

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW REMOVAL OF THE MAJORITY OF THE ROOF AND INTERIOR (EXCEPT FOR STAIRWAY CORE) OF AN EXISTING 15,000-SQUARE FOOT, TWO-STORY BUILDING; RETENTION AND INTEGRATION OF THE BUILDING WALLS, STREET FACING FACADE AND A PORTION OF THE EXISTING ROOF; AND CONSTRUCTION OF A 22-STORY, 240-FOOT-HIGH MIXED USE BUILDING 100% AFFORDABLE SENIOR HOUSING PROJECT WITH 220 MULTIFAMILY RESIDENTIAL UNITS AND APPROXIMATELY 18,643 SQUARE FEET OF COMMERCIAL SPACE WITH UP TO FOUR COMMERCIAL CONDOMINIUMS; ON AN APPROXIMATELY 0.22-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF NORTH 2ND STREET APPROXIMATELY 70 FEET NORTH OF EAST SANTA CLARA STREET (19 NORTH 2ND STREET) (APN: 467-21-028)**

**FILE NO. SP21-044**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 5, 2021, an application for a Site Development Permit and Special Use Permit (File No. SP21-044) was filed by the applicant, Kurt Anderson, on behalf of Roygbiv Real Estate Development LLC and property owner, Wendy Warren, with the City of San José, to allow the removal of the majority of the roof and interior (except for stairway core) of an existing 15,000-square foot, two-story building, the retention and integration of the building walls, street facing facade and a portion of the existing roof and the construction of a 22-story, 240-foot-high mixed use 100% affordable senior housing project with 220 multifamily residential units and approximately 18,643 square feet of commercial space with up to four commercial condominiums on an approximately 0.22-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District located on the west side of North 2nd

approximately 70 feet north of East Santa Clara Street (19 North 2nd 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 February 22, 2023, 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, “North Second Affordable Senior Housing, 19 N 2nd Street, San José, CA 95113” dated May 17, 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:

The City Council hereby incorporates the foregoing recitals into this Resolution as if fully contained herein. 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 site is a single lot located on the west side of North 2nd Street approximately 70 feet north of the intersection with East Santa Clara Street. The approximately 0.22-gross acre site is developed with an existing two-story commercial building that is a designated City Landmark. The approximately 0.22-gross acre site is surrounded by two 13-story commercial retail and office buildings across North 2nd Street to the east, vacant three story residential and commercial buildings at 35-39 East Santa Clara Street and 43-49 East Santa Clara Street to the south, two commercial buildings at 21-25 East Santa Clara Street and a nine-story commercial building at 28 North 1st Street to the west, and a four-story commercial office building at 31 North 2nd Street to the north. The site has a General Plan land use designation of Downtown and is located within the DC Downtown Primary Commercial Zoning District.

The project site contains a designated City Landmark, the Realty Building. Constructed in 1925 in the Beaux Arts style, the two-story commercial building is significant under the Commerce theme for the Inter-War period (1918-1945).

Identifying features of the building are its two-story height, rectangular massing, flat roof and parapet, symmetrical four bay facade divided by pilasters, central arched recessed entry crowned by a wrought iron balcony, four commercial spaces, multi-light storefront transom, large commercial style windows, and Beaux Arts style detailing, including the decorative cornice and frieze.

The City Council designated the Realty Building a City Landmark in 2001 (HL01-136, Resolution No. 70635) based on its historical, cultural and architectural significance. The building was found eligible under significance criteria 4, 6, and 8 of the Historic Preservation Ordinance and the San José historic context theme of Commerce during the Inter-War period (1918-1945). The Realty Building was also found eligible to be individually listed on the National Register of Historic Places and the California Register of Historical Resources under Criterion A/1 for its association with the larger Downtown Commercial District located south of East Santa Clara Street and under Criterion C/3 as a work of high artistic value. The period of significance under Criterion A/1 would be from 1925, when the building was constructed, to the 1940s, when the downtown commercial district started to decline. The period of significance under Criterion C/3 would be 1925 when the building was constructed.

2. **Project Description.** The project consists of the removal of the majority of the roof and interior (except for stairway core) of a City Landmark building and the construction of a 22-story mixed-use project that would retain and integrate the two-story facade of the City Landmark building. The new building includes one basement level and commercial space located on the first and second floors, in addition to residential amenities. The commercial space would allow up to two commercial condominiums. Residential units are located on floors three through 22. A roof deck is provided for common open space. Projecting cornices are located at the 4th, 12<sup>th</sup>, and 18<sup>th</sup> floors and the roof level, dividing the new building into four sections. A recessed glazed central bay runs vertically at the center of the new building facade. Typical openings are rectangular and contain aluminum sash. Refer to the project plans.

In accordance with the State Density Bonus Law (Government Code Section 65915), the project is eligible for up to a 26% Density Bonus. A Density Bonus Application was submitted in conjunction with the Special Use Permit Application. 14% of the units (25 units) would be provided for low-income households earning up to 60% Area Median Income (AMI). Therefore, pursuant to Government Code Section 6915(f)(1), the project is eligible for a 26% density bonus over the allowable residential density for the site. The applicant requested a 25% density bonus. The subject site has a General Plan land use designation of Downtown, which allows for a residential density of up to 800 dwelling units per acre (DU/AC). Without a density bonus, the maximum allowed number of residential units on site is 176. With the 25% density bonus, the total number of units allowed is 220. Therefore, the residential density of approximately 1,000 DU/AC may be permitted with application of density bonus.

In addition to the allowable 26% increase in density, the project applicant is also eligible for concessions/incentives and waivers under the State Density Bonus Law, pursuant to Government Code Section 65915 (d)(2)(D). The project applicant seeks waivers for the reduction of the Commercial floor-area ratio (FAR) requirement from 4.0 to 2.0, the removal of the off-street loading space requirement, reduction in the required first floor height of 16 feet, and removal of the transitional height requirement pursuant to the Downtown Design Guidelines and Standards.

In accordance with Government Code Section 65915 (p)(3)(A), no vehicle parking is required on-site as the project is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development. The site is located approximately 330 feet to the north of the existing Santa Clara VTA Light Rail Station.

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 Bay Area Rapid Transit (“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 base land use designation of “Downtown” has an allowed FAR of up to 30.0 (3 to 30 stories) and density of up to 800 Dwelling Units per Acre (“DU/AC”).

*Analysis: As stated in Section 2 above, the project includes a Waiver under the State Density Bonus Law to reduce the required commercial FAR from 4.0 to 2.0. The total project FAR is 15.3. Therefore, the project conforms with allowable FAR of the site. The subject site has a General Plan land use designation of Downtown, which allows for a residential density of up to 800 DU/AC. Without a density bonus, the maximum allowed number of residential units on site is 176. With the 25% density bonus, the*

*total number of units allowed is 220. Therefore, the residential density, with the Density Bonus included, of approximately 1,000 DU/AC may be permitted with the application of State Density Bonus Laws.*

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.
- Housing Policy H-1.3: Create new housing opportunities and preserve and rehabilitate the City's existing housing stock to allow seniors to age in place, either in the same home, assisted living facilities, continuing care facilities, or other housing types within the same community.
- Land Use Policy LU-13.3: For landmark structures located within new development areas, incorporate the landmark structures within the new development as a means to create a sense of place, contribute to a vibrant economy, provide a

connection to the past, and make more attractive employment, shopping, and residential 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 residential and commercial use. Ambitious job and housing growth capacity is planned for the Downtown supported by regional transit systems and the development of Downtown as a regional job center. The project would provide housing, office, and retail opportunities in the Downtown core through the development of 220 affordable senior residential units and 18,643 square feet of commercial space. The project balances the need for parking with the need to minimize parking and encourage transit use. The project encourages alternative modes of transportation with no parking provided on-site pursuant to the State Density Bonus Law. The project is adjacent to multiple transit stops, including the Santa Clara Light Rail station, and VTA Bus Routes 72, 73, 22, 23, and Rapid 523. The project also provides ample bicycle parking with the inclusion of a secure bicycle storage room on the basement level.*

*The project retains the 1925 two-story facade of 19 North 2<sup>nd</sup> Street and would rehabilitate the existing commercial storefront for continued retail use. The three pedestrian-focused storefronts continue the ground-floor commercial use which has characterized the building's primary facade since its construction. The glazing at the historic storefronts provides transparent interfaces between outdoor and indoor spaces. The new construction above the second floor creates residential capacity on the site, while retaining the distinctive historic facade which includes the building's character-defining features. Through the use of contemporary materials and design vocabulary, the new elements of the Project would clearly differentiate new tower from the historic building. Nonetheless, the Project is considered "facadism" because it would affect the historic materials, features and spatial relationships that characterize the building. For additional Historic analysis, please refer to the associated Historic Preservation Permit Resolution (File No. HP21-001).*

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.

*Analysis: The project retains the 1925 two-story facade of 19 North 2<sup>nd</sup> Street and would rehabilitate the existing commercial storefront for continued retail use. A 22-story, 220-unit multifamily senior affordable housing development would be constructed above the second floor. The tower would contribute to the creation of a dramatic skyline within the downtown core, while retaining the distinctive historic facade at the lower levels of the building. The building would be approximately 239 feet in height, adding to the growing number of high-rise buildings within the downtown core. The first two stories of the building remain directly along North 2<sup>nd</sup> Street. The tower portion of the building begins with a stepback at the podium level and includes plane changes and facade articulation throughout. Projecting cornices would be at the 4<sup>th</sup>, 12<sup>th</sup>, 18<sup>th</sup>, and roof levels, dividing the new building into four sections. A recessed glazed central bay runs vertically at the center of the new building facade. An outdoor rooftop deck is included for residential amenity space. The historic facade of the building would be preserved and rehabilitated in order to maintain the historic character of the building at the pedestrian level. The project is oriented towards transit, with the VTA Light Rail line located directly in front of the project site. As previously discussed, the project is served by several transit lines including VTA Light Rail, VTA bus, and BART. Ample bicycle parking is provided in a bicycle storage room at the ground floor and outside the building footprint.*

#### **4. Zoning Ordinance Consistency.**

##### Land Use

The subject 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, and retail are all permitted uses in the DC Zoning District.

Because the project also includes up to four commercial condominiums, pursuant to Section 20.175.040 of the Zoning Code a Special Use Permit is required. The minimum allowed size for a commercial condominium is 750 square feet. None of the project commercial condominiums would be less than 750 square feet. In addition, a



Tentative Map is required to subdivide the building into up to four commercial condominiums.

#### 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)	Project
268.5 feet	239 feet

*Analysis: As shown above the project is below the maximum 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

##### **Vehicle Parking**

Use	Number of Units/Square Footage	Ratio	Required
Residential, multiple dwelling	220 units	1 per unit	220 spaces
Commercial Retail	9,321 sf	No parking Required	0
Office	9,321 sf	2.5 per 1,000 sf	24 spaces
<b>Total Required</b>			244 spaces
<b>Total Provided</b>			0 Spaces (Pursuant to State Density Bonus Law)

Pursuant to Table, 20-140 of Section 20.70.100 of Zoning Code, the project is required to provide 244 vehicle parking spaces. However, in accordance with Government Code Section 65915 (p)(3)(A), no vehicle parking is required on-site as the project is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development. The subject site is located approximately 330 feet to the north of the existing Santa Clara VTA Light Rail Station and is accessible from the sidewalk along North 2<sup>nd</sup> Street. Therefore, the project complies with this requirement and no vehicle parking is required on-site.

### **Bicycle Parking**

<b>Use</b>	<b>Number of Units/Square Footage</b>	<b>Ratio</b>	<b>Required</b>
Residential, multiple dwelling	220 units	1 per 4 living units	55 spaces
Retail	9,321 sf	3 parking spaces (Section 20.70.485)	3 spaces
Office	9,321 sf	1 per 4,000 sf of floor area	3 spaces
<b>Total Required</b>			61 spaces
<b>Total Provided</b>			62 spaces

Pursuant to Section 20.70.485, the project is required to provide a total of 58 bicycle parking spaces. The project would provide 62 bicycle parking spaces. Long-term bicycle parking is provided in a secure bicycle storage room at the basement level. Six short-term bicycle parking spaces are provided in bicycle racks outside of the building footprint. Therefore, the project complies with the bicycle parking requirement.

## **5. State Density Bonus Law.**

### Density Bonus

In accordance with the State Density Bonus Law (Government Code Section 65915) the project is eligible for up to a 26% Density Bonus. One hundred percent of the residential units are restricted to seniors aged 55 and up. A Density Bonus Application was submitted in conjunction with the Special Use Permit Application. Fourteen percent of the units (25 units) would be provided for low-income households earning up to 60% Area Median Income (AMI). Therefore, pursuant to Government Code Section 65915 (f)(1), the project is eligible for a 26% density bonus over the allowable residential

density for the site. The applicant is requesting a 25% density bonus. The subject site has a General Plan land use designation of Downtown, which allows for a residential density of up to 800 DU/AC. Without a density bonus, the maximum allowed number of residential units on site is 176. With the 25% density bonus, the total number of units allowed is 220. Therefore, the residential density, with the Density Bonus included, of approximately 1,000 DU/AC may be permitted. The Special Use Permit includes a conditional of approval that the applicant must enter into a density bonus regulatory agreement with the City prior to issuance of building permits.

#### Parking

Pursuant to Table, 20-140 of Section 20.70.100 of Zoning Code, the project is required to provide 244 vehicle parking spaces. However, in accordance with Government Code Section 65915 (p)(3)(A), no vehicle parking is required on-site as the project is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development. The subject site is located approximately 330 feet to the north of the existing Santa Clara VTA Light Rail Station and is accessible from the sidewalk along North 2<sup>nd</sup> Street. Therefore, the project complies with this requirement and no vehicle parking is required on-site.

#### Incentives/Concessions and Waivers

As requested by the applicant in their Density Bonus Application, the following waivers are hereby granted.

- a. Waiver One. Reduction of Commercial FAR (General Plan Chapter 5, Page 26): Pursuant to the Downtown Employment Priority Area General Plan land use designation, mixed use projects are required to provide a minimum commercial FAR of 4.0. The applicant has requested a reduction of the commercial FAR to 2.0. The waiver is granted because the inclusion of an additional 2.0 FAR of commercial space on the third and fourth floors would result in the loss of 22 residential units, precluding the construction of the project at the residential density allowed under the State Density Bonus Law. Further, approving the request would not violate state or federal laws and would not create an adverse impact to public health and safety.
- b. Waiver Two. Loading Spaces (San José Municipal Zoning Code, Section 20.70.435): Pursuant to Section 20.70.435 of the Zoning Code, multiple dwelling uses of 200 units or greater shall provide at least two off-street loading spaces. The applicant has requested a reduction in off-street loading to 0 spaces. The waiver is granted because the existing first floor height and the extensive facade change required to construct the mixed-use project preclude the provision of two loading spaces on the first floor. The provision of loading spaces on the ground floor would require moving the commercial space to the second through fifth floors and would result in a loss of 33 residential units. Therefore, the provision of the required loading spaces would preclude the construction of the project at the

residential density allowed under the State Density Bonus Law. Further, approving the request would not violate state or federal laws and would not create an adverse impact to public health and safety.

- c. Waiver Three. First Floor Height (Downtown Design Guidelines and Standards Section 5.3.2, Standard B): Pursuant to Section 5.3.2, Standard B of the Downtown Design Guidelines and Standards the ground floor commercial space must maintain a minimum height of 16 feet. The applicant has requested a reduction in first floor height to 13feet, the height of the existing first floor. The waiver is granted as the existing first floor height and the extensive facade restoration required to construct the mixed-use project would result in a loss of residential units. The increase in height to the ground floor commercial space would require moving additional commercial space to the fifth floor, resulting in a loss of 33 residential units. Therefore, a 16-foot-high first floor would preclude the construction of the project at the residential density allowed under the State Density Bonus Law. Further, approving the request would not violate state or federal laws and would not create an adverse impact to public health and safety.
- d. Waiver Four. Transitional Height Requirement (Downtown Design Guidelines and Standards, Section 4.2.2, Standard C): Section 4.2.2, Standard C of the Downtown Design Guidelines and Standards requires that when a new building 100 feet tall or more is across from a parcel line interior to a block from a historic building 45 feet tall or less, the rear portion of the building must maintain a transitional height of 60 feet or less within the first 20 feet from the property line. The waiver is granted as maintaining the transitional height of 70 feet or less within 20 feet from the property line would require moving the stair tower back to avoid the 70-foot height restriction and would result in a loss of 36 units (16 units on the north side, 20 units on the south side). Therefore, compliance with this standard would preclude the construction of the project at the residential density allowed under the State Density Bonus Law. Further, approving the request would not violate state or federal laws and would not create an adverse impact to public health and safety.

## 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. The project is subject to the following provisions of the Downtown Design Standards and Guidelines.

### 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 3.3.2 – Relationship to Transit
  - Standard A - Place a building's Active Frontages (particularly retail) and amenities such as Privately-Owned Public Open Spaces near rail transit stations and bus stops on the Frequent Network.
- 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: As shown on the project plans, the existing bottom two floors of the building would remain in their present location with the rehabilitation of the historic building facade. The building is placed directly on the property line at North 2<sup>nd</sup> Street for 100% of the parcel's public-space facing property line, in conformance with Section 3.3.2 and Section 4.3.3 Standard B. The project site is directly in front of the VTA Light Rail line and is within close proximity to multiple VTA bus routes along North 2<sup>nd</sup> Street and East Santa Clara 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 3.5.1 – Pedestrian and Bicycle Entrance Location
  - Standard C – Provide retail spaces with direct entry from a street.

*Analysis: There is no vehicle parking or circulation on-site, so there is no conflict with drive aisles or parking. The building entrance is directly accessible from the sidewalk along North 2<sup>nd</sup> Street. Bicycle parking is provided in secure bicycle storage at the basement level of the building and would be accessible by elevator or stairs inside the building. Additional short-term bicycle parking spaces are provided outside of the building for use by retail patrons. Retail spaces would continue to be provided with direct entry from North 2<sup>nd</sup> Street.*

#### Building Massing and Design

- 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 a historic building that is 45 feet tall or less, the new building must step back its street facing facade 5 feet

minimum from the front parcel or setback line at an elevation between 25 and 50 feet.

- Section 4.2.4 – Historic Adjacency
  - Standard B - Design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings.
  - Standard C - Use cornice articulation at the Podium Level at a height comparable to the heights of Historic Context buildings.
- 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
- Section 4.4.1 – Façade Pattern and Articulation
  - Standard A - Design all buildings to include a top distinguishable from the rest of the facade. The building top may consist of the special facade treatment of one or more full floors, among other possible treatments.

*Analysis: The new building incorporates a 19-foot deep setback beginning at the third floor (26 feet high). The building is designed with a distinguishable base, middle, and top. The two-story podium level building is characterized by the historic facade and its existing four bay facade divided by pilasters, a central arched recessed entry, and four distinctive commercial spaces, none of which are wider than 80 feet. The cornices of the historic building at the second level facade are to be maintained and restored as originally constructed. The lower and middle portions of the tower are visibly distinct from the historic building on the lower level with the street facing facade being divided by two columns of windows no greater than 15 feet wide. The columns continue up the facade to the top of building, which is defined by the roof deck.*

#### 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.

*Analysis: The entirety (100%) of the street facing facade on North 2<sup>nd</sup> Street, a Secondary Addressing Street, is wrapped with active retail and lobby space.*

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

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the 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. An on-site sign was posted on the project frontage on February 1, 2021. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

A formally noticed Community Meeting with Environmental Scoping was held on Monday, August 9, 2021 to introduce the project to the community. Approximately 15 members of the public attended the meeting. The questions and comments from community members included the following:

- Concerns about the impacts to the City Landmark and compliance with the Secretary of the Interior standards
- Concerns about parking, and since there is no parking provided, concerns that there is no designated pick-up and drop-off area
- Concerns about the impact to privacy to nearby residential towers
- Concerns about the construction of the basement and how it will impact the foundations of the surrounding buildings

Support for retaining the facade, but there is a concern that some of the tiles at the entry have been replaced, bathrooms are from the 1970s, skylights are boarded up, windows are single pane, party walls not up to code, and the top floor is not usable.

In accordance with Chapter 13.48 of the Municipal Code, the project was referred for comment to the Design Review Committee on January 20, 2021 and the Historic Landmarks Commission on June 2, 2021. As stipulated by Chapter 13.48 of the San Jose Municipal Code, the HLC considered the application for a HP Permit on December 7, 2022. The HLC requested additional information including a cost estimate to seismically upgrade the existing building since it was asserted that the upgrade would be too expensive, information on the costs, constraints, and requirements to renovate the building and bring it up to code, additional financial analysis on the three project alternatives presented, and information about what is original and significant material and features in the interior of the building, what needs to be removed to construct the tower and which of those elements could be put back into the new building. The HLC voted to continue the public hearing on the HP Permit to February 1, 2023 to allow the applicant time to provide the additional information requested. The HLC continued the public hearing on the HP Permit on February 1, 2023. The HLC rejected the finding under hardship pursuant to Section 13.48.260 of the San Jose Municipal Code. Instead, the HLC recommended approval of the HP Permit (4-3-0), with recommendations for retention of specific character-defining

features that otherwise would have been compromised, based on Section 13.48.240B of the San Jose Municipal Code for the issuance of a Historic Preservation Permit. Specifically, the HLC recommended to the City Council that the project would not be detrimental to the City Landmark if it retained the Realty building sign above the central entry, fenestration, doors, existing windows, vestibule vaulted ceiling and bas relief, and 18 feet, 11 inches setback from the original building in addition to the front façade, exterior walls, portion of the interior core including the central entry vestibule and corridor on the first floor, stairs and the second-floor central lobby in accordance with the project description.

## **8. Environmental Review.**

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report ("Draft SEIR") to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) for the Draft SEIR was circulated from July 28, 2021 to August 27, 2021, and the Draft SEIR was circulated for public review and comment from August 29, 2022 to October 13, 2022. An environmental scoping meeting for the Draft SEIR was also held on August 9, 2021 via virtual conference meeting.

### **Summary of Environmental Impacts Reduced to Less than Significant with Mitigation**

The Draft SEIR identified potential environmental impacts related to cumulative construction air quality, hazards and hazardous materials during construction due to an adjacent sites' historical uses, construction noise and vibration, and potentially previously unknown and undocumented historic-era and Native American archaeological resources. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program ("MMRP") and prepared for the project, these impacts are reduced to less than significant levels. As part of the certification of the Final Supplemental Environmental Impact Report ("Final SEIR"), the City Council will need to approve the associated MMRP for the project.

### **Significant and Unavoidable Impacts and Statement of Overriding Considerations**

The Draft SEIR also found that the project would result in a significant and unavoidable impact to Cultural Resources due to the project's partial demolition of a registered City Landmark building (Realty Building, HL01-136). The project would cause a substantial adverse change in the historic significance of the designated City Landmark and mitigation measures to be adopted for the project would not reduce this impact to a less than significant level.

Significant and unavoidable impacts were also identified for Land Use and Planning in the Draft SEIR because the project would not comply with General Plan Policies related to historic preservation, such as General Plan Policies LU-13.2, LU-13.6, LU-13.7, and LU-13.8. Furthermore, the project is mostly inconsistent with the Secretary of the Interior's Standards for Rehabilitation as the project would remove the majority of extant building components except for the front facade, the exterior walls, and a



portion of the interior core including the central entry vestibule and corridor on the first floor, the stairs, and the second-floor central lobby, and construct a 22-story tower. Therefore, the project would affect the historic status of the City Landmark building and its eligibility for the National Register of Historic Places and the California Register of Historic Resources.

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 project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen.

The Statement of Overriding Considerations found that the economic and social benefits of construction of the project which consists of a 22-story building with 18,643 square feet of commercial space, and 220 affordable residential units outweigh impacts associated with the partial demolition of the City landmark building at 19 North Second Street that would result from the project, and given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible.

### Project Alternatives

The Draft SEIR analyzed four project alternatives, including a No Project Alternative, Preservation/Adaptive Reuse Alternative, Reduced Alternative, and Decreased Alternative. Alternatives were crafted based on their ability to reduce the significant and significant adverse impacts summarized above and to identify an environmentally superior project and to inform decision-making. The environmentally superior alternative would be the No Project/No Development Alternative, which would avoid the identified significant impacts of the project; however, CEQA requires that another alternative be chosen when the No Project Alternative is environmentally superior. The Preservation/Adaptive Reuse Alternative would consist of modifying and altering the existing building (in compliance with the SOI Standards for Rehabilitation) to accommodate residential units – per the calculations, approximately 20 residential units could be accommodated. This alternative would eliminate the significant unavoidable impacts to historic resources and associated land use/planning effects and thus, be the next best environmentally superior alternative. However, this alternative would not support any commercial space or meet the primary project objective of providing 220 affordable senior housing units. Therefore, the Preservation/Adaptive Reuse Alternative was not considered further.

The reduced project alternatives (Reduced Alternative and Decreased Alternative) would both decrease the project in height and density. The Reduced Alternative would reduce the project to a two-story addition (totaling four stories) resulting in approximately 55 residential units and 5,000 square feet of commercial space and the Decreased Alternative would result in a 22-story tower with 120 residential units. Compared to the project, both reduced project alternatives would fall short of the 222 units and 18,643 square feet of commercial space.

### Summary of Comments Received

The City received five comment letters during the public circulation period of the Draft SEIR. Comments were submitted by Pacific Gas & Electric Company (“PG&E”), Valley Transportation Authority (“VTA”), Kanyon Consulting, LLC., on behalf of the Indian Canyon Band of Costanoan Ohlone People, J. Michael Sodergren on behalf of Preservation Action Council of San José, and Valley Water. The main concerns raised by commenters are as follows:

- The project’s site Area of Potential Effect overlaps or is near the management boundary of a potentially eligible cultural site, recommendation for monitoring, and potential approaches to Indigenous cultural awareness/history during/after implementation of the project.
- Reminder to coordinate with PG&E prior to any digging or excavation due to underground gas and electric distribution facilities currently serving property.
- Non-compliance with SOI Standards resulting in a significant impact to a historical resource under CEQA.
- Project alternatives were ultimately not given serious consideration by the applicant
- Environmentally Superior Preservation/Adaptive Reuse Preservation would activate the site while preventing the permanent loss of a historic resource.
- Non-compliance with General Plan policies adopted for the purpose of protecting historic resources.
- Non-compliance with the Historic Preservation Ordinance (Title 13 of the Municipal Code)
- Cumulative impacts to historic resources
- Concurrent construction of Downtown projects, including VTA’s BART Phase II Extension Project, and related coordination.

None of the comments received address an issue of deficiency or adequacy of the Draft SEIR, or the mitigation measures to be adopted as part of the Final SEIR.

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. SEIR text revisions were included in the First Amendment to address clarifications to the text of the Draft SEIR and other suggested text revisions from commenters; therefore, recirculation of the Draft SEIR is not required. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program (MMRP) constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (Final SEIR) are available for review on the project page on the City’s Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building->

code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/sp21-044-19-north-second-street-mixed-use-project.

**EIR Recirculation Unnecessary**

The comments received do not identify substantive inadequacies in the Draft SEIR or present 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, including a feasible project alternative that the project's proponents have declined to implement (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information requiring recirculation has been added to the SEIR since publication of the Draft SEIR, and the mitigation measures to be adopted with the Final SEIR would not result in a new significant environmental impact and feasible mitigation measures requested by commenters would be adopted as part of project approval. Therefore, the Draft SEIR does not require recirculation.

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

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

*Analysis: As discussed in Section 3 above, the project is consistent with the General Plan goals and policies for focused growth, housing, land use, and employment. The project would also be consistent with the General Plan Downtown design policies regarding the promotion of iconic architecture and the creation of a dramatic skyline, respecting and responding to the surrounding historic character, and designing development to connect to public transit. The project is in conformance with the allowable FAR and residential density for a project with the inclusion of a 25%*

*density bonus. The project has an FAR of 15.3 and a residential density of approximately 1,000 DU/AC.*

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

*Analysis: As discussed in the Municipal Code Conformance section above, the project is consistent with all applicable objective criteria of the DC Downtown Primary Commercial Zoning District. The office, retail, and residential uses are all permitted in the DC Zoning District, no parking is required, and the height is determined by the FAA. The commercial condominiums require a special use permit, which is also consistent with the Zoning Ordinance as described in Section 4 above.*

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

*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 August 9, 2021. An on-site sign has also been posted on the project frontage since February 1, 2021. 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. See the Public Outreach section above for additional details about public comments received.*

- 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 new tower is designed to be compatible with the existing historic building on-site. The first two stories of the building consist of the historic building, including the street facing facade, which would be restored. The residential portion of the 22-story begins at the third floor (26-feet-high) and incorporates a 19-foot-deep setback where the tower begins. The new tower consists of rectilinear forms, similar to the rectilinear forms of the existing historic facade. The lower and middle portions of the tower, while visibly distinct from the historic building, are divided by two columns no greater than 15 feet wide and separated with an aluminum curtain wall with tinted glass.*

- 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 on all sides by commercial office or retail uses. The project consists of the retention and rehabilitation of an existing historic landmark*

*and the construction of a 22-story mixed use building with 18,643 square feet of retail and 220 multifamily residential units within the Downtown core. The historic facade, comprising the first two stories is retained and will continue the pattern of low and mid-rise office and retail buildings along North 2<sup>nd</sup> Street and East Santa Clara Street. As discussed in Section 6section above, the buildings incorporates a height transition above the second story to soften the change in height and scale from existing historic building and neighboring development. The new 22-story addition allows for high density residential uses that would support the existing and future retail and commercial development within Downtown.*

- 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 in an urbanized area on a parcel that is fully developed with an existing commercial building that already has public utilities and services in place. The project is required to adhere to standard environmental permit conditions to reduce construction related impacts to air quality, biological resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and noise. The project is required to conform 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 discharge. As the project site is within 500 feet of a residence, construction hours are limited to 7:00 am to 7:00 pm Monday through Friday. Additionally, the project is required to appoint a Construction Disturbance Coordinator to address any construction related complaints.*

- 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 space is located on the roof and would be landscaped and concealed to maintain privacy between existing and future residents. The trash room is located inside the building. The project is 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 along North 2<sup>nd</sup> Street. The project site is within a ¼ mile of multiple transit options including the Santa Clara Street and Saint James Street VTA Light Rail Stations. Numerous VTA bus routes also serve the immediate area, including VTA Bus Routes 72, 73, 22, 23, and Rapid 523. The project also provides ample bicycle parking with the inclusion of a secure bicycle storage room on the basement level. The project site is approximately 550 feet from the planned BART station on East Santa Clara Street between Market Street and 1<sup>st</sup> Street. As discussed in Section 5 above, no vehicle parking is required pursuant to the State Density Bonus Law.*

10. **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: See Site Development Permit Finding A above.*

- 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: The project allows up to four commercial condominiums. Therefore, pursuant to Section 20.175.040 of the Zoning Code, a Special Use Permit is required. As conditioned in this Special Use Permit Resolution, all commercial condominiums are required to be a minimum of 750 square feet. As described above, the project includes four commercial spaces ranging from 865 square feet to 5,692 square feet, which exceeds the minimum condominium space size of 750 square feet.*

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

*Analysis: See Site Development Permit Finding C above.*

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

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

*Analysis: The mixed-use project, including the 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 uses in the vicinity in that the size of the commercial units adequately accommodates a variety of potential uses.*

- 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 0.22-gross acre site is adequate in size to accommodate the project as well as the necessary common outdoor space and associated landscaping. Common outdoor space is located on the rooftop courtyard of the building. As discussed, the buildings include height transitions to soften the change in height and scale from neighboring development and the existing historic building. All necessary bicycle parking, utility rooms, and trash rooms are located interior to the building on the first floor or basement level. As discussed in Section 5 above, no vehicle parking is required pursuant to the State Density Bonus Law.*

- 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: Pedestrian and bicycle access is provided from the project frontage along North 2<sup>nd</sup> Street. The project site is within a ¼ mile of multiple transit options including the Santa Clara Street and Saint James Street VTA Light Rail Stations. Numerous VTA bus routes also serve the immediate area, including VTA Bus Routes 72, 73, 22, 23, and Rapid 523. The project site is approximately 550 feet from the planned BART station on East Santa Clara Street between Market Street and 1<sup>st</sup> Street. The project also provides ample bicycle parking with the inclusion of a secure bicycle storage room on the basement level.*

**11. State Density Bonus Findings.** Pursuant to Chapter 20.190.090 of the San José Municipal Zoning Code requires that any project with a Density Bonus, incentives, or development standard waivers must make the following findings:

- a. The Housing Development is eligible for a Density Bonus and any Incentives, waivers or modifications requested.

*Analysis: The project is a 100% affordable housing project, which provides up to 14% of the units for low-income households, as defined in Sections 65915 of the Government Code for the State of California and is therefore, eligible for the State Density Bonus Law for affordable housing projects.*

- b. If the Density Bonus is based on all or in part on donation of land, a finding that all the requirements for a land transfer Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project does not include a land donation.*

- c. If the Density Bonus or Incentive request is based all or in part on the inclusion of a Child Care Facility, a finding that all of the requirements for a Child Care Facility Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project does not include a Child Care Facility.*

- d. If the Incentive request is for a Mixed-Use development, a finding that all the requirements for a Mixed-Use Incentive development approval that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project is not requesting any incentives. However, the project is eligible as a "Housing Development" pursuant to Government Code Section 65915 (i) as it includes five or more residential units. The project allows the construction of 220 multifamily residential units.*

- e. If the Incentive includes a request for approval of condominium conversion, a finding that all the requirements for a condominium conversion Incentive that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project does not include a request for condominium conversions*

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

system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Use Authorization.** Subject to all conditions herein, this Permit allows the removal of the majority of the roof and interior (except for stairway core) of an existing 15,000-square foot, two-story building, the retention and integration of the building walls, street facing facade and a portion of the existing roof and the construction of a 22-story, 240-foot-high mixed use 100% affordable senior housing project with 220 multifamily residential units and approximately 18,643 square feet of commercial space with up to four commercial condominiums on an approximately 0.22-gross acre site. The permittee shall provide a 100% senior housing development restricted to ages 55 and, up with at least 14% of the units (25 units) provided for low-income households.
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved (Name Type of Permit Here) plans entitled, "North 2<sup>nd</sup> Street Affordable Senior Housing" dated May 17, 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."
7. **Tentative Map Required.** If the permittee desires to subdivide the parcel into up to four commercial condominiums and a residential unit consisting of all of the residential portion of the premises, the permittee shall apply for and obtain a tentative subdivision map and final subdivision map subdividing the property into the condominium units prior to approval of a parcel map or final map.
8. **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.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
10. **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.
11. **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
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.

13. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
15. **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.
16. **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.
17. **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.
18. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
19. **Required Bicycle Parking.** This project shall conform to the bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
20. **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.
21. **Landscaping.** Planting and irrigation are to be provided by the permittee, as indicated, on the final Approved Plans.
22. **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.
23. **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.
24. **Conformance to Other Permits.** This project shall conform to all of the requirements and Conditions of Approval of the Historic Preservation Permit (File No. HP21-001).

- 25. No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
- 26. 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.
- 27. 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.
- 28. Interior Noise.** The following noise insulation features shall be incorporated into the project to reduce interior noise levels to 45 dBA DNL or less at residential interiors:
- i. The project's design shall provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
  - ii. The project shall provide appropriately rated windows and doors to ensure the interior noise threshold of 45 dBA DNL is met, confirmed prior to the issuance of a building permit. Preliminary calculations indicate that residential units along the eastern building facade would require windows and doors with a minimum rating of 31 STC with adequate forced air mechanical ventilation to meet the interior noise threshold.
  - iii. Units along the southern facade shall install windows and doors with minimum STC ratings of 28 with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL. • A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code and the Cal Green Code. The study will review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA DNL or lower and to reduce commercial interiors to 50 Leq(1-hr) or below.

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

**29. 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].

### **30. Standard Environmental Permit Conditions**

#### **a. Air Quality**

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic for

a record of determination that equipment is running in proper condition prior to operation.

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

**b. Biological Resources**

- i. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-ScreeningForm?bidId=>) to the Director of Planning, Building and Code Enforcement ("PBCE") or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

**c. Cultural Resources**

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

The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

**d. Geology and Soils**

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. 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 settlement to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- vii. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to Director of Planning or Director's designee.

**e. Hazards and Hazardous Materials**

- i. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of the on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with the California Occupational Safety and Health Act of 1973 ("Cal/OSHA") Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable Asbestos-Containing Materials (ACMs) shall be removed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards above.
- v. Materials containing more than one percent asbestos are also subject to the 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.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers. o Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
- vii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
- viii. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

**f. Hydrology and Water Quality**

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.



- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soils, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- ix. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

**g. Noise**

- i. Pile driving is prohibited.
- ii. Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
- iii. Construct solid plywood fences around the ground level construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
- iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- v. Prohibit unnecessary idling of internal combustion engines.
- vi. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors.
- vii. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

- viii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - ix. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - x. 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.
  - xi. 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.
  - xii. Designate a “disturbance coordinator” who 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.
31. **Regulatory Agreement.** Prior to the issuance of the first Building Permit, the Permittee shall submit a Permit Adjustment Application and enter into a Density Bonus Regulatory Agreement with the City. The permittee shall provide a 100% senior housing development restricted to ages 55 and, up with at least 14% of the units (25 units) provided for low-income households. The final Regulatory Agreement, as amended and as approved by the City Attorney and by the Director of Planning, shall be recorded in the Office of the County Recorder by the City. This Permit shall take effect upon the date of recordation of the Density Bonus Regulatory Agreement in the form approved by the City and shall have no force and effect prior to that date.
32. **Housing.** The development may be subject to the Affordable Housing Impact Fee (“AHIF”) or subject to the Inclusionary Housing Ordinance (IHO).
- If the development is a rental project, the permittee must pay the Affordable Housing Impact Fee prior to the issuance of any building permits, unless an exemption claim has been made and conditionally accepted. Rental developments are developments that do not include the filing of a tentative map, parcel map or other plan intended to allow the separate conveyance of individual residential units or interests.
- a. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the AHIF.
  - b. If a development qualifies for a conditional exemption to the AHIF in the approved Plan, the permittee and owner must execute and record an Affordable Housing Agreement with the City prior to the issuance of any building permits.
  - c. Permittee’s approval is for development of less than 20 qualifying dwelling units, as determined by Housing. Any changes in the number of units or the type of units

in the development may result in additional requirements up to and including a requirement to comply with the IHO.

- d. No building permit may be issued until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.

If the development is a for-sale project, the permittee must comply with the requirements under IHO.

- e. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the IHO.
- f. If a development requests an IHO exemption in the Plan, the conditions of that exemption shall be complied with through the issuance of the certificate of occupancy.
- g. Permittee's approval is for development of less than 20 qualifying dwelling units, as determined by Housing. Any changes in the number of units or the type of units in the development may result in additional requirements up to and including a requirement to comply with the IHO.
- h. No building permit may be issued until evidence of compliance with the IHO and exemption process. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

### 33. Airport.

- a. **Avigation Easement.** Prior to the issuance of any 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 the San José Airport Department at (408-392-1193), 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](http://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.

**34. 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, SP21-044 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](http://www.sjenvironment.org/reachcode).
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- f. *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. *Other.* Such other requirements as may be specified by the Chief Building Official.
35. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
36. **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 CEQA transportation analysis because the project is located in the expanded Downtown Core and is covered under the San José Downtown Strategy 2040 EIR. We conclude that the subject project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1) and a determination for a negative declaration can be made with respect to traffic impacts.
- c. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. 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.

d. **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 used in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the permittee 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 used for use along the adjacent property(ies) (*APNs:467-21-024, 025, 029,-045 and 054*) agreements between the permittee and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.
- f. **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).
- g. **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.
- h. **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.
- i. **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.

- j. **Assessments:** This project is located within the recently renewed and expanded Downtown San Jose Property-Based Business Improvement District, which provides enhanced services and activities through Clean Teams, a Social Impact Team, Safety Ambassadors, Beautification and Streetlife programs, Business Development, Communications, and Service Innovation/Special Projects within the boundaries of the district. Benefiting properties within the district pay for services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year, plus up to an additional 5% on commercial and enterprise government parcels. The assessment is calculated based on land use and its building and lot square footages. For tax year 2022-2023, commercial properties pay \$0.133879294 and residential properties pay \$ 0.108266260 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”.
- k. **Street Improvements:**
  - i. This project is located along the Downtown San José Transit Mall and any excavation within the street or sidewalk shall conform to the following:
    - a) Improvements and excavation within the sidewalk will require preservation of the existing granite pavers and granite curb. If the existing granite pavers or curb become damaged, the permittee shall be responsible for replacing these pavers and should contact the Department of Transportation at (408) 794-1987.
    - b) The street is comprised of concrete panels and any re-grading of the curb, gutter and any other intrusion or damage to existing panels due to construction will require the removal and replacement of the entire concrete panel(s).
  - ii. Provide \$25,000 contribution towards video detection implementation at the 2nd Street/Santa Clara Street intersection.
  - iii. Remove tiled pan lids from tree wells and replace with non-compacted decomposed granite or mulch.
- l. **Downtown Transit Mall:** This project is located along the Downtown San José Transit Mall and any public improvements necessary for the project along N. 2nd Street (i.e., new driveways, driveway closures, trenching, etc.), shall conform to the following:
  - i. Improvements and trench work within the sidewalk will require preservation of the existing granite pavers and granite curb. If the existing granite pavers

- become damaged the permittee shall be responsible to replace these pavers and should contact the Department of Transportation (DOT) at (408) 794-1987.
- ii. The street traveled way is comprised of concrete panels and any re-grading of the curb, gutter and any other intrusion or damage to existing panels due to construction will require the removal and replacement of the entire concrete panel(s). Improvements to the roadway will be required to conform to the "Special Provisions for Roadway Repair within the San José Transit Mall".
  - m. **BART Phase II:** The project will be required to 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. Tiebacks may not be acceptable at certain locations and/or elevations depending on the project's design.
  - n. **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>.
  - o. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any sidewalk and lane closures to support the onsite construction activities.
    - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
      - 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 project-related activities/uses within the Public right-of-way cannot occur within the construction site. These include the use of the right-of-way for temporary facilities and activities such as man-lifts, baker tanks, staging areas, 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 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.
  - p. **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.
  - q. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - r. **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." Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
    - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are to be removed. Provide a tree protection plan for street trees that are to remain.
  - s. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (VTA) and Bay Area Rapid Transit (BART).

**37. 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 \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
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

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING AT A POINT ON THE WESTERLY LINE OF SECOND STREET, DISTANT 25 VARAS NORTHERLY FROM THE INTERSECTION OF THE NORTHERLY LINE OF SANTA CLARA STREET WITH THE WESTERLY LINE OF SECOND STREET; RUNNING THENCE NORTHERLY ALONG THE WESTERLY LINE OF SECOND STREET, SIXTY-SEVEN AND 975/1000 (67.975) FEET TO A POINT ONE (1) FOOT SOUTHERLY FROM THE CORNER OF LOTS 5 AND 8 IN BLOCK 2 RANGE 2 NORTH OF THE BASE LINE OF SAID CITY OF SAN JOSE IN THE WESTERLY LINE OF SECOND STREET; THENCE AT RIGHT ANGLES, WESTERLY AND PARALLEL WITH THE NORTHERLY LINE OF SANTA CLARA STREET ONE-HUNDRED THIRTY-SEVEN AND 96/100 (137.96) FEET TO A POINT IN THE WESTERLY LINE OF LOT 8 BLOCK 2 RANGE 2 NORTH OF THE BASE LINE OF CITY OF SAN JOSE, DISTANT ONE (1) FOOT SOUTHERLY ALONG SAID LOT LINE FROM THE COMMON CORNER FOR LOTS 5, 6, 7 AND 8 BLOCK 2 RANGE 2 NORTH OF THE BASE LINE OF THE CITY OF SAN JOSE; THENCE SOUTHERLY ALONG THE LINE BETWEEN SAID LOTS 7 AND 8, SIXTY-SEVEN AND 975/1000 (67.975) FEET TO A POINT AND DISTANT 25 VARAS NORTHERLY MEASURED AT RIGHT ANGLES FROM THE NORTHERLY LINE OF SANTA CLARA STREET) AND THENCE AT RIGHT ANGLES EASTERLY AND PARALLEL WITH THE NORTHERLY LINE OF SANTA CLARA STREET ONE HUNDRED THIRTY-SEVEN AND 96/100 (137.96) FEET TO THE POINT OF BEGINNING, AND BEING A PART OF LOT 8 IN BLOCK 2 RANGE 2 NORTH OF THE BASE LINE OF SAID CITY OF SAN JOSE, AS SHOWN UPON MAP OF SAID CITY OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY, CALIFORNIA IN [BOOK A OF MAPS, PAGE 72](#), RECORDS OF SAID COUNTY.

APN: 467-21-028

**EXHIBIT "A"**  
**(File Nos. SP21-044; HP21-001)**

*First American Title Insurance Company*