

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT AND SPECIAL USE PERMIT TO ALLOW THE DEMOLITION OF EXISTING BUILDINGS ON SITE TOTALING APPROXIMATELY 22,527 SQUARE FEET AND THE REMOVAL OF 39 TREES (FOUR ORDINANCE-SIZE, 35 NON-ORDINANCE-SIZE) FOR THE CONSTRUCTION OF A MIXED USE PROJECT CONSISTING OF UP TO 415 MULTIFAMILY RESIDENTIAL UNITS, 525,000 SQUARE FEET OF COMMERCIAL OFFICE SPACE, 8,500 SQUARE FEET OF RETAIL SPACE, AND TO ALLOW UP TO 10 COMMERCIAL CONDOMINIUMS, WITH EXTENDED CONSTRUCTION HOURS FROM 7:00 AM TO 7:00 PM MONDAY TO SATURDAY, ON AN APPROXIMATELY 2.10-GROSS ACRE SITE, LOCATED ON THE NORTHWEST CORNER OF EAST SANTA CLARA STREET AND NORTH FOURTH STREET (147 EAST SANTA CLARA STREET, 49-95 NORTH 4TH STREET, 128 EAST ST. JOHN STREET) (APN: 467-20-060, -079, -080, 081)

FILE NO. SP21-031

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 23, 2021, an application for a Site Development Permit and Special Use Permit (File No. SP21-031) was filed by the applicant, Paul Ring, on behalf of property owners, Tamara Current, Sara McVey, and Erik Hayden, with the City of San José, to allow the demolition of the existing building on site totaling approximately 22,527 square feet and the removal of 39 trees (four ordinance-size, 35 non-ordinance-size) and the construction of a mixed use project consisting of up to 415 multifamily residential units, 525,000 square feet of commercial office space, 8,500 square feet of retail space, and to allow up to 10 commercial condominiums with extended construction hours from 7:00 am to 7:00 pm Monday through Saturday on an approximately 2.10-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District located on the west side of North 4th Street between East Santa Clara Street and

East St. John Street (147 East Santa Clara Street, 49-95 North 4th Street, and 128 East St. John Street, San José, which real property is sometimes referred to herein as the “subject property”); and

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

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

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

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the Planning Commission and the City’s Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Icon Echo – Office & Residential" dated March 18, 2022, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The subject 2.10-gross acre site comprised of four contiguous lots. The approximately 2.10-gross acre site is bounded by East Santa Clara Street and commercial retail uses to the south, the newly constructed Miro Towers and Donner Lofts multifamily residential projects across North 4th Street to the east, commercial retail across East St. John Street to the north, and a mix of commercial and residential uses to the west.

The buildings located on the project site include (from north to south) three one-story industrial/ commercial buildings at the intersection of East St. John and North 4th streets (128 East St. John Street (constructed 1922), 77 North 4th Street (constructed 1927), and 95 North 4th Street (constructed 1948)), the former First Presbyterian Church building on North 4th Street (49 North 4th Street), the surface parking lot serving the adjacent Town Park Towers building (60 North 3rd Street), and a Chevron gas station and auto-repair shop at the intersection of North 4th Street and East Santa Clara Street (147 East Santa Clara Street). The three buildings located at the southwest intersection of East St. John Street and North 4th Street are located within the St. James Square City Landmark District. All buildings include surface parking,

trees and landscaping. All existing structures onsite are proposed to be demolished (totaling 22,527 square feet).

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

The 27-story residential tower (Echo) would be located on the northern portion of the site, with frontage along East St. John Street and North 4th Street. The residential tower would include 415 multifamily residential units, ground floor lobby/amenity space, leasing space, as well as additional amenity space on the upper levels. The maximum height of the residential building would be 267 feet. The two buildings would be connected by structured parking, with one level of subterranean parking and eight levels of above ground parking. There would be four levels of parking below the residential tower and eight levels of parking below the office tower. The garage would be accessible from a 27-foot-wide two-way driveway along North 4th Street. Parking would be shared between the residential tower and office tower. A total of 1,255 parking spaces would be ~~provided~~ accomplished with 992 dedicated, spaces that include 263 shared parking spaces with the implementation of an approximately 18% parking reduction and utilization of an alternating use parking arrangement, as permitted by Sections 20.70.100 and 20.90.200 of the Zoning Code. ~~893-897~~ spaces would be dedicated for office, 69 spaces would be dedicated for residential, and 26 spaces would be dedicated exclusively for use by residents and visitors of the adjacent Town Park Towers building at 60 North 3rd Street. Of the ~~893-897~~ parking spaces for the office use, 263 of those spaces would also be allocated for a shared parking arrangement with the residential tower. Office users would be able to park in any office space during the day, but the shared parking spaces would be designated by signage, and enforced by security personnel, with parking hours limited to between 8:00 am and 6:00 pm. Residential parking would be unbundled, meaning residents would be required to lease a parking space.

The project includes the removal of 39 trees (four ordinance-sized and 35 non-ordinance-sized) from the project site, and the replanting of up to 67 trees on the site.

To facilitate the construction of the project, a Vesting Tentative Map is included to allow the reconfiguration of the four existing parcels into two parcels. The two parcels would be further subdivided into up to 415 residential condominiums and 10 commercial condominiums.

The project also requires a Historic Preservation (HP) Permit because the project site contains one parcel (APN 467-20-060) that is located within the St. James Square City Landmark District, and the applicant is proposing demolition and new construction within the historic district.

3. **General Plan Conformance.** The project site is in the Downtown designation, within the Downtown Employment Priority Area Overlay (EPA Overlay). The EPA Overlay designation is applied to a portion of Downtown sites planned for intensive job growth because of the area's proximity and good access to the future Downtown BART station. The EPA Overlay is generally applied to sites located within approximately one block (walking distance) of the planned Downtown BART station on East Santa Clara Street as shown on the Land Use/ Transportation Diagram. The overlay boundary is intended to respect property lines and not split parcels. Due to proximity to the future BART station, the EPA Overlay supports development at very high intensities, where such high intensity is not incompatible with other policies within the General Plan, such as Historic Preservation policies. The EPA Overlay does not change the uses or densities otherwise allowed within the base "Downtown" land use designation. The EPA Overlay, however, requires a minimum Floor-Area Ratio (FAR) of 4.0 for commercial (job generating) uses, including office, retail, service, hotel or entertainment uses, prior to allowing residential uses, as supported by the "Downtown" General Plan Land Use/ Transportation Diagram designation. The development intensity and site design elements in the areas within the EPA Overlay designation should reflect an intense, transit-oriented land use pattern that is typically expected in Downtown. It is envisioned that active commercial uses (e.g., retail and entertainment uses) would be located at the ground level with high-intensity office development above. To help activate the Downtown BART corridor, new development within the EPA Overlay should incorporate active ground floor retail commercial uses along the street. The Downtown Employment Priority Area allows for a maximum residential density of 800 DU/AC and a residential/commercial mixed use FAR between 4.0 to 30.0.

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

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

- Major Strategy #9 – Destination Downtown: Support continued growth in the Downtown as the City's cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/ placemaking goals.

- Goal LU-3 – Downtown: Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José.
- Land Use Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.
- Land Use Policy LU-3.4: Facilitate development of retail and service establishments in Downtown and support regional- and local-serving businesses to further primary objectives of this Plan.
- Land Use Policy LU-3.5: Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
- Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.
- Land Use Policy LU-9.1: Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas.

Analysis: The redevelopment of the site is consistent with the General Plan Land Use Designation of Downtown and Downtown (EPA Overlay), as the project would provide a high intensity mix of commercial and residential uses. The project would provide office, housing, and retail opportunities in the Downtown core through the development of approximately 525,000 square feet of office space, 8,500 square feet of retail space, and 415 residential units.

The project also includes an approximately 18% parking reduction and a shared parking arrangement between the office use, residential use, and adjacent residential building (Town Park Towers). The project would also provide ample bicycle parking and street/sidewalk improvements that would facilitate bicycle and pedestrian access to the site. Two secure bicycle storage rooms would be provided on the ground floor of the office building and residential building, respectively.

Public improvements that would be constructed as part of the project include a 21-foot-wide sidewalk and raised bikeway along North 4th Street, reconstruction of the 16-foot-wide sidewalk along East Santa Clara Street, and reconstruction of a 12-foot-wide sidewalk along East St. John Street.

In addition to consistency with the above General Plan Policies, the project is also analyzed for consistency with the following Downtown Urban Design Policies.

- Downtown Design Policy CD-6.6: Promote iconic architecture and encourage and incorporate innovative, varied, and dynamic design features (e.g., appearance, function, sustainability aspects) into sites, buildings, art, streetscapes, landscapes, and signage to make Downtown visually exciting and to attract residents and visitors.
- Downtown Design Policy CD-6.7: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown skyline.
- Downtown Design Policy CD-6.8: 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.
- Downtown Design Policy CD-6.9: Recognize Downtown as the hub of the County's transportation system and design buildings and public spaces to connect and maximize use of all types of transit. Design Downtown pedestrian and transit facilities to the highest quality standards to enhance the aesthetic environment and to promote walking, bicycling, and transit use. Design buildings to enhance the pedestrian environment by creating visual interest, fostering active uses, and avoiding prominence of vehicular parking at the street level.
- Downtown Design Policy CD-6.12: Design public sidewalks with ample width to be shared by large volumes of pedestrians and bicyclists, and plant and maintain street trees to provide a tree canopy for shade to enhance the visitor experience.

Analysis: The project consists of the development of two towers with unique and distinctive designs a prominent location in the Downtown core. The office building (Icon) fronts East Santa Clara Street, includes a stepback at the podium level, and includes plane changes and façade articulation throughout. The office building also includes numerous landscaped exterior terraces which help to activate the upper levels of the building and multiple stepbacks at the East Santa Clara Street frontage in order to soften the transition between the existing historic buildings to the west and south of the site.

The residential building (Echo) is an L-shaped tower that interlocks at the corner of East. St. John and North 4th Streets. While not adjacent to any historic structures, the residential tower also incorporates a small stepback at the street frontage between the podium and tower levels. The residential tower façade incorporates varied vertical and horizontal elements to break up the massing. An

outdoor amenity deck is included at the roof of the podium level.

The two towers are separated by an average of 67 feet, with the largest portion being a separation of 150 feet at the top of the buildings to create a distinctive view at the skyline level. The building entrances are oriented towards the street to allow for ease of pedestrian and bicyclist access. As discussed above, the project includes extensive public improvements to better connect pedestrian and bicyclists to the sidewalk and existing/future transit. Primary entrances are located along East Santa Clara Street and East St. John Street. The garage/loading entries are located along North 4th Street, away from the primary pedestrian and bicycle entrances. Structured parking is wrapped with active space along the entirety of the East Santa Clara and East St. John Street frontages, and a significant portion North 4th Street frontage. The remainder of the North 4th Street frontage garage space is fully screened.

Public improvements that would be constructed as part of the project include a 21-foot-wide sidewalk and raised bikeway along North 4th Street, reconstruction of the 16-foot-wide sidewalk along East Santa Clara Street, and reconstruction of a 12-foot-wide sidewalk along East St. John Street. See additional information on the project conformance with the Downtown Design Guidelines below.

4. Zoning Ordinance Consistency.

Land Use

The subject site is located in the DC Downtown Primary Commercial Zoning District. Pursuant to Section 20.70.100, Table 20-140 of the Zoning Ordinance, office, multifamily residential, retail, and shared parking/alternative parking arrangements are all permitted uses in the DC Zoning District. Pursuant to Section 20.100.610, the project includes the construction of a building; therefore, a Site Development Permit is required to be issued.

The project also includes up to 10 commercial condominiums. Pursuant to Section 20.175.040 of the Zoning Code, no Tentative Map for commercial common interest development shall be approved unless a Special Use Permit has been issued by the City. Therefore, a Special Use Permit is required, and the findings for the issuance of a Special Use Permit pursuant to Section 20.175.050 of the Zoning Code are provided below. The minimum allowed size for a commercial condominium is 750 square feet. As shown in the development plans, the project would allow the creation of 10 commercial condominiums of varying sizes, none of which would be less than 750 square feet.

Height

Pursuant to Section 20.70.200 of the Zoning Code, properties located in the downtown zoning districts shall only be subject to the height limitations, to the top of roof,

necessary for the safe operation of San José International Airport. As shown in the table below, the project would conform with the allowable height limits as governed by the Federal Aviation Administration (FAA).

Maximum Height (FAA)	Office (Icon)	Residential (Echo)
Allowed	277.7 feet	265 feet
Project	263 feet (top of roof)	265 feet (top of roof)

Analysis: The project is consistent with the height limits established by the FAA for the project site.

Setbacks

Pursuant to Section 20.70.210 of the Zoning Code, properties located in the DC Downtown Primary Commercial Zoning District are not subject to any minimum setback requirements.

Analysis: The buildings would be constructed at the property line with no setback and is consistent with the setback requirements of the DC Zoning District.

Parking

Use	Number of Units/Square Footage	Ratio	Required
Residential, multiple dwelling	415 units	1 per unit	415 spaces
Office, business	525,000 sf	2.5 per 1,000 sf	1,116 spaces
Retail	8,500 sf	No parking Required	0 spaces
Total Required			1,531 spaces
Total Provided			1,255 spaces
Reduction Requested			18%

Pursuant to Table, 20-140 of Section 20.70.100 of Zoning Code, the project is required to provide 1,531 vehicle parking spaces. However, Section 20.90.220 of the Zoning Code authorizes a parking reduction of up to 20% of the required parking spaces for sites within a Growth Area without the implementation of a Transportation Demand

Management (TDM) Plan if the project provides the code required number of bicycle spaces. The subject site is located in Downtown, a growth area, and provides the required number of bicycle parking spaces. Therefore, the project is eligible for this reduction. Additionally, alternative and alternating use parking arrangements are permitted by right in the DC Downtown Primary Commercial Zoning District, pursuant to Section 20.70.100 of the Zoning Code.

Analysis: A total of 1,255 parking spaces would be ~~provided~~ accomplished within (992 dedicated spaces that include 263 shared) parking spaces. The project includes the implementation of an approximately 18% parking reduction and utilization of an alternating use parking arrangement, as permitted by Sections 20.70.100 and 20.90.200 of the Zoning Code. A total of ~~893-897~~ spaces would be dedicated for office, 69 spaces would be dedicated for residential, and 26 spaces would be dedicated exclusively for use by residents and visitors of the adjacent Town Park Towers building at 60 North 3rd Street. Of the ~~893-897~~ office parking spaces, 263 of those spaces would be allocated for a shared parking arrangement with the residential tower. Individuals going to the office building would be able to park in any office space during the day, but the shared parking spaces would be designated by signage, and enforced by security personnel, with parking hours limited to between 8:00 am and 6:00 pm. Residential parking would be unbundled, meaning residents would be required to lease a parking space. See the findings for an Alternative and Alternating use parking arrangement in the Permit Findings section below.

Bicycle Parking

Use	Number of Units/Square Footage	Ratio	Required
Residential, multiple dwelling	415 units	1 per 4 living units	104 spaces
Office, business	525,000 sf	1 per 4,000 sf of floor area	112 spaces
Retail	8,500 sf	3 parking spaces (Section 20.70.485)	3 spaces
Total Required			219 spaces
Total Provided			241 spaces

Additionally, pursuant to Section 20.70.485 and Table 20-190 (see table above), the project is required to provide a total of 219 bicycle parking spaces. The project would provide 241 bicycle parking spaces. Bicycle parking would be provided in two secure bicycle storage rooms. The bicycle storage rooms would be provided on the ground floor of the residential and office buildings.

Tree Removals

The project includes the removal of 39 trees (four ordinance-sized and 35 non-ordinance-sized). The trees to be removed are located within the building footprint and include Italian cypress (11), London plane (6), Chinese elm (5), Crape myrtle (3), Mulberry (3), Western sycamore (2), Silk oak (2), Almond (2), Australian willow (1), White ironbark (1), Sweetgum (1), and Glossy privet (1). The removal of the 39 trees on-site requires the replacement of 67 (15-gallon) trees or 34 (24-inch box) trees on site. Based on the plans provided, 40 (24-inch box) and 24 (15-gallon) trees would be planted on-site, exceeding the mitigation requirements. The trees to be planted include a mix of Norfolk Island pine, California fan palm, Saratoga Bay laurel, and Holly Leaf cherry. Three London plane trees at the southern end of the site would be preserved.

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

Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. On-site signs were posted on the project frontages. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

In accordance with Chapter 13.48 of the Municipal Code, the project was heard at the October 5, 2021 Historic Landmarks Commission meeting under the "Early Referral Policy." A formally noticed Community Meeting with the Environmental Scoping meeting was held on Thursday, October 21, 2021 to introduce the project to the community. Approximately 22 members of the public attended the meeting. The questions and comments from community members included concerns related to the use of union labor, building height, questions regarding the Historic Landmarks Commission's role in reviewing the project, and demolition of potentially historic resources within the St. James Square City Landmark District. Additionally, staff received eight letters in support of the project.

6. Design Guidelines

The project was submitted in July, 2021. As the project is located within Downtown, it

is subject to the Downtown Design Guidelines and Standards, adopted by City Council on April 23, 2019.

Downtown Design Guidelines and Standards Conformance

- **Building Placement**

- Section 3.2.2 - Building Placement

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

- Section 4.3.3 – Streetwall

- Standard B - Create a Streetwall along a Primary Addressing Street or SoFA Addressing Street along at least 70% of the property or setback line.
 - Standard C - Create a Streetwall along a Secondary Addressing Street along at least 50% of the property or setback line

Analysis: There is zero setback on all three frontages, As shown on the project plans, both buildings are placed directly at the property line of all three street frontages (East Santa Clara Street, East St. John Street, and North 4th Street).

- **Entrances**

- Section 3.3.4 – Vehicle and Bicycle Parking Location

- Standard B - Place bicycle parking so that bicyclists do not have to cross vehicular parking or drive aisles to enter the building.

- Section 3.5.3 – Parking and Vehicular Access Location

- Standard A - Locate parking and vehicle entries at least 20 feet away from primary pedestrian entries (except within Porte Cocheres).

Analysis: As shown on the project plans, pedestrians and bicyclists would be able to access both buildings from multiple entrances along East Santa Clara Street, East St. John Street, and the corner entrance at North 4th Street without crossing vehicular drive aisles. The parking garage entrance and both loading docks are located along North 4th Street, away from both the primary and secondary pedestrian/bicycle entries of both the residential and office buildings on East Santa Clara and East St. John Streets. Two bicycle storage rooms are each located interior to the residential and office buildings.

- **Building Massing and Design**

- Section 4.3.1 – Podium Level Massing
 - Standard - Divide Podium Level building massing facing Public Space that creates a facade wider than 100 feet into visibly articulated smaller masses no wider than 80 feet using projections and recesses, materials, shadow relief, or other architectural elements

Analysis: As shown on the project plans, the massing is broken down vertically as well as horizontally by two-story niches in the building facades. The visibly articulated masses are broken up into sections ranging from 37 feet to 80 feet wide throughout the podium level of both the office and residential building.
- Section 4.4.2.c – Balconies (Private Open Space)
 - Standard A - Create residential balconies and solariums of minimum of 4 feet deep (6 feet preferred), except for Juliet balconies with a maximum depth of 1 foot.
 - Standard B - Create residential balconies of a minimum 20 square feet to be usable for typical activities such as dining.

Analysis: Where provided, the residential balconies would range from 5 feet to 6.5 feet in depth and would have a minimum square footage of 20 feet. Where provided, Juliet balconies would have a maximum of one foot in depth.
- Section 4.4.6 – Parking Garages
 - Standard C - Design the facade of any exposed or standalone parking garage that faces any Public Space (but not alley) with an appearance similar to the facade of a commercial or residential building. Use window openings or glazing modules of a similar size and shape as those of an office or residential building (typically with a vertical rather than horizontal orientation) and use facade materials of similar quality.
 - Standard D - Design the facade of any exposed or standalone parking garage that faces any Public Space (but not alley) with an appearance similar to the facade of a commercial or residential building. Use window openings or glazing modules of a similar size and shape as those of an office or residential building (typically with a vertical rather than horizontal orientation) and use facade materials of similar quality.

Analysis: The north portion of the façade of the parking garage along North 4th Street that is not wrapped with active spaces is composed of a perforated metal mesh screen that is of a similar style and color to the office building façade. The screen continues the same horizontal and vertical

window elements of the office façade above the ground floor. Likewise, the portion of the parking garage that is connected to the residential building along the North 4th Street side would continue the same pattern of the cementitious paneling at the podium level of the residential building.

- Section 4.4.9.a – Lighting – Podium Level

- Standard A – Provide outdoor lighting using fixtures that yield low light pollution and glare.
- Standard B - Orient exterior lighting fixtures downward.
- Standard C – Shield all lighting to prevent light intrusion into private and public building uses, especially residential units.

Analysis: As described in the project plans, all lighting throughout the exterior of the building shall be warm white light-emitting diode (LED), ranging from 2400 Kelvin-3000 Kelvin with minimum 80 Color Rendering Index (CRI). Flood and area lighting fixtures shall be aimed downwards, with no fixture to be aimed above 15 degrees above the lowest point. Poles and area bollards shall be full-cutoff fixtures. All light sources shall have low-brightness reflectors and/or glare control accessories to reduce visual brightness. Lighting shall be on astronomic timeclock controls to allow for auto on/off in relation to sunrise/sunset times as well as automatic late-night dimming to reduce light levels. Ground level site lighting shall consist of minimal canopy recessed downlights located at building entries / exits to provide basic egress lighting. Ceiling recessed linear grazers shall illuminate the building along North 4th Street. Direct view linear LED strips shall frame major portals, including the garage entry along North 4th Street as marker lights. The amenities terrace shall be lit from a floodlight located on the upper office/parking garage facade, aimed downwards. Additional low level planter area lights and trellis/cabana mounted downlight cylinders shall be used to provide human scale lighting. Integral under-bench lighting shall be throughout. The office terraces shall be illuminated by canopy and trellis mounted surface or recessed downlights. Additional pedestrian scale full cutoff poles and bollards shall be used to illuminate open areas as required. Integral under-bench lighting shall be throughout.

- Pedestrian Level Design

- Section 5.3.1.a – Active Frontages

- Standard A - Place Active Frontages along at least 80% of the Pedestrian Level Streetwall on a Primary Addressing Street, SoFA Addressing Street, Secondary Addressing Street, Urban Park/Plaza Frontage, or Open Space Frontage.

The entirety of the street facing façade on East Santa Clara Street is wrapped with active retail and lobby space. The ground floor of the residential building along East St. John consists of leasing/waiting area lobby space, and a mailroom.

- Section 5.3.2 – Ground Floor Non-Residential Space

- Standard B - Provide a minimum 16 feet clear height (18 feet optimal) to finished ceiling in ground floor Commercial Space.

Analysis: As shown on Sheet A34 of the project plans, the non-residential space along East Santa Clara and North 4th Street has a minimum clear height of 16 feet. The ground floor façade consists of clear glazing and has dedicated space for signage for each potential retail tenant. Any signage would be permitted after project approval with the issuance of a separate Sign Permit.

- Section 5.5.2 - Vehicle and Service Entry Design

- Standard A - Provide a single access for both service and vehicles. Separate driveways may be accepted with a minimum separation of 10 feet, subject to City review.
- Standard C - Limit vehicle and service building entry height to a maximum of 20 feet.
- Standard E - Locate service loading and unloading areas, such as for garbage, so these activities do not block the sidewalk.

Analysis: Separate driveways are provided for the garage entry and two loading areas along North 4th Street. The loading areas are separated from the main garage entry by at least 93 feet and 47 feet each. The loading spaces and garage entry would be less than 20 feet in height as shown on the project elevations. All service and loading areas are located entirely within the building footprint and are recessed so as to not block the sidewalk. All loading spaces would comply with the required dimensions pursuant to Section 20.90.420 of the Zoning Code.

Exceptions Request

The project applicant may request an exception to the design standards contained in the Downtown Design Guidelines and Standards. The request must be made in writing as part of the Planning application for the proposed project. The application for an exception must contain detailed information on the design standard that is requested to be waived; how the physical constraints and unique situations of the project site make it infeasible to comply with the design standard; how the project meets the design standard at issue to the extent feasible; and how the request meets each

exception requirements. The decision-maker considers the request and information provided and makes certain findings to either approve or deny the request.

The decision-maker (City Council) shall only grant an exception if all the following findings are made:

- a. There is a physical constraint or unique situation that:
 - i. is not created by the project applicant or property owner; and
 - ii. is not caused by financial or economic constraints considerations.
- b. Approving the waiver will not impair the integrity and character of the neighborhood in which the subject property is located or create a safety hazard.
- c. The proposed project meets the design standard at issue to the extent physically feasible.
- d. The proposed project meets all other guidelines and standards in the Design Guidelines.

The applicant has requested exceptions to the following standards:

- Section 4.2.2 – Massing Relationship to Context
 - Standard A – Height Transition: If a new building 100 feet tall or more is across the street from or adjacent to either: (1) a historic building 45 feet tall or less or (2) a site for residential uses that is limited to a building 45 feet tall or less, the new building must step back its street-facing façade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet. (See Figure 4)

Analysis: The office building is located across East Santa Clara street from historic buildings located within the San José Downtown Commercial National Register District to the south. Therefore, the building is required to incorporate a stepback at the East Santa Clara Street frontage for a minimum of five feet at an elevation between 25 and 50 feet. As part of the exception request, the applicant requests a 25-foot setback, five times greater than the minimum requirement, beginning at a height of 80 feet for the majority of the façade along East Santa Clara Street. A smaller portion of the building also includes a 25-foot stepback, beginning at a height of 20 feet, at the western end of the building, adjacent to the historic Alliance Building.

The project site is physically constrained by the eight-level parking podium, which is required to be lined with active edges of office and retail uses along East Santa Clara Street and a portion of North 4th Street. To the extent feasible, the project still provides stepbacks, but at varying heights, in order to break down the scale of the massing. Aside from the other exception request listed

below, the project complies with all other applicable design standards.

Approving the waiver would not impair the integrity or character of the surrounding neighborhood nor would it result in a health and safety hazard. The mixed-use project would be located in Downtown, where major commercial and residential growth is encouraged. The building would be modern in appearance, while still including height transitions at the front and side of the building in order to step down towards the historic properties to the south and west. Approving the waiver would not result in a health and safety hazard as the project would be required to comply with all applicable Building and Fire Code requirements prior to issuance of Building Permits.

Standards B of this section, cited below, are not triggered as the adjacent historical buildings occupy their full lot widths and do not share a rear interior property line with the project.

- Section 4.3.2 – Skyline Level Massing (Above 70 feet in height)
 - Standard B – Keep a minimum spacing of 60 feet between any portions of skyline level building masses (towers)

Analysis: The project site along North 4th Street measures approximately 450 feet in length. Therefore, the two towers are required to maintain a minimum spacing of at least 60 feet at the skyline level height (above 70 feet). The office and residential building are separated by 49 feet for two-thirds of their height, and then 150 feet for the remaining one-third of the building heights. The average separation between the two towers is approximately 67 feet. With the spacing, views from either building would still be maintained. Additionally, at various levels between the two towers are landscaped decks that create visual interest for the rear facing Town Park Towers. Lastly, the garage entry is located at the center of the gap to further emphasize the separation of the two towers. To the extent feasible, the two towers maintain separation, while ensuring the necessary structured parking and outdoor common areas are retained.

Approving the waiver would not impair the integrity or character of the surrounding neighborhood nor would it result in a health and safety hazard. The project would allow for the construction a mixed-use project consisting of two separate towers in Downtown, where major commercial and residential growth is encouraged. The two towers would be located adjacent to modern housing towers on either side of the project site to the east and west. Views to the east and west from both adjacent properties would be maintained, while still allowing for the maximum development feasible on the subject site. Approving the waiver would not result in a health and safety hazard as the project would be required to comply with all applicable Building and Fire Code requirements prior

to issuance of Building Permits.

Aside from the other exception request listed above, the project complies with all other applicable design standards. The project applicant has provided a design alternative that meets the overall intent of the design standard.

7. Environmental Review.

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

Summary of Environmental Impacts Reduced to Less than Significant with Mitigation

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

Summary of Environmental Impacts Determined to be Significant and Unavoidable

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

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

In compliance with CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social,

technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen. The City Council adopted a Statement of Overriding Considerations, finding the economic and social benefits of the project outweigh its significant environmental impacts.

Project Alternatives

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

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

Summary of Comments Received

The City received six written comment letters during the public circulation period. Comments were submitted by six agencies and organizations, which were Valley Water; Bay Area Air Quality Management District (BAAQMD); Santa Clara Valley Transportation Authority (VTA); Canyon Sayers-Roods of Canyon Consulting, LLC; Preservation Action Council of San Jose (PAC*SJ), and Adams Broadwell Joseph & Cardozo. The main concerns raised by commenters are as follows:

- Impacts to the St. James Square City Landmark District
- Cumulative impacts to City historic resources

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

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

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

EIR Recirculation Unnecessary

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

In accordance with CEQA Guidelines Section 15088, the Final 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 Final SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, recirculation of the Draft SEIR is not required.

8. **Special Use Permit Findings:** The City Council must be able to make all required findings for a Special Use Development Permit, Site Development Permit, Tree Removal Permit, and Demolition Permit. The Historic Landmarks Commission made a recommendation on the Historic Preservation Permit findings directly to the City Council.

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

Analysis: As discussed above, the project is consistent with the General Plan goals and policies for focused growth, land use, and employment. The project would also be consistent with the applicable General Plan Downtown design policies. The project is in conformance with the allowable FAR and density for a project with a designation of Downtown Employment Priority Area. The combined, mixed use FAR would be approximately 15.13 (a maximum of 30 is allowed). The residential density would be approximately 198 Dwelling Units per Acre (DU/AC), within the allowed maximum of 800 DU/AC.

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

Analysis: As discussed in the San José Municipal Code Conformance section above, the project is consistent with all applicable objective criteria of the DC Downtown Primary Commercial Zoning District. The project office, retail, and residential uses are all permitted uses in the DC Zoning District. The project also provides the required number of vehicle parking spaces with an approximately 18 percent parking reduction and implementation of an alternative and alternating use parking arrangement.

Additionally, the project requires the removal of the 39 trees on-site. The removal of the 39 trees requires the replacement of 67 (15-gallon) trees or 34 (24-inch box) trees on site. Based on the plans provided, 40 (24-inch box) and 24 (15-gallon) trees would be planted on-site.

- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project was duly noticed per Council Policy 6-30: Public Outreach

Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on October 21, 2021. An on-site sign has also been posted on the project frontages. Public Notices of the community meeting and 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. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: The mixed-use project, which includes residential, office, and commercial retail space, would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, or impair the utility or value of property in the surrounding area. The residential, office, retail space, and common areas would be located wholly within the project site, and all activity in these spaces would not impact the area outside of the building. The project's common interest development (commercial condominiums) would not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the commercial units adequately accommodates a variety of potential uses, and the anticipated uses such as office or retail uses would add to the economic viability of the area.

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

Analysis: The approximately 2.10-gross acre site would be adequate in size to accommodate the two buildings as well as the necessary common outdoor space, landscaping, parking and loading. All parking would be located in structured parking with one level of subterranean parking and eight levels of above ground parking. Common outdoor space, including landscaping, would be located in the courtyard of the residential building or on the upper terraces of the office building where they would be accessible to residents or employees. As discussed, the buildings include height transitions to soften the change in height and scale from neighboring development. The residential building would be setback 15 feet from neighboring

residential building to the west. The fifth-floor courtyard and amenity areas are located at the southwest end of the residential building so that there is separation between the primary massing of the 27-story residential tower and the neighboring ten-story Town Park Towers residential building to the west. The office building incorporates two levels of stepbacks at the west and south side of the buildings to create a transition between the historic buildings directly adjacent and across the street from the subject site.

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

Analysis: Vehicular access to the site would be from North 4th Street, with right-in/right-out turns only. Regional vehicular access would be provided from North 4th Street and East Santa Clara Street, where vehicles could reach Interstate 280, U.S. Highway 101, or California State Route 87. Pedestrian access would be provided from any of the project frontages (East Santa Clara Street, North 4th Street, or East St. John Street). The project site is located approximately 500 feet from the St. James VTA Light Rail Station, with service on the Blue Line and Green Line. Numerous VTA bus routes serve the immediate area, including Routes Rapid 522, Rapid 523, Rapid 500, 17, 22, 23, 64A and 64B. Lastly, the project would be approximately 900 feet distance from the planned BART station on East Santa Clara Street between Market Street and North 1st Street.

9. **Commercial Common Interest Development Findings.** Pursuant to Section 20.175.050 of the Zoning Code, in addition to the findings required by Section 20.100.820, no Special Use Permit may be issued for a commercial or industrial common interest development unless and until all of the following additional findings are first made:

- a. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole;

Analysis: The project's common interest development would not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the commercial units adequately accommodates a variety of potential uses, and the anticipated uses such as restaurant or retail uses would add to the economic viability of the area. The project uses are also physically and functionally compatible to adjacent land uses and uses allowed under the

Downtown land use designation.

- b. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

Analysis: A Declaration of Covenants, Conditions, and Restrictions (CC&Rs) is required pursuant to Section 20.175.060 of the Zoning Code, and when approved by the City in accordance with the Zoning Ordinance prior to final map approval would include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development. The Special Use Permit resolution includes a condition for the recordation of governing documents for the proposed common interest development prior to condominium plan approval.

- c. The proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interests therein.

Analysis: The CC&Rs, required when the Final Map is approved by the City in accordance with the Zoning Ordinance would state that each residential owner shall have, as appurtenant to their unit, an undivided interest in the common residential areas. This would ensure that each common interest development has sufficient retention of common areas for use by all owners as noted in the conditions of approval. The CC&Rs would also include provisions for ingress, egress, parking, emergency access, utilities, landscaping, and the like.

10. Off-Site, Alternating Use and Alternative Parking Arrangement Findings.

Pursuant to Section 20.90.200.B of the Zoning Code, in addition to any other findings for a Development Permit, the City Council, may approve such off-street parking facilities arrangements only upon making the following findings:

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

Analysis: A total of 1,255 parking spaces would be ~~provided~~ accomplished within ~~{992 dedicated~~ spaces that include 263 shared} parking spaces. The project

includes the implementation of an approximately 18% parking reduction and utilization of an alternating use parking arrangement, as permitted by Sections 20.70.100 and 20.90.200 of the Zoning Code. A total of ~~893~~ 897 spaces would be dedicated for office, 69 spaces would be dedicated for residential, and 26 spaces would be dedicated exclusively for use by residents and visitors of the adjacent Town Park Towers building at 60 North 3rd Street. Of the ~~893~~ 897 office parking spaces, 263 of those spaces would be allocated for a shared parking arrangement with the residential tower. Office users would be able to park in any office space during the day, but the shared parking spaces would be designated by signage, and enforced by security personnel, with parking hours limited to between 8:00 am and 6:00 pm. Residential parking would be unbundled, meaning residents would be required to purchase a parking space. The spaces that would be shared would be directly accessible to residents and office employees in the building as well as Town Park Towers residents in the adjacent building. The owners of the new development would record a private agreement with the owners of the adjacent Town Park Towers to ensure that adequate parking for Town Park Towers would be maintained for the foreseeable future.

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

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

Analysis: See Special Use Permit Finding A 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: See Special Use Permit Finding B above.

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

Analysis: See Special Use Permit Finding C above.

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

Analysis: The two towers are designed as two distinct buildings, while being physically connected by the podium level parking garage. The residential tower anchors the northern portion of the site, while the office building anchors the southern portion. Both buildings provide a strong street presence at each respective intersection, with active space lining the ground floor of both buildings. Extensive exterior spaces at a variety of scales are carved into the facades and blur the

boundaries between inside and out providing exterior workplace opportunities in the office building and public and private open space in the residential tower. The parking garage, which makes up the bulk of the podium level, is wrapped with active space or screened from view.

- 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 site is bordered by commercial retail across East Santa Clara Street to the south, the newly constructed Miro Towers and Donner Lofts multifamily residential projects across North 4th Street to the east, commercial retail across East St. John Street to the north, and a mix of commercial offices, multifamily residential, and commercial retail to the west. The project would consist of the construction of two high rise towers (one residential, one commercial) in the Downtown core.

As discussed in the Design Guidelines Consistency section above, the buildings include height transitions to soften the change in height and scale from neighboring development. The residential building would be setback 15 feet from neighboring residential building to the west. The fifth-floor courtyard and amenity areas are located at the southwest end of the residential building so that there is separation between the primary massing of the 27-story residential tower and the neighboring 10-story Town Park Towers residential building to the west. The office building incorporates two levels of stepbacks at the west and south side of the buildings to create a transition between the project's modern buildings and the historic buildings directly adjacent and across the street from subject site.

- 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 an in-fill development that occurs in an urbanized area on a parcel that is fully developed with existing commercial buildings and surface parking lots that already have public utilities and services already in place. A Supplemental Environmental Impact Report (SEIR) was prepared for the project as required by CEQA. Mitigation measures have been identified within the SEIR for implementation during construction and operation to reduce potentially significant impacts under the respective environmental areas of concern mentioned above. This project includes standard environmental permit conditions that would reduce any construction related impacts, as well as implementation of Best Management Practices and regulatory agency permits. Specifically, the conditions address impacts related to Air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and

water quality, and noise and vibration. Additionally, the project is conditioned to appoint a Construction Disturbance Coordinator, who would be responsible for addressing any construction related concerns from surrounding neighbors and businesses.

- 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: All mechanical equipment is located within the building and in the mechanical penthouse on the roof, not visible from the street or surrounding buildings. No outdoor activities would occur on the ground floor of this project. The outdoor common open spaces would be landscaped and concealed with guardrail/fencing to maintain privacy between existing and future residents. The project would be conditioned to provide street trees along the ground floor street frontages. Therefore, the landscaping, irrigation systems, all walls and fences, exterior heating, ventilation, plumbing, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood.

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

Analysis: Pedestrian and bicycle access is provided at multiple entrances along all three project frontages. Vehicular access to the site would be from North 4th Street, with right-in/right-out turns only. Regional vehicular access would be provided from North 4th Street and East Santa Clara Street, where vehicles could reach Interstate 280, U.S. Highway 101, or California State Route 87. Pedestrian access would be provided from any of the project frontages (East Santa Clara Street, North 4th Street, or East St. John Street). The project site is located approximately 500 feet from the St. James VTA Light Rail Station, with service on the Blue Line and Green Line. Numerous VTA bus routes serve the immediate area, including Routes Rapid 522, Rapid 523, Rapid 500, 17, 22, 23, 64A and 64B. Lastly, the project would be approximately 900 feet distance from the planned BART station on East Santa Clara Street between Market Street and North 1st Street. The project is located within an urbanized area and is served by all required utilities and services. The project provides the required number of vehicle parking spaces in a conveniently located parking garage with a 18% parking reduction and alternative/alternating use parking arrangement allowable by code.

12. Tree Removal Permit Findings. Section 13.32.100 of the San José Municipal Code specifies the required findings for live tree removals.

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

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

Analysis: The project includes the removal of 39 trees (four ordinance-sized and 35 non-ordinance-sized). The trees to be removed are located within the project buildings footprints restricting the economic development of the parcel. The trees to be removed include Italian cypress (11), London plane (6), Chinese elm (5), Crape myrtle (3), Mulberry (3), Western sycamore (2), Silk oak (2), Almond (2), Australian willow (1), White ironbark (1), Sweetgum (1), and Glossy privet (1). The removal of the 39 trees on-site requires the replacement of 67 (15-gallon) trees or 34 (24-inch box) trees on site based on the ratios in the table below. Based on the plans provided, 40 (24-inch box) and 24 (15-gallon) trees would be planted on-site. The trees to be planted include a mix of Norfolk Island pine, California fan palm, Saratoga Bay laurel, and Holly Leaf cherry. Three London plane trees at the southern end of the site would be preserved.

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

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

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;

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

Analysis: The project includes the demolition of all existing buildings on site totaling 22,527 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare as the existing buildings would continue to operate as commercial or public assembly uses. The demolition permit would facilitate a project that is physically and functionally compatible with the surrounding neighborhood. As previously discussed, the project is consistent with all applicable General Plan and goals and policies, zoning code requirements, and design guidelines. The demolition of the existing commercial buildings would facilitate the construction of a mixed-use buildings with 525,000 square feet of office space, 415 residential units, and 8,500 square feet of retail. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible. Based on the Historic Resources Evaluation report, prepared by Treanor HL in July 2019, demolition of the residences at 1530 West San Carlos Street, which are eligible as candidate City Landmark structures, would be a significant and unavoidable impact under CEQA and pursuant to the Secretary of the Interior standards for preservation of historical resources. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Further, while the demolition is not preserving the historic structures and Criterion 5 of these findings cannot be met, the project is satisfying other goals and policies of the General Plan. The redevelopment of the site is consistent with the General Plan Land Use Designation of Downtown and Downtown (EPA Overlay), as the project would provide a high intensity mix of commercial and residential uses. The project would provide office, housing, and retail opportunities in the Downtown core through the development of approximately 525,000 square feet of office space, 8,500 square feet of retail space, and 415 residential units. In addition, the demolition of any existing buildings on-site would not be approved until the issuance of a grading or building permit, whichever comes first, as conditioned in this Special Use Permit for the subject site.

In accordance with the findings set forth above, a Special Use Permit and 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Special Use Permit and Site Development Permit (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described 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. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of all existing buildings on-site totaling approximately 22,527 square feet and the removal of 39 trees (four ordinance-size, 35 non-ordinance-size) for the construction of a mixed-use project consisting of up to 415 multifamily residential units, 525,000 square feet of commercial space, up to 8,500 square feet of retail space, and up to 10 commercial condominiums with extended construction hours from 7:00 am to 7:00 pm Monday through Saturday on an approximately 2.10-gross acre site.
6. **Project Phasing.** The project is permitted to be constructed in phases. This permit allows for the option of filing separate Building and Public Works Permits for the Icon Commercial Building and Echo Residential Building. Prior to the issuance of any separate Public Works Permits, the permittee will be responsible to submit a comprehensive logistics plan to outline the necessary traffic control and transition improvements to facilitate this separation. The permittee will also be responsible to pay any applicable Public Works site area or master plan impact fees prior to the approval of development clearance for Building Permit issuance.
7. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, "Icon Echo – Office & Residential" dated March 18, 2022, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set

8. Commercial Common Interest Development.

- a. Prior to Condominium Plan Approval, the permittee, at its sole cost, shall prepare, submit for prior review and approval by the city, and record concurrently with the applicable parcel or final map, governing documents for the common interest development that include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms, including enforcement by the city, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Prior to approval of the parcel or final map by the city, the permittee shall submit the proposed governing documents to the city for review for compliance with the requirements of this chapter.
- b. The permittee shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the city for compliance with the terms of this chapter and the requirements of Title 19 of this Code, and shall upon city approval be recorded concurrently with the approved parcel or final map.
- c. All commercial condominiums shall be a minimum of 750 square feet.
- d. Any other condition imposed by the director, the planning commission or city council to accomplish the purposes of this chapter or for the preservation of public health, safety or welfare.

9. **Demolition Permit.** A demolition permit may be issued for the demolition of all existing buildings on-site totaling approximately 27,527 square feet only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.

10. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.

11. **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.

12. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.

13. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

14. **Refuse.** All trash and refuse storage areas are approved as designed and 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 .
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
16. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
17. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
18. **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.
19. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
20. **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.
21. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
22. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
23. **Off-Site, Alternating Use, and Alternative Parking Arrangement Permitted.** This Permit allows an off-site, alternating use, and alternative parking arrangement to facilitate the provision of sufficient parking as shown on the Approved Plans. The project shall provide ~~30-26~~ vehicle parking spaces for exclusive use by the adjacent Town Park Towers located at 60 North 3rd Street. Any changes to the number of spaces to be provided for the exclusive use by the adjacent Town Park Towers in the off-site, alternating use, and alternative parking arrangement shall require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement in accordance with Zoning Ordinance, as amended.
24. **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.

25. **Extended Construction Hours.** Weekend construction hours, including staging of vehicles, equipment and construction materials, shall be limited to Saturdays between the hours of 7:00 a.m. and 7:00 p.m.
- Permitted work activities include activities such as framing, roofing, siding, stucco, home interior work and landscaping. Exterior generators, water pumps, compressors, idling trucks, rough grading, demolition, and roadway construction that include heavy and noisy equipment are not permitted. Permittee shall be responsible for educating all contractors and subcontractors of said construction restrictions. The Director of Planning, Building and Code Enforcement, at their discretion, may rescind provisions to allow extended hours of construction activities on weekends upon written notice to the permittee.
 - Up to five 24-hour concrete pours per year are allowed over the course of construction, on any day of the year.
26. **Landscaping.** Planting and irrigation are to be provided by the permittee, as indicated, on the final Approved Plans.
27. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
28. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
29. **Conformance to Other Permits.** This project shall conform to all of the requirements and Conditions of Approval of the Historic Preservation Permit (File No. HP21-007) [and Vesting Tentative Map \(File No. T21-033\).](#)
30. **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.
31. **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.

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

33. Standard Environmental Permit Conditions

a. Air Quality

- i. Construction-related Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - a) Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - b) 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.
 - c) 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.
 - d) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - e) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - f) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - g) All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - h) Replant vegetation in disturbed areas as quickly as possible.
 - i) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - j) 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.

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

b. Biological Resources

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

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

- 1) The proposes 39 trees for removal: 11 trees would be replaced at a 4:1 ratio, 19 trees would be replaced at a 2:1 ratio, and five trees would be replaced at a 1:1 ratio with 15-gallon containers. Additionally, the two native trees would be replaced at a 5:1 ratio with 15-gallon containers. No tree replacement would be needed for the two orchard trees since they are less than 19 inches. The project would be required to plant a total of 97 trees per the City's tree replacement policy. The species of trees to be planted would be determined in consultation with the City

Arborist and the Department of Planning, Building and Code Enforcement or Director's designee.

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

payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at: <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>

c. Cultural Resources

- i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity

in a location not subject to further subsurface disturbance:

- a) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - b) The MLD identified fails to make a recommendation; or
 - c) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. Salvage. Preservation organizations and other interested parties shall be contacted at least 30 days prior to demolition activities and given the opportunity to examine the buildings located at 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street and to salvage any architectural and building elements. Documentation of the salvage offer/s shall be submitted to the City's Historic Preservation Officer.
- iv. Interpretation/Commemoration: In consultation with a qualified architectural historian and design professional, and under the direction of the Historic Preservation Officer, the Permittee shall develop an interpretive and/or commemorative program of the St. James Square City Landmark District that may include one or more interpretive displays, artworks, electronic media, smartphone apps, and other means of presenting information regarding the history and development of the historic district. The program may concentrate on those contextual elements that are specific to the buildings that will be demolished or the greater historic district. Display panels, if included in the interpretive program, shall be placed at, or as near as possible to, the location where the buildings were historically located. The conceptual interpretive program shall be reviewed and approved by the Historic Preservation Officer prior to the issuance of demolition permit(s) for 128 East St. John Street, 95 North 4th Street, and 77 North 4th Street and shall be fully implemented and/or installed before the issuance of a certificate of occupancy for the Echo residential tower.

d. **Geology and Soils**

i. Seismic Hazards.

- a) To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable

Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

- b) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - c) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - d) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
 - e) The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- ii. Dewatering. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
 - iii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

e. Greenhouse Gas Emissions

- i. Proof of Enrollment in SJCE. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement, or Director's designee, proof of enrollment in the San Jose Community Energy TotalGreen program

(approximately 100% renewable energy). Program enrollment requirements were determined by the level assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act. If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

f. Hazards and Hazardous Materials

i. Asbestos and Lead-Based Paint.

- a) In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- b) During demolition activities, all building materials containing LBP shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing LBP or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- c) All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- d) 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.
- e) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

- ii. Polychlorinated Biphenyls. In conformance with City of San José permitting requirements, consistent with Regional Water Quality Control Board (RWQCB) regulations, the project applicant shall be required to submit a polychlorinated biphenyls Screening Assessment Form when applying for a demolition permit to demolish the existing building(s) on the project site and shall comply with any resulting sampling and abatement procedures as directed by federal and state agencies.

- iii. FAA Clearance Required. Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

g. Hydrology and Water Quality

- i. Construction-related water quality.
 - a) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - b) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - c) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary.
 - d) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - e) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
 - f) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - g) Vegetation in disturbed areas shall be replanted as quickly as possible.
 - h) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - i) The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- ii. Construction General Permit Requirements. Prior to initiating grading activities, the project applicant will file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project's

SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The SWPPP may include, but is not limited to, the following construction BMPs:

- a) Restrict grading to the dry season or meet City requirements for grading during the rainy season.
- b) Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
- c) Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
- d) Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
- e) Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
- f) Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.
- g) The proposed project involves dewatering activities; therefore, the SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent will be contained prior to discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater will be analyzed by a state-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the applicant will work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.

iii. The SWPPP shall also include a Post-Construction Stormwater Management

Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction.

- iv. When the construction phase is complete, a Notice of Termination (NOT) will be filed with the RWQCB and the DTSC, in conformance with the Construction General Permit requirements. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

h. Noise and Vibration

- i. Construction-related Noise. Noise minimization measures include, but are not limited to, the following:
 - a) Pile driving is prohibited.
 - b) Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
 - c) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - d) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - e) Prohibit unnecessary idling of internal combustion engines.
 - f) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - g) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - h) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
 - i) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule

of “noisy” construction activities to the adjacent land uses and nearby residences.

- j) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- k) Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
- ii. Interior Noise Standard for Residential Development. The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

34. Housing

- a. Conditions of Approval for Inclusionary Housing Ordinance Requirements for Residential Developments.
 - i. The permittee has submitted an Affordable Housing Compliance Plan Application (“Plan”) and processing/application fees. Approval of the Plan is required prior to the development’s planning application being deemed complete and prior to Planning’s first approval.
 - 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
 - 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.
- b. Conditions for Projects with Non-Residential Uses Adding at least 5,000 Square Feet.
 - i. For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area, permittee is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) a fully completed, executed Satisfaction Plan, (b) all attachments to the Satisfaction Plan, (c) the required application processing fee. The development has obtained approval of the chosen payment option and will receive a 20% reduction to the total CLF fee amount when the fee is paid at or prior to building permit issuance. If obligation is not fulfilled at or prior to building permit issuance, payment will be due in full at Scheduling of Final Building Inspection.
 - a) Permittee must strictly comply with each requirement of the approved CLF Satisfaction Plan Application (Plan), Processing Fee, and Agreement, and any other applicable requirements of the CLF.
 - b) No building permit may issue until an Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the CLF and the proposed Plan to fulfill the CLF obligations.
 - c) No scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.

35. Airport.

- a. **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.
- b. **FAA Clearance Required.** Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and "No Hazard Determination" expiration date. The data on the FAA forms shall be prepared by a

licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

- c. **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.
 - d. **Construction Cranes.** Prior to issuance of any Building Permit for construction, the permittee shall coordinate with the San José Airport Department to sign a Construction Crane Agreement and provide a crane fee deposit for the expected duration project will operate construction cranes above the Downtown Building Height Limits. Compliance shall become a condition of Building Permit issuance for construction. Contact Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the construction crane agreement coordination.
 - e. **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. A public-use solar glare hazard analysis tool is available at www.forgesolar.com. The Airport requests the permittee provide a completed solar glare hazard analysis report for this project evaluating potential impacts to the Airport's existing and future Air Traffic Control Tower and to ensure there are no hazards to aviation. Contact the San José Airport Department at (408-392-1193), prior to preparing a solar glare hazard analysis report.
36. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, SP21-031 shall be printed on all construction plans submitted to the Building Division.
 - b. *San José'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.
 - 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. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
- g. *Project Addressing Plan.* Prior to issuance of a 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. The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
- h. *Other.* Such other requirements as may be specified by the Chief Building Official.

37. Bureau of Fire Department Clearance for Issuing Permits.

- a. 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.
- b. Prior to issuance of a Grading Permit for the Icon (office) Building, or elimination of Fire Department Access to the Town Park Towers building at 60 North 3rd Street from the subject property, fire suppression sprinklers shall be installed on each of the balconies on the eastern elevation of 60 North 3rd Street. The project's sprinklers shall be reviewed by the Fire Department through the variance process.

38. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:** This project does not require a detailed CEQA Transportation Analysis because the project is located in the expanded Downtown Core and is

covered under the San Jose Downtown Strategy 2040 EIR. However, the project was required to conduct a Local Transportation Analysis (LTA) to evaluate the project's effect on transportation, access and related safety elements in the proximate area of the project. See separate Transportation Analysis Memo dated 04/12/2022 and project conditions below:

- i. Provide one (1) 35-foot wide right-in/right-out only driveway along Fourth Street.
 - ii. Provide two (2) 26-foot wide right-in/right-out only driveways along Fourth Street for truck access only.
 - iii. Install Class IV raised protected bike lanes along the project's Fourth Street frontage.
 - iv. Construct bulb-outs/signal modifications at the northwest and southwest corners of the Fourth Street/St. John Street intersection.
 - v. Construct bulb-outs/signal modifications at the northwest and southwest corners of the Fourth Street/Santa Clara Street intersection.
- c. **Grand Boulevard:** This project fronts Santa Clara Street which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- d. **Street Vacation:** A street vacation is required in order to accomplish the land use plan as shown. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. In addition, the preliminary title report provided by the permittee indicates that the City of San Jose owns the subject street in fee. As a result, the property will be subject to a sale and disposition process, which may involve public auction. This process would not guarantee that the property would be sold exclusively to the permittee. Any sale of City property will be based on fair market value.
- e. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm

drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. 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.

f. Shoring:

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs 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 permittee or permittee's contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e. soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties (467-20-068; 072; 078; 080) agreements between the Applicant and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- iv. Coordination with the Santa Clara Valley Transportation Authority (VTA) will be

required for confirmation review with the proposed future Bay Area Rapid Transit (BART) tunnel.

- g. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at <http://www.sanjoseca.gov/home/showdocument?id=27405>
- h. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).
- i. **Flood:** Zone D The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- j. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- k. **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 José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José 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.
- l. **Assessments:** A portion of this project is located within the Premium Zone and the remainder is in the Basic Zone of the Downtown San Jose Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the

district pay for the services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2021-22, Premium Zone commercial properties pay \$0.134182419 and residential properties pay \$0.108146660 per building and lot square footages. For 2021-2022, Basic Zone commercial properties pay \$0.080109088 and residential properties pay \$0.054073330 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the County property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". The Downtown PBID is scheduled for renewal in the 2022-2023 fiscal year with adjustments to the rates and zone boundaries. Any questions may be directed to the Department of Public Works at (408) 535-6831.

m. Street Improvements:

- i. Remove the existing sidewalk, curb, and gutter and reconstruction of a 21-foot-wide sidewalk that contains a raised bikeway along the North 4th Street project frontage. The section shall be an 8-foot-wide pedestrian through zone, 4-foot-wide tree wells, 5-foot-wide raised bike lane, and 4-foot-wide landscape buffer.
- ii. Remove the existing sidewalk, curb, and gutter and reconstruction of a 16-foot attached sidewalk with 5-foot by 5-foot tree wells along the East Santa Clara Street project frontage.
- iii. Remove the existing sidewalk, curb and gutter and reconstruction of a 12-foot-wide attached sidewalk with 4-foot by 5-foot tree wells along the St. John Street project frontage. A 2-foot-wide sidewalk easement dedication will be required.
- iv. A signal modification is required at North 4th Street and East Santa Clara Street in order to implement the following:
 - a) A protected bike network along North 4th Street.
 - b) Construction of a bulb out at the northwest and half-bulb & detached island at the southwest corner of North 4th Street and East Santa Clara Street.
 - c) Relocation of the existing signal cabinet within the proposed building footprint.
- v. A signal modification is required at North 4th Street and St. John Street in order to implement the following:
 - a) A protected bike network along North 4th Street.
 - b) Construction of a bulb out at the northwest and southwest corner of St. John Street and East Santa Clara Street.
 - c) Relocation of the existing signal cabinet within the proposed building

footprint.

- vi. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and frontage).
- vii. Close unused driveway cuts.
- viii. Construct three driveways along the North 4th Street project frontage. A 26-foot-wide driveway for residential loading to the north. A 35-foot-wide right turn in/right turn out driveway at the middle of the site for vehicular access. A 26-foot wide driveway for commercial loading to the south.
- ix. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- x. Any trenching within East Santa Clara Street shall be restored in kind using Rubberized Asphalt (RHMA).
- xi. 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.
- n. **BART Phase II:** The project shall submit structural and shoring plans to the Santa Clara Valley Transportation Authority (VTA) for coordination with the future BART tunnel to ensure no conflicts or impacts to the proposed BART project. Tie-backs may not be acceptable at certain locations and/or elevations depending on the project's design.
- o. **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>.
- p. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:

- a) **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 (e.g., swinging loads over the sidewalk are not safe for pedestrians).
- b) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - a) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - b) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition i.b above.
- iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- q. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- r. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San José Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- s. **Electrical:**
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the

public improvement plans.

- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

t. **Street Trees:**

- i. 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.
- ii. Install infill tree wells where available to maintain 35 feet on center spacing along the East Santa Clara Street project frontage. Provide a tree protection plan for existing street trees. Infill street trees shall be *Platanus x hispanica* 'Columbia.'
- iii. Street trees along the North 4th Street project frontage shall be placed 25 feet on center. Street trees shall be *Ulmus propinqua* 'Emerald Sunshine'.
- iv. Street trees along the East St. John Street project frontage shall be 25 feet on center. Street trees species shall be *Betula nigra* 'BNMTF' (Dura-Heat).

39. Additional BAAQMD Conditions

- a. Offer temporary filtration units for the Town Park Towers building residents and at Little Einstein Montessori Preschool and Horace Mann Preschool and Elementary School;
- b. Prohibit grading and other dust-generating activities on days with an Air Quality Index forecast of greater than 100 for particulates in the project area;
- c. Minimize the amount of excavated material or waste materials stored at the site;
- d. Document the frequency of watering on exposed surfaces; and
- e. Provide a telephone number and person to contact at all residences and businesses within 1,000 feet of the project site regarding dust complaints.

39.40. Revocation, Suspension, Modification. This Special Use Permit and Site Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed

hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

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

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

LEGAL DESCRIPTION

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

PARCEL ONE:

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

PARCEL TWO:

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

PARCEL THREE:

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

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

PARCEL FOUR:

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

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

APN 467-20-08