

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 EXISTING PARKING GARAGES, SPORTS COURTS, POOL, AND AMENITY BUILDING, REMOVAL OF UP TO 133 ORDINANCE-SIZE TREES, AND THE CONSTRUCTION OF A MIXED-USED DEVELOPMENT INCLUDING 302 RESIDENTIAL UNITS AND 17,800 SQUARE FEET OF RETAIL/COMMERCIAL SPACE AND EXTENDED CONSTRUCTION HOURS ON AN APPROXIMATELY 20.08-GROSS ACRE SITE LOCATED ON THE EAST SIDE OF SARATOGA AVENUE BETWEEN BLACKFORD AVENUE AND MANZANITA DRIVE (700 SARATOGA AVENUE)**

**FILE NO. PD17-027**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 14, 2017 an application (File No. PD14-027) was filed by the applicant, Joe Kirchofer, on behalf of AvalonBay Communities, Inc., with the City of San José for a Planned Development Permit to allow the demolition of existing parking garages, sports courts, pool, and amenity building, removal of up to 133 ordinance-size trees, and the construction of a mixed-used development including 302 residential units and 17,800 square feet of retail/commercial space and extended construction hours on an approximately 20.08-gross acre site, on that certain real property situated in the R-M(PD) Planned Development Zoning District and located on the east side of Saratoga Avenue between Blackford Avenue and Manzanita Drive (700 Saratoga 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 May 22, 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, "AvalonBay West Valley," dated revised on April 3, 2019, 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 is located on the east side of Saratoga Avenue between Blackford Avenue and Manzanita Drive. The existing project site is developed with 873 residential apartment units within 28 buildings. The project includes three parking garages and surface parking spaces. The residential buildings are clustered in groups with landscaped courtyards and two pools totaling 30,652 square feet of residential common open space. Additionally, the site has a 20,040-square foot residential amenity and leasing building, a 22,170-square foot outdoor amenity and pool area, and a tennis court/sports court space on the top of the parking garage located on the southeast corner of Blackford Avenue and Saratoga Avenue. Fourteen driveways provide access to the project site: seven on Blackford Drive, two on Saratoga Avenue, and five on Manzanita Drive.

Commercial, residential, and institutional uses surround the project site. Schools and single-family and multifamily residences are located to the project's east. Commercial/office buildings are located to the property's north. West of the site is developed with a commercial plaza (Mitsuwa Marketplace), single-family residences, and single-family residences which have been converted to commercial/office land uses. South of the project site are single-family residences.

The project site is located within the Saratoga Avenue Urban Village boundary area. The Saratoga Avenue Urban Village is a Horizon 3 urban village and currently it does not have an approved urban village plan.

2. **Project Description.** The project would allow the construction of 302 residential units in two buildings (the Avalon Building and Manzanita Building) for a combined total of 1,175 residential units on site. Additionally, the project would include 17,800 square feet of commercial retail space and a stand-alone parking garage. The 28 residential

buildings with 873 units would remain on-site as well as the parking garage along the northeast portion of the project site.

The project would demolish the garage located on the southeast corner of Saratoga Avenue and Blackford Avenue, the leasing/amenity building and pool area directly south of the garage, the garage located along Manzanita Avenue, and associated surface parking lots. The project would include the removal of 133 ordinance-size trees and 103 non-ordinance size trees to accommodate the development. The parking garage along Blackford Avenue would remain.

The project would demolish the garage located on the southeast corner of Saratoga Avenue and Blackford Avenue, the leasing/amenity building and pool area directly south of the garage, the garage located along Manzanita Avenue, and associated surface parking lots. The project would include the removal of 133 ordinance-size trees and 103 non-ordinance size trees to accommodate the development. The parking garage along Blackford Avenue would remain.

The Avalon Building, located at the northwest corner of the property, would be a seven-story, mixed-use building with 247 residential units, 17,800 square feet of retail space on the ground floor, and 406 parking spaces. Of the 406 parking spaces, 369 parking spaces would be provided within the building and 37 surface parking spaces would be located within the new surface parking lot south of the Avalon Building. The residential units would be located on floors two to seven of the 83-foot tall building. Retail would be located on northern and northwestern portions of the building, along the Saratoga Avenue and Blackford Avenue street frontages. The Avalon Building would include residential common open space amenities including a fitness room, club room, courtyard with a pool, roof deck and dog park totaling approximately 25,355 square feet of common open space. Vehicular access to the Avalon Building would be along the existing driveway cut on Saratoga Avenue and Blackford Avenue. Pedestrian access to the commercial and residential uses would be available along Saratoga Avenue and Blackford Avenue.

The existing parking garage located at the center and southern portion of the site along Manzanita Drive would be demolished and replaced with a new stand-alone garage and a three-story residential building with 55 residential units. The Manzanita Building would be approximately 45 feet in height. On-site amenities for the Manzanita Building would include an outdoor courtyard, club room, fitness room, and an outdoor pool area located on the ground floor of the building.

The stand-alone parking garage would be located immediately northeast of the Manzanita building. The 35-foot-tall parking garage would provide 742 parking stalls in levels of above-grade parking and one level of below-grade parking. Vehicular access to the Manzanita Building and new parking garage would be from a single driveway along Manzanita Drive. The building frontage and pedestrian access to the Manzanita Building would be taken off Manzanita Drive.

The project includes two public plazas, the Saratoga Plaza and the Palm Plaza. The Saratoga Plaza, located at the corner of Saratoga Avenue and Blackford Avenue, is designed to provide a public amenity space which engages with the ground floor retail along the Avalon Building's street frontage. The 8,085-square foot Saratoga Plaza includes unique paving to define the public area, a variety of seating options including moveable furniture, a built-in counter along the planter, and picnic benches, an art sculpture, featured pottery, and landscaping. The Palm Plaza, located along the Avalon Building's Saratoga frontage, includes unique paving, raised planter seating, moveable furniture, and stringed lighting. The Palm Plaza is approximately 3,975 square feet. (See Exhibit I, Sheet 6.9.0, Public Plaza Concepts).

Pursuant to Section 20.100.450 of the San José Municipal Code, the project is conditioned to allow extended construction hours for weekend construction on Saturdays from 9 a.m. to 5 p.m., twice a month and up to 10 days of 24-hour construction to allow concrete pours.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Mixed Use Neighborhood and Urban Residential. The Mixed Use Neighborhood designation is on the majority of the site and is where the new construction is proposed. The Mixed Use Neighborhood designation supports residential densities up to 30 dwelling units per acre as well as commercial and mix-use developments which are integrated into the surrounding neighborhood. The Urban Residential General Plan designation is on the eastern portion of the site where the existing Buildings 1, 2, and 3 are located. New development is not proposed on this portion of the site. The Urban Residential designation supports medium residential development and a broad range of commercial uses with densities between 30 and 95 dwelling units per acre.

The project is also within the boundaries of the Saratoga Avenue Urban Village growth area. The Saratoga Avenue Urban Village planning process has not commenced and is not anticipated to do so in the near future; therefore, to move ahead of an urban village plan, the project is applying under the "Signature Project" General Plan Policy (IP-5.10) to allow the residential density and height. As analyzed below, the project conforms to the requirements of a "Signature Project". These development projects are a catalyst for the implementation of the General Plan Urban Village strategy.

The project is also consistent with the following General Plan Major Strategies and Policies as identified and analyzed below.

#### *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.

*Analysis: The project is located within the Saratoga Avenue Urban Village, which is a growth area as identified in the Envision San José 2040 General Plan. The project is consistent with this Major Strategy as it fully utilizes an underdeveloped portion of an existing multifamily development for a denser mixed used development. The project would capitalize on the site’s existing multifamily use without displacing any existing residential units. The mixture of residential, commercial, and publicly-accessible open space would accommodate a growing population while providing access to neighborhood amenities.*

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 Signature Project is a mixed-use project with the density and commercial uses oriented on the corner of Saratoga Avenue and Blackford Avenue. The project includes public plazas which are designed to attract the public to utilize the commercial ground floor spaces and activate the public sphere through the inclusion of outdoor seating, lighting, and landscaping. The proposed mix of uses would encourage residents inside and outside of the development to patronize the proposed commercial uses.*

3. Major Strategy #6 - Streetscapes for People: Design streets for people, not just cars, and to support a diverse range of urban activities and functions. Develop important roadways as Grand Boulevards to connect multiple neighborhoods and act as urban design elements at a citywide scale. Promote the ongoing development of main streets to foster community identity and walkability, recognizing that they serve as important destinations for retail and other activities within neighborhood areas.

*Analysis: The project has building frontage along Saratoga Avenue (a General Plan designated Grand Boulevard), and two neighborhood streets, Manzanita Drive and Blackford Avenue. The project incorporates a 7-foot setback from the sidewalk easement along Saratoga Avenue allowing the Avalon building to interact with the street and pedestrian activity to spill out onto the public realm. The corner of Blackford Avenue and Saratoga Avenue includes the Saratoga public plaza, which would serve as a focal point at the intersection and foster community identity and walkability. The Avalon building includes multiple public entrances off the public streets and landscaping to facilitate a multitude of non-vehicular modes of travel such as walking, bicycle, and public transit.*

4. 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: A combination of multifamily and single-family developments surround the project site. The project would retain all 873 existing residential units on-site to minimize displacement of existing residents. This project would provide 302 new residential units, consisting of 26 studios, 141 one-bedroom units and 135 two-bedroom units. The project would add to the existing diversity of housing on the site and in the area. The development would enhance the existing site through added on-site amenities including the two public plazas, a residential dog park, and two new amenity spaces within the proposed Manzanita and Avalon buildings.*

5. 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.
6. 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 RM Multiple Residence Zoning District. To develop the site as a Signature Project, the project requires a Planned Development Zoning District. Development Standards have been prepared for the project that will guide development on the site.*

7. 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.
8. Implementation Policy IP-2.11: Provide a "Pool" of residential unit capacity which may be allocated to allow entitlement of residential projects within Urban Village Areas not included within the current Plan Horizon. The pool is initially established as 5,000 units, and may be replenished as part of a General Plan Major Review. The 5,000-unit Pool is not additional capacity to the General Plan's planned housing yield, but instead is drawn from the respective Urban Village's planned housing yield when utilized. Projects receiving allocation must conform to the Land Use/Transportation Diagram and advance the goals and policies of the respective Urban Village Plan. Preparation of an Urban Village plan for the subject Urban Village is necessary prior

to allocation of these units unless the project qualifies as a Signature Project in a future Horizon Urban Village.

*Analysis: The project is within the Saratoga Avenue Urban Village growth area; a Horizon 3 Urban Village. The Envision San José 2040 General Plan allocates this urban village growth area a dwelling unit capacity of 1,115 dwelling units. To date, 89 dwelling units have been entitled. The project would utilize 307 units of the remaining 1,026 dwelling unit capacity. As described in further detail below, the project would be a Signature Project which would utilize the provided "Pool" of residential units capacity allocated to allow residential projects for Urban Village Areas not included within the current plan horizon. The residential "Pool" has 4,505 residential units remaining in capacity, enough to support the project.*

9. 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.

*Analysis: The project would maximize the use of existing infrastructure on-site since it is intensifying an existing developed site within a growth area. In addition to the added residential density, the project would add a mixed use component to the residential site with 17,800 square feet of commercial ground floor space. The proposed public plazas surround the commercial space to foster a vibrant and walkable urban setting. The new commercial space would add additional retail options to the Saratoga Avenue and Blackford Avenue intersection which has the active Mitsuwa Marketplace shopping center across the street.*

10. 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 existing 19.46 gross acre site is developed with 873 multifamily residential units and has an existing density of 44.86 dwelling units per acre. The project capitalizes on the underutilized portions of the site to provide additional housing and commercial square footage. The project would bring the site's overall density to 60.64 dwelling units per acre to be consistent with the General Plan's goals of targeting density in identified growth areas.*

11. Attractive City Policy, CD-1.9: Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to



the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity.

*Analysis: The project would provide 300 bicycle parking spaces to accommodate bicycle use for the residents, employees, and visitors throughout the three new buildings (Avalon Building, Manzanita Building, and new garage). The Avalon building would front the property lines with residential and commercial entrances along Blackford Avenue and Saratoga Avenue. The parking garage and surface parking lot would direct commercial tenant customers into the public plaza and sidewalk spaces. The Manzanita building would locate the active ground floor uses, such as the club room, fitness room, and courtyard, along Manzanita Drive. The new parking structure would be located at the center of the site, away from the street frontages. The project would consolidate the four existing driveways serving the garage on Manzanita Drive into one driveway serving the new garage; this would enhance pedestrian safety as reducing the number of driveways will reduce circulation conflicts between vehicles and pedestrians.*

12. Function Policy, CD-2.4: Incorporate public spaces (squares, plazas, etc.) into private developments to encourage social interaction, particularly where such spaces promote symbiotic relationships between businesses, residents, and visitors.

*Analysis: The Saratoga Plaza, located at the corner of Saratoga Avenue and Blackford Avenue at the Avalon Building, would be used for gathering and outdoor seating. The space would include landscaping and an art installation on the corner. The Palm Plaza, located along Saratoga Avenue and the Avalon Building, could also be used for gathering and outdoor seating. The site would include raised planter seating and stringed lighting to create a sense of place. The Palm Plaza has been designed to function as an extension of the residential amenity space stretching from the stairs along the courtyard plaza to the public sidewalk. Both plazas would be designed with a variety of seating options to encourage visitors to the commercial tenant spaces.*

13. Urban Village Planning, IP-5.10: A residential, mixed-use Signature Project may proceed within Urban Village areas in advance of the preparation of an Urban Village Plan if it fully meets the following requirements:

- a. Conforms to the Land Use / Transportation Diagram. Within the Urban Village areas, Signature Projects are appropriate on sites with an Urban Village, residential, or commercial Land Use / Transportation Diagram land use designation.
- b. Incorporates job growth capacity above the average density of jobs/acre planned for the developable portions of the entire Village Planning area and, for portions of a Signature project that include housing, those portions incorporate housing density at or above the average density of dwelling units per acre planned for the entire Village Planning area.

- c. Is located at a visible, prominent location within the Village so that it can be an example for, but not impose obstacles to, subsequent other development within the Village area.

Additionally, a proposed Signature project will be reviewed for substantial conformance with the following objectives:

- d. Includes public parklands and/or privately maintained, publicly-accessible plazas or open space areas.
- e. Achieve the pedestrian friendly design guideline objective identified within this General Plan.
- f. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.
- g. Demonstrates high-quality architectural, landscape and site design features.
- h. Is consistent with the recommendations of the City's Architectural Review Committee or equivalent recommending body if the project is subject to review by such body.

*Analysis: The project satisfies the criteria for a Signature Project as specified in the General Plan. The project is located within the boundaries of the Saratoga Avenue Urban Village, on a site with a Mixed Use Neighborhood land use designation. The project is required to provide a minimum of 17,800 square feet of commercial uses to meet the employment square footage requirements of the Signature Project. The Planned Development Zoning would require a minimum of 17,800 square feet of commercial uses which the project would provide on the ground floor of the Avalon Building. Therefore, the project satisfies point 2 of the Signature Project General Plan policy.*

*Pursuant to General Plan Appendix 5, the Saratoga Avenue Urban Village boundary is 159 gross acres with a planned housing growth of 1,115 residential units equaling an average residential density of 7 dwelling units per acre required for projects. The project is proposing a density of 60.6 dwelling units per acre (based on 1,180 dwelling units and 19.46 acres) which satisfies the housing density required by this General Plan policy. As part of the Conditions of approval for this Planned Development Permit, the commercial/office component must be constructed before or concurrently with the residential component. This is a requirement and the developer would not be able to occupy the residential portion of the project before the completion of the commercial component.*

*The project site is also considered a visible, prominent location as it is located along a General Plan Grand Boulevard (i.e. Saratoga Avenue) and is of a substantial size of approximately 20 acres. Development of the site would not constrain future development of adjacent parcels, as development of the site*

*would not create small remnant parcels. Rather, the project is being proposed as an infill project to an existing multifamily development.*

*The project is also providing approximately 12,060 square feet of publicly-accessible, privately-maintained open recreational area that can be accessed by future residents, surrounding residents, and businesses. This publicly-accessible, privately-maintained space would be privately owned and maintained. The project achieves the pedestrian-friendly design guidelines and demonstrates high-quality architecture, landscaping, and site design features, as described below.*

*The City of San José has held two publicly-noticed community meetings for the project. The first community meeting was on April 26, 2018, and it discussed the Planned Development Zoning and Planned Development Permit on file and the Notice of Preparation for the Environmental Impact Report. The second community meeting was held on February 6, 2019, and discussed the Planned Development Rezoning, Planned Development Permit, and Tentative Map. Approximately 55 community members attended the first community meeting and approximately 30 community members attended the second community meeting. Both community meetings were publicly noticed at a radius of 1,000 feet. The applicant has also held several outreach meetings with existing tenants and the surrounding neighborhood to discuss the project.*

*The project demonstrates high-quality architecture, landscaping, and site design features. The three buildings are unique but contain elements that qualify for a project with high-quality architectural value, including but not limited to: substantial changes in building plane, strategic use of material, variation in roof line, high-quality materials, appropriate form and massing, and high-quality ground-floor commercial spaces with depths of at least 45-feet and interior heights of approximately 18 feet. Placing the mixed use building “Avalon Building” at the corner of Blackford and Saratoga Avenue (which is considered a Grand Boulevard) is appropriate as commercial uses and higher-intensity residential uses help activate, engage, and add interest to Saratoga Avenue. Placing Residential Building, “Manzanita Building” along Manzanita Drive and the parking garage is appropriate as the mass and scale of these buildings are reduced and have a better transition to the lower intensity existing residential uses on Manzanita Drive. The landscape design incorporates a number of elements that would help activate the privately-maintained, publicly-accessible space and provides for a number of different activities that can be conducted in this open space area.*

*Lastly, the project has incorporated design changes as recommended through the Urban Design Review process. The project emphasized the corner element of the Saratoga Building and introduced canopies and articulated the corner. The project simplified the façade material palette to create a unified design that*

*incorporates materials that blend well together. The project has also incorporated ground-floor commercial depths of at least 45 feet. The new garage has incorporated additional screening mechanisms along its eastern and western façades, consistent with the direction provided in the Urban Design Review process.*

- 3. Zoning and Planned Development Zoning Conformance.** The project site is in the RM Multiple Residence Zoning District. The R-M Multiple Residence Zoning District will serve as an adequate base zoning district. As part of the “Signature Project”, the site is proposed to be rezoned from the R-M Multiple Residence General Zoning District to a R-M(PD) Multiple Residence Planned Development Zoning District.

General Plan Implementation Policy IP-8.5 allows the Planned Development Rezoning process to be utilized if the Planned Development Rezoning process would better conform to the General Plan goals and policies than a conventional zoning district. The subject site’s rezoning to a R-M(PD) Multiple Residence Planned Development Zoning District complies best with the “Signature Project” policy and the surrounding area.

The R-M(PD) Multiple Residence Planned Development Zoning District has three Subareas (Subarea A, Subarea B, and Subarea C). As a whole, the Planned Development Rezoning would allow up to 1,180 residential units (including the existing residential units) and a minimum of 17,800 square feet of commercial floor area. The project would be required to provide an average of 150 square feet per unit of private and common residential open space. The project would provide an average of 160.5 square feet of private and common residential open space, separate from the provide privately-maintained, publicly accessible space.

Subarea A, at the corner of Blackford Avenue and Saratoga Avenue allows a residential mixed-use development. Commercial uses would be required to conform to the uses identified in the Planned Development Zoning and the development can construct up to 252 residential units. The Planned Development Permit would construct 247 residential units and 17,800 square feet of commercial square feet.

Subarea B would be located along the proposed development footprint of the Manzanita residential building and new garage. Subarea B would allow up to 55 residential units and permitted uses of the R-M Multiple Residence Zoning District. Subarea C would encompass the remainder of the site and would allow the permitted uses of the R-M Zoning District. The Planned Development Permit would construct a 55-unit residential building and a 742-parking space garage

Subarea A would have a height limitation of 92 feet. Subarea B and C would have a height limitation of 45 feet. All subareas would allow height exceptions of up to 17 feet permitted for roof top appurtenances, such as roof structures, housing stairways, elevators, mechanical equipment, screening, and ventilation.

Within all subareas, all permitted, conditional, and special uses shall require the approval of a Planned Development Permit. The Planned Development Zoning District would require a minimum 7-foot setback along the sidewalk easement from Saratoga Avenue, a minimum 14-foot setback along the sidewalk easement from Blackford Avenue, and a minimum 10-foot setback along the sidewalk easement from Manzanita Avenue. These setbacks would ensure compatibility with the surrounding neighborhood context.

Additionally, the project is required to provide a minimum of 12,000 square feet of publicly accessible, open plaza areas, separate from the required residential open space requirements. The privately-owned, publicly-accessible open space at Saratoga Avenue and Blackford Avenue is required to remain open to the public and would not be permitted to decrease in size. The Planned Development Permit development would meet the setback and height requirements and includes two public plazas totaling 12,060 square feet.

Vehicle, motorcycle, and bicycle parking would be required pursuant to the parking standards and requirements of the San José Municipal Code. The project is required to provide 1.25 parking spaces per studio and one-bedroom units, 1.7 parking spaces per two-bedroom unit, and 1 parking space per 400 square feet of commercial floor area, for a total of 1,651 parking spaces. Floor area is defined as 85% of the total gross floor area of a building. Subarea A would allow up to 20% of the required residential parking within the Subarea to be allocated as “flex spaces” during the on-site commercial uses’ hours of operation. “Flex spaces” are shared vehicle parking spaces available as parking for commercial patrons during business hours and available for residential use during all non-business hours.

Pursuant to Section 20.90.220 of the San José Municipal Code, a parking reduction of up to 20% may be authorized for a development which provides all the required bicycle parking and is located in an Urban Village area. The project has a 7.5% parking reduction which would require only 1,527 parking spaces. The project, located in the Saratoga Avenue Urban Village would provide the required 300 bicycle spaces.

Pursuant to Section 20.100.450 of the San José Municipal Code, the Planned Development Permit proposes extended construction hours to allow weekend construction on Saturdays from 9 a.m. to 5 p.m., twice a month and up to 10 days of 24-hour construction to allow concrete pours. The construction hours allow a more efficient construction schedule and would reduce the overall construction timeline.

- 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. This project is pedestrian scaled by placing the building within close proximity of the sidewalk, providing canopies on the Avalon Building, and ground floor entrances for all building. Both residential buildings utilize

a variety of colors and materials that complement their location in the multifamily development and site context.

The mixed-use Avalon Building, along the prominent corner of Saratoga Avenue and Blackford Avenue, contains 17,800 square feet of ground floor commercial space. The commercial space on the ground floor has a minimum 18-foot height. The Blackford Avenue and Saratoga Avenue frontages are lined within transparent storefront windows and canopies which distinguish the building's entrances and provide a shade structure. The use of dark porcelain tile establishes a strong base on the ground floor of the Avalon Building. The middle of the building is defined by lighter colors and materials and a pattern of recessed residential balconies. The building has a varying roofline with the use of a roof deck trellis, changes in height among the different volumes of the building, and the use of a corner element piece.

The Manzanita Building is located along Manzanita Drive and interfaces with existing one-story residential uses. The building is 45 feet in height. The building incorporates common design characteristics of the surrounding neighborhood including the use of siding panels and pitched rooftop. The proposed residential courtyards and residential balconies provide articulation along Manzanita Drive. Additionally, the Manzanita Building is lined with trees which continues the tree lined design and intensity of the existing multifamily development's frontage along Manzanita Drive.

The new garage's eastern and western elevations are shielded with a combination of green walls and printed mesh screens panels. The parking garage would be surrounded by bio-treatment planted areas and several trees, which will provide additional screening of the parking garage.

7. **Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (DEIR), which was circulated for public review and comment from December 21, 2018 to February 11, 2019. A First Amendment to the DEIR was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project.

The DEIR found that the project would not result in any significant unavoidable impacts. Therefore, a Statement of Overriding Considerations is not required. The DEIR identified impacts resulting from the project to air quality from construction activities, biological resources and hazardous materials. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program prepared for the project, these impacts are reduced to less than significant levels.

The DEIR was circulated for a 52-day period from December 21, 2018 to February 11, 2019. The City received six written comment letters during the public comment

period. Comments were submitted by one individual and five agencies and organizations, as shown below:

- Igor Yevelev – Community Member
- Native American Heritage Commission
- Santa Clara Valley Water District
- The County of Santa Clara Roads and Airports Department
- Santa Clara Valley Transportation Authority,
- Lozeau Drury LLP (representing Laborers International Union of North America, Local Union No. 270)

Issues raised in these comment letters include the following:

- Minor correction to the timeframe of when a Most Likely Descendant should make a recommendation
- Traffic intersection to be studied
- ADA design
- Existing neighborhood disagreements, cleanliness, and unresponsiveness
- Biological resources and sensitive habitat
- Indoor air quality related to building materials

The City responded to all comments received on the DEIR and incorporated them into the First Amendment to the DEIR. The First Amendment, taken together with the Draft SEIR, constitutes the Final EIR. The DEIR and First Amendment to the DEIR are available for review on the project page on the City's Active EIRs website at: <http://sanjoseca.gov/index.aspx?NID=6069>.

In accordance with CEQA Guidelines Section 15088, the First Amendment to the DEIR for the project includes written responses to all comments received during the public review period for the DEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the DEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the DEIR and, in some cases, correct or update information in the DEIR. No significant new information has been added to the EIR since publication of the DEIR.

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## FINDINGS

The City Council concludes and finds, based on the analysis of the above facts, that:

1. **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:
  - a. 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.*
  - b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property;  
*Analysis: Analysis: The Planned Development Permit conforms in all respects to the proposed R-M(PD) Planned Development Zoning of the property, including uses, open space, setbacks, height, public plazas, and parking.*
  - c. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency;
  - d. *Analysis: The project is consistent with the City Council Policy on Public Outreach.* 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 Avalon Building, with the concentration of residential units and commercial square footage, is located on the prominent corner of Saratoga Avenue and Blackford Avenue. The Manzanita Building, which is more residential in character, is located along Manzanita Drive. Its architecture, materials, and roof elements reflect the character of the surrounding street. The proposed new garage is located within the development site to shield the parking use from the public right of way. Additional screening elements are used including landscaping, green screens, and printed mesh.*
  - e. 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:** In addition to the Environmental Impact Report 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 residential and commercial uses are not anticipated to create odor or unusual noise as the majority of the development's activity occurs indoors. Noise and ground vibration related to construction and demolition are temporary and mitigation measures would 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. The extended hours of construction would allow the development to efficiently construct the development's concrete parking decks which require large amounts of time for drying. The extended construction hours should reduce the overall construction timeframe. Therefore, the project is not anticipated to have an unacceptable negative effect on the adjacent property or properties.*

2. **Demolition Findings:** Pursuant to Section 20.80.460 of the San José Municipal Code, the following criteria have been considered to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:
  - a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
  - b. The failure to approve the permit would jeopardize public health, safety or welfare;
  - c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
  - d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
  - e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
  - f. Rehabilitation or reuse of the existing building would not be feasible; and
  - g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

***Analysis:** The demolition of the existing buildings will not result in the creation or continued existence of a nuisance, blight, dangerous condition or public health and safety issue; the demolition will help implement the General Plan by*

*furthering Major Strategies # 3 and #5 along with a number of other General Plan policies, as described above. The demolition of the existing buildings would facilitate the construction of a mixed-use project with 302 new residential units in addition to the existing 873 residential units, and 17,800 square feet of commercial office space. Re-use or rehabilitation of the two existing parking garages, associated surface parking lots and the leasing/amenity building would not be practical given the orientation, age, and design of the existing parking structures. No residential units would be removed as part of the demolition and the project would result in an increase of 302 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 existing uses in the area and the goals for growth areas. The structures proposed for demolition were constructed in 1969. Research of the buildings on the site found that none of the structures are listed on national or state registers of historic places or on the San José Historic Resources inventory, and do not represent any distinctive or important architectural style.*

3. **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 133 ordinance-sized trees and 101 non-ordinance size trees. The trees proposed to be removed are located either within the proposed buildings footprints or within the proposed buildings' construction zones. Preservation of the trees would create a building footprint that would not be conducive to the growth envisioned for the Signature Project. The project will be preserving the majority of the existing mature tree canopy on the remainder of the site.*

*A total of 734, 15-gallon replacement trees would be required. The size of a replacement 15-gallon tree could be increased to a 24-inch box tree and count as two replacement trees.*

*Pursuant to the project landscaping plan, a total of 169 twenty-four-inch box trees will be replanted on-site along the perimeters of the new buildings. Per the City's The remaining 396 mitigation trees will be replaced off-site in accordance with the City's off-site replacement policy.*

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. **Required Phasing.** A Final Certificate of Occupancy cannot be issued for the "Manzanita" residential only building until such a time as Building Permits have been issued for the "Avalon" Mixed Use Building.
4. **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.

5. **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.
6. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "AvalonBay West Valley," dated revised on April 3, 2019 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."
7. **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.
8. **Scope and Use Authorization of the Planned Development Permit.** This Planned Development Permit allows the demolition of existing parking garages, sports courts, pool, and amenity building, removal of up to 133 ordinance-size trees, and the construction of a mixed-used development including 302 residential units and 17,800 square feet of retail/commercial space on an approximately 20.08-gross acre site.
9. **Extended Construction Hours.** Weekend construction hours, including staging of vehicles, equipment, and construction materials, shall be limited to Saturdays between

the hours of 9 a.m. to 5 p.m. up to twice a month and 24-hour construction operations up to 10 days to accommodate concrete pours. Permittee shall be responsible for educating all contractors and subcontractors of said construction restrictions. The Director of Planning, at their discretion, may rescind provisions to allow extended hours of construction activities on weekends upon written notice to the Permittee.

10. **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.
11. **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.
12. **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.
13. **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.
14. **Window Glazing.** Unless otherwise indicated on the approved plan, all ground floor windows shall consist of a transparent glass.
15. **Lighting Plan.** A lighting plan shall be submitted for lighting features to illuminate all structures and public and private open spaces. Lighting features shall conform to all City and FAA requirements and policies. Photometric measurements shall be provided with the lighting plan.
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, PD17-027, 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 Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

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

**31. Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be

preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

32. **Tree Replacement.** The removed trees would be replaced according to tree replacement ratios required by the City, as provided in below, as amended.

<b>Table: Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
<p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than or equal to 38-inch 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 permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p> <p>Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.</p>				

- i. Since 133 ordinance size tree and 101 non-ordinance size trees would be removed, a total of **734** 15-gallon replacement trees required to be planted.
- 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, at the development permit stage:



- iii. 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.
- iv. 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.

**33. Final Map or Lot Line Adjustment Required.** Prior to the issuance of a Building Permit, the permittee shall secure approval and provide recordation of the final map or a Lot Line Adjustment to consolidate the existing lots.

**34. 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.

**35. 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.

**36. 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.

**37. 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.

**38. 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.

**39. 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.

40. **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.
41. **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.
42. **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
43. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
44. **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 Impact Analysis has been performed for this project based on 113 AM and 155 PM peak hour trips. Based on the analysis, the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be

made with respect to traffic impacts. See separate Revised Traffic Impact Analysis memo dated 04/09/2019 for additional information.

- ii. Permittee agrees to provide a voluntary contribution in the amount of \$300,000 toward design and construction of a new traffic signal at Manzanita Drive/Saratoga Avenue and/or transportation improvements within the area.
- c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San Jose 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.
- d. **Grand Boulevard:** This project fronts Saratoga Avenue, which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot 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 engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - v. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.

- 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 must be submitted prior to issuance of a Public Works Clearance.
- g. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and will create and/or replace one acre or more of impervious surface. The project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- h. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- j. **Parks:** 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 Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- k. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Saratoga Avenue prior to issuance of a Public Works Clearance. 100 percent (100%) 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. Realign curb line along the Manzanita Drive frontage to provide 36 feet curb-to-curb width.

- ii. Construct 12-foot-wide attached sidewalk with tree wells along Manzanita Drive project frontage.
  - iii. Construct 15-foot wide attached sidewalk with tree wells along the Saratoga Avenue and Blackford Avenue project frontages. Provide approximately 5-foot wide street dedication along Saratoga Avenue and Blackford Avenue.
  - iv. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - v. Close unused driveway cut(s).
  - vi. Proposed driveway widths to be 26 feet on the Saratoga Avenue, Manzanita Drive, and Blackford Avenue frontages.
  - vii. Reconstruct half street along Manzanita Drive frontage including curb, gutter, sidewalk, and pavement sections. Additional repair, overlay, or reconstruction of asphalt pavement may be required along Saratoga and Blackford.
  - viii. Permittee 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 frontages.
  - ix. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - m. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - n. **Street Trees:** The locations of the street trees shall 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 tree wells at back of curb along Manzanita Drive, Saratoga Avenue, and Blackford Avenue. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
45. The project shall install a 3.5-foot high parapet walls, as measured above the base elevation of the Avalon Building rooftop use area to maintain an acceptable outdoor noise exposure of 60 dBA DNL. The parapet walls would need to be located along the perimeter of the roof deck on proposed on the seventh floor of the Avalon Building. The parapet wall shall be constructed with a solid material with no gaps in the face of the wall or at the base. Suitable materials for sound wall construction shall have a minimum surface weight of three pounds per square foot (such as a one-inch-thick wood, ½-inch laminated glass, masonry block, concrete, or metal one-inch).

46. Prior to the issuance of any building permits, the permittee shall consult with the local building officials and a qualified acoustic consultant to determine a suitable form of forced-air mechanical ventilation for all Avalon Building residences so that the windows can be kept closed to control noise.
47. Within the Avalon Building, the project shall include and install sound-rated windows with minimum STC ratings of 28 in all residential rooms facing Saratoga Avenue to maintain interior noise levels at acceptable levels of 45 dBA DNL or less. Changes to the sound-rated windows rating shall require an acoustic report prepared by a qualified acoustic consultant to determine whether the changes would continue to provide interior noise level exposure of 45 dBA DNL or less.
48. The project shall pay school impact fees pursuant to Government Code Section 65996.
49. The project shall pay the applicable Parkland Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees. The project's PDO/PIO fees would be used for neighborhood serving elements (such as playgrounds/tot-lots and basketball courts) within 0.75 mile of the project site, and/or community serving elements (such as soccer fields and community gardens) within a three-mile radius of the project site, consistent with General Plan Policies PR-2.4 and PR-2.5.
50. **No Drive Piling Allowed.** All construction contract or relevant document (e.g., equipment rental) shall include language indicating that no pile driving will be permitted without further vibration assessment.
51. **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.           .

**52. Standard Environmental Permit Conditions**

**a. AIR QUALITY.**

- 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.
- vi. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- 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. **Tree Replacement.** 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, at the development permit stage:
  - 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.
  - 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.
- ii. **Habitat Conservation Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit a SCVHP Coverage Screening Form or Nitrogen Deposition Only Application Form (if no land cover fees apply) to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement for review and shall complete subsequent forms, reports, and/or studies as needed.

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**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. If the finds do not meet the definition of a historical or archaeological resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it should be avoided by project activities. Project personnel should not collect or move any cultural material. Fill soils that may be used for construction purposes should not contain archaeological materials.
- ii. If avoidance is not feasible, adverse effects to such resources should be mitigated in accordance with the recommendations of the archaeologist. 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.
- iii. 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.
- iv. 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.
- v. 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 of being granted 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.
- vi. The permittee shall ensure all construction personnel receive paleontological awareness training that includes information on the possibility of encountering fossils during construction, the types of fossils likely to be seen, based on past finds in the project area and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.
- vii. If vertebrae fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for ensuring that the recommendations of the paleontological monitor regarding treatment and reporting are implemented.

**d. GEOLOGY AND SOIL.**

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites will be weatherized.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas

**e. ASBESTOS AND LEAD**

- 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 ACMs 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.
- vi. Radon Testing: Prior to the issuance of any grading permits, the permittee shall test for radon. Radon testing and mitigation must be performed by a state certified contractor. If radon concentrations exceed the EPA Action Levels of 4.0 picocuries per liter (pCi/L), the state certified contractor shall recommend and implement measures such as installation of vents and/or a ventilation system such as fans, or equivalent, to reduce the radon concentrations to below the EPA Action levels. The results of the test and recommendations for additional installation of the any new equipment (if needed) shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review prior to the issuance of any grading permits.

**f. CONSTRUCTION WATER QUALITY MANAGEMENT STRATEGIES.**

- 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.

**g. NOISE.**

- i. Prior to issuance of building permits, the permittee shall retain a qualified acoustical consultant to review the mechanical noise equipment selected and to determine specific noise reduction measures necessary to comply with the noise limit of 55 dBA or less at residential property lines. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers such as enclosures and parapet walls to block the line of sight between the noise source and nearest receptors.
- ii. Construction noise reduction strategy:
  - 1) Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval.
  - 2) Construct solid plywood fences around ground-level construction sites adjacent to operational businesses, hotels, and other noise-sensitive land uses.
  - 3) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - 4) All unnecessary idling of internal combustion engines is prohibited. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes.
  - 5) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers should reduce construction noise levels by five dBA.
  - 6) Utilize "quiet" air compressors and other stationary noise sources where technology exists.
  - 7) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- 8) Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- 9) A temporary noise control blanket barrier shall be erected, if necessary, along building facades facing construction sites. This condition shall only be necessary if conflicts occur which are irresolvable by proper scheduling. Noise control blanket barriers shall be rented and quickly erected.
- 10) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

**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.

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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. PD17-027) 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.*

ALL OF LOT 9, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE CROSSMAN SUBDIVISION, "WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JULY 17, 1903 IN BOOK F-3 OF MAPS, AT PAGE 17.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING WITHIN THAT CERTAIN 7.765 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM BOTILDA J. HANSON AND IRENE L. HANSON TO MORELAND SCHOOL DISTRICT OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, DATED OCTOBER 13, 1960, RECORDED OCTOBER 14, 1960 IN BOOK 4950 OFFICIAL RECORDS, PAGE 91, SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT AN IRON PIPE SET IN THE NORTHERLY LINE OF LOT 6 OF THE CROSSMAN SUBDIVISION, FORMERLY THE VALENTINE TRACT, THE MAP FOR WHICH IS FILED IN BOOK F-3 OF MAPS AT PAGE 17, SANTA CLARA COUNTY RECORDS, SAID IRON PIPE ALSO BEING IN THE SOUTHERLY LINE OF TRACT NO. 176, ENTITLED "FIRST NATIONAL BANK OF SAN JOSE- SUBDIVISION "B", THE MAP FOR WHICH IS FILED IN BOOK 5 OF MAPS, AT PAGES 42 AND 43, SANTA CLARA COUNTY RECORDS, SAID IRON PIPE BEING SOUTH 89 DEGREES 20' 12" WEST 421.01 FEET ALONG THE NORTHERLY LINE OF SAID LOT NO. 6 AND THE SOUTHERLY LINE OF SAID TRACT NO. 176 FROM THE NORTHEAST CORNER OF SAID LOT NO. 6 OF THE CROSSMAN SUBDIVISION; THENCE LEAVING SAID NORTHERLY AND SOUTHERLY LINES AND RUNNING PARALLEL AND DISTANT 421.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES TO THE EASTERLY LINE OF LOT NO. 6 OF SAID CROSSMAN SUBDIVISION SOUTH 0 DEGREES 18' 40" EAST 411.73 FEET TO A POINT IN THE NORTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESIGNATED AS PARCEL 2, CONVEYED BY ANNIE J. VAN ARSDELL TO MARTIN MORGIN AND MARIE MORGIN, HIS WIFE, BY DEED RECORDED IN BOOK 2073 AT PAGE 550, SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF SAID MORGIN NORTH 89 DEGREES 46' 20" WEST 74.61 FEET TO A 4 X 4 POST AT THE COMMON CORNER FOR LOTS 8 AND 9 IN THE WESTERLY LINE OF LOT NO. 6 OF SAID CROSSMAN SUBDIVISION AND THE NORTHWEST CORNER OF SAID PARCEL CONVEYED TO MORGIN; THENCE ALONG THE LINE DIVIDING LOTS 8 AND 9 IN SAID CROSSMAN SUBDIVISION SOUTH 88 DEGREES 24' 40" WEST 738.48 FEET; THENCE LEAVING SAID DIVIDING LINE AND RUNNING PARALLEL WITH THE EASTERLY LINE OF LOT NO. 6 IN SAID CROSSMAN SUBDIVISION NORTH 0 DEGREES 18' 40" WEST 422.50 FEET TO AN 1" IRON PIPE SET IN THE NORTHERLY LINE OF LOT NO. 9 IN SAID SUBDIVISION; SAID IRON PIPE ALSO BEING IN THE SOUTHERLY LINE OF TRACT NO. 176 ABOVE REFERRED TO; THENCE ALONG THE NORTHERLY LINE OF LOTS 9 AND 6 IN SAID CROSSMAN SUBDIVISION AND THE SOUTHERLY LINE OF SAID TRACT NO. 176, NORTH 89 DEGREES 20' 12" EAST 812.92 FEET TO THE IRON PIPE AT THE POINT OF BEGINNING AND BEING A PORTION OF LOTS 6 AND 9 OF THE CROSSMAN SUBDIVISION ABOVE REFERRED TO IN THE QUITO RANCHO.

AND, EXCEPTING THEREFROM THE FOLLOWING AREA 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM MORELAND SCHOOL DISTRICT OF SANTA CLARA COUNTY TO SAN JOSE COUNTRY CLUB APARTMENTS RECORDED DECEMBER 6, 2000 IN DOCUMENT NO. 15486398, OFFICIAL RECORDS, SAID CORNER BEING ON THE EASTERLY LINE OF THAT CERTAIN PARCEL DESCRIBED IN THE DEED FROM WILSHIRE WEST DEVELOPMENT COMPANY TO SAN JOSE COUNTRY CLUB APARTMENTS RECORDED JUNE 17, 1969 IN BOOK 8570, PAGE 667, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

THENCE ALONG THE COMMON BOUNDARY LINE BETWEEN SAID PARCEL RECORDED IN DOCUMENT NO. 15486398 AND SAID PARCEL RECORDED IN BOOK 8570, PAGE 667, SOUTH 0° 19' 10" EAST, 392.50 FEET;

THENCE LEAVING SAID COMMON LINE ALONG THE SOUTHERLY LINE OF SAID PARCEL RECORDED IN BOOK 8570 AT PAGE 667, SOUTH 88° 24' 10" WEST, 9.39 FEET;

THENCE ALONG A LINE PARALLEL WITH AND DISTANT 9.39 FEET WESTERLY FROM SAID COMMON BOUNDARY LINE NORTH 0° 19' 10" WEST, 392.65 FEET;

DISTANCE OF 304 FEET MORE OR LESS, TO THE POINT OF BEGINNING AND BEING A PORTION OF LOT 8 AS SAID LOT IS SHOWN UPON THE MAP HEREINABOVE REFERRED TO.

AND ALSO EXCEPTING THEREFROM THE FOLLOWING AREA 2:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM MORELAND SCHOOL DISTRICT OF SANTA CLARA COUNTY TO SAN JOSE COUNTRY CLUB APARTMENTS RECORDED DECEMBER 6, 2000 IN DOCUMENT NO. 15486398, OFFICIAL RECORDS, SAID CORNER BEING ON THE EASTERLY LINE OF THAT CERTAIN PARCEL DESCRIBED IN THE DEED FROM WILSHIRE WEST DEVELOPMENT COMPANY TO SAN JOSE COUNTRY CLUB APARTMENTS RECORDED JUNE 17, 1969 IN BOOK 8570 AT PAGE 665, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID PARCEL RECORDED IN DOCUMENT NO. 15486398, OFFICIAL RECORDS SOUTH 88° 24' 10" WEST, 9.39 FEET;

THENCE ALONG A LINE PARALLEL WITH AND DISTANT 9.39 FEET WESTERLY FROM THE COMMON BOUNDARY LINE BETWEEN SAID PARCEL RECORDED IN DOCUMENT NO. 15486398 AND SAID PARCEL RECORDED IN BOOK 8570 AT PAGE 665, NORTH 0° 19' 10" WEST, 203.82 FEET TO THE NORTHERLY LINE OF LAST SAID PARCEL;

THENCE ALONG SAID NORTHERLY LINE NORTH 88° 24' 10" EAST, 9.39 FEET;

THENCE ALONG LAST SAID COMMON BOUNDARY LINE SOUTH 0° 19' 10" EAST, 203.82 FEET TO THE POINT OF BEGINNING OF AREA 2.

PARCEL FOUR:

PARCEL C AS SHOWN IN THAT CERTAIN LOT LINE ADJUSTMENT PERMIT RECORDED JANUARY 28, 2002 AS INSTRUMENT NO. 16076204, OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN PARCEL DESCRIBED IN THE DEED RECORDED OCTOBER 11, 1960 IN BOOK 4946 AT PAGE 392 AND A PORTION OF THAT CERTAIN PARCEL DESCRIBED IN THE DEED RECORDED OCTOBER 14, 1960 IN BOOK 4950 AT PAGE 91, OFFICIAL RECORDS OF SANTA CLARA COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID PARCEL DESCRIBED IN THE DEED RECORDED IN BOOK 4946 AT PAGE 392, OFFICIAL RECORDS;

THENCE ALONG THE SOUTHERLY LINE THEREOF NORTH 88 DEGREES 24' 40" EAST 120.03 FEET;

THENCE ALONG A LINE PARALLEL WITH AND DISTANT 120.00 FEET EASTERLY FROM THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN SAID DEED RECORDED IN BOOK 4946 AT PAGE 392 AND ALONG THE NORTHERLY PROLONGATION THEREOF NORTH 0 DEGREES 18' 40" WEST 594.38 FEET TO THE SOUTHERLY LINE OF THAT 30 FEET WIDE PARCEL CONVEYED TO R & B DEVELOPMENT COMPANY, A PARTNERSHIP, IN THE DEED RECORDED SEPTEMBER 11, 1970 IN BOOK 9049, PAGE 541, OFFICIAL RECORDS, SANTA CLARA COUNTY;

THENCE ALONG SAID SOUTHERLY LINE SOUTH 89 DEGREES 20' 12" WEST 120.00 FEET;

THENCE ALONG THE WESTERLY LINE OF THE AFOREMENTIONED PARCEL DESCRIBED IN THE DEED RECORDED IN BOOK 4950 AT PAGE 91 AND CONTINUING ALONG THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN THE DEED RECORDED IN BOOK 4946 AT PAGE 392, OFFICIAL RECORDS, SOUTH 0 DEGREES 18' 40" EAST 596.32 FEET TO THE POINT OF BEGINNING.

FIRST NATIONAL BANK OF SAN JOSE SUBDIVISION "B" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MARCH 3, 1941 IN BOOK 5 OF MAPS, AT PAGES 42 AND 43.

PARCEL SEVEN:

ALL THAT CERTAIN PORTION OF TANBARK STREET LYING WITHIN THE CITY OF SAN JOSE AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY TERMINUS OF THE NORTHERLY LINE OF TANBARK STREET (30 FEET WIDE) AS SHOWN UPON THAT CERTAIN RECORD OF SURVEY MAP FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER, SANTA CLARA COUNTY, CALIFORNIA, ON JUNE 4, 1969, IN BOOK 254 OF MAPS, AT PAGE 40, SAID POINT OF BEGINNING BEING ALSO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED FROM MORELAND SCHOOL DISTRICT OF SANTA CLARA COUNTY TO THE CITY OF SAN JOSE BY DEED DATED JANUARY 14, 1964 AND FILED FOR RECORD ON JANUARY 30, 1964 IN BOOK 6365 OF OFFICIAL RECORDS, AT PAGE 271, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE ALONG SAID NORTHERLY LINE OF SAID TANBARK STREET NORTH 89 DEGREES 19' 20" EAST 496.68 FEET TO THE SOUTHWESTERLY CORNER OF LOT 39, AS SAID LOT 39 IS SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 176 THE FIRST NATIONAL BANK OF SAN JOSE - SUBDIVISION B," WHICH MAP WAS FILED FOR RECORD IN BOOK 5 OF MAPS, AT PAGES 42 AND 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE AT RIGHT ANGLES TO SAID NORTHERLY LINE OF TANBARK STREET SOUTH 0 DEGREES 40' 40" EAST 30.00 FEET TO A POINT IN THE SOUTHERLY LINE OF TANBARK STREET; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89 DEGREES 19' 20" WEST 496.68 FEET TO THE WESTERLY TERMINUS OF SAID SOUTHERLY LINE AT THE SOUTHWESTERLY CORNER OF SAID LANDS CONVEYED TO THE CITY OF SAN JOSE; THENCE ALONG THE WESTERLY TERMINUS OF TANBARK STREET AND THE WESTERLY LINE OF SAID LANDS CONVEYED TO THE CITY OF SAN JOSE NORTH 0 DEGREES 19' 10" WEST 30.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EASTERLY 1 FOOT OF THE ABOVE DESCRIBED PROPERTY.

APN: 299-37-024-00(Affects Parcels Five and Six)  
299-37-026-00(Affects Parcel Seven)  
299-37-030-00(Affects Parcel Two)  
299-37-031-00(Affects Parcel Four)  
299-37-032-00(Affects Parcel One)  
299-37-033-00(Affects Parcel Three)