

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING RESTAURANT BUILDING AND THREE ACCESSORY BUILDINGS, THE REMOVAL OF ONE ORDINANCE-SIZE TREE AND ONE NON-ORDINANCE-SIZE TREE, AND THE CONSTRUCTION OF A 30-STORY MIXED RESIDENTIAL AND COMMERCIAL BUILDING WITH FOUR LEVELS OF BELOW-GRADE PARKING ON A 0.75-ACRE SITE LOCATED AT THE SOUTH CORNER OF SOUTH 2<sup>ND</sup> STREET AND EAST SAN SALVADOR STREET (APNS 264-47-019, 020, AND 097); AND TO ALLOW EXTENDED CONSTRUCTION HOURS FROM 7 AM TO 10 PM, MONDAY TO SATURDAY OVER A PERIOD OF APPROXIMATELY 33 MONTHS**

**FILE NO. H20-038**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 18, 2020, an application (File No. H20-038) was filed by Project Bo Town LLC for a Site Development Permit to allow the demolition of the existing Bo Town Restaurant, which is eligible as a Candidate City Landmark, an accessory building and two storage structures totaling approximately 5,283 square feet, the removal of one ordinance-size tree and one non-ordinance-size tree, and the construction of one 30-story mixed residential and commercial building with a total of approximately 606,526 square feet, including 7,430 gross square feet of ground floor commercial space and 540 residential units with 7,497 co-working space on Level 2 and 6,141 residential amenity space on Level 30, and four levels of below-grade parking (the “project”) on a 0.75-acre site located at the south corner of South 2<sup>nd</sup> Street and East San Salvador Street (APNs 264-47-019, 020, and 097) (the “subject property”); and

**WHEREAS**, the Site Development Permit also allows extended construction hours from 7 AM to 10 PM, Monday to Saturday over a period of approximately 33 months; and

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

**WHEREAS**, at a duly noticed public hearing on October 26, 2022, the Planning Commission considered public comments and all evidence and testimony received at the public hearing regarding the project and recommended that the City Council approve the project; and

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

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Bo Town Residential, Universal Planning Application-SDP6" dated revised on August 3, 2022, which is on file in the Department of Planning, Building, and Code Enforcement and available for inspection; said plan is incorporated by reference; and

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

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

After considering all of the evidence presented at the Public Hearing, the City Council finds the following are the relevant facts regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject property is located at the south corner of East San Salvador Street and South 2nd Street. The approximately 0.75-gross acre site is currently developed with a one-story restaurant (currently vacant Bo Town Restaurant) at the street corner, two storage structures, a surface parking lot and a two-story accessory building to the south of the restaurant. The Bo Town Restaurant building is listed in the Historic Resources Inventory as a Structure of Merit. Per the Historic Resources Assessment conducted by TreanorHL dated October 22, 2021, the restaurant building is eligible as a Candidate City Landmark because it is one of the only extant examples of a Googie-style building in downtown San Jose.

The site is surrounded by restaurant, bar, and office uses to the west, a church and a motel to the south, a restaurant and a market on a lot planned for two mixed use towers (File No. SP21-019) and residential use to the east across South 2nd Street, and a surface parking lot planned for a high-rise commercial office development (Valley Title Commercial Office Project, File No. H21-012) to the north across East San Salvador Street.

- 2. Project Description.** The project would demolish four existing buildings and structures, including the Bo Town Restaurant building. The project would also remove one ordinance-size tree and one non-ordinance-size tree on site.

The 30-story, approximately 606,526-square-foot mixed-use tower, which consists of approximately 7,430 gross square feet of ground floor commercial space, approximately 7,497 square feet of co-working space on Level 2 (designated for residents in this building), 540 residential units from Level 3 to Level 29, approximately 6,141 square feet of residential amenity space (such as gym, pool, party room, and outdoor activity area on Level 30), and four levels of below grade parking. The ground floor commercial area includes a 4,524-square foot restaurant designed to resemble the Bo Town building being demolished, and a 2,863-square foot cycle club. The site would be accessed from a two-way driveway from East San Salvador Street. The project would have a maximum height of 293 feet and a density of 719 dwelling units per acre. The project also includes extended construction hours from 7AM to 10PM, Monday to Saturday for the entire construction period (approximately 33 months).

The project requires a Supplemental Environmental Impact Report (SEIR) to the 2040 Downtown Strategy Environmental Impact Report, certified by the City Council in December of 2018. The SEIR for the project identified significant and unavoidable project impacts related to:

- **Air Quality:** Implementation of the project would result in significant cancer risk to sensitive receptors near the project site during construction.
- **Cultural Resources:** Demolition of the existing structure on-site that is identified as a Candidate City Landmark would result in a significant and unavoidable impact to the historical resource and a significant and unavoidable impact to the cumulative historical resource.

As analyzed in the SEIR, there are no feasible mitigation measures to reduce the impact to the cultural resources that would also meet the project objectives to construct the mixed-use tower, and the impact to air quality during construction. The SEIR was prepared in accordance with Title 21 of the San José Municipal Code and the California Environmental Quality Act of 1970, as amended (CEQA), and a statement of overriding consideration is required for environmental impacts that cannot be reduced to a less than significant level.

- 3. General Plan Conformance.** The subject site has an Envision San Jose 2040 General Plan designation of Downtown. This designation supports uses such as office, retail, service, residential, and entertainment uses. All development within this designation is intended to enhance the “complete community” in Downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown land use designation allows a density of up to 800 dwelling units per acre (DU/AC) and a floor-area ratio (FAR) of up to 30.0.

The 30-story mixed use building with ground floor commercial fosters a complete community in Downtown by increasing jobs and providing active ground floor commercial use along street frontages. The project also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a density of 719 DU/AC and a FAR of 15.3, making it consistent with the General Plan land use designation of Downtown.

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

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

*Analysis: The project’s ground floor would include a restaurant, an outdoor area for dining and activities, residential lobby and cycle club along the project’s street frontages to enliven the street. The project would also improve and enhance pedestrian and bicycle connection/circulation by constructing 18 to 21-foot-wide attached sidewalks with street trees along the East San Salvador Street and South 2nd Street.*

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

*Analysis: The ground floor would provide a restaurant, cycle club and residential lobby along its street frontages and outdoor activity area. The project frontage is designed with high transparency to enhance safety and visibility between the public realm and private development.*

- c. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA,

BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

*Analysis: The project site is served by three frequent bus routes (Routes 23, 66, and 68) and two rapid bus routes (Routes 523 and 568). Two light rail transit (LRT) lines (Blue and Green Lines) are also provided in the project vicinity with the San Antonio Light Rail Station.*

*The project includes a Transportation Demand Management Plan that promotes transit ridership by incorporating a transit use incentive program that provides VTA SmartPasses to residents.*

*The proximity of the intensive mixed-use development to a variety of public transportation options encourages transit use and provides options for residents to have a car-free commute. Furthermore, it is envisioned that residents in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site.*

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

*Analysis: The project has a density of 719 DU//AC, and a FAR of 15.3 with a maximum height of approximately 293 feet, making this a dense mixed-use project. The significant density and size of the project, including its distinctive façade planting design theme would contribute to strengthening Downtown's urban character. The tower has a unique roof style reflecting that of the Bo Town Restaurant, that would contribute toward an interesting and dramatic skyline within the downtown.*

- f. Land Use Policy LU-16.1: Integrate historic preservation practices into development decisions based upon fiscal, economic, and environmental sustainability.
- g. Community Design Policy CD-1.26: Apply the Historic Preservation Goals and policies of the General Plan to proposals that modify historic resources or include development near historic resources.
- h. Downtown Urban Design Policy CD-6.7: Recognize Downtown's unique character as the oldest part, the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.

*Analysis: The existing Bo Town Restaurant on site is listed on the HRI as a Structure of Merit. Per the Historic Resources Assessment conducted by*

*TreanorHL dated October 22, 2021, Bo Town Restaurant is eligible as a Candidate City Landmark because it is one of the only extant examples of a Googie style building in downtown San Jose. The project site is also within 200 feet of five properties listed in the Historic Resources Inventory including two adjacent to the west of the project site along South 1st Street.*

*The entire site would be excavated to accommodate the underground parking for the d mixed-use tower. Therefore, all existing buildings on site including the existing Bo Town Restaurant would be removed. Due to the demolition of this Candidate City Landmark, the project would result in a significant and unavoidable impact to cultural resources. As analyzed in the SEIR, there are no other alternatives that can preserve the historic building while keeping the project viable. Therefore, a Statement of Overriding Considerations is required to approve the project. To reduce the impact to cultural resources, the project is required to implement the mitigation measures as described in the MMRP.*

*The design of the project respects the existing Bo Town Restaurant by constructing a new restaurant at the same location as the exiting Bo Town Restaurant as part of the building and incorporating the similar design features to the new building. The restaurant would follow the existing restaurant building footprint, using a very similar roof style, incorporating similar materials as the existing restaurant, and keeping the Bo Town signage at the street corner. The project also takes into consideration adjacent historic resources by including a minimum 20-foot separation from the resource buildings at the western property line, consistent with the rear transition standard of the Downtown Design Guidelines.*

*The project was referred to the Historic Landmarks Commission (HLC) on June 2, 2021, for early referral. The HLC commended the design incorporating the Bo Town Restaurant into the project and taking inspiration of the architectural resources on site for the project. The HLC suggested considering adding some wood elements into the design, applying variegated stone with more varied sizes, shapes, colors, textures for the restaurant, and retaining the existing signage at the street corner. The project design has been modified to address the HLC comments. The wood elements would be used in the interiors, field stone replica matching the existing restaurant would be used at the wall along the new restaurant entry, and the signage would be retained.*

*While the Bo Town Restaurant cannot be preserved, the project is still consistent with the above historic preservation goals and policies to the extent feasible by constructing a new building closely resembling the Bo Town building, as discussed above.*

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

##### Land Use

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

#### Height and Setbacks

[Section 20.70.210](#) does not establish a minimum setback for developments in the DC Downtown Primary Commercial Zoning District. The Zoning District only limits heights to that necessary to maintain the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. The building would be 293 feet in height. This permit includes conditions to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the development's height.

#### Parking

Per Table 20-140 of Zoning Code Section [20.70.020](#), multiple dwelling residential uses require one vehicle space per unit and one bicycle space per four living units. Commercial retail uses have no minimum vehicle parking requirement but require three bicycle parking spaces including two short-term spaces and one long-term spaces per Zoning Code Section [20.70.485](#).

Based on the 540 units, the project requires 540 vehicle parking spaces and 138 bicycle parking spaces (135 for residential and three for commercial). The project meets the bicycle parking requirement by providing a total of 176 bicycle parking spaces on site.

Per Zoning Code Section [20.90.220.A.1.a](#), a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The site is within 1,400 feet of the San Antonio Light Rail Station. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section [20.90.220.A.1](#). Additionally, per Section [20.70.330.A](#), for projects within the Downtown Zoning District, a further 15% parking reduction and an additional 50% reduction may be granted for mixed use projects if: 1) it is determined a TDM plan program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the program; and 2) the TDM would be maintained for the life of the project and it is reasonably certain the parking provided would be maintained to meet the required parking during the life of the building or use.

If applying the maximum parking reduction, the project would require 115 parking spaces. The project provides 194 vehicle parking spaces. A 64% parking reduction is requested. The project would be implementing a TDM plan. The TDM plan dated January 2022 prepared by Fehr & Peers conforms with Section [20.90.220](#) and Section [20.70.330](#). This TDM plan provides evidence that the TDM program would reduce parking demand and identifies the percentage of parking demand that would be

reduced through the TDM plan. The TDM measures include providing transit subsidies and/or transit passes to all residents who desire to commute by transit, establishing a telecommute or flexible work schedule to encourage alternative transportation, designating an on-site TDM manager and providing TDM information and program management, and providing a guaranteed ride home program. In addition, the permit contains a condition (Condition No. 7) that requires the TDM plan to be implemented for the life and use of the building. Project Condition No. 8 also requires Planning review if any future parking reduction is proposed. Therefore, with these project conditions, the project meets the parking requirement.

#### Off-Street Loading

Per Zoning Code [Section 20.70.435](#), multiple dwelling residential uses of five hundred units or more shall provide at least three off-street loading spaces. With 540 residential units, the project would require three loading spaces. No loading space is required for commercial area less than 10,000 gross square feet. The project would provide three loading spaces at the rear of the building. The project meets the off-street loading requirements.

#### Extended Construction Hours

Per Zoning Code [Section 20.100.450](#), hours of construction within 500 feet of a residential unit is limited to Monday through Friday between 7:00 a.m. and 7:00 p.m., unless otherwise allowed in a development permit. The project site is within 500 feet of residential uses. This development permit would allow extended construction hours from 7 a.m. to 10 p.m., Monday to Saturday through the entire construction period of approximately 33 months. The construction-related standard conditions included in this Resolution and mitigation measures included in the MMRP would apply to the project to limit noise and dust to reduce the construction impact to the nearby residential use, and the extended construction hours would have the beneficial effect of shortening the overall construction period, thereby reducing the duration of construction impacts. The mitigation measures include submitting a construction operations plan providing specifications of the equipment to be used during construction, having a qualified air quality specialist verify that the equipment included in the plan meets the standards specified in the MMRP, developing an odor control plan that addresses operating and maintenance procedures to minimize construction equipment emissions. The contact information of the construction disturbance coordinator would be required to be posted at the construction site (Condition #15).

### **5. Downtown Design Guidelines and Standards.**

[Section 20.70.500](#) of the San José Municipal Code requires any project in the DC Downtown Primary Commercial Zoning District be subject to the design guidelines adopted by the City Council; therefore, this project has been reviewed and found consistent with the [Downtown Design Guidelines and Standards](#), with the exception of four standards for which exceptions have been requested, as analyzed below:



The Downtown Design Guidelines include an exception process for design standards which cannot be met and establish findings in Section 1.4 of the San José Downtown Design Guidelines that are required to be made by decision makers in order to grant the requested design standard exceptions. These findings include:

- (1) there is physical constraint or unique situation not caused by the applicant or financial reasons;
- (2) approving the waiver will not impair the integrity and character of the neighborhood or create a safety hazard;
- (3) the project meets the design standard at issue to the extent physically feasible; and
- (4) the project meets all other guidelines and standards in the Design Guidelines.

*The following exceptions have been requested mainly due to the concept of rebuilding the Bo Town Restaurant in place and keeping the relationship of the restaurant to the surroundings.*

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

*The DC zoning district does not require setbacks. Approximately 49% of the ground level façade facing East San Salvador Street is within 10 feet from the property line. The project does not meet this standard.*

- b. Chapter 4.3.3 Streetwall, Standard g: This Standard requires that at the corner of intersecting streets, streetwall should be maintained along both streets for at least 20 feet.

*The project does not provide a streetwall within 20 feet of the corner and does not meet this standard.*

*Analysis: The project respects the original footprint of the Bo Town restaurant by following the original building entry that steps back from the street corner. This recess is greater than the prescribed maximum 10 feet for streetwalls. If this building line at the entry were to be included in the calculation, the project would meet this Standard; however, this change would significantly modify the original footprint and design of the original structure. In addition, bringing these walls to within 10 feet would also change the relationship to the existing signage which would be kept as part of the project, and is referred to as one of the character defining elements in the TreanorHL historic report. Consistent with the comments from the Historic Landmarks Commission, the project respects the entry as originally designed, incorporating materials and signate styles in that entry area. Redesign to strictly meet the design guidelines would compromise the original building design, signage relationships, and relationships to the street.*

*The existing Bo Town Restaurant location, building footprint, entry area design at the corner, and signage location are the unique situation not caused by the applicant or financial reasons. Approving the waiver would not impair the integrity and character of the neighborhood or create a safety hazard; rather, the reconstruction of the restaurant in place would contribute to retaining the integrity of the historic building that is an identifiable element of the character of the neighborhood. It would continue to be seen and recognized at its prominent location on the corner of South 2<sup>nd</sup> Street and East San Salvador Street. Except the four standards analyzed in this section, the project meets all other guidelines and standards in the Design Guidelines. Therefore, the findings to the above two exception requests can be made.*

- c. Chapter 4.2.2 Massing Relationship to Context, Standard a-Height Transition: This Standard requires new buildings taller than 100 feet to step back its street-facing façade at least 5 feet from the front parcel line between the 25 to 50-foot elevations, if the building is adjacent to an historic building 45 foot tall or less.

*The project is adjacent to a historic building on East San Salvador Street side (400 South 1<sup>st</sup> Street) that is less than 45 feet in height. The building has no setback above the 20-foot height level to the top of the roof parapet, and therefore doesn't meet the five-foot recess standard*

Analysis: *The concept of rebuilding the original restaurant, requirements for off street loading, and parking access determine the placement of the tower in relation to the historic building. In addition, the side-facing elevation of the historic building along East San Salvador Street is a solid wall without windows, doors, or architectural details that would typically express historic character. Approving the waiver would therefore not impair the integrity and character of the neighborhood or create a safety hazard. Additionally, the original building location and adjacent historic building are the physical constraints that are not caused by the applicant and therefore not driven by financial considerations. The Bo Town restaurant parking lot already forms a physical break between the existing Bo Town restaurant and historic building; therefore, the project would not disrupt an existing continuous urban form. Moreover, the balconies project out 4 feet from the building façade starting at the 20-foot height level, which helps create a height reference line to the historic building. Therefore, the design generally conforms with the intent to provide a height transition to the adjoining historic property and also in balancing the relationship to the Bo Town Restaurant scale on the corner.*

*Except the four standards analyzed in this section, the project meets all other guidelines and standards in the Design Guidelines. Therefore, the findings to this exception request can be made.*

- d. Chapter 4.2.4 Historic Adjacency, Standard d-Maintain Streetwall Continuity: This Standard requires maintaining streetwall continuity with Historic Context buildings that are on the same side of the same street by placing the street-side façade of a

new building within 5 feet of the average Historic Context building streetwall distance from the front property line.

*400 S. 1st Street is adjacent to the building and on the same side of East San Salvador Street. The existing building at 400 S 1st Street is constructed without setbacks and provides a continuous streetwall. The building has an articulated streetwall along East San Salvador Street which is set back approximately 7 feet to 19.75 feet (except the stairway wall). The building does not meet this standard.*

*Analysis: As discussed in the exception request to Standard 3.2.2, the project would rebuild the restaurant in place to maintain the historic relationship to the surroundings. The exception request results from the existing restaurant location, building footprint, entry area design at the corner, and signage location that are the unique situations not caused by the applicant or and not driven by financial reasons. The façade of the building at 400 1st Street along East San Salvador Street presents a side facing façade without any transparent elements or breaks. Approving the exception would not impair the integrity and character of the neighborhood or create a safety hazard. The reconstruction of the restaurant in place would contribute to retaining the integrity of the historic building that is an identifiable element of the character of the neighborhood. Given the tall height and massing of the building the project design would still achieve the intent of defining the streetwall. In addition, there is a break between the building and the historic context building to allow for site access, making the difference in setback between the building and historic context building less evident. Except the four standards analyzed in this section, the project meets all other guidelines and standards in the Design Guidelines. Therefore, the findings to this exception request can be made.*

- 6. Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (“SEIR”) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation was circulated from September 7<sup>th</sup>, 2021, until October 7<sup>th</sup>, 2021. The Draft SEIR itself was circulated for public review and comment from April 29<sup>th</sup>, 2022 through June 14<sup>th</sup>, 2022.

The City received three written comment letters during the public circulation period. Comments were submitted by three agencies, which were the Santa Clara Valley Transportation Authority (VTA), Valley Water, and the Bay Area Air Quality Management District (BAAQMD). VTA applauded the number of bicycle parking spaces provided but recommended that the project also allow residents to keep bicycles in their unit to get closer to the bicycle parking supply goal for residential projects of one bicycle parking space per bedroom per the updated VTA Bicycle Technical Guidelines bicycle parking chapter. VTA recommended that improvements be made to the existing bus stop on southbound 2<sup>nd</sup> Street in front of the project, including replacing the bus pad, removing the planned street trees, and replacing the existing wooden bench with a new

open back advertising shelter. Valley Water provided comments related to dewatering, groundwater, and made recommendations for text edits to the document for flood zones and water usage. BAAQMD applauded the increased housing density, transit demand management (TDM) incentives, and use of green building practices by the project. They also expressed concern about the project's proximity to sensitive receptors and recommended that additional mitigation measures be included to address construction impacts and exhaust emissions. BAAQMD also recommended that enhanced measures should be added to address any potential odor emissions from the project's wastewater treatment facility.

None of the comments received address an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address bus stop information, dewatering, flood zone information, revisions to reports, and other suggested texts from agencies.

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 MMRP constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (FSEIR) 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/bo-town-mixed-use-project>. A copy of the signed MMRP is attached to the CEQA resolution.

#### *Identified Significant and Unavoidable Impacts*

The Draft SEIR found that the project would result in a significant and unavoidable impacts to Air Quality from significant cancer risk and Cultural Resources from demolition of the eligible Candidate City Landmark. Due to the size and placement of the project, there are no suggested feasible mitigation measures to reduce the impacts. Therefore, a Statement of Overriding Considerations is required.

#### *Project Alternatives*

The Draft SEIR analyzed four project alternatives for the purpose of identifying an environmentally superior proposal. The three alternatives analyzed were a No-Project Alternative, Reduced Development Alternative, a Preservation Alternative 2 – Preservation of the Historic Resource On-Site, and a Reduced Density and Preservation Alternative.

#### *Environmental Impacts and Mitigation Measures*

The Draft SEIR identified potential environmental impacts to air quality, biological resources, cultural resources, hazardous materials, and noise. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program (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 a related Mitigation Monitoring and Reporting Program (MMRP) for the project.

#### *EIR Recirculation Unnecessary*

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

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

## **7. FINDINGS**

### **1) Site Development Permit Findings**

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

*Analysis: As discussed above, the project is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial and residential uses at high densities. The project is also consistent with the General Plan policies listed above.*

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

*Analysis: As discussed above, the project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District does not require any minimum setbacks. The project is subject only to the height limit necessary for the safe operation of the*

*San Jose International Airport; and conditions of approval are included requiring a No Hazard Determination to be obtained from the FAA prior to issuance of Building Permits. The project requires 138 bicycle parking spaces, and the project provides 176 bicycle parking spaces. With maximum parking reduction by implementing a TDM plan, the project would require 115 parking spaces. The project would provide 194 parking spaces by implementing the TDM measures included in the TDM plan dated January 2022 prepared by Fehr & Peers. The project applicant is required to implement the TDM plan for the life and use of the building.*

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

*Analysis: Staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the project. Signs describing the project have been posted on the project site since July 2021. A joint community and environmental scoping meeting was held on September 9, 2021, to inform the surrounding community of the project. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Following the [City Council Policy on the Preservation of Historic Landmarks](#), the project was discussed at the Historic Landmark Commission under "Early Referral" on June 2, 2021, due to the Candidate City Landmark on site. The project received positive feedbacks on building design.*

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

*Analysis: There is only one building to be constructed on the project site. The building consists of a L-shape tower and a one-story portion (new restaurant) at the street corner in respecting the existing Bo Town Restaurant footprint. The roof of the new restaurant and the tower have the same style as the existing restaurant. The existing Bo Town signage would remain. The project would have active commercial use on the ground floor and residential use and amenities on the upper floors. Access to the loading area and the underground garage is from a two-way driveway at East San Salvador Street. The project would be required to implement street and sidewalk improvements required by Public Works Department and Department of Transportation as discussed previously to enhance the pedestrian and bicycle circulation and connection.*

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

*Analysis: The project is compatible with adjacent development and the*

*downtown character as defined by a growing number of high intensity developments. Two high-rise development projects would be constructed to the east across South 2nd Street and to the north across East San Salvador Street. The project would apply the same façade treatment as the proposed Valley Title Commercial Office project to the north across East San Salvador Street. The project would reduce the massing impact to the existing one to two-story buildings to the west of the site by placing the tower portion of the building at least 20 feet from the western property line. Also as discussed above, the project would rebuild the restaurant in place, apply the similar materials and roof style as the original design, which would help retain the character of the neighborhood. The project would therefore be aesthetically harmonious with adjacent development or the character of the neighborhood.*

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

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

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

*Analysis: The building would conceal the plumbing, utility, and trash facilities within the building as shown on the approved plans. All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.*

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

*Analysis: As described above, the project contains parking consistent with the Zoning Ordinance with TDM measures, and has adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can easily access the building from the lobby or commercial spaces along street frontages and the outdoor activity area. The project was reviewed by the Department of Public Works,*

*Department of Transportation and Fire Department and was found to be consistent with regulations and standards for vehicle, emergency vehicle, and pedestrian access.*

- 2) Demolition.** Chapter 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. The following shall be considered to determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation:
- a) The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
  - b) The failure to approve the permit would jeopardize public health, safety or welfare;
  - c) The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
  - d) The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
  - e) Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
  - f) Rehabilitation or reuse of the existing building would not be feasible; and
  - g) The demolition, removal, or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: Implementation of the project would demolish an existing restaurant, an accessory building, and two storage structures on site. The existing restaurant, which is currently vacant, is listed on the HRI as a Structure of Merit and is eligible as a Candidate City Landmark. The project would include a new restaurant which reflects the existing restaurant building as discussed previously. The removal of the four buildings and structures would facilitate the development which is compatible with the surrounding area as discussed above. Re-use or rehabilitation of the buildings would not be feasible given the project objective to construct a high-rise mixed-use tower on site. The removal of these buildings and structures would not reduce the City's housing stock.*

*The removal of the restaurant building would result in a significant and unavoidable impact to the cultural resources and a significant cumulative cultural impact. As analyzed in the SEIR, there are no other alternatives that can preserve the historic building while achieving the project objectives. To reduce the impact to cultural resources, the project would be required to implement the mitigation measures as described in the MMRP.*



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

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

*Analysis: One ordinance-size redwood tree and one non-ordinance-size London Plane tree would be removed to accommodate the development. These two trees cannot be retained due to the requirement to fully excavate the site to construct the building foundation and below-grade parking. Seven 15-gallon replacement trees are required. The project would plant 16 15-gallon trees on site.*

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

## CONDITIONS

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site Development Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development plans entitled, "Bo Town Residential, Universal Planning Application SDP6" dated August 3, 2022, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José

Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the “Approved Plan Set”.

6. **Parcel Map Required.** Prior to the issuance of any Building Permit, the Permittee **shall** secure approval and provide proof of recordation of a Parcel Map to merge all existing lots to one lot.
7. **Implementation of a Transportation Demand Management (TDM) Plan.** The project is required to implement the TDM Measures included in the TDM Plan prepared by Fehr and Peers dated January 2022, as amended, for the life of the project. Changes to the TDM Plan are permitted with issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
  - a. Transit Use Incentive Program for all on-site residents (such as VTA SmartPass transit passes and/or Clipper Direct Program)
  - b. TDM Information Program Management (such as On-Site TDM Manager and TDM information provided to residents and employees in the building)
  - c. Guaranteed Ride Home Program
8. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. This Permit authorizes the project to utilize a parking reduction pursuant to Section 20.90.220 of up to 50% and then a parking reduction pursuant to Section 20.70.330 for an additional 15% and 50% with the implementation of the TDM Plan. Any changes to the required vehicular or bicycle parking require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning. Changes in conformance with the Zoning Ordinance, as amended would not be withheld.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Demolition Permit.** A demolition permit may be issued upon the submittal of a complete Public Works Grading Permit application, the submittal of a shoring and excavation Building Permit, or the submittal of a complete Building Permit application for new construction, whichever occurs first. The Demolition Permit cannot be issued to the existing restaurant building at 409 South 2<sup>nd</sup> Street prior to the satisfaction of the mitigation measures and conditions that are required prior to this building demolition, as stated herein.
12. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.

13. **Tree Replacement.** The removal of one ordinance-sized tree and one non-ordinance-sized trees on site requires seven 15-gallon replacement trees to be planted on site.
14. **Extended Construction Hours:** This Permit allows extended construction hours from 7:00 a.m. to 10:00 p.m. Monday to Saturday for the entire duration of construction (approximately 33 months).
15. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
16. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
17. **Affordable Housing Requirements.** This Permit is subject to its Affordable Housing Compliance Plan as set forth by the Department of Housing, which includes the following conditions:
  - a. Prior to earliest of: approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
  - b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO or its guidelines and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.
  - c. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.

18. **FAA Clearance.** Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each roof-top corner and any additional highest point(s) of the proposed structure. The data on the forms should be prepared by a licensed civil engineer or surveyor at a "1-A" accuracy standard using NAD83 latitude/longitude coordinates out to hundredths of seconds, and NAVD88 elevations rounded off to next highest whole foot.
19. **FAA Clearance Permit Adjustment.** Prior to issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.
20. **Subsequent Permit Adjustments/ Amendments.** Any Permit Adjustment/Amendment application filed by the permittee that proposes to increase the maximum structure elevations or change the location of the structure's highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval.
21. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical construction, the property owner shall grant an Avigation Easement to the City of San José. Contact the San José Airport Department (408-392-1193) to initiate the easement dedication process.
22. **Construction Cranes.** Prior to issuance of a Building Permit for vertical construction, and prior to the required filing with the FAA for airspace obstruction review of temporary construction cranes for vertical construction, the permittee shall coordinate with the San Jose Airport Department to formulate an agreement on crane elevation and operational parameters. Compliance with an Airport-approved construction crane agreement shall become a condition of Building Permit issuance for vertical construction. Contact the San José Airport Department (408-392-1193) to initiate the construction crane agreement coordination.
23. **Solar Glare Hazard Analysis.** FAA guidance requires solar panels (and any other reflective materials) placed on the roof of any structure to be designed to minimize glare and to incorporate bird-safe design. The Airport has reviewed and approved the Solar Glare Hazard Analysis dated revised August 25, 2022 prepared by Tetra Tech Inc. for this project. Any changes to the project inconsistent with the analysis shall require a revised glare analysis subject to Airport review.
24. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.

25. **Window Glazing.** Unless otherwise indicated on the Approved Plans, all windows shall consist of a transparent glass.
26. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
27. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
28. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
29. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
30. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
31. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.
32. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
33. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
34. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
35. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
36. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping. The Permittee may request an exception/variance per Section 15.10.380, as amended, if needed in the future.

37. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. **Construction Plans.** This permit file number, H20-038, shall be printed on all construction plans submitted to the Building Division.
  - b. **San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.** The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
  - c. **Americans with Disabilities Act.** The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - d. **Emergency Address Card.** The project permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - f. **Project Addressing Plan.** Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - g. **Other.** Such other state or city adopted requirements as may be specified by the Chief Building Official.
38. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
39. **Public Works Clearance for Building Permit(s) or Map Approval.** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- 1) **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the

completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

- 2) **Transportation:** A Local Transportation Analysis (LTA) has been performed for the subject **project** based on a net new 137 AM and 155 PM peak hour trips. See separate Traffic Memo dated 6/22/22 for additional information. The following conditions shall be implemented:
  - a. Provide one (1) 26-foot full-access driveway along East San Salvador Street.
  - b. Construct Class IV raised bike lanes along the project frontages on San Salvador Street and Second Street.
  - c. Construct the signal modification at the Second Street/San Salvador Street intersection and implement the bulb-out/ADA ramps at the southwest corner.
  - d. Coordinate with VTA and the City of San Jose on implementation of bus stop improvements along the Second Street project frontage aligned with the Class IV raised bike lane.
  - e. Submit a TDM plan prior to Planning approval for the proposed maximum 63% reduction in required parking spaces.
- 3) **Private Improvements within Public Property:** The proposed encroachment for balconies, windows and/or architectural features shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for balconies, windows and/or architectural features that comply with the San Jose Building Code. The property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirement(s) and prior to Building Permit issuance. The Encroachment Agreement shall be recorded against title to the property.
  - a. Further evaluation of the proposed trees and permanently raised planter strips within the balconies that encroach into the public right-of-way will be necessary for coordination with the City Arborist during implementation stage.
  - b. Mature trees (without pruning) shall not exceed 12' in height and shall not bear fruit or nuts.
  - c. A separate Encroachment Agreement between City and Developer may be necessary as required by Director of Public Works for maintenance of trees within the balconies and within the public right of way.
- 4) **Grading/Geology:**
  - a. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - b. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being



surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- c. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

**5) Shoring:**

- a. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- b. If tiebacks are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e., soldier beams).
- c. If tiebacks are proposed for use along the adjacent property(ies) (467-47-003, 004, 089, 090, & 095) agreements between the Applicant and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- 6) **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - a. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project shall be in conformance with City Policy 6-29.

- b. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - c. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
  - d. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following:  
<http://www.sanjoseca.gov/home/showdocument?id=27405>
- 7) **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- 8) **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- 9) **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- 10) **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- 11) **Street Improvements:**
- a. Construct new curb, gutter, and a total attached sidewalk width of 18', which includes 8' pedestrian through zone, 6' raised bike lane, 4' tree well (which includes the 0.5' curb) along the San Salvador Street project frontage, as shown in the planlines provided by DOT.
  - b. Construct new curb, gutter, and a total attached sidewalk width of 21', which includes 8' pedestrian through zone, 5' tree well, 5' raised bike lane, 3' buffer

- zone (which includes the 0.5' curb) along the South 2nd Street project frontage, as shown in the planlines provided by DOT.
- c. Construct 26' wide City Standard driveway on San Salvador Street project frontage.
  - d. Provide a minimum 24' property line corner radius at the project corner per Municipal Code 19.36.070, including the sidewalk easement dedication required to meet the minimum 24' corner radius.
  - e. Construct a full signal modification at the S. 2nd Street/San Salvador Street intersection to implement a protected intersection implementing Class IV bike lanes per the Downtown Protected Bikeway Master planline. Refer to the following website under "Traffic Signal Plans" for submittal instructions, requirements, and design notes: <https://www.sanjoseca.gov/your-government/departments/public-works/development-services/public-works-applications>.
  - f. Construct two new bicycle/pedestrian curb ramps at the south corner of the intersection of San Salvador Street and S. 2nd Street.
  - g. Close unused driveway cut(s).
  - h. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - i. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - j. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- 12) **Downtown Construction:** This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- 13) **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
- a. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:

- i) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
  - ii) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
  - b. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
    - i) Implementing the closures at the time the onsite activities dictate the need for the closure.
    - ii) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii) above.
  - c. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- 14) **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- 15) **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- 16) **Street Trees:**
- a. The recommended street trees on San Salvador Street are Koelreuteria paniculate, planted 35' on center.

- b. Provide tree protection for all existing street trees on 2nds Street project frontage and infill to match existing street trees to meet 35' on center, where space allows.
- c. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- d. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

17) **Referrals:** This project should be referred to the Valley Transportation Authority (VTA).

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

41. **Conformance to Downtown Strategy 2040 Mitigation Measures.** This project shall conform to all applicable mitigation measures in the Downtown Strategy 2040 Final Environmental Impact Report (SCH# 2003042127).

42. **Standard Environmental Permit Conditions**

- a. Air Quality. The Permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site:
  - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
  - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.

- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources.

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

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

- ii. In-Lieu Mitigation. If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of

Planning, Building and Code Enforcement. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:

- a) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- b) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works building permit(s), in accordance to the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- iii. Tree Protection Standards. The applicant 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.
- iv. 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 (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.
- c. Cultural Resources. 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.
- d. Hazards and Hazardous Materials.
- 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 ACSMs and/or LBP.
  - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
  - iii. All potentially friable ACMs shall be removed in accordance with 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 BAAQMD regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- e. Noise. Consistent with the requirements for future development under the Downtown Strategy 2040 FEIR and California Building Code, the following measures shall be implemented to reduce interior noise levels to 45 dBA DNL for the residential units or 50 dBA DNL or lower for the commercial portions:

Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with the building plans and approved design, prior to issuance of a building permit.

Noise Insulation Features to Reduce Future Interior Noise Levels

- i. The following noise insulation features shall be incorporated into the proposed project to reduce interior noise levels to 45 dBA DNL or less at residential interiors:
  - ii. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
  - iii. Preliminary calculations indicate that residential units along the eastern building façade would require windows and doors with a minimum rating of 31 to 35 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
  - iv. Preliminary calculations indicate that residential units along the western building façade would require windows and doors with a minimum rating of 28 to 32 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
43. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

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

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

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

#### NOTICE TO PARTIES

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

## EXHIBIT A

### 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:

#### TRACT ONE:

##### **PARCEL ONE:**

Beginning at a point on the Westerly line of Second Street distant thereon 100.84 feet Southerly from its intersection with the Southerly line of San Salvador Street; thence Southerly along said Westerly line of Second Street 67 feet; thence at right angles Westerly 137.84 feet more or less, to the Westerly line of Lot 4 in Block 4, Range 2 South, of the base-line in said City of San Jose; thence at right angles Northerly along the Westerly line of Lots 4 and 1 in said Block, 67 feet; thence at right angles Easterly 137.84 feet, more or less, to the point of Beginning, being a portion of Lots 1 and 4 in Block 4, Range 2 South of the base line in said City of San Jose.

##### **PARCEL TWO:**

Beginning at a point on the Westerly line of Second Street distant thereon 100.84 feet Southerly from its intersection with the Southerly line of San Salvador Street; thence Westerly on a line drawn at right angles to said Westerly line of Second Street, 137.84 feet, more or less, to the Westerly line of Lot 1 in Block 4, Range 2 South of the base line in said City of San Jose; thence at right angles North 0.84 feet; thence in an Easterly direction in a straight line to the point of beginning.

Being a triangular parcel in Lot 1, Block 4, Range 2 South, of the base line in said City of San Jose.

Being the same parcels conveyed to Cornelia T. Ryland by Katherine M. Mac Phee by Deed dated March 9th, 1923 and recorded in the Office of the Recorder of said County of Santa Clara in Volume 18 of official Records Page 66.

APN: 467-47-020 (Affects Parcel's One and Two)

##### **PARCEL THREE:**

Beginning at a point on the Westerly line of Second Street in the City of San Jose forty-five (45) feet Northerly from the intersection of the Southerly line of Lot 4 in Block 4, Range 2 South of base line in said city with the Westerly line of Second Street; running thence Northerly and along the Westerly line of Second Street sixty-two and 1/2 (62-1/2) feet; thence Westerly at right angles one hundred thirty-seven and 1/2 (137-1/2) feet, more or less, to the Easterly line of Lot 3; thence Southerly and along the Easterly line of Lot 3 thirty-eight and 75/100 (38.75) feet; thence Westerly at right angles thirty-seven and 1/2 (37-1/2) feet; thence Southerly and parallel with Second Street twenty-three and 75/100 (23.75) feet; more or less, to the Northwestern corner of land conveyed by Sarah A. Cory, to Frank K. Ledyard by deed dated July 23, 1897 and recorded August 6, 1897, in Liber 201 of deeds, Page 5, in the office of the county recorder of the County of Santa Clara, State of California; thence Easterly and along the Northerly, line of said land of Ledyard one hundred seventy-five (175) feet, more or less, to the Westerly line of Second Street and the point of beginning and being a part of Lots 3 and 4 in Block 4, Range 2 South of base line in the City of San Jose, according to the map of said city on file and of record in the office of the county recorder of said county of Santa Clara.

APN: 467-47-019

#### TRACT TWO:

## EXHIBIT A (Continued)

### PARCEL ONE:

Portion of Lot 1, Block 4, Range 2 South, as shown upon that certain Map entitled, "City of San Jose, copies from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California in Volume "A" of Maps, at Pages 72 and 73, and more particularly described as follows:

Commencing at a point on the Southwesterly line of Second Street, said point being distant 38 feet Southeasterly from the intersection of the Southeasterly line of San Salvador Street with the Southwesterly line of Second Street; running thence Southwesterly and parallel with San Salvador Street, 137.84 feet, more or less, to a point in the Southwesterly line of Lot 1; thence Southeasterly and along the Southwesterly line of said Lot 1, 62.50 feet, more or less, to the Westerly corner of the land as conveyed by Alice E. Wood, et al., To Katherine M. MacPhee, by deed dated January 10, 1922, recorded January 26, 1922, in Volume 648 of Deeds, at Page 232; thence Northeasterly and along the Northwesternly line of the land of MacPhee, 137.84 feet, more or less, to a point in the Southwesterly line of Second Street; thence Northwesternly and along the Southwesterly line of Second Street 62.50 feet, more or less, to the point of commencement.

### PARCEL TWO:

Beginning at the intersection of the Westerly line of Second Street with the Southerly line of San Salvador Street; thence Southerly along said line of Second Street 38 feet; thence at right angles Westerly and, parallel with said line of San Salvador Street 137.50 feet to the dividing line between Lots 1 and 2 in Block 4, Range 2 South of the base line of the City of San Jose; thence at right angles Northwesternly and along said dividing line between Lots 1 and 2 in said Block and Range 38 feet to the Southerly line of San Salvador Street; thence, Easterly and along said line of San Salvador Street, 137.50 feet to the point of beginning, and being a part of Lot 1 in Block 4 Range 2 South of the base line of the City of San Jose.

APN: 467-47-097