

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW AN ALTERNATIVE PARKING DESIGN (CARLIFTS) AND THE DEMOLITION OF AN APPROXIMATELY 1,000 SQUARE FOOT BUILDING AND A SITE DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A MIXED-USE PROJECT CONSISTING OF APPROXIMATELY 3,095 SQUARE FEET OF GROUND FLOOR COMMERCIAL, AND UP TO 18 MULTI-FAMILY RESIDENTIAL UNITS, ON AN APPROXIMATELY 0.18 GROSS ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF WEST SAN CARLOS STREET AND JOSEFA STREET (500 WEST SAN CARLOS STREET, APN: 264-20-064)**

**FILE NO. SP18-053**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 13, 2016, an application (File No. SP18-053) was filed by the owner, Abbas Haghshenas, with the City of San José for a Special Use Permit to allow an alternative parking arrangement (car lifts) and the demolition of an approximately 1,000 square foot building, and a Site Development Permit to allow the construction of a mixed-use project consisting of approximately 3,095 square feet of ground floor commercial, and up to 18 multi-family residential units, all on an approximately 0.18 gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and generally located on the southwest corner of West San Carlos Street and Josefa Street (500 West San Carlos Street, APN: 264-20-064, 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 and depicted in Exhibit "A," entitled “Legal Description and Map,” which are 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 hearing on said application on November 14, 2018, 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 City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "San Carlos/Josefa Plaza A Mixed Use of Retail & Residential Apartment," dated received on October 18, 2018, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The project site currently contains an approximately 1,000 square foot building and a trucking school. North of the project site are commercial uses (restaurant and auto service use) across West San Carlos Street. South of the project site are existing single-family residential uses. East of the project site is a private instruction, personal enrichment use (San José Learning Center) across Josefa Street. West of the project site is an existing tattoo shop. The nearby single-family residential uses south of the project site are primarily one-story structures.
2. **Project Description.** On January 13, 2016, the applicant filed an application with the City of San José for a Conventional Rezoning of the subject site from the CP Commercial Pedestrian Zoning District to the DC Downtown Primary Commercial Zoning District. The rezoning allows the demolition of one existing single-story commercial building, approximately 1,000 square feet, and the construction of a mixed-use project consisting of approximately 3,095 square feet of ground floor commercial and up to 18 multi-family residential units, a six-foot tall fence, and to utilize an alternative parking arrangement (i.e. car lifts) on an approximately 0.18 gross acre site.
3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Downtown. The Downtown designation allows office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities, unless incompatibility with other major policies within the General Plan (such as Historic Preservation Policies) indicates otherwise. The project conforms to the General Plan Land Use designation as it is a mixed-use project with ground floor commercial

uses. Residential and commercial uses are allowed in the Downtown General Plan Land Use designation.

The proposed Conventional Rezoning, and Special Use Permit are consistent with the following General Plan policies:

Major Strategy #8- 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.

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.

*Analysis for Major Strategy #8 and LU-3.1: The General Plan land use designation for the project site is Downtown, which supports significant intensification of underutilized sites. The project is a 18-unit mixed-use project (approximately 106 dwelling units per acre) which will contribute to the growing critical population mass of the downtown in support of economic, fiscal, environmental, and urban design/placemaking goals and act as a transition to lower intensity residential uses.*

Implementation Policy IP-1.6: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance Envision General Plan vision, goals, and policies.

Implementation Policy IP-1.7: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.

*Analysis for IP-1.6, IP-1.7, and IP-8.2: The proposed rezoning would change the zoning from the CP Commercial Pedestrian Zoning District to the DC Downtown Primary Commercial Zoning District. The DC Downtown Primary Commercial District*

*is consistent with the General Plan land use designation and Diridon Station Area Plan designation of Downtown and is a conventional district.*

Land Use Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

*Analysis for LU-2.1: The project is providing an additional 18 residential units to contribute to the critical population mass of the Downtown area in support of vibrant, walkable urban settings. The Downtown is considered a Growth Area as stated in the General Plan. In support of existing and planned transit facilities, the project is located approximately 0.6 mile away from the Diridon Station, within approximately 0.3 mile from the Valley Transportation Authority (VTA) Children’s Discovery Museum Light Rail station and is located across the street from VTA bus stops (routes 23 and 81).*

Connections Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

*Analysis for CD-3.5: The project is providing an alternative parking arrangement in the form of car lifts. These car lifts operate independently of one another, allowing the user to obtain their vehicle without relying on another occupant’s vehicle to be moved.*

4. **Diridon Station Area Plan Conformance.** The project is located in the Diridon Station Area Plan (DSAP) boundary, within the Southern Zone, subarea F (Park/San Carlos). The DSAP has a designation of Downtown for the project site. The land use classification of Downtown in the DSAP supports residential uses as well as non-residential uses, including office, retail, service, hotel, medical, and entertainment uses. The Park/San Carlos area is a mix of new and existing uses with a mix of older, newer, smaller and large properties.

#### *Design Guidelines*

The DSAP’s Design Guidelines represent a long-term vision for the area. Various design aspects are discussed in detail below.

#### Maximum Build-Out

The Diridon Station Area Plan anticipates the eventual build-out for the area, establishing the maximum potential development that could occur. The Area Plan would allow a maximum of 32 residential units, up to 8,000 square feet of commercial, and a maximum of five stories in height upon this site. The project is proposing 18 residential units, approximately 3,095 square feet of ground floor commercial and is five-stories tall. The proposed project is within these requirements of the Area Plan.

### Height

Guidelines are provided on the maximum height of buildings in the Diridon Station Area. These guidelines are consistent with the Federal Aviation Administration's (FAA) Part 77 Airport Approach Zone height limits and with the Santa Clara County Airport Land Use Commission's (ALUC) Comprehensive Land Use Plan (CLUP). The building height guidelines in the DSAP for the Southern Zone, are intended to ensure the compatibility of new development with the surrounding relatively low density residential neighborhoods. Guidelines in the DSAP discourage taller buildings adjacent to areas with existing single-family homes and require buildings to be set back from the established single-family areas. The maximum height of the project is approximately 59 feet. The project has a rear setback of approximately 24 feet to allow a buffer between the building mass and the existing single-family residences located directly south of the project site. Furthermore, the project is incorporating a building stepback at the fourth and fifth floors. The building is stepped back approximately 37 feet from the building face on the fourth floor to the rear property line and approximately 48 feet from the face of the building on the fifth floor to the rear property line. The height of the third-story is approximately 40 feet and the height of the fourth-story is approximately 53 feet tall.

### Setbacks

The DSAP requires that residential buildings be set back a maximum of 15 feet from the street-facing property line to allow a transition zone between the public and private realm. The project has a five-foot front setback along West San Carlos Street and a two-foot setback along Josefa Street. Therefore, the project complies with these setbacks.

### Parking Design

The DSAP requires minimization of the visual impact of non-active spaces, such as onsite parking spaces, by placing them behind active uses and landscaping. The project will provide 15 parking spaces in a car lift formation at grade. As a function of the car lift, approximately seven feet of below ground excavation will occur to accommodate the car lift. The ground-floor commercial uses will be used to screen parking from street view and to help activate the West San Carlos Street frontage. Additionally, ground-floor commercial space would wrap around to Josefa Street.

## **5. Zoning Ordinance Compliance.**

### *Land Use*

The subject site is in the DC Downtown Primary Commercial Zoning District. Multi-family residential and commercial uses are allowed by right within the Downtown Zoning District.

### *Setbacks*

The project has a five-foot front setback, a two-foot corner setback, a six-foot interior setback, and a 24-foot rear setback. The DC Downtown Primary Commercial Zoning District are not subject to any minimum setback requirements, pursuant to [Section 20.70.210](#), and therefore, the project complies with the setback requirements.

### *Height*

Pursuant to [Section 20.70.200](#) (Height, DC Districts) of the SJMC, properties located in the downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport. The project building has a maximum height of approximately 59 feet. At this location, review by the Federal Aviation Administration would only be required for buildings and structures higher than approximately 70 feet above the ground. Therefore, the project complies with the height requirements.

### *Off-Street Vehicle Parking*

[Section 20.70.100](#) (Allowed Uses and Permit Requirements) of the SJMC sets forth the off-street vehicle parking requirements. A residential multiple dwelling requires one off-street vehicle parking space per unit. Retail uses do not require any off-street parking spaces. Based on 18 units, 18 off-street vehicle parking spaces are required. [Section 20.90.220](#) allows a 20% parking reduction if a project meets the following criteria: (1) The structure or use is located within two thousand feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a neighborhood business district, or as an urban village, or as an area subject to an area development policy in the city's general plan or the use is listed in [Section 20.90.220.G](#); and (2) The structure or use provides bicycle parking spaces in conformance with the requirements of [Table 20-90](#).

The project is located approximately 1,800 feet from the Children's Discovery Light Rail Station and approximately 3,000 feet to the Diridon Station. The project is providing eight bicycle parking spaces and eight bicycle parking spaces are required. Therefore, the project complies with the bicycle parking requirement. Because the project is located within 2,000 feet of one existing Light Rail Station, and is satisfying the bicycle parking requirement, the project is able to utilize the 20% parking reduction, as allowed in [Section 20.90.220\(A\)\(1\)\(a\)](#) and [Section 20.90.220\(A\)\(1\)\(b\)](#). Twenty percent of 18 parking spaces (for the residential component) is 3.6, which allows for a reduction of 4 off-street vehicle parking spaces. The project is providing 15 off-street vehicle parking spaces, which complies with the reduced parking requirements.

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### Alternative Parking Arrangement

Under an alternative parking arrangement, pursuant to [Section 20.90.200](#) in the San José Municipal Code, the project's 15 off-street parking spaces will be accommodated by an automated parking lift system manufactured by Klaus Multiparking, Model GmbH Trend Vario 4300 series (<https://www.multiparking.com/index.php?KLAUS-TrendVario-parking-automat-parking-solution>) or equivalent brand and model. The lift allows the desired car to be called without requiring another resident's car to be moved. The lift works independently and does not rely on other cars to be moved to bring the requested car forward.

In addition to any other findings required for a Special Use Permit, the City Council may approve such off-street parking facilities arrangements only upon making the following findings, as specified in [Section 20.90.200](#) in the San José Municipal Code:

- I. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title; 18 parking spaces are required under the Code and 15 are provided, as allowed by the San Jose Municipal Code for projects located near transit and provide the required bicycle parking;
- II. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; in that, the lifts are conditioned to maintain their operation for the life of the project.
- III. The parking facility is reasonably convenient and accessible to the buildings or uses to be served; in that, the lifts are located on the ground floor of the building and the lift allows the desired car to be called to the bottom row without requiring another car to be moved by a different resident;

### *Bicycle Parking*

Table 20-140 in [Section 20.70.100](#) of the SJMC requires one bicycle parking space per four units. Based on 18 residential units, five bicycle parking spaces are required. [Section 20.70.485](#) states that enumerated uses in Chapter 20.70 that do not require any off-street parking for motorized vehicles shall be required to provide only two short-term bicycle parking spaces and one long-term bicycle parking space. The ground-floor retail use does not require any motorized parking spaces but still must provide a total of three bicycle parking spaces. The total bicycle parking requirement for the project is eight bicycle parking spaces (five for the residential component and three for the commercial component). The project complies with the bicycle parking requirement by providing eight bicycle parking spaces.



6. **Residential Design Guidelines Conformance.** The project complies with the Residential Design Guidelines by being designed for the pedestrian at the ground level and providing an interesting architectural aesthetic. This project is pedestrian scaled by placing the building within close proximity of the sidewalk, providing an awning and a ground floor entrance, and a darker cement board material that provides a distinctive base. Furthermore, reduced building setbacks are appropriate to higher density housing types in areas near downtown to reinforce the planned urban character of the neighborhood.

The project features a strong roof top element which clearly defines the 'top' of the building. The roof top element is comprised of a dark red cement board cornice. This roof top cornice is provided on all sides of the building and provides a nice finish to the building. The project is incorporating a variety of materials, ranging from cement board for the ground floor, roof top cornice element, and body of the building. The project is also proposing a dark IPE wood material to provide additional interest. The project also includes a varied building façade, recessed windows, and protruding balconies, which all contribute to an interesting aesthetic (Sheet A-3). The change in building plane, the recessed windows and protruding balconies will provide additional shadow lines to the building and therefore, provide dimensionality to the building facades which will provide additional architectural interest to the building.

7. **Environmental Review.** An Initial Study (IS) and Addendum to the Diridon Station Area Plan (DSAP) Environmental Impact Report (Council Resolution No. 77096), San José Downtown Strategy 2000 EIR (Council Resolution No. 72767), and Envision San José 2040 General Plan EIR (Council Resolution No. 76041) , Envision San José 2040 General Plan Supplemental EIR (Council Resolution No. 77617), and Addenda thereto was prepared by the Director of Planning, Building, and Code Enforcement for the subject Rezoning, and Special Use Permit. The Diridon Station Area Plan and San José Downtown Strategy 2000 Environmental Impact Reports (EIRs) contain sufficient information to provide project-level environmental clearance for certain impacts by including standard measures that apply to all projects in San José. The proposed project is eligible for an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 because the project does not result in any new impact beyond those analyzed in the EIRs and was completed in compliance with CEQA to reflect an independent judgment and analysis of the project.

The project site includes one single-story commercial building built circa 1958. A historic resources evaluation was conducted for the existing building by consultant Michael Baker International on July 27, 2017, pursuant to Section 5024.1 of the California Public Resources Code and Section 15064.5(a) of the CEQA Guidelines. As discussed in the Initial Study, the building was evaluated and recommended ineligible for listing in the California Register under Criterion 1, 2, 3, or 4 either

individually or as a contributor to a historic district due to a lack of association with a historic context and integrity.

The IS/Addendum identified relevant mitigation measures, included in the previous EIRs, for potential cultural resource impacts that would reduce those impacts to a less-than-significant level. In addition, standard permit conditions are made as part of the permit for air quality, compliance with the Santa Clara Valley Habitat Conservation Plan, best management practices for construction period such as noise control, erosion control, and demolition activities. The mitigation measures are included in the Mitigation Monitoring and Reporting Program and both the measures and conditions are made a part herein of the subject permit.

The IS/Addendum concluded that the project will not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the EIRs. For these reasons, a supplemental or subsequent EIR is not required, and an Addendum to the DSAP EIR, Downtown EIR, and the General Plan EIR, as supplemented, has been prepared for the project.

8. **Special Use Permit Findings.** [Chapter 20.90](#) of the San José Municipal Code (SJMC) establishes required Findings for issuance of a permit for an alternative parking arrangement. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit.
- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and
- Analysis: As described above, the project is consistent with and will further the policies of the General Plan and Diridon Station Area Plan.*
- b. The Special Use Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and
- Analysis: As described above, the project conforms with the Zoning Ordinance and all other provisions of the San José Municipal Code that are applicable to the project.*
- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and
- Analysis: As described in the Public Hearing Notification section below, the project is consistent with the City Council Policies on Public Outreach. The project also has been evaluated with City Council Policy number 6-29 Post-Construction Urban Runoff Management and has been found in compliance. The proposed project complies with Stormwater requirements and is providing self-treating vegetated*

*areas. Additionally, the project would connect the trash area to the sanitary sewer, utilizing water efficient irrigation systems, and providing beneficial landscaping.*

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

*Analysis: The alternative parking arrangement will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or impair the utility or value of property of other persons located in the vicinity of the site or to be detrimental to public health, safety, or general welfare because the parking lifts operate as a unit and is not dependent on the owner of the car. Essentially, a car in the car lift can be called to the bottom row without requiring another car to be moved by a different resident. The car lifts will be fully contained and shielded inside the parking garage and therefore, will not affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding areas nor impact the utility or value of property of other persons located in the vicinity.*

- 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 alternative parking arrangement is fully contained and shielded inside the building envelope.*

- f. The proposed site is adequately served: (1) 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 (2) By other public or private service facilities as are required.

*Analysis: The project site is currently served by West San Carlos Street and Josefa Street. The project site has street frontages on both streets. The project only has vehicular access on Josefa Street and does not have vehicular access on West San Carlos Street. The existing streets and utilities are of sufficient capacity to serve the mixed-use project.*

- g. 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 alternative parking arrangement (i.e. car lift) is not anticipated to create impacts associated with noise, vibration, dust, drainage, erosion, storm water runoff and odor as it will be fully contained within the building envelope. The operation of the car lift system will not generate any vibrations, dust, drainage issues, erosion, storm water runoff and odor because the car lift system is merely shifting cars around.*

9. **Site Development Permit Findings.** [Chapter 20.100](#) of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow the erection, construction enlargement, placement or installation of a building or structure on the project site. These criteria are applied to the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit. In order to make the Site Development Permit findings pursuant to [Section 20.100.630](#) of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

- 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 described above, the project is consistent with and will further the policies of the General Plan and Diridon Station Area Plan.*

- 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 described above, the project conforms with the Zoning Ordinance and all other provisions of the San José Municipal Code that are applicable to the project.*

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

*Analysis: As described in the Public Hearing Notification section below, the project is consistent with the City Council Policies on Public Outreach. The project also has been evaluated with City Council Policy number 6-29 Post-Construction Urban Runoff Management and has been found in compliance. The proposed project complies with Stormwater requirements and is providing self-treating vegetated areas. Additionally, the project would connect the trash area to the sanitary sewer, utilizing water efficient irrigation systems, and providing beneficial landscaping.*

- 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 project site will contain a mixed-use project, in which the ground floor will be occupied by commercial uses and the upper floors will be occupied by residential units. Both residential and commercial uses will be contained in one building. The residential and commercial uses will be mutually compatible as the commercial use could serve the project as well as the existing residential uses in the area.*

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

*Analysis: The project is compatible with the development pattern along West San Carlos Street, in that similar materials and building site design are incorporated into the project. West San Carlos primarily contains 1 to 2-story buildings, with occasional three-story and eight-story buildings. The project is of a more modern design and relates to the Delmas Park apartments located on the southeast corner of West San Carlos and Bird Avenue and the Museum Park project located at the northwest corner of West San Carlos and Gifford Avenue. The project is of a scale that the Diridon Station Area Plan and the General Plan envisions for redevelopment.*

- 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 demolition of the existing building and the construction of a new 18-unit mixed-use building will not have an unacceptable negative affect on any adjacent property or properties. In addition to the Addendum prepared pursuant to the California Environmental Quality Act (CEQA), the project was also evaluated per adopted stormwater requirements. The project would create less than 10,000 square feet of impervious area, and therefore not subject to Low Impact Development treatment measures. The mixed-use project is not a use that would create substantial objectionable odor impacts exceeding City standards. The project would generate noise and ground vibration impacts related to construction and demolition, but with implementation of standard permit conditions and best management practices, would not exceed thresholds established by the General Plan.*

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

*Analysis: The project includes new landscaping, irrigation systems, walls and fences, trash facilities that will upgrade the appearance of the neighborhood. The project includes nine new trees and a new decorative metal fence that*

*encloses the common open space. The trash enclosure is located inside the garage and therefore, is screened from the public right-of-way.*

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

*Analysis: The project includes vehicular access off Josefa Street only and does not propose vehicular access on West San Carlos. The project features pedestrian access on West San Carlos and Josefa Street. As discussed in the Zoning Conformance section above, the project includes a 20% reduction in the required parking and an alternative parking arrangement (i.e., car lifts). As part of the 20% reduction in parking, the project is required to be located within 2,000 feet of existing or proposed rail transit and provide all the required bicycle parking. The project is located approximately 1,800 feet of the Children's Discovery Museum Light Rail Station and is providing the required bicycle parking of eight bicycle parking spaces on the site.*

**10. Evaluation Criteria for Demolition.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The demolition of the existing single-story commercial building will facilitate the construction of a five-story building with up to 18 residential units that will enhance the area and is compatible with the surrounding neighborhood. The surrounding neighborhood is comprised of residential and commercial uses. Reusing the existing building is not feasible as it is likely that the project site would not be able to accommodate the parking and open space requirements. Furthermore, reuse of the existing commercial building will not further the pedestrian oriented nature of West San Carlos, as the existing building is set far back from the*

*public sidewalk. The demolition of the existing commercial building will increase the supply of existing housing stock.*

*As part of the environmental review process, a historic evaluation was completed for the project and it was found to not rise to the level of a local, state, or federal designation. The existing buildings on the project site are not historically significant under the City's historic preservation ordinance, the California Register of Historic Resources or the National Register of Historic Places.*

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 these Permits except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## **CONDITIONS**

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Special Use Permit and Site Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a. Acceptance of the Special Use Permit and Site Development Permit; 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.** The Special Use Permit and Site Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no 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 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Special Use Permit and Site Development 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 Special Use Permit and Site Development 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 by 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 is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region..
5. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit and Site Development Permit plans entitled, "San Carlos/Josefa Plaza a Mixed Use of Retail and Residential Apartment," dated received on October 18, 2018, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Use Authorization.** The Special Use Permit allows for the utilization of an alternative parking arrangement to allow the use of 15 parking spaces provided as car lifts (brand and type as noted on the approved plans dated October 18, 2018). Should the brand/model number be altered in any manner, a Permit Adjustment shall be required, to the satisfaction of the Director of Planning, Building, and Code Enforcement.



7. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
8. **Hours of Construction within 500 feet of a Residential Unit.** Unless otherwise expressly allowed in a development permit or other planning approval, no permittee or agent of the permittee shall suffer or 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.
9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
11. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
12. **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.
13. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
14. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
15. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **Noise.** Noise shall be contained within the building and the building shall be adequately insulated to prevent excessive sound from emanating outside. Adequate HVAC (air conditioning) shall be provided to allow all doors and windows on the subject site to remain closed during the operation and activities of the site.

17. **Sign Approval.** No signs are approved at this time. All project signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
18. **Building and Property Maintenance.** The property owner or management company shall maintain the property 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.
19. **Perimeter wall.** Wall height and materials shall be provided as shown on the Approved Plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
20. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
21. **Timing for Demolition.** Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Building Permit has been issued.
22. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, SP18-053, 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. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. *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.
  - e. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).
23. **Access Control.** When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire

department emergency access to the building are installed, such devices shall be approved by the Chief. All access control devices shall be provided with an approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.

**24. Security Gate Access.** All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear with of 14 feet for each direction of travel when split by median. Gates shall be recessed beyond the turning radius required by the San José Fire Department and without obstruction of any median island dividers. All gate installing shall be reviewed and approved prior to construction. Electric gate operators must have UL 325 listing and it gate must comply with ASTM F2200.

**25. General Fire Prevention Requirements.** The permittee shall provide the following improvements:

- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
- b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
- c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
- d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Standpipes shall be equipped with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
- e. *Complex Map.* A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
- f. *Public Safety Radio Coverage.* Public Safety Radio Coverage is to be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.
- g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.

- h. *Management Association Responsibilities for Life & Safety Systems.* The Subdivider/owner shall create and maintain a Management Association which will be responsible for the fire/life safety systems inspections per Title 19 and access to the systems if applicable.
- i. *Hazardous Materials.* The permittee must contact the Hazardous Materials Division at (408) 535-7750 as soon as possible to initiate the process to determine if the type and quantity of hazardous material is acceptable per code and whether a Hazardous Materials Plan Review is required.
- j. *Construction Fire Protection Plan.* A "Construction Fire Protection Plan" shall be prepared by the Permittee and submitted for approval by San José Building and Fire Departments prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.

**26. Diridon Station Area Financing Plan.** The San José City Council of the City of San José ("City") approved the Diridon Station Area Plan on June 17, 2014 ("Diridon Plan"). The Diridon Plan, in conjunction with the 2040 General Plan, provides the framework for development within the approximately 250-acre Diridon Plan area surrounding the existing Diridon Station and future High-Speed Rail and Bay Area Rapid Transit (BART) hub.

The City is in the process of developing a comprehensive financing plan for the Diridon Plan ("Diridon Financing Plan") to fund public improvements, affordable housing, and other amenities and services. The Diridon Financing Plan may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program; (v) Commercial linkage fee program; and/or (vi) other financing mechanism.

The City completed a Diridon Station Area Infrastructure Analysis on January 31, 2017 ("2017 Infrastructure Analysis"). The 2017 Infrastructure Analysis examined the basic public infrastructure required for the build-out of the Diridon Plan totaling approximately \$70 million for public streets, sanitary sewer, storm drain and flood control, potable and recycled water, and parks, plazas, and trails. The City is in the process of updating the 2017 Infrastructure Analysis. The City is also in the process of conducting studies to determine the appropriate financing mechanisms to be included in the Diridon Financing Plan and fair-share contributions from each project located within and outside the Diridon Plan area boundary.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in the City Council approved Diridon Financing Plan, as may be

amended, which may include one or more of the financing mechanisms identified above; provided that the project will not be subject to, and exempt from, any charges, fees, assessments or taxes included in the City Council approved Diridon Financing Plan if the project meets each of the following requirements: (i) a complete building permit application for construction of the project is submitted to the City on or before January 1, 2019; and (ii) the City issues building permit for construction of the project on or before January 1, 2020.

**27. Housing.** The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced IHO or AHIF, the permittee must execute and record their Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.

- a. The IHO and AHIF Resolution each exempt certain developments from affordable housing obligations, if the development meets certain criteria. However, whether an exemption is claimed or not, the permittee must submit an Affordable Housing Compliance Plan Application, and the application processing fee to the Housing Department as part of the application for First Approval.
- b. The Housing Department has reviewed and approved the Affordable Housing Compliance Plan for this project. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this project and any other applicable requirements of the IHO or AHIF.
- c. If the project is subject to the AHIF, no building permit may issue 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.
- d. If the project is subject to the IHO, 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.

**28. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of Building permits, the permittee shall be required to have satisfied all 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/index.aspx?nid=2246>.

- 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 is located in the expanded Downtown Core and is covered under the new San José Downtown Strategy 2000 EIR; therefore, no further traffic analysis is required. The subject project is in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
- c. **Grand Boulevard:** This project fronts San Carlos Street, which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- d. **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 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should 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. Foundation, earthwork, and drainage recommendations should be included in the report. 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.
- e. **Shoring.**
  - i. If the project proposes to have a vertical excavation of 5 feet or greater, shoring plans shall be required for review and approval as part of the Grading Permit for this project.

- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring shall not be allowed to encroach within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties (APN's 264-20-063, 065 and 066) agreements between the permittee and the private property owners shall be secured, executed and provided to the Public Works Project Engineer, prior to approval of the Grading Permit for this project.
- f. **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
- g. **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).
- h. **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.
- i. **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 Public Works clearance.
- j. **Parks:** The residential portion of the 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 contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- k. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Josefa Street prior to issuance of a Public Works clearance. One hundred percent of the base fee in place at the time of payment will be due. Currently, the 2018 base fee is \$485 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project shall be required to pay the current rate in effect at the time the Public Works Clearance is issued.

**I. Street Improvements:**

- i. Remove and replace curb, gutter, and sidewalk along the project frontage on Josefa Street with a 10-foot wide attached sidewalk with tree wells. This will require approximately 2 feet of street easement dedication.
  - ii. Remove and replace curb, gutter, and sidewalk along the project frontage on West San Carlos Street with a 15-foot wide attached sidewalk with tree wells. This will require approximately 5 feet of sidewalk easement dedication.
  - iii. Remove and replace the handicap ramp at the intersection of West San Carlos Street and Josefa Street with an ADA compliant handicap ramp, per City Standard Detail R-10.
  - iv. Proposed driveway width to be 22 feet wide per City Standard Detail R-6.
  - v. Close unused driveway cut(s).
  - vi. Remove and replace broken or uplifted curb and gutter along project frontages. Permittee shall also be responsible to remove and replace curb and gutter damaged during construction of the proposed project.
  - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - viii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
- i. The following shall be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
    - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan shall provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent shall provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are 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 area, concrete pumping activities, etc. The Letter of Intent would also provide a discussion as to the reasons



why covered pedestrian walkways will not be provided (e.g., swinging loads over the sidewalk not safe for pedestrians).

- 2) **Multi-Phased Site-Specific Sketches:** These sketches shall show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches shall 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:
  - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
  - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 28.m.i.2 above.
- iii. If proposed lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to the Department of Transportation (DOT). These applications may be obtained at: <http://www.sanjoseca.gov/index.aspx?NID=3713>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- n. **Private Improvements within Public Property:** The permittee's proposed encroachment of roof overhangs requires the issuance of an encroachment permit, which is subject to the discretionary approval of the City Council. Encroachment permits are authorized and issued in accordance with Chapter 13.37 of the Municipal Code. If the City Council does not authorize an encroachment permit for this project, the permittee shall apply for a Planning Permit Adjustment or Amendment, as applicable, to remove the encroachment. If the City Council authorizes an encroachment permit for this project that is not consistent with the encroachment proposed by this Permit, the permittee shall apply for a Permit Adjustment or Amendment, as necessary, to remove the encroachment from the project or modify the encroachment to conform to the approved encroachment permit. If an encroachment permit is authorized, the property owner shall execute an Encroachment Agreement, which shall be recorded against title to the property, prior to the City issuing any permit that would allow the installation or construction of the encroachment.

- o. **Strong Neighborhoods Initiative (SNI):** This project is located within the Delmas Park SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
  - 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:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - s. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Agency.
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. \_\_\_\_\_.
30. **Standard Environmental Conditions:**
- a. **Air Quality:**
    - All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
    - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
    - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
    - All vehicle speeds on unpaved roads shall be limited to 15 mph.

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off 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). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- A publicly visible sign shall be posted with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The air district's phone number shall also be visible to ensure compliance with applicable regulations.

**b. Biological Resources:**

- i. **Habitat Conservation Plan:** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit a SCVHP Coverage Screening Form to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement for review and will complete subsequent forms, reports, and/or studies as needed.

**c. Cultural Resources:**

- i. The project proponent shall ensure all construction personnel receive paleontological resources awareness training that includes information on the possibility of encountering fossils during construction; the types of fossils likely to be seen, based on past finds in the project area; and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.
- ii. If vertebrae fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include 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 ensuring that the recommendations of the paleontological monitor regarding treatment and reporting are implemented.

**d. Geological Resources:**

- i. Standard erosion control and grading best management practices (BMPs) will be implemented during construction to prevent substantial erosion from occurring during site development. The BMPs shall be included on all construction documents.
- ii. Prior to issuance of a Public Works Clearance, the permittee must obtain a grading permit before commencement of excavation and construction. In accordance with General Plan Policy EC-4.12, the permittee may be required to submit a Grading Plan and/or Erosion Control Plan for review and approval, prior to issuance of a grading permit.
- iii. Consistent with General Plan policies, the permittee shall complete a design-level geotechnical investigation to verify compliance with applicable regulations. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation shall be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet be explored and evaluated in the investigation. The report shall be submitted to the City of San José Public Works Department for review prior to issuance of any site-specific grading or building permit.
- iv. Techniques that may be used to minimize hazards include: replacing problematic soils with properly conditioned/compacted fill and designing structures to withstand the forces exerted during shrink-swell cycles and settlements.
- v. Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement.

**e. Hazards and Hazardous Materials:**

- i. In accordance with National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines, an asbestos survey shall be performed on all structures to be demolished that are known or suspected to have been constructed prior to 1980. If asbestos-containing materials (ACMs) are determined to be present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of Bay Area Air Quality Management District (BAAQMD). Demolition and disposal of ACMs shall be completed in accordance with the procedures specified by BAAQMD's Regulation 11, Rule 2. A final report of methodologies and findings of the survey shall be

submitted to the Building Division of PBCE prior to the issuance of grading or building permits.

- ii. A lead-based paint survey shall be performed on all structures to be demolished that are known or suspected to have been constructed prior to 1980. If lead-based paint is identified, then federal and state construction worker health and safety regulations shall be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified at the building, it shall be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations. Requirements set forth in the California Code of Regulations shall be followed during demolition activities, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the waste being disposed. A final report of methodologies and findings of the survey shall be submitted to the Building Division of the City's PBCE prior to the issuance of grading or building permits.
- iii. The County of Santa Clara and City of San José shall be notified of the project, as stated and required under the leaking underground storage tank (UST) case closure issued by the Santa Clara County Department of Environmental Health.
- iv. A Site Management Plan (SMP) shall be written and in-place during site development to address any potential contamination that might be discovered. The SMP shall include management practices for identifying, handling, and disposing of contaminated soils, if encountered during construction activities. If contamination above environmental screening levels is found during construction, regulatory oversight from the Santa Clara County Department of Environmental Health shall be obtained.

**f. Hydrology and Water Quality**

- i. Discharge to a landscaped area or bioretention unit that is properly-designed to accommodate the volume of pumped ground water; or
- ii. Discharge to the sanitary sewer. Discharges to the sanitary sewer system shall be subject to all wastewater permitting requirements and fees; or
- iii. If the two discharge options described above are not feasible, as determined by the authority having jurisdiction, and these discharges must enter the storm drain system, pre-discharge sampling shall be done in accordance with Provision C.15.b.i.(2)(c) through (e) of the Municipal Regional Stormwater Permit (MRP) to verify that the discharge is not contaminated. The permittee shall provide to the City a record of the pre-discharge sampling data collected for verification that the pumped groundwater is not contaminated.

- iv. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- v. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- vi. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary
- vii. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- viii. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall be required to maintain at least two feet of freeboard.
- ix. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- x. Vegetation in disturbed areas shall be replanted as quickly as possible.
- xi. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.

**g. Noise and Vibration**

- i. Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (Municipal Code Section 20.100.450).
- ii. Construct solid plywood fences around ground-level construction sites adjacent to operational businesses, hotels, and other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Unnecessary idling of internal combustion engines shall be strictly prohibited.
- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by five dBA.
- vi. Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- vii. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
  - viii. 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.
  - ix. A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - x. Consider the use of "acoustical blankets" for receptors located within 100 feet of the site during pile driving activities.
  - xi. Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and 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 in it the notice sent to neighbors regarding the construction schedule.
31. **Revocation, Suspension, Modification.** This Special Use Permit and Site Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Special Use Permit and 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**.

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### Effective Date

The effective date of this Permit (File No. SP18-053) shall be the effective date of the Rezoning Ordinance for File No. C16-003 and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

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

### NOTICE TO PARTIES

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



**LEGAL DESCRIPTION**

**EXHIBIT "A"**

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

All of Lots 1, 2 and 30, as shown upon that certain Map entitled, Map of Franklin Tract, being a subdivision of Lots 11 and 8 of the Sunol Addition, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 29, 1893 in Book G of Maps, at Page 55.

Excepting therefrom all that portion thereof, as conveyed to the City of San Jose, A Municipal Corporation by Deed recorded August 8, 1955 in Book 3245 Page 594 of Official Records, described as follows:

PORTION OF LOTS 1 and 2, as shown upon that certain Map entitled, "Map of the Franklin Tract", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 29, 1893 in Book G of Maps, at page 55, and more particularly described as follows:

BEGINNING at the point of intersection of the Southwesterly line of Josefa Street, with the Southeasterly line of San Carlos Street, as said Streets are shown upon the Map above referred to; running thence from said point of beginning, Southwesterly along the said Southeasterly line of San Carlos Street, 85.70 feet to the Westernmost corner of Lot 2, as said Lot is shown upon the Map above referred to; thence leaving the said Southeasterly line of San Carlos Street and running Southeasterly along the Southwesterly line of said Lot 2, for a distance of 34.00 feet; running thence Northeasterly and parallel with the said Southeasterly line of San Carlos Street, for a distance of 85.70 feet to a point on the said Southwesterly line of Josefa Street; running thence Northwesterly along the said Southwesterly line of Josefa Street, 34.00 feet to the point of beginning.

APN: 264-20-064, 264-20-065

EXHIBIT 'A'  
PLAT MAP

OWNER:

ABBAS HAGHSHENAS  
127 E. CAMPBELL AVE  
CAMPBELL, CA 95008

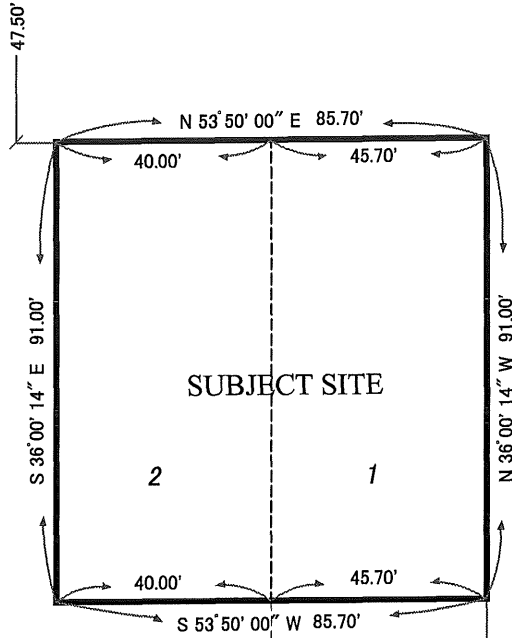
PROP. ADDRESS:

500 W. SAN CARLOS AVE.  
SAN JOSE, CA 95126

APN:

264-20-064

CENTER LINE OF SAN CARLOS AVE



SUBJECT SITE

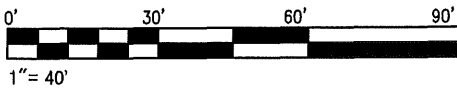
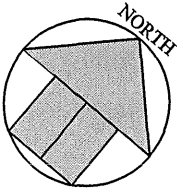
2

1

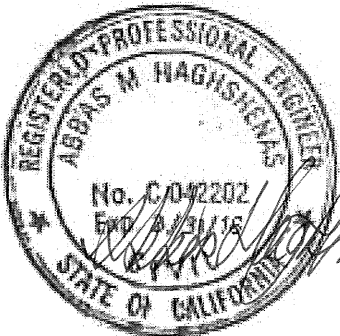
CENTER LINE OF JOSEFA STREET

ADJACENT SITE

APN: 264-20-065



1" = 40'



CENTER LINE OF COLOMBIA AVE

1/12/2016

C16-003