POINT OF BEGINNING ALSO BEING DISTANT ALONG SAID LINE OF THIRD STREET SOUTHERLY 131.56 FEET FROM WHERE SAID LINE OF THIRD STREET IS INTERSECTED BY THE LINE DIVIDING LOTS 2 AND 3 IN BLOCK 2 RANGE 4 NORTH OF THE BASE LINE OF THE CITY OF SAN

JOSE, AND SAID POINT OF BEGINNING ALSO BEING THE SOUTHWESTERLY CORNER OF THE LAND OF THE SOCIETY OF THE FIRST PRESBYTERIAN CHURCH OF SAN JOSE, A CORPORATION; THENCE SOUTHERLY ALONG SAID LINE OF THIRD STREET 65.1667 FEET TO THE LAND DESCRIBED IN THE DEED FROM ALLIANCE LAND COMPANY, A CORPORATION, ET AL, TO GLENWOOD LUMBER COMPANY, A CORPORATION, DATED OCTOBER 24, 1924 AND RECORDED OCTOBER 30, 1924 IN BOOK 115 OF OFFICIAL RECORDS, PAGE 290; TENCE AT A RIGHT ANGLE EASTERLY 115.0 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 65.1667 FEET TO A POINT IN THE SOUTHERLY LINE OF LAND OF THE SOCIETY OF THE FIRST PRESBYTERIAN CHURCH OF SAN JOSE, A CORPORATION; YHENCE AT A RIGHT ANGLE WESTERLY 115 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOTS 3 AND 6 IN BLOCK 2 RANGE 4 NORTH OF THE BASE LINE OF THE CITY OF SAN JOSE.

PARCEL FOUR:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THIRD STREET, DISTANT THEREON ONE HUNDRED NINETY-SIX AND 7267/10000 (196.7267) FEET SOUTHERLY FROM THE POINT WHERE THE DIVIDING LINE BETWEEN LOTS 2 AND 3 IN BLOCK 2 RANGE 4 NORTH OF THE BASE LINE INTERSECTS THE SAME; AND RUNNING THENCE EASTERLY AT RIGHT ANGLES TO THIRD STREET ONE HUNDRED FIFTEEN (115) FEET; THENCE AT RIGHT ANGLES NORTHERLY AND PARALLEL TO THIRD STREET SIXTY-FIVE AND 1667/10000 (65.1667) FEET; THENCE AT RIGHT ANGLES EASTERLY ALONG THE LOT NOW OR FORMERLY OF THE SOCIETY OF THE FIRST PRESBYTERIAN CHURCH OF SAN JOSE, ONE HUNDRED SIXTY AND 34/100 (160.34) FEET, MORE OR LESS, TO THE WESTERLY LINE OF FOURTH STREET; THENCE SOUTHERLY ALONG SAID LINE OF FOURTH STREET ONE HUNDRED NINE AND 12/100 (109.12) FEET, MORE OR LESS, TO THE NORTHERLY LINE OF LET NOW OR FORMERLY OF SPERRY FLOUR COMPANY; THENCE WESTERLY ALONG SAID LAST NAMED LINE AT RIGHT ANGLES TO FOURTH STREET TWO HUNDRED SEVENTY-FIVE AND 68/100 (275 68) FEET, MORE OR LESS, TO THE EASTERLY LINE OF THIRD STREET, AND THENCE NORTHERLY ALONG SAID LAST NAMED LINE FORTY-THREE AND 95/100 (43.95) FEET, MORE OR LESS TO THE POINT OF BEGINNING AND BEING PART OR PORTIONS OF LOTS 3, 4, 5 AND 6 IN BLOCK 2 RANGE 4 NORTH OF THE BASE LINE OF THE CITY OF SAN JOSE.

EXCEPTING THEREFROM PARCELS ONE THROUGH FOUR ALL THAT PORTION OF LAND GRANTED TO TOWN PARK TOWERS, INC. IN THAT CERTAIN CORPORATION GRANT DEED RECORDED AUGUST 13, 1971 IN BOOK 9462, PAGE 736, SANTA CLARA COUNTY OFFICIAL RECORDS.

APN 467-20-08