

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF THE EXISTING 1,544-SQUARE FOOT SINGLE-FAMILY RESIDENCE AND APPROXIMATELY 3,887-SQUARE FOOT COMMERCIAL BUILDING, THE REMOVAL OF SEVEN ORDINANCE-SIZE TREES AND THE CONSTRUCTION OF A MIXED-USE PROJECT WITH NO MORE THAN 48 RESIDENTIAL UNITS AND APPROXIMATELY 18,495-SQUARE FEET OF COMMERCIAL OFFICE SPACE WITH NO MORE THAN 15 COMMERCIAL CONDOMINIUMS ON AN APPROXIMATELY 0.47-GROSS ACRE SITE, LOCATED ON THE NORTH SIDE OF HEMLOCK AVENUE, APPROXIMATELY 120 FEET EASTERLY OF SOUTH BAYWOOD AVENUE (2881 HEMLOCK AVENUE AND 376 BAYWOOD AVENUE)

FILE NO. PD18-037

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 12, 2018, an application (File No. PD18-037) was filed by the applicant, Henry Cord, on behalf of owner Yisrael 26, LLC (“Permittee”), with the City of San José for a Planned Development Permit to allow the demolition of the existing 1,544-square foot single-family residence and approximately 3,887-square foot commercial building, the removal of seven ordinance-size trees, and the construction of a mixed-use project with no more than 48 residential units and approximately 18,495-square feet of commercial office space with no more than 15 commercial condominium units on an approximately 0.47-gross acre site, on that certain real property situated in the CP(PD) Planned Development Zoning District and located at the north side of Hemlock Avenue, approximately 120 feet easterly of South Baywood Avenue (2881 Hemlock Avenue and 376 South Baywood Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on March 13, 2019, 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, "Hemlock Mixed Use Project," dated revised on November 17, 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 subject site, composed of two lots, is located on the north side of Hemlock Avenue, approximately 120 feet easterly of South Baywood Avenue. An approximately 1,544-square foot single-family residence is located on the western portion of the site and a 3,887-square foot dental office and parking lot are located on the eastern portion of the project site. South Baywood Avenue and Hemlock Avenue provide access to the site.

Commercial and residential uses surround the project site. A surface parking lot and parking structure are located to the north; residential and commercial uses are located to the west; a commercial building and duplex are located to the east; and a children's learning center and single-family tract houses are located to the south. A four-story apartment development is located immediately south of Hemlock Avenue, 200 feet southwest of the site. Stevens Creek Boulevard, a four-lane, two direction major arterial, is located approximately 520 feet north of the site.

The project site is located within the Santana Row/Valley Fair Urban Village Plan Area.

2. **Project Description.** The project consists of the demolition of the existing buildings on-site, the removal of seven ordinance-sized trees, and the construction of a mixed-use project with no more than 48 residential condominiums and approximately 18,495 square feet of commercial office space with no more than 15 commercial condominium units on an approximately 0.47-gross acre site. The development will be a six-story, L-

shaped building with an approximately 1,470-square foot rooftop residential open space area and two levels of subterranean parking with 67 off-street parking spaces, 26 bicycle parking spaces, and six motorcycle parking spaces. Commercial offices will be located on the first and second floors, and 48 residential condominium units will be located on the second through sixth floors. The development will provide a minimum of 4,852 square feet of residential common open space, including outdoor amenity space on the roof, second floor, and ground floor, and 3,576 square feet of private residential open space balconies.

The project includes a 50% parking reduction supported through the implementation of a Transportation Demand Management (TDM) Program. The project will implement several TDM measures, including an on-site Transportation Coordinator, bicycle programs including an on-site cargo bicycle share program, transit subsidies such as VTA eco passes provided to both residents and commercial employees, commercial carpool/vanpool incentives, commercial flexible work schedules, and unbundled residential parking.

Vehicular access to the subterranean parking garage will be through an ingress/egress driveway located off Hemlock Avenue. Pedestrian access for both the commercial offices and the residential units will be available along both street frontages.

- 3. General Plan Conformance.** The subject site has an Urban Village land use designation on the General Plan Land Use/Transportation Diagram. This designation supports a wide variety of commercial, residential, institutional, or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan, which specifies how each Urban Village will accommodate the planned housing and job growth capacity.

The project conforms to the following key General Plan strategies and policies:

- 1. Major Strategy #3- Focused Growth:** Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. A Major Strategy of the Envision General Plan is to focus new growth capacity in specifically identified "Growth Areas," while the majority of the City is not planned for additional growth or intensification.
- 2. Major Strategy #5- Urban Villages:** Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goals.

Analysis: The project is a mixed-use development within the Santana Row/Valley Fair Urban Village boundary. Urban Villages are considered growth areas in the

General Plan, and Urban Villages are intended to create higher-density housing growth along with a significant amount of job growth. The project is furthering General Plan Major Strategy #3 and #5 by developing a higher-density residential and commercial project as envisioned in the Santana Row/Valley Fair Urban Village.

3. Housing Policy H-1.1: Through the development of new housing and the rehabilitation of existing housing, facilitate the creation of economically, culturally, and demographically diverse and integrated communities.

Analysis: This project features 48 new residential units, consisting of 25 one-bedroom units and 23 two-bedroom units. The project would add to the existing diversity of housing in the area, which includes a mix of single-family homes, townhomes, and multifamily developments.

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

5. Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than may be practical through implementation of a conventional Zoning District. These development standards and other site design issues implement the design standards set forth in the Envision General Plan and design guidelines adopted by the City Council.

Analysis: The project site is currently in the CG Commercial General Zoning District, which does not conform to the Urban Design standards set forth in the Santana Row Valley Fair Urban Village with regards to land use requirements, setbacks, height, and design requirements. Development Standards for the project have been prepared as part of the Planned Development process

6. Implementation Policy IP-2.9: Focus new residential development into specified Growth Areas to foster the cohesive transformation of these areas into complete Urban Villages. Allow immediate development of all residential capacity planned for the Growth Areas included in the current Plan Horizons.

Analysis: The project is within the Santana Row/Valley Fair Urban Village Plan. The Plan was adopted on August 7, 2017. On December 18, 2018, the Plan was shifted into Horizon 1 Urban Village by City Council through Resolution 78940. The Urban Village has a dwelling unit capacity of 2,635 units. To date, 725 units have been entitled. The project would utilize 48 units of the remaining 1,910 dwelling unit capacity. As described in the Urban Village Plan Section below, the project would conform and further the Urban Village's goals and policies, in addition to the

General Plan's Land Use/Transportation Diagram as this project would meet the residential density and commercial floor area ratio minimums.

7. Growth Areas, 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.
8. High Quality Housing and Great Places, H-3.2: Design high density residential and mixed residential/commercial development, particularly development located in identified Growth Areas, to:
 - Create and maintain safe and pleasant walking environments to encourage pedestrian activity, particularly to the nearest transit stop and to retail, services, and amenities.
 - Allow residents to conduct routine errands close to their residence, especially by walking, biking, or transit.
 - Integrate with surrounding uses to become a part of the neighborhood rather than being an isolated project.
 - Provide residents with access to adequate on- or off-site open space.
 - Create a building scale that does not overwhelm the neighborhood.

Analysis: The project is within the Santana Row/Valley Fair Urban Village boundary, identified as a growth area by the General Plan. The residential mixed-use building would consist of 48 residential units and approximately 18,495 square feet of commercial office space on a site with existing City services and infrastructure. The project's density, at 104.3 dwelling units per acre, is higher than the average density of the surrounding area but is consistent with the allowed density of the Urban Village land use designation and the Santana Row/Valley Fair Urban Village growth area.

The project's location, near Santana Row, Valley Fair, and community amenities such as Frank M. Santana Park, would allow future residents and commercial tenants to conduct many of their daily activities through walking or bicycling. The project is designed to integrate into its surroundings; the design manipulates the massing to provide articulation and incorporates buffering landscaping, including vines planted on the second floor open space to be trained down the façade of the building along the shared interior lot lines with the corner lot to create a landscaping buffer. The project would provide adequate residential open space through a rooftop amenity area, other outdoor open spaces on the ground floor and second floor balcony, and the provision of private open space. Consistent with Urban Village design criteria, the building will step back from the residential properties along Hemlock Avenue to reduce the impact of the building's mass on the neighboring residential properties.

9. Function Policy CD-2.10: Recognize that finite land area exists for development and that density supports retail vitality and transit ridership. Use land use regulations to require compact, low-impact development that efficiently uses land planned for growth, especially for residential development which tends to have a long life-span. Strongly discourage small-lot and single-family detached residential product types in Growth Areas.

Analysis: The project's density will be 104.3 dwelling units per acre and a Floor Area Ratio (FAR) of 0.9 on an approximately 0.47-acre site. The project is a higher-density residential project, located within walking distance of Santana Row and Valley Fair that is efficiently utilizing the land in a compact and dense form.

10. Fiscally Sustainable Land Use Framework Policy FS-3.6: Through the land use entitlement process, approve new development projects, including mixed-use residential development, that conform to the completed Urban Village Plan or which provide job capacity above the amount identified in the Urban Village Plan for the subject property.

Analysis: The Planned Development Permit is providing approximately 18,495 square feet of commercial office space on the ground and second floor. Although the project is demolishing an existing 3,821-square foot dental office building, the new development will replace the demolished existing square footage and add approximately 14,674 square feet of net new commercial office space.

11. Parking Strategies, TR-8.6: Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive TDM program, or developments located near major transit hubs or within Urban Villages and other Growth Areas.

Analysis: The project will implement a TDM plan to allow a 50% reduction of the required off-street parking spaces. Per Section 20.90.200 of the San José Municipal Code, a reduction in the required off-street vehicle parking spaces, of up to fifty percent, may be authorized for structures or uses that implement a total of at least three transportation demand management (TDM) measures, are located within an area designated as an urban village, and which bicycle parking spaces in conformance with the requirements of Table 20-90 of the Municipal Code.

The project site's Urban Village designation and proximity to commercial and retail rich-areas will support the parking reduction and encourage residents and office employees to walk and bicycle. The project will provide 26 bicycle parking spaces and pedestrian entrances to the building along all street frontages. Only one ingress and egress vehicle driveway will be provided to minimize vehicle conflicts with bicyclists and pedestrians.

12. Attractive City Policy, CD-1.17: Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances

and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm.

Analysis: The development includes a subterranean parking garage so that all on-site parking activities will be shielded from the surrounding neighborhood consistent with this Attractive City Policy.

- 3. Santana Row/Valley Fair Urban Village.** The subject site is within the Santana Row/Valley Fair Urban Village Plan, adopted by City Council on August 7, 2017; and the project site is within the Plan's Urban Village land use designation. This designation allows a density between 65 dwelling units per acre and 250 dwelling units per acre. The designation supports a wide range of commercial uses, including retail, sales, services, professional and general office, and residential uses in a mixed-use format. The Plan does not establish a maximum FAR for commercial or residential mixed-used projects; however, proposed projects should provide a commercial Floor Area Ratio based on the average commercial Floor Area Ratio for the entire Village at the time of a development proposal.

As stated above, the Santana Row/Valley Fair Urban Village is a Horizon 1 Urban Village. Residential and mixed-use developments in this Urban Village are subject to the Planned Housing yield of the Urban Village. The Santana Row/Valley Fair Urban Village has a housing capacity of 2,635 dwelling units and 725 units have been entitled. The project will utilize 48 of the remaining 1,910 dwelling unit capacity.

The project is not subject to the City Council adopted Urban Village Implementation and Amenity Framework (Implementation Framework). The Implementation Framework includes a provision that exempted projects that submitted a complete application prior to the date of the City Council adoption of the Implementation Framework. The Implementation Framework was adopted by the City Council on May 22, 2018, after the Planned Development Rezoning application was submitted to the City for review.

The proposed project conforms to the following key Santana Row/Valley Fair Urban Village policies.

1. Vibrant Commercial Corridor Policy, 3-3: With the Mixed Use Commercial, Mixed Use Neighborhood, or Urban Village Land Use designations, existing commercial or industrial square footage shall be replaced with an equivalent commercial square footage in the new residential or residential mixed use development.

Analysis: The existing commercial office building on-site is approximately 3,821 square feet. This project would provide 18,494 square feet of commercial office space, equivalent to 0.9 commercial FAR.

2. Vibrant Commercial Corridor Policy 3-11: Residential mixed-use projects utilizing the residential pool must build the commercial and residential portions of the development concurrently.

Analysis: The mixed use building will be a vertical mixed-use building, resulting in the concurrent construction of both uses. As part of the Development Standards for the Planned Development Zoning, the commercial/office component must be constructed before or concurrently with the residential component.

The project conforms to the following key Goals, Standards, and Guidelines of the Santana Row/Valley Fair Urban Village Plan, Chapter 5 Urban Design. This chapter provides an overall urban design framework for development with the Village. The framework focuses on the Village's character and livability and strives for compatible higher-intensity developments which support existing neighborhoods.

1. Pedestrian- and Bicycle- Friendly Environment Goal LU-4: Foster a development pattern that supports the creation of a walkable dynamic environment and reduces motor vehicle travel by encouraging the use of other modes of travel.
2. Quality Building Design Guideline DG-4: A minimum of one building entrance should be provided along each public street frontage.
3. Parking and Loading, Goal UD-13: Provide ample bicycle parking and pedestrian amenities to increase the comfort of non-motorized travelers.

Analysis: The development will provide a 12-foot wide sidewalk along the project's Hemlock Avenue street frontage and a 15-foot wide sidewalk along the South Baywood Avenue Frontage. The project is designed to have pedestrian entrances on both street frontages for both the residents and commercial employees. The project has incorporated street-side landscaping and pedestrian lighting to soften the building's façade along the sidewalk. Lobby entrances and large windows along the ground floor create an engaging, human-scale street experience.

The project will provide sidewalk amenities and landscaping including benches. Additionally, the project will have 26 bicycle parking spaces, including 18 long-term bicycle spaces located on the first parking level in a secured bicycle room and eight short term bicycle racks on the ground floor sidewalk. Coordination with Public Works for the bicycle rack location will be required as a condition of this project.

The project will include a 50% parking reduction with the implementation of a Transportation Demand Management (TDM) Plan. One of the goals of a TDM Plan is to promote more efficient utilization of existing transportation facilities and ensure new developments are designed to maximize the potential for sustainable transportation usage. The closest bus stop location to the project site is at the Stevens Creek Boulevard and Santana Row intersection, approximately 1,000 to 1,400 feet northwest of the project site, and is served by Express Route 323. The Valley Fair Transit Center is located within three-quarters of a mile of the project site adjacent to Westfield Valley Fair, along Forest Avenue. The Valley Fair Transit Center is served by two bus routes, Route 23 and Route 60. Some of the measures the development will utilize to support the 50% parking reduction and

to encourage the reduction of motor vehicle travel include providing on-site bicycle programs, such as on-site cargo bicycle share programs, and providing transit subsidies to residents and commercial tenants, such as the VTA eco/Smart Pass, to encourage the use of alternate forms of transportation.

4. A Cohesive and Pedestrian-Oriented Village Goal UD-2: Support an engaging pedestrian environment along major pedestrian routes.
5. A Cohesive and Pedestrian-Oriented Village Guideline DG-2: All active frontage and pedestrian-oriented frontages:
 - a. Blank walls at the ground level should be no more than 20 feet in length
 - b. Building frontages should incorporate detailed articulation and entrances that are designed at the pedestrian scale
 - c. Loading docks and exposed parking should not be allowed
 - d. Utilities and vehicular access points should be minimized.

Analysis: The Santana Row/Valley Fair Urban Village Plan designates the Hemlock Avenue and South Baywood Avenue project frontages as pedestrian-oriented frontages. Both project site frontages utilize large ground floor windows along the street frontage. The use of the ground floor windows and entry ways results in no blank ground floor façades exceeding 20 feet in length. The building's parking, mechanical equipment, and trash rooms will be located in the subterranean garage, away from the pedestrian right-of-way. One vehicle ingress and egress driveway will provide access to the subterranean parking garage, located along Hemlock Avenue.

6. Quality Building Design, Standard DS-3: The minimum floor-to-ceiling height of the ground floor commercial space shall be a minimum of 15 feet and preferably 18 to 20 feet.

Analysis: The building has a 15-foot ground floor height; in accordance with this standard.

7. Whole Building Design, Standard DS-7: Buildings shall maintain façade quality of architectural articulation and finishes on all sides of a building that are visible to the public. Some of the architectural features of the main facade shall be incorporated into the rear and side elevations.
8. Whole Building Design, Guideline DG-26: Building façades should be constructed of high quality and durable materials such as stone, brick, tile, wood, glass, and metal. Use of stucco shall be minimized and aluminum mesh is prohibited as a balcony material. Ground floor should use high quality material with texture.
9. Whole Building Design, Guideline DG-29: Recessed and projected balconies should be introduced as part of a composition that contributes to the scale and proportion of the residential building façades.

10. Whole Building Design, Guidelines DG-32: Incorporate usable outdoor terraces and rooftop gardens that overlook the street and provide visual interest

Analysis: The building's design is modern/contemporary and uses a combination of wood siding, concrete, aluminum metal panels, and stucco. The balconies are transparent, which helps maintain the effect of the building's step-backs while creating usable terrace open space. The project design steps the massing of the building back along the street frontages, creating a series of modulating solid and void spaces. This design is incorporated along all sides of the project, with the greatest building step-backs along Hemlock Avenue. The project capitalizes on the design's recesses and flat roof to provide a variety of private and common residential open spaces.

11. Compatibility of Building Height, Placement and Scale, Goal UD-7: Create an urban environment where new development steps down toward existing low-intensity residential uses and is built to the human-scale at the ground level.

12. Compatibility of Building Height, Placement and Scale, Standard DS-8: Figure 5-2 establishes the Urban Village height limits, which limits the height of the building to 65 feet (5-6 stories typical).

13. Compatibility of Building Height, Placement and Scale, Standard DS-9: New projects proposed within the Urban Village Plan over 55 feet in height must provide detailed visualizations of their proposed project that show what the project will look like from the street level, from different perspectives and distances, within the context of the neighborhood including both current and proposed projects.

14. Compatibility of Building Height, Placement and Scale, Guideline DG-35: Non-occupiable architectural features such as roof forms, chimneys, stairwells, and towers may project up to ten feet above the maximum height.

Analysis: The development will have a maximum building height of 65 feet with the elevator room and stairwell projecting an additional 8 feet 6 inches. Visualizations of the development are provided in the approved development plans. The visualizations provide a perspective of the project from the intersection of Hatton Street and the existing parking lot's driveway, approximately 250 feet southwest of the site, the sidewalk on Hemlock Avenue approximately 120 feet east of the project site, from the western sidewalk along South Baywood Avenue approximately 100 feet north of the site. The visualizations demonstrate, from a pedestrian point of view, how the project will appear within the existing built environment.

15. Compatibility of Building Height, Placement and Scale, Standard DS-12: For buildings on Hemlock Avenue (between South Baywood Avenue and South Monroe Street), stories above 4 stories or 45 feet must step back so as not to intercept a 45-degree daylight plane inclined inward from the building edge.

Analysis: The building along Hemlock Avenue is designed so as not to intercept the 45-degree daylight plane inclined inward from the building edge. The 45-degree daylight plane requires that any portion of the building, above 4 stories or 45 feet in height, must step back so as not to intercept a 45-degree angle measured from the top of 45 feet inward from building's edge. On the fourth and fifth floors the building is stepped back a minimum of 13 feet and six inches. The building is stepped back a minimum of 26 feet and three inches on the sixth floor. With the step-backs, the building will comply with the required 45-degree daylight plan requirement. The design of the building allows the project to achieve the intensity required in the Urban Village while reducing its impact on the nearby residential property.

16. Compatibility of Building Height, Placement and Scale, Table 5-1: Building 5-1 establishes the building placement and bulk standards:

- a. Front Setback, non-residential ground floor use: 0 to 10 feet.
- b. Front Setback, residential ground floor use: 2 to 5 feet.
- c. Street Side Setback: 0 to 10 feet
- d. Side Setback: 0 feet.
- e. Rear Setback: Minimum 10 feet.

Analysis: Along the project's Hemlock Avenue property line, the project is set back between 3 feet 8 inches and 5 feet. The project is set back 2 feet 4 inches along the South Baywood Avenue property line. The project's eastern property line is the rear property line; the building is set back ten feet from the eastern property line. The building is set back 0 to 5 feet on all other side property lines, consistent with Table 5-1 of the Santana Row Valley Fair Urban Village.

4. Zoning and Planned Development Zoning Conformance. The site is in the CP(PD) Planned Development Zoning District with an Urban Village General Plan land use designation.

Subject to the Development Standards adopted as part of the rezoning, the CP(PD) Planned Development would require conformance with the Santana Row/Valley Fair Urban Village, including the required the setbacks, height, and 45-degree daylight plane, as described above.

Parking is required for the project pursuant to the parking standards and requirements of the San José Municipal Code. The project is required to provide 1.25 parking spaces per one-bedroom unit, 1.7 parking spaces per two-bedroom unit, and 1 parking space per 250 square feet of office floor area, for a total of 134 parking spaces. Floor area is defined as 85% of the total gross floor area of a building. Pursuant to Section 20.90.220 of the San José Municipal Code, a parking reduction of up to 50% may be authorized for a development which implements a

minimum of three transportation demand management measures, provides all the required bicycle parking, and is located in an Urban Village area.

The project applicant requests a 50% parking reduction supported through the implementation of a TDM plan. The project applicant would implement several TDM measures including an on-site Transportation Coordinator, bicycle programs including an on-site cargo bicycle share program, transit subsidies such as VTA eco/Smart Passes provided to both residents and commercial employees, commercial carpool/vanpool incentives, commercial flexible work schedules, and unbundled residential parking. With the implementation of the TDM and a 50% parking reduction, the project will provide 67 vehicle parking spaces in two levels of subterranean parking in lieu of the required 134 parking spaces. A minimum of 17 bicycle parking spaces and six motorcycle spaces would be required for the project; 26 bicycle parking spaces and six motorcycle parking spaces will be provided.

- 6. Residential Design Guidelines.** The project complies with the Residential Design Guidelines by being designed for the pedestrian at the ground-level and providing an interesting architectural aesthetic, as described above. This project provides pedestrian scale by placing the building within proximity of the sidewalk and providing articulation and transparency along the ground floor. Furthermore, reduced building setbacks are appropriate to higher-density housing types in growth areas to reinforce the planned urban character of the neighborhood.

The project incorporates a variety of materials, ranging from cement, wood, metal, and stucco. The project includes a varied building façade, recessed and protruding windows and balconies, which contribute to an interesting aesthetic and provide dimensionality to the building. The undulating façade will provide additional shadow lines to the building adding architectural interest to its façade.

The project provides 3,576 square feet of private residential open space, an average of 74 square feet per unit. A minimum of 4,852 square feet of common residential open space will be provided, an average of 101 square feet per unit. This is consistent with the residential design guidelines standard that encourages the provision of a minimum of 60 square feet of private open space and 100 square feet of common open space per unit. The provided common open space will take advantage of the project's many opportunities for common outdoor balconies and terraces. Additionally, the project includes a rooftop garden open space area for residents to enjoy themselves outdoors. The roof deck is located on the western portion of the project site, setback a least 110 feet from the existing residences along Hemlock Avenue.

- 7. Environmental Review.** An Initial Study/Mitigated Negative Declaration (IS/MND) entitled "Hemlock Mixed-Use Project" was prepared and approved on December 10, 2018, by the Director of Planning, Building, and Code Enforcement for the subject Planned Development Rezoning, Planned Development Permit, and Tentative Map. The IS/MND was completed in compliance with the California Environmental Quality

Act (CEQA), as amended, to reflect an independent judgment and analysis of the project. The documents were circulated for public review and comments from December 10, 2018 to January 9, 2019. Four formal comments/emails were received from the public during the public circulation period. The comments did not result in any substantial changes to the project description, analyses, and/or impacts that was previously disclosed in the IS/MND.

The IS/MND identified potentially significant environmental impacts and determined that with implementation of related mitigation measures, the project would not have a significant effect on the environment. The environmental issues that require mitigation re air quality, biological resources, hazards and hazardous materials, and noise. The IS/MND determined with the incorporation of mitigation measures would reduce any potentially significant project impacts to a less-than-significant level. The mitigation measures and associated compliance methods are included in the adopted Mitigation Monitoring and Reporting Program.

8. Planned Development Permit Findings: Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit. 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 proposed permit. In order to make the Planned Development Permit findings pursuant to Section 20.100.720 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan;

Analysis: As described above, the project is consistent with and will further the policies of the General Plan.

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property;

Analysis: The Planned Development Permit conforms in all respects to the CP(PD) Planned Development Zoning of the property, including uses, design, setbacks, height, and parking.

3. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency;

Analysis: As described in the City Council Policy section above, the project is consistent with the City Council Policy on Public Outreach. A community meeting was held for the project on Monday, August 6, 2018 at the Bascom Community Center to receive public comments and input on the project. The staff report is

also posted on the City's website. Staff has been available to respond to questions from the public.

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious;

Analysis: As described above, the interrelationship between the orientation, location, mass and scale of the building's volume and elevations is appropriate, compatible, and aesthetically harmonious. The architectural style and attention to detail is consistent along all façades of the building. The project continues the pattern of protruding and recessing building and window components along each elevation. The combination of the warm-color wood material blends nicely with the cooler concrete and metal building materials. The transparent balcony railings allow the volume of the building to be appreciated rather than hidden. The use of durable wood and concrete at the building's base give a strong ground floor presence and the building's presence is lightened with the use of a cream-colored stucco accented by concrete, wood, and metal on the upper floors.

5. The environmental impacts of the project, including, but not limited to aesthetics, air quality, noise, and transportation/traffic, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: The demolition of existing buildings, removal of trees, and the construction of the project will not have an unacceptable negative affect on adjacent property or properties. In addition to the Mitigated Negative Declaration prepared pursuant to the California Environmental Quality Act (CEQA), the project was also evaluated per adopted stormwater requirements in the City's Post-Construction Urban Runoff Management Policy (Policy 6-29), and the Stormwater Control Plan has been found in compliance. Additionally, the proposed residential and commercial uses would not create odor or unusual noise as the majority of the development's activity occurs indoors. Noise and ground vibration related to construction and demolition will be temporary, and mitigation measures will be implemented to reduce any negative effects. Best management construction practices would be implemented to reduce the construction impact on the neighborhood, as included as standard environmental conditions for the project.

9. **Commercial Common Interest Findings:** Section 20.175.050 the San José Municipal Code (SJMC) establishes required Findings for allowance of a commercial condominium project. These criteria are applied to the project based on the above-stated findings related to General Plan and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.

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

Analysis: The project would consist of approximately 18,495 square feet of commercial office space that could be subdivided into up to fifteen commercial condominium units. The separation of commercial ownership would not adversely impact the economic viability of the uses in the vicinity of the area as there is a variety large, medium, and small format office spaces and retail spaces of varying sizes in the project's vicinity. This would allow the project to provide the area with additional for-sale office spaces as driven by market demand.

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

Analysis: Prior to issuance of the Final Map, the project will be required to provide sufficient evidence demonstrating the common area will be adequate, safely maintained, and repaired for the life of the project. The project will also be required to provide information related to the creation of an Owner's Association for the maintenance of the common area.

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

Analysis: Prior to issuance of the Final Map, the project will be required to demonstrate that the common area will be retained as common area and provide information related to the creation of an Owner's Association for the maintenance of the common area.

10. Demolition Findings: Pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered by the Director of Planning to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:

- b. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- c. The failure to approve the permit would jeopardize public health, safety or welfare;
- d. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
- e. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- f. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

- g. Rehabilitation or reuse of the existing building would not be feasible; and
- h. 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 buildings will not result in the creation or continued existence of a nuisance, blight, dangerous condition, or public health and safety issue; however, the demolition will help implement the General Plan by furthering Major Strategy # 3 and #5 along with a number of other General Plan policies. The demolition of the existing buildings would facilitate the construction mixed-use project with no more than 48 residential units and 18,494 square feet of commercial office space. Re-use or rehabilitation of the building would not be practical given the small size of the building. The existing unit to be removed would be replaced by the project's 48 new units, increasing the City of San José housing stock. The surrounding uses are a mixture of residential and commercial uses; the proposed project use would be compatible with the area's existing uses. While the proposed project is not compatible with the immediate surrounding area in terms of scale, the project is consistent with what is envisioned in the Santana Row/Valley Fair Village Plan, in terms of densification, massing, and build-out.

Neither structure proposed for demolition is located on the San José Historic Resource inventory nor have they been evaluated as part of any historic resource survey. The existing office structure on-site was constructed in 1978-1979 and is only 39 years old. A Historical Evaluation was completed for the site's buildings in April 2018, which concluded that the structures would not qualify for listing in any of the historic resource lists because they lack design distinction or exceptional importance.

- 7. Tree Removal Findings:** Chapter 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit for ordinance-size trees measuring 56 inches or more in circumference. Findings are made for the project based on the above-stated findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
 - b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
 - c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility

services, is such that preservation of the public health or safety requires its removal

Analysis: The project would remove seven ordinance-sized trees and three non-ordinance size trees. The trees are currently located adjacent to the existing buildings or in the surface parking lot. The trees proposed to be removed are located either within the proposed building footprint or within the proposed building's excavation zone. The 10 trees proposed for removal could not be preserved because the project must satisfy the densities and commercial square footage requirements of the Santana Row/Valley Fair Urban Village. Preservation of the trees would create a building footprint that would not be conducive to the growth envisioned in this area. The project preserves four trees along the northwestern portion of the site.

Pursuant to the project landscaping plan, a total of 15 fifteen-gallon trees and 48 twenty-four-inch box trees will be replanted on-site. This is consistent with the City's Tree Replacement ratios which require a minimum of 23 replacement mitigation trees.

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

CONDITIONS

1. **Acceptance of Permit.** Per 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 Planned 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 Planned 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 Planned 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 Planned 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 Planned 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 Plant 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 Planned Development Permit plans entitled, "Hemlock Mixed Use Project," dated revised on November 17, 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. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of land covered by the Permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.

7. **Scope and Use Authorization of the Planned Development Permit.** This Planned Development Permit allows the demolition of the 1,544-square foot single-family residence and approximately 3,887-square foot commercial building, the removal of seven ordinance-size trees, and the construction of a mixed-use project with up to 48 residential units and approximately 18,495-square feet of commercial office space on an approximately 0.47-gross acre site, in accordance with the approved development plans and uses consistent with the General Development Standards of the Planned Development Zoning District.
8. **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.
9. **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.
10. **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.
11. **Transportation Demand Management (TDM) Plan.** The project shall operate in perpetuity in accordance with the TDM measures listed in the Hemlock Mixed Use Project TDM Plan including: an on-site Transportation Coordinator, bicycle programs including an on-site cargo bicycle share program, transit subsidies such as VTA SmartPass provided to both residents and commercial employees, commercial carpool/vanpool incentives, commercial flexible work schedules, and unbundled residential parking.
12. **Owner's Association.**
 - a. Prior to the issuance of any occupancy permit (temporary or final), an Owners' Association shall be established for maintenance of all common areas, including pedestrian walkways, easements, and landscaping. The Permittee shall provide to the Owners' Association a copy of the Vesting Tentative Map, the accompanying Plan Set, any approved Development Permit, Amendments, and Adjustments under Title 20 of the Municipal Code, and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
 - b. The Permittee shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the city for compliance with the terms of

- the City of San José Municipal Code, and shall upon city approval be recorded concurrently with the approved parcel or final map
- c. The Transportation Demand Management Plan measures, as amended, shall be incorporated into the Owners' Association agreement/CC&Rs.
13. **SmartPass Program.** The project shall participate in the VTA SmartPass program to attract transit users and help reduce traffic and air quality impacts.
14. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise levels from such equipment will not exceed 55 dBA at the residential property line. All roof mounted mechanical equipment shall be screened from view.
15. **Window Glazing.** Unless otherwise indicated on the approved plan, all ground floor windows shall consist of a transparent glass
16. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
17. **Bicycle Parking Provisions.** This project shall provide a combination of short term uncovered bike parking as well as long term covered parking consistent with the requirements noted in the Zoning Ordinance.
18. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
19. **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.
20. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
21. **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. Trash areas shall be maintained in a manner to discourage illegal dumping.
22. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
23. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

- 24. 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.
- 25. 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.
- 26. Affordable 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.
- 27. 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. The permit file number, PD18-037, 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), including paths of travel connecting all buildings on the site.
 - c. Emergency Address Card. The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- d. **Street Number Visibility.** Street numbers of the buildings shall be easily visible at all times, day and night.
 - e. **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.
- 28. Construction and Demolition Hours.** Construction, demolition, and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project.
- 29. Demolition of Structures.** No demolition permits may be issued prior to the submittal of foundation or structural building permits. Demolition Permits may be issued prior to the Final Map approval.
- 30. Final Map or Lot Line Adjustment Required.** Prior to the issuance of a Building Permit, the developer shall secure approval and provide recordation of the final map or a Lot Line Adjustment to consolidate the existing lots.
- 31. Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
- 32. Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
- 33. Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
- 34. Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
- 35. Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from

the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

36. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
37. **Lighting.** All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
38. **Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
39. **Parkland Dedication Ordinance.** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the permittee shall enter into a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance
40. **Green Building Requirements for Mixed Use New Construction Projects.** The development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this permit, the permittee shall pay a Green Building Refundable Deposit. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code
41. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
42. **FAA Clearance**
 - a. Prior to the issuance of a Building Permit, the Permittee shall obtain from the

Federal Aviation Administration (FAA) a “Determination of No Hazard” for the highest building point. The permittee shall initiate the required FAA review by filing a “Notice of Proposed Construction or Alteration” (FAA Form 7460-1) for the building high point. The technical data on the FAA form should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.

- b. The permittee shall comply with any condition set forth in an FAA Determination of No Hazard, including expiration date. If the FAA determination requires a subsequent filing of a “Notice of Actual Construction or Alteration” (FAA Form 7460-2) upon completion of construction, such filing shall occur prior to City issuance of any certificate of occupancy.

43. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following link:
<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:**
 - i. A Traffic Report by Hexagon Transportation Consultants, dated July 17, 2018, was submitted and approved.
 - ii. The Traffic Report indicates that the project will significantly impact the intersection of Monroe Street/ Stevens Creek Boulevard. The Monroe Street/Stevens Creek Boulevard intersection is a *Protected Intersection*. The project is required to conform to the City’s Council Policy 5-3 for protected intersections.
- c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth. In order for this project to establish an identity as an Urban Village, applicant must meet with Public Works to discuss opportunities for implementation of the following within the public right-of-way:
 - i. Up to 15-foot wide sidewalks.

- ii. Pedestrian scale lighting.
 - iii. Enhanced landscaping and street trees.
 - iv. Identification banners or gateway elements.
 - v. Streetscape amenities such as benches, bicycle racks, and attractive trash/recycling receptacles.
 - vi. Awnings or overhangs which will require a sidewalk easement.
- 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 2013 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. A soils report must be submitted and accepted by the City prior to the issuance of a grading permit. The report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- e. **Shoring:**
- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach within the public right-of-way (i.e. soldier beams).
 - iii. If tie-backs are proposed for use along the adjacent property(ies) (277-34-019, 277-34-020, 277-34-022, 277-34-052) agreements between the Applicant and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- 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, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures should be included on the final Stormwater Control Plan.
 - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at:
<http://www.sanioseca.gov/documentcenter/view/38835>
- g. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydrmodification Management area and is not required to comply with the City's Post-Construction Hydrmodification 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:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance(Chapter 19.38 of Title 19 of the San Jose Municipal Code).
- k. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to South Baywood Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2019 base fee is \$489 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 will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- l. **Street Improvements:**
 - i. Provide 26-foot City standard driveway along Hemlock Avenue frontage.

- ii. Provide 12-foot attached sidewalks with tree wells per City standards along Hemlock Avenue frontage and dedicate an approximate 2-foot public street easement.
- iii. Provide 15-foot attached sidewalks along Baywood Avenue frontage and dedicate an approximate 5-foot public street easement.
- iv. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- v. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- vi. 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. Electrical

- i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
- iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and T from communication lines.

n. Street Trees:

- i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over six feet in height that are proposed to be removed.

44. 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. _____.

45. Standard Environmental Permit Conditions

a. AIR QUALITY.

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iii. 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.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- v. 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.
- vi. Replant of vegetation in disturbed areas as soon as possible after completion of construction.
- vii. 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 the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- viii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- ix. Post a publicly visible sign with the telephone number and person to contact 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. Any tree to be removed will be replaced with new trees in accordance with the City’s Tree Replacement Ratios, as set forth below.
- ii. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement.
 - 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage. Replacement tree plantings may be accommodated at an alternative site(s).

Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12 inches or more ³	5:1	4:1	3:1	15-gallon
6.0 to 12 inches	3:1	2:1	None	15-gallon
Less than 6.0 inches	1:1	1:1	None	15-gallon

¹ As measured 4.5 feet above ground level
² X:X = tree replacement to tree loss ratio
³ Ordinance-sized tree

Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size.
 A 38-inch tree equals 12.1 inches in diameter.
 A 19-inch tree equals 6.1 inches in diameter.
 One 24-inch box tree= two 15-gallon trees

- 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- iii. Habitat Plan. The project is subject to applicable Santa Clara Valley Habitat Plan (SCVHP) conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. Prior to issuance of any grading permits, the project applicant 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. In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement will be notified, and a qualified archaeologist will examine the find. The archaeologist will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery would be submitted to Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.
- iii. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.
- iv. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - 1) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - 2) The MLD identified fails to make a recommendation; or
 - 3) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to

provide measures acceptable to the landowner.

- v. If vertebrate fossils are discovered during construction, all work on the site will 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 project proponent will be responsible for implementing the recommendations of the paleontological monitor.

c. GEOLOGY AND SOIL.

- i. To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Planning, Building, and Code Enforcement as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code Chapter 16, Section 1613, as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work will be scheduled in dry weather months or construction sites will be weatherized.
- iii. Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.
- iv. Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. In addition, the San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works clearance. These standard practices, including the measure outlined below, will ensure that the future building on the site is designed properly to account for soils-related hazards on the site. The project shall conform to the recommendations of a project-specific geotechnical report, including design considerations for proposed foundations.

d. HAZARDS AND HAZARDOUS MATERIALS.

- i. In conformance with state and local laws, a visual inspection/pre-demolition

survey, and possible sampling, shall be conducted prior to the demolition of on-site building to determine the presence of asbestos-containing materials and/or lead-based paint.

- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

e. HYDROLOGY AND WATER QUALITY.

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

f. NOISE.

- i. Prior to the issuance of any building permits, a detailed acoustical study shall be prepared during building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations, such as residences. The study shall be submitted to the City of San José for review and approval prior to issuance of any building permits.
- ii. The project sponsor shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to insure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. If required, building sound insulation requirements shall include the provision of forced-air mechanical ventilation for the manager's unit. Special building construction techniques may be required and can include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

g. PUBLIC SERVICES.

- i. In accordance with California Government Code Section 65996, the developer shall pay a school impact fee to the School District, to offset the increased demands on school facilities caused by the proposed project.
- ii. The project shall conform to the City's Park Impact Ordinance and Parkland Dedication Ordinance and pay all required fees.

h. TRANSPORTATION.

- i. Prior to the issuance of Public Works clearance, the project applicant shall implement offsetting improvements as required by the Department of Public Works to other parts of the citywide transportation system to improve system-wide roadway capacity or to enhance non-auto travel modes in furtherance of the General Plan goals and policies. Confirmation of compliance with this condition shall be submitted to the Supervising Environmental Planner prior to the issuance of Public Works Clearances.

41. Revocation, Suspension, Modification. This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council, as applicable, 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 Planned 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**.

EFFECTIVE DATE

The effective date of this Permit (File No. PD18-037) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC18-009 approved for publication on _____, 2019 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed

by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 277-34-051

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:

Parcel 3, as shown on that certain Parcel Map which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 29, 1978 in Book 421 of Maps at page(s) 35.

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 277-34-023

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:

LOT 32, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "TRACT NO. 238 WESTWOOD PARK UNIT NO. 2, SITUATION IN THE S.W. 1/4 OF SECTION OF 14, T.7 S.R. 1W., M.D.B. AND M.", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JANUARY 21ST, 1946 IN BOOK 8 OF MAPS, AT PAGE 17.