

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, AN HISTORIC PRESERVATION PERMIT TO ALLOW THE REMOVAL OF THE MAJORITY OF THE ROOF AND INTERIOR OF A CITY LANDMARK AND THE CONSTRUCTION OF A 22-STORY BUILDING WITHIN THE WALLS OF THE CITY LANDMARK THAT WOULD INTEGRATE AND RESTORE THE STREET-FACING FAÇADE AND A PORTION OF THE EXISTING ROOF ON A 0.22-GROSS-ACRE SITE AT 19 NORTH 2ND STREET (APN 467-21-028) [PBCE RECOMMENDATION]

FILE NO. HP21-001

WHEREAS, pursuant to the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, on January 6, 2021, Kurt B. Anderson (the “applicant”) filed an application for an Historic Preservation Permit (File No. HP21-001) on behalf of property owner Loida Kirkley / Roygbiv Real Estate Development, LLC, with the City of San José to allow the construction of a new 22-story, mixed-use building and the demolition of the existing 15,000 square foot building, retaining and integrating the street-facing, two-story façade and parapet (the “Project”) at 19 North 2nd Street, San José (the “subject property”); and

WHEREAS, the subject property contains an historic landmark (hereafter referred to as the “Realty building”) and is all that real property more particularly described in Exhibit "A" entitled “Legal Description,” which is attached and incorporated by reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 13.48 of Title 13 of the San José Municipal Code, the Historic Landmarks Commission (“HLC” or the “commission”) conducted public hearings on said application on December 7, 2022, and February 1, 2023, notice of which was duly given; and

WHEREAS, on December 7, 2022, the HLC voted to continue the public hearing on Historic Preservation Permit File No. HP21-001 and directed the applicant to return to the commission with more documentation to substantiate a claimed hardship that were the Project to be found detrimental to the Realty building the supporting documentation would help verify that claim; and

WHEREAS, on February 1, 2023, the applicant returned to the commission with supporting documentation, which the HLC found to be unpersuasive. The HLC ultimately recommended approval (4-3-0) of Historic Preservation Permit File No. HP21-001 based on Section 13.48.240(B) of the San José Municipal Code on the condition that specific character-defining features that otherwise would have been compromised would be retained and preserved. Specifically, the HLC concluded 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-foot, 11-inch 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; and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission also conducted a Public Hearing on the Project on February 22, 2023, including consideration of HLC's recommendation of Historic Preservation Permit File No. HP21-001, notice of which was duly given; and

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

Planning Commission recommended that the City Council approve the Project applications; and

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

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the HLC, Planning Commission, and the Director of Planning, Building and Code Enforcement. This Resolution memorializes the findings and recommendations of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "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 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 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 two-story commercial building, the Realty building, constructed in 1925 in the Beaux Arts style. The City Council designated the building a City Landmark in 2001 (HL01-136, Resolution 70635) based on its historical, cultural and architectural significance under the San José historic context theme of Commerce during the Inter-War period (1918-1945). The building was found eligible under significance criteria 4, 6, and 8 of the Historic Preservation Ordinance and 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. Identifying features of the Realty Building are its two-story height, rectangular massing, flat roof and parapet, symmetrical four bay façade 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.

2. **Project Description.** The project consists of the removal of the majority of the roof and interior (except for stairway core) of the Realty building and the construction of a 22-story mixed-use project that would retain and integrate the two-story façade of the building. The new building includes one basement level and commercial space located on the first and second floors, in addition to residential amenities. 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, 12th, and 18th 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 façade. Typical openings are rectangular and contain aluminum sash. The Project requires a HP Permit because the project includes exterior alterations to a designated City Landmark.

3. **General Plan Conformance.** The project site is in the Downtown designation, within the Downtown Employment Priority Area Overlay (EPA Overlay). The EPA Overlay designation is applied to a portion of Downtown sites planned for intensive job growth because of the area's proximity and good access to the future Downtown BART station. The EPA Overlay is generally applied to sites located within approximately one block (walking distance) of the planned Downtown BART station on East Santa Clara Street as shown on the Land Use/ Transportation Diagram. The overlay boundary is intended to respect property lines and not split parcels. Due to proximity to the future BART station, the EPA Overlay supports development at very high intensities, where such high intensity is not incompatible with other policies within the General Plan, such as Historic Preservation policies. The EPA Overlay does not change the uses or densities otherwise allowed within the base "Downtown" land use designation. The EPA Overlay, however, requires a minimum floor-area ratio (FAR) of 4.0 for commercial (job generating) uses, including office, retail, service, hotel or entertainment uses, prior to allowing residential uses, as supported by the "Downtown" General Plan Land Use/Transportation Diagram designation. The development intensity and site design elements in the areas within the EPA Overlay designation should reflect an intense, transit-oriented land use pattern that is typically expected in Downtown. It is envisioned that active commercial uses (e.g., retail and entertainment uses) would be located at the ground level with high-intensity office development above. To help activate the Downtown BART corridor, new development within the EPA Overlay should incorporate active ground floor retail commercial uses along the street. The 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: 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 Dwelling Units Per Acre (DU/AC). Without a density bonus, the maximum allowed number of residential units on site is 176. With the proposed 25% density bonus, the total number of units allowed is 220. Therefore, the proposed residential density, with the Density Bonus included, of approximately 1,000 DU/AC may be permitted.

The project conforms or partially conforms with the following Envision San José 2040 General Plan historic preservation policies:

- a. 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 project would retain the 1925 two-story façade of 19 North 2nd Street and would rehabilitate and integrate the existing commercial storefront for continued retail use. The three pedestrian-focused storefronts would continue the ground-floor commercial use which has characterized the building's primary façade since its construction. The glazing at the historic storefronts would provide transparent interfaces between outdoor and indoor spaces. The proposed new construction above the second floor would create residential capacity on the site, while retaining the distinctive historic façade 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 destroy some historic materials, features and spatial relationships that characterize the building.

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

Analysis: The project was referred for comment to the Design Review Committee ("DRC") of the Historic Landmarks Commission ("HLC") on January 20, 2021, and the full membership of the HLC on June 2, 2021, as outlined in the Background section of this staff report and design modifications were made to the Project in response to DRC and HLC comments, and the analysis of project alternatives in the environmental review process.

- c. Land Use Policy LU-13.6: Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.

Analysis: The project would preserve the building's historic exterior materials and character defining features including nearly 19' of the flat roof, parapet, symmetrical four bay façade divided by pilasters, central arched recessed entry crowned by a wrought iron balcony, multi-light storefront transom, large commercial style windows, and Beaux Arts style detailing, including the decorative cornice and frieze.

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

Analysis: An application was made for an HP Permit which has been processed in conformance with Chapter 13.48 (Historic Preservation Ordinance) of the San José Municipal Code. A Supplemental Environmental Impact Report ("SEIR") was prepared for the Project, which was analyzed in conformance with the California Environmental Quality Act ("CEQA"). The Project was evaluated for conformance with the Standards, which are federal guidelines implemented on the local level.

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

Analysis: TreanorHL prepared an Historic Resources Assessment and Design Guidelines and Standards Compliance Review report for the Project as part of the historic preservation and environmental review processes.

The project does not conform with the following Envision San José 2040 General Plan historic preservation policies:

- f. Land Use Policy LU-13.2: Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.

- g. Land Use Policy LU-13.6: Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.

Analysis: The project would preserve some of the building for a new use on site, and would retain and rehabilitate the 1925 two-story façade of 19 North 2nd Street, the building's 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 in accordance with the project description, as well as the Realty building sign above the central entry, fenestration, doors, existing windows, vestibule vaulted ceiling and bas relief, and 18-foot, 11-inch setback of the new construction from the original building. However, professional evaluation of the Secretary of the Interior's Standards by TreanorHL and the City's Historic Preservation Officer concluded that the project would not conform with five of the ten standards (Standards 1, 2, 5, 9, and 10) because it would destroy the spatial relationships

that characterize the building, including its two-story massing with flat roof and rear one-story massing with flat roof, and would destroy historic materials and features, including concrete walls, skylights at the rear roof and the steel-sash windows on the west façade. The project would require a significant change to the use of the building and the majority of historic materials, features, and spaces that characterize the property would be removed. If the new construction were removed, the essential form and integrity of the City Landmark could not be restored since most of the building would no longer be extant. The new construction would not be compatible with the City Landmark in height, massing, scale and proportion since the 22-story tower is significantly taller than the City Landmark and overwhelms the portion of the two-story building proposed to remain. As a result, the project would diminish the significance and historic integrity of the City Landmark.

The Envision San Jose 2040 General Plan includes “Focused Growth” as a major strategy and Downtown is designated as a Growth Area which promotes intensification in this area. The General Plan also includes Destination Downtown as a major strategy and supports focused growth downtown. Ambitious job and housing growth capacity is planned for the Downtown supported by regional transit systems and the development of Downtown as a regional job center.

4. **Zoning Ordinance Consistency.** The Project site is in the Downtown Primary Commercial area and the DC Downtown Core Zoning District which provides for a broad range of mixed-use, high intensity development including residential, commercial, retail and entertainment uses.

Analysis: Please refer to Section 4, Zoning Ordinance Consistency, of the Special Use Permit Resolution related to the Project and adopted by the City Council (Resolution No. [REDACTED]).

5. **Standards and Guidelines.** The Historic Preservation Ordinance (Section 13.48.250) states that in making the required findings, the application shall be reviewed in accordance with the approved standards and guidelines. TreanorHL, a qualified historic resources consultant, evaluated the project for consistency with the Secretary of the Interior’s Standards for Rehabilitation (Standards) in the 19 North 2nd Street Historic Resources Assessment and Design Guidelines and the Standards Compliance Review report prepared on March 29, 2022 (the “TreanorHL report”).

Secretary of the Interior’s Standards for Rehabilitation

The TreanorHL report concluded that the project would conform with three of eight applicable Standards and does not conform with Standards 1, 2, 5, 9, and 10. The TreanorHL report concluded that Standards 7 and 8 were not applicable to the Project. However, the project will not include chemical or physical treatments to the historic property and any significant archaeological resources affected by a project will be protected and preserved. Thus, the project complies with Standards 7 and 8.

The conformance analysis is outlined below.

Standard 1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

Analysis: The project includes the demolition of the majority of the historic resource except for the front façade, the exterior walls, and a portion of the interior core and construction of a 22-story tower with commercial spaces on the first and second floors, and senior housing above. Although the project's commercial spaces would continue the uses on the street level, the project would require a significant change to the use of the building and does not comply with Standard 1.

Standard 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

Analysis: The project includes the demolition of the majority of the historic resource on site, except for its front façade, the exterior walls, and a portion of the interior core. The majority of historic materials, features, or spaces that characterize the property would be removed. Therefore, the project does not comply with Standard 2.

Standard 3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

Analysis: The project includes the demolition of the historic resource at 19 North 2nd Street except for its front façade, the exterior walls, and a portion of the interior core, and constructing a 22-story tower. The project would incorporate the existing façade the exterior walls, and a portion of the interior core into the new building, which would also feature recessed central bay, and new projecting cornices at the 4th, 12th, 18th and the roof levels. The new projecting cornices are contemporary in design and would not mimic the existing historic features. Therefore, the project complies with Standard 3.

Standard 4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

Analysis: The building received interior alterations in 1956, 1966, and the 1980s. It has not received any major exterior alterations, especially on the front façade. None of the recent alterations were found to have acquired historic significance in their own right. Therefore, the project complies with Standard 4.

Standard 5. Distinctive features, finishes, and construction techniques or examples of fine craftsmanship that characterize a property will be preserved.

Analysis: The project would demolish the majority of the historic resource at 19 North 2nd Street except for its front façade, the exterior walls, and a portion of the interior core. It would destroy some features, finishes, and construction techniques, particularly the historic building's front two-story massing with flat roof and rear one-story massing with flat roof, the skylights at the rear roof, and the steel-sash windows on the west façade. Therefore, the project does not comply with Standard 5, except for the front façade.

Standard 6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacements of a distinctive feature, the new feature will match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

Analysis: Conformance to Standard 6 is being assessed relative to the front facade, the exterior walls, and a portion of the interior core only since the remainder of the building would be demolished. The project drawings received in March 2022 specify that the existing finishes and elements of the front façade would be retained including the bulkheads, transoms, pilasters, storefronts, doors and windows, main entry, signage, and untinted glazing. The exterior walls, the interior core walls including walls, stairs, the first-floor entry and lobby, and the second-floor lobby would also be saved. Therefore, the project complies with Standard 6.

Standard 7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

Analysis: The project does not include chemical or physical treatments to the historic property. The project will clean and restore the exterior front façade and some interior features. The measures taken to clean existing historic fabric will use the gentlest mean possible. Therefore, the project complies with Standard 7.

Standard 8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures will be undertaken.

Analysis: Based on the archaeological report prepared for the project by CMAC (May 2021), the project site has a high possibility for historic-era buried and pre-contact archaeological deposits, therefore, excavation for project construction could result in potentially significant impacts on archaeological resources. Construction monitoring for pre-contact resources is required to be conducted at the site. The project does comply with Standard 8.

Standard 9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and

will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Analysis: The project includes the demolition of the existing historic resource at 19 North 2nd Street except for its front façade, the exterior walls, and a portion of the interior core, and the construction of a new building on the parcel. The project will destroy some historic materials and features including concrete walls, the skylights at the rear roof and the steel-sash windows on the west façade, as well as the spatial relationship that characterize the property; particularly its front two-story massing with flat roof and rear one-story massing with flat roof. The proposed new building is not compatible with the property and its environment in terms of size, scale, proportion, and massing. The 22-story tower is significantly taller than the existing building and nearby historic and contemporary buildings which range from two to 14 floors. Even though the new building's front façade steps back approximately 19 feet from the front parcel line and the historic façade above the second floor, the proposed massing still overwhelms the historic façade. The overall height, massing, proportion, and scale of the project development are far greater than those characteristics of the historic property and its environment. The new building would feature a recessed central bay and projecting cornices at the 4th, 12th, 18th, and the roof levels, which are contemporary in design and would not mimic the existing historic features. The proposed materials appear compatible with the historic building. The historic front façade is stucco clad with marble and tile bulkheads, wood doors and windows with clear glazing, leaded transoms, and cast-iron balcony railings. The proposed building would use stucco cladding, aluminum windows, and glass railings, which would be compatible with the historic materials. Therefore, the project does not fully comply with Standard 9.

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

Analysis: The project includes the demolition of the existing historic resource at 19 North 2nd Street except its front façade, the exterior walls, and a portion of the interior core, and the construction of a 22-story tower. The future removal of the new construction would not restore the essential form and integrity of the historic property since most of the building would no longer be extant. Therefore, the project does not comply with Standard 10.

- 6. City Council Policy on the Preservation of Landmarks.** The project was first referred to the Design Review Committee ("DRC") of the HLC on January 20, 2021. The DRC made the following comments:

- Create setback of the new building at the roofline of the City Landmark, and the space could be used for balcony or common space.

- Create visual relief in the transition to the new tower.
- Building might be high, but a setback from the original building façade might be appropriate.
- Window arches on the third and fourth floors dominated the original façade, setback the new building and square off the windows to better relate to the City Landmark.
- Matching the detail of the historical ornament of the upper most cornice, dome and balcony balustrades is unnecessary and a distraction, the design should be simplified.
- Follow the form, scale and massing of the historic building facade, but do not replicate the detail to differentiate the new from the old.
- Exterior material of the new building should be compatible with the original facade in finish, but also create contrast and interest.
- Incorporate tile on the third and fourth floors to relate to the tile on the original facade and to provide surface relief to the proposed stucco exterior.
- Facadism should be avoided.
- The archways are more successful at the vertical center of the building, rather than on the third and fourth floors. A break in the horizontal plane would provide a natural transition between the new building and the original façade.
- A setback at the third and fourth floors would have an impact on how the building is experienced on the ground plane.
- Simplify elements like the balcony railings and cornices. Commissioner. The curved shape of the balcony railings is not compatible with the original façade. There is a small central balcony on the original façade that could be reflected in the upper balconies.
- The project should be compatible in massing, size and scale and should include a substantial setback from the original building on the third and fourth floors to establish visual distinction so the building could continue to be read from the sidewalk as a two-story building with a flat roof.

Following the DRC meeting, the applicant submitted amended plans that provided a setback at the third floor to differentiate between the existing and the new building. The central arches were retained, the arched windows on the side of the proposed building were changed, and black marble was added to the third and fourth floors to provide surface relief to stucco exterior walls. The design of the balcony railing and cornices was simplified, and the balconies were modified to no longer be curved.

The modified project was referred to the HLC on June 2, 2021, under the “Early Referral” City Council Policy on the Preservation of Historic Landmarks. Early Referral

review is applicable to any designated City Landmark, Contributing Structure in a City Landmark Historic District, building listed in the National Register of Historic Places and/or the California Register of Historical Resources, a Contributing Structure in a National Register Historic District, or a building that qualifies for any of the above based on the applicable City, State, or National qualification criteria. The Early Referral policy applies to the Project because the property is a designated City Landmark.

The HLC confirmed the architect responded to the DRC's comments and the design had progressed in the right direction. The HLC also confirmed that the project includes the demolition of a designated City Landmark and did not see how the project could conform with the Standards because the percentage of new construction significantly outweighs the remaining historic fabric. The HLC commented that if the project did move forward, then additional design work needed to be done to provide deference to the historic building. The HLC stated that the project reads as a single building, rather than a historic building with a new addition, and recommended that the new tower be further set back from the historic building because there was not enough separation and that the color palette should be differentiated. The HLC stated that the second-floor plan illustrates where the building steps down and suggested that a cue could be taken from that change in height in the existing building or from the column grid to inform where the setback of the new construction could begin. The HLC stated that the cornice on the fourth level appears to historicize that level when it is not part of the historic building and recommended a clear transition from the historic façade to the new construction. The HLC clarified that the project is not a total demolition. The HLC recommended that the new construction be further simplified to draw the attention to the City Landmark because the design distracted from the historic building and the area between the base and the top of the building should be continuous - more of a unification of the middle stories. The HLC commented that its function is to encourage and promote the preservation of landmarks and noted that the consideration of the demolition of a landmark goes against the purpose of the HLC. The HLC inquired if there would be a way to reinforce the City Landmark and build on top of it. The HLC noted that the basic form of the building, flat roof and two-story façade appears to be of primary importance and recommended that the basic arrangement of a portion of the building be maintained and the new construction set back.

In response to HLC comments, the applicant further revised the design of the project. The new construction was set back further (8 feet, 5 inches) from the façade of the City Landmark building. The proposed colors were changed and other visual modifications were added to the design of the new construction to help the tower appear less massive. The cornice at the fourth level of the new construction was removed and the design of the other levels simplified.

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). For a

summary of the environmental review and analysis, please refer to the resolution adopted by the City Council certifying the Supplemental Environmental Impact Report for the project (Resolution No. [REDACTED]).

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

In making these findings Section 13.48.250 of the Historic Preservation Ordinance states the HP Permit application shall be reviewed in accordance with the approved standards and guidelines. Professional evaluation of the Standards by TreanorHL and the City's Historic Preservation Officer concluded that the Project would not conform with five of the ten Standards (Standards 1, 2, 5, 9, and 10). The project would destroy the spatial relationships that characterize the building, including its two-story massing with flat roof and rear one-story massing with flat roof, and would destroy historic materials and features, including concrete walls, skylights at the rear roof and the steel-sash windows on the west façade. The project would require a significant change to the use of the building and the majority of historic materials, features, and spaces that characterize the property would be removed. If the new construction were removed, the essential form and integrity of the City Landmark could not be restored since most of the building would no longer be extant. The new construction would not be compatible with the City Landmark in height, massing, scale and proportion since the 22-story tower is significantly taller than the City Landmark and overwhelms the portion of the 2-story building proposed to remain. As a result, the Project would diminish the significance and historic integrity of the City Landmark.

Section 13.48.010 of the Historic Preservation Ordinance states that one of the purposes of the ordinance is to carry out the goals and policies of the city's general plan. General Plan historic preservation land use policies LU-13.2 and LU13.6 envisage the preservation of the integrity of designated landmark buildings by ensuring that modifications to conform to the Standards and appropriate State of California requirements regarding historic buildings. The project would not conform with five of the ten Standards or General Plan historic preservation land use policies LU-13.2 and LU13.6. The purpose of the Historic Preservation Ordinance is also to increase cultural, economic and aesthetic benefits to the City and its residents; preserve, continue and encourage the development of the City to reflect its historical, architectural, cultural, and aesthetic value or tradition; and protect and enhance the city's cultural and aesthetic heritage. The project would not increase the cultural or aesthetic benefits to the city or preserve or protect the historic or cultural value of

the City Landmark because it would destroy the historic materials, features and spatial relationships that characterize the building, and the new construction would not be compatible with the City Landmark in height, massing, scale and proportion. Therefore, the required findings in Section 13.48.240(B) cannot be made because the project would be detrimental to the historical, cultural and architectural significance of the City Landmark for which it was found eligible and designated and the work would not be consistent with the spirit and purposes of the Historic Preservation Ordinance.

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

The applicant evaluated three different alternative designs (Scheme A, B and C) that could potentially increase conformance with the Standards and enhance compatibility of the project with the City Landmark building. The documentation submitted by the applicant discusses the feasibility of the three design alternatives.

Option A is the project as originally proposed with the construction of a new 22-story tower consisting of 220 residential units and the retention of the façade of the City Landmark with the new construction set back 8 feet, 5 inches from the historic facade.

Option B entails the construction of a new 22-story tower with 120 residential units that would be set back 53 feet to 58 feet from the facade of the City Landmark to preserve the front portion of both floors and the exterior walls and the entirety of the existing roof system of the building.

Option C entails the construction of a new 22-story tower with 220 residential units and the retention of the façade, exterior walls, first floor entry, lobby, lobby ceiling, stairwell, and a portion of the second floor and roof of the City Landmark. The construction of the new tower would be set back approximately 19 feet from the historic façade of the building.

A pro forma was prepared by the applicant's affordable housing partner. In real estate terms, a pro forma analysis is a set of calculations that projects the financial return that a proposed real estate development is likely to create. For Option A and Option C, the proforma assumes a net cash flow beginning in Year 1 (2024) of \$172, 291. This is based on a total project cost of \$193,709, 689 with a construction price of \$1,268 per gross square foot. The applicant asserts that both Option A and Option C would be feasible. The new tower would be designed with a seismic sheer core layout

which necessitates the use of a boxed (enclosed) section to prevent excessive movement during an earthquake.

The documentation submitted by the applicant includes information from DCI Engineers, which asserts that the majority of the cost of concrete high-rise construction is the specialized formwork that is utilized to construct the cores; therefore, maximizing the size and efficiency of the high-rise floor plate is important to making a project work. DCI Engineers concluded that given the extremely small size and tight layout of Option B, it is unlikely that the project would be viable from the cost and return on investment standpoint because there would not be enough units to distribute the cost of the core framework to make the units profitable to build or rent/purchase. The applicant claims that Option B is not feasible because it would reduce the number of residential units by 100 and result in a total revenue loss of \$78,600 per year. The applicant further claims that the reduced square footage would increase the cost per square foot as the reduced number of units would not be able to absorb the overall infrastructure costs and would reduce the net cash flow on an annual basis to less than \$100,000, which is not enough revenue to justify the expense and risk of the Project.

The letter from DCI Engineers states that the existing building does not meet current building code requirements, including overall seismic stability as well as localized resiliency of elements. The DCI Engineers letter states that there is no property line offset between the building and adjacent buildings and that the two buildings could experience “pounding” during a major seismic event. DCI Engineers point out that a seismic upgrade of the City Landmark building is possible, however, there is no way for a seismic upgrade to resolve the property line offset issue. DCI Engineers assert that a seismic upgrade of the building would require significant cost and would impede the potential uses of the building due to the introduction of additional structural elements. DCI Engineers also assert that seismic upgrades would not be able to create an infinitely rigid or stiff building and the building would always have some movement during an earthquake since buildings of the construction type and materials are fairly flexible.

On December 7, 2022, the HLC requested that the applicant provide additional information on the request for hardship including a cost estimate to seismically upgrade the existing building should be provided 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, and additional financial analysis on the three project alternatives presented. On January 6, 2023 the applicant submitted financial analysis on the three project alternatives and costs to renovate the existing building. The City’s Historic Preservation Officer requested written clarification of the information submitted.

The City Council considered the evidence submitted and finds that denial of the HP Permit would cause immediate and substantial hardship on the applicant because

development in accordance with the Historic Preservation Ordinance is infeasible from a technical, mechanical, structural and economic standpoint.

Therefore, in accordance with the findings set forth above, a Historic Preservation Permit to conduct said work specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted** under Section 13.48.260 of the Historic Preservation Ordinance, finding that denial of the HP Permit would cause immediate and substantial hardship on the applicant because development in accordance with Chapter 13 is infeasible from a technical, mechanical, structural or economic standpoint. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Historic Preservation Permit Limitations.** This Historic Preservation Permit (the "Permit") does not authorize any land uses. Land uses are separately regulated by Title 20 of the San Jose Municipal Code (Zoning Ordinance).
2. **Retention of Character-Defining Features.** The Permit requires the retention of the front façade, 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 in accordance with the project description, and the Realty building sign above the central entry, fenestration, doors, existing windows, vestibule vaulted ceiling and bas relief, and 18-foot, 11-inch setback from the new construction from the original building.
3. **Acceptance of Permit.** Per Section 13.48.270(D), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Chapter 13.48 applicable to such Permit.
4. **Timing.** No work on the buildings may be implemented unless and until this Permit is released to the Building Division.
5. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.

6. **Conformance to Plans.** Construction and development shall conform to the conditions in this Historic Preservation Permit, and plans, entitled “North Second Affordable Senior Housing, 19 N 2nd Street, San José, CA 95113,” dated November 4, 2020, last update 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.” If there are inconsistencies among the Permits and the plans, this Permit take precedence.
7. **No Signage Approval.** Any signage shown on the Approved Plan Set is conceptual only. Signs are subject to review and approval through the submittal of a Sign Permit application (Permit Adjustment).
8. **Plan Modifications.** Any modifications to the approved plans will require a Historic Preservation Permit Amendment or Adjustment at the discretion of the Director of Planning.
9. **Permit Expiration.** This Permit shall automatically expire in four years from and after the date of issuance hereof by the Director of Planning, Building and Code Enforcement, if within such time period, a Building Permit has not been obtained, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning, Building and Code Enforcement. However, the Director of Planning, Building and Code Enforcement may approve a Historic Preservation Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Chapter 13.48 of the Municipal Code (Historic Preservation Ordinance). The Historic Preservation Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
10. **Conformance with Municipal Code.** No part of this approval shall be construed to permit violation of any part of the San José Municipal Code.
11. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, *HP21-001* shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

12. **Conformance Required with Approved Mitigation, Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development by City Council by Resolution No. [REDACTED].
13. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.

ADOPTED this ____ day of ____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHON
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