

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF FOUR 65-FOOT TALL FIELD LIGHTS ON AN APPROXIMATELY 3.19-GROSS ACRE SITE LOCATED ON THE EAST SIDE OF ELM STREET, BETWEEN WEST HEDDING STREET AND EMORY STREET, SOUTHWEST CORNER OF WEST HEDDING STREET AND ELM STREET, SOUTHWEST CORNER OF EMORY STREET AND STOCKTON AVENUE, AND NORTH SIDE OF WEST HEDDING STREET, APPROXIMATELY 300 FEET EASTERLY OF ELM STREET (960 WEST HEDDING STREET)

FILE NO. PD19-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 9, 2019 an application (File No. PD19-001) was filed by the applicant, Jeffrey Berg on behalf of Bellarmine College Preparatory, with the City of San José for a Planned Development Permit to allow the construction of four 65-foot tall field lights on an approximately 3.19-gross acre site, on that certain real property situated in the PQP(PD) Planned Development Zoning District and located on the east side of Elm Street, between West Hedding Street and Emory Street, southwest corner of West Hedding Street and Elm Street, southwest corner of Emory Street and Stockton Avenue, and north side of West Hedding Street, approximately 300 feet easterly of Elm Street (960 West Hedding Street, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on August 28, 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, "Bellarmine College Preparatory," dated last revised on August 29, 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 north side of West Hedding Street, approximately 315 feet easterly of Elm Street on an approximately 3.19-gross acre site. The 3.19-gross acre site is currently a soccer/lacrosse sports field that is part of a secondary private school (Bellarmine College Preparatory). Classrooms, administrative offices, accessory structures, sports fields (i.e., soccer/lacrosse, football, and baseball), and associated parking lots located on four different blocks in proximity to each other. The main campus is located on the south side of West Hedding Street (the "Main Campus"). An elevated segment of West Hedding Street separates the Main Campus from the soccer/lacrosse field and a parking lot, but provides an accessway beneath West Hedding Street to connect the Main Campus with the soccer/lacrosse field. The athletic field currently is not lighted.

Residential uses are located to the project site's northwest, west, south, and southeast. Commercial uses are located to the property's north and industrial uses are located to the property's northeast and east. The nearest residential use is on the south McKendrie Street. The residence is approximately 75 feet away from the soccer/lacrosse field and is separated by custodial facilities buildings for Bellarmine College Preparatory.

2. **Project Description.** The project would allow the construction of four 65-foot tall ground-mounted field lights on an approximately 3.19-gross acre portion of the site at the soccer/lacrosse field located on the north side of West Hedding Street. This side of the school is not directly adjacent to residential properties. The field lights are located within the development site and down-facing to shield the light from adjacent properties. The use of the field lights would be limited to Monday through Friday between 6:30 a.m. and 9:00 p.m. and Saturdays from 9:00 a.m. to 7:00 p.m.

- 3. General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Public/Quasi-Public. This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices, and airports. The subject site is currently developed with an athletic field for a private school. The field lights would promote the use of the existing soccer/lacrosse athletic field located on the north side of West Hedding Street.

A portion of the subject site also has a Residential Neighborhood and Light Industrial General Plan land use designations. This portion is on the southwest corner of Stockton Avenue and Emory Street. The Residential Neighborhood portion is used for the wrestling facility and the Light Industrial portion is a parking lot. In the Residential Neighborhood land use designation, Private Community Gathering Facilities compatible with the surrounding residential neighborhood are also supported under this land use designation. Private community gathering facilities are buildings used for school or sports activities that serve a critical role in establishing our sense of community, building civic identity, and fostering the development of arts and culture. The private secondary school, Bellarmine College Preparatory, is a private school with associated sport facilities and fields.

The Light Industrial land use designation is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. The parking lot was approved under Planned Development Permit File No. PD12-047 and no changes are proposed to the parking lot in this project.

The project is also consistent with the following General Plan policies as discussed below.

General Plan Goals and Policies

1. Land Use Policy LU-1.9: Preserve existing Public/Quasi-Public lands in order to maintain an inventory of sites suitable for Private Community Gathering Facilities, particularly within the Residential Neighborhoods, Urban Villages and commercial areas, and to reduce the potential conversion of employment lands to non-employment use.
2. Vibrant, Attractive, and Complete Neighborhoods Policy VN-1.2: Maintain existing and develop new community services and gathering spaces that allow for increased social interaction of neighbors, (i.e., parks, community centers and gardens, libraries, schools, commercial areas, churches, and other gathering spaces).

Analysis: The subject site is currently occupied by Bellarmine College Preparatory, a private secondary school. The rezoning and Development Standards would allow the existing use and incorporate a height allowance for field lights. The field lights

would allow games to occur in the evenings and would be consistent with other school facilities in the City. The field lights would not increase the maximum student capacity or number of staff. The rezoning includes the entire site consisting of the Main Campus as well as the adjacent portions of the site. The rezoning would promote the preservation of the lands to be used as a school and consistent with the above General Plan policies.

- 3. Zoning and Planned Development Zoning Conformance.** The project site was rezoned from the A(PD) Planned Development Zoning District to a PQP(PD) Public/Quasi-Public Planned Development Zoning District.

Upon adoption of the proposed ordinance rezoning to PQP(PD), the ground-mounted field lights would be consistent with the development standards of the Planned Development Zoning. The setbacks provided in the development standards are for buildings and parking. The field lights are structures. The building setbacks would not apply to the field lights. Therefore, the lights would be consistent with the setback requirements. The maximum height for the field lights is 65 feet. The proposed height of the ground-mounted field lights is 65 feet.

The existing development is in conformance with the previous Planned Development Zoning and the associated Planned Development Permits. The minimum perimeter setbacks for buildings is 20 feet and 10 feet for parking. The maximum height in the area north of University Avenue, east of Elm Street, south of West Hedding Street and west of the railroad right-of-way is 50 feet. The maximum height for the area north of University Avenue, west of Elm Street and south of West Hedding Street is 40 feet. The remainder of the site has a maximum height of 35 feet. The existing buildings meet the setback and height requirements. Since the PQP(PD) Planned Development Zoning District is not changing the setback and height requirements, the existing buildings are consistent with development standards. Additionally, the proposed PD permit would not allow any increase of the maximum student capacity. The maximum heights would not increase for the balance of the site.

The development standards require parking ratios per Section 20.90.060 of the Zoning Ordinance. The required parking for secondary schools is 1 per teacher, plus 1 per employee, plus 1 per 5 students. The proposed rezoning and Planned Development Permit would not increase the student capacity from the previous Planned Development Zoning (File No. PDC07-072). The maximum student capacity of the school is 1,750 students. The current number of teachers and employees is 180. The site requires 180 parking spaces for teachers and employees and 350 spaces for the students. A total of 530 parking spaces are required. There are 603 parking spaces provided on-site. Therefore, the project meets the parking requirements.

6. Design Guidelines. The project site is a school use; and is evaluated under the “Institutional Uses” section of the City of San José Commercial Design Guidelines. The institutional uses design guidelines portion focuses on site organization and building design. The project would not affect the design of the site and does not include new buildings. The Commercial Design Guidelines does not guidelines for lights. The field lights are partially shielded and are down-facing to meet the City Council Policy for Outdoor Lighting on Private Development.

7. Council Lighting Policy 4-3: Outdoor Lighting on Private Developments

On March 1, 1983, City Council approved a policy to promote energy-efficient outdoor lighting on private development in the City of San José that provides adequate light for nighttime activities while benefiting the continued enjoyment of the night sky and continuing operation of the Lick Observatory by reducing light pollution and sky glow.

The policy states the use of low-pressure (LPS) sodium lighting for outdoor, unroofed areas shall be required for all private development in the City of San José as a condition of approval on all Land Use Development Permits. No light source shall be directed skyward. All light sources that produce more than 4,050 lumens shall be fully shielded (full cutoff) to prevent light aimed skyward. However, the Director of Planning can consider exceptions to the use of low-pressure sodium lighting. The exceptions require a photometric study of the proposal and a referral to the Lick Observatory. Specific land uses qualify for the exceptions from the low-pressure sodium lighting requirements. Outdoor recreational facilities are one of the exceptions. This is for field sports such as football, baseball, softball, or soccer, partially shielded light fixtures may be used during such recreational events. Lighting for outdoor recreational activity must be extinguished by 11:00 p.m., or when the activity is concluded, but only if the event began before 10 P.M.

The project is for an outdoor recreational facility. The field lights would be partially shielded and would be extinguished by at 9:00 PM. A photometric study was prepared to analyze potential light spillover onto adjacent properties. The photometric study showed that all light spillover resulting from the field lights would be confined to the project site, Bellarmine Campus (i.e. the maintenance facility and parking lot to the southwest and the area beneath the West Hedding Street overpass), McKendrie Street, and West Hedding Street. No spill light would occur on the adjacent residential and industrial uses. The Lick Observatory reviewed the project and they do anticipate the use of the field lights would interfered with their operations, stating that limiting the use of the lights from 6:30 a.m. to 9:00 p.m. and turning them off when not in use would help reduce the impact on the observatory. Therefore, the project is consistent with the City Council Policy. Additionally, a lighting study (Bellarmine Soccer Lacrosse, prepared by Musco Lighting, dated November 14, 2018) was prepared for the field lights. The field lights would have

a total of 24 partially shielded LED luminaries on four pole-mounted light fixtures, which would generate a total light level of 121,000 lumens.

- 8. Environmental Review.** On August 16, 2019, the City of San José, as the lead agency for the project, prepared and approved an Addendum to the Bellarmine College Preparatory Master Plan Mitigated Negative Declaration, adopted by the City Council on June 24, 2008 (Ordinance No. 28337), all in conformance with the California Environmental Quality Act. The project is eligible for an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 because the project does not result in any new impacts beyond those analyzed in the Bellarmine College Preparatory Master Plan Mitigated Negative Declaration and was completed in compliance with CEQA to reflect an independent judgment and analysis of the project. The Addendum evaluated the potential impacts to aesthetics/lighting, energy, hazards and hazardous materials, noise, transportation, and mandatory findings of significance. A noise assessment was prepared for the proposed project by Illingworth & Rodkin Inc., dated January 30, 2019. Noise resulting from construction of the project would be temporary and would only occur during allowable hours. The field lights would not increase the usage intensity of the field as it would distribute existing uses with similar participant numbers. Therefore, there would be no significant noise impact related to traffic or operation. Based on the analysis and conclusions in the Addendum, the proposed project would not result in any new impacts not previously disclosed in the Bellarmine College Preparatory Master Plan Mitigated Negative Declaration; nor would it result in a substantial increase in the magnitude of any significant environmental impact previously identified in the Mitigated Negative Declaration.

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 the City Council must determine that:
 - a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan;

Analysis: As explained in detail above, the secondary private school use and field lights further the policies of the General Plan. The field lights would promote the preservation of Public/Quasi-Public land use and would allow a private community gathering facility.

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

Analysis: As previously stated, the project includes four 65-foot tall ground-mounted field lights on the soccer/lacrosse field. The maximum height established by the PQP(PD) Planned Development Zoning district and the project's development standards is 65 feet. The project is not adding buildings or increasing heights and setbacks of the existing school facilities, or increasing student capacity or number of staff. Based on a maximum capacity of 1,750 students and 180 staff, 530 parking spaces are required and there are 603 existing parking spaces. Therefore, the project is in conformance with the development standards and parking sections of the Zoning Ordinance.

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

Analysis: The project is consistent with Council Policy 6-30 Public Outreach as the project installed an on-site sign describing the project and mailed notices for the public hearing to property owners and tenants within a radius of 500 feet of the project site. Additionally, as described above, the project was reviewed for compliance with the City Council Lighting Policy 4-3: Outdoor Lighting on Private Developments. The field lights will be partially shielded and fall under the exception for low-sodium lights because the lights are for outdoor recreational facilities.

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

Analysis: The interrelationship between the orientation, location, mass and scale of the building's volume and elevations is appropriate, compatible, and aesthetically harmonious. The field lights would be located on the north side of West Hedding Street on the soccer/lacrosse field. This side of the school is not directly adjacent to residential properties. The nearest residential use is on the south McKendrie Street. The residence is approximately 75 feet away from the field and is separated by custodial facilities buildings for Bellarmine College Preparatory. The field lights are located within the development site and down-facing to shield the light from adjacent properties. As previously stated, based on the photometric study, Bellarmine Soccer Lacrosse, prepared by Musco Lighting and dated November 14, 2018, light spillover would be contained within Bellarmine College Preparatory and would not reach the adjacent residential, commercial, and industrial uses.

- e. The environmental impacts of the project, including, but not limited to including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

***Analysis:** As stated above, the development occurs in an urbanized area that is adequately served by all required utilities and public services. There is no increase in square footage nor increase in height for the existing buildings and no increase in the number of students or staff. The field lights would not impact dust, drainage, erosion, and stormwater runoff. Additionally, the field light usage is not anticipated to create odor or unusual noise as the majority of the development's activity occurs indoors. A noise assessment was prepared for the project by Illingworth & Rodkin Inc., dated January 30, 2019. Noise resulting from construction of the project would be temporary and would only occur during allowable hours. The field lights would not increase the usage intensity of the field as it would distribute existing uses with similar participant numbers. The Addendum evaluated the potential impacts to aesthetics, energy, hazards and hazardous materials, noise, transportation, and mandatory findings of significance. The field lights would have a total of 24 partially shielded LED luminaries on four pole-mounted light fixtures, which would generate a total light level of 121,000 lumens. The light spillover would be contained to Bellarmine College Preparatory. No light spillover would occur on the adjacent residential, commercial, or industrial properties. The field lights would be used at night and early morning only, and would be subject to recommendations of the Lick Observatory for lighting in the Santa Clara Valley, including use the minimum amount of lighting for the intended purpose and use of lighting controls so that lighting is not used when unnecessary. The field lights also meet the City's requirements for energy efficiency and conform to the City Council Policy for Outdoor Lighting. Therefore, the project is not anticipated to have an unacceptable negative effect on the adjacent property or properties. Under VMT Policy 5-1, no additional traffic analysis was required since no additional trips would be generated with the field lights. The field lights would not increase the usage intensity of the field as it would distribute existing uses with similar participant numbers. The games would be distributed between longer hours.*

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

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned

Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:

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

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

5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Bellarmine College Preparatory," dated last revised on August 29, 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."
6. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of land covered by the Permit shall only be land uses consistent with the Planned Development Zoning District (File No. PDC19-001) and only upon issuance of a Planned Development Permit for those uses.
7. **Scope and Use Authorization of the Planned Development Permit.** This Planned Development Permit allows the construction of four 65-foot tall ground-mounted field lights for use between 6:30 a.m. and 9:00 p.m. Monday through Friday and 9:00 a.m. to 7:00 p.m. on Saturdays on the soccer/lacrosse field, located on the north side of West Hedding Avenue, approximately 315 feet easterly of Elm Street on an approximately 3.19-gross acre site. The Planned Development Permit also allows the uses and development previously approved with Planned Development Permits, Planned Development Permit Amendments, and/or Permit Adjustments.

The following is the maximum number of athletes allowed on the soccer/lacrosse field with the use of the field lights:

- a. During the weekdays in the fall from 3:00 p.m. to 9:00 p.m., a total of 100 athletes are allowed.
 - b. During the weekdays in the winter from 3:00 p.m. to 9:00 p.m., a total of 50 athletes are allowed.
 - c. During the weekdays in the spring between 6:30 a.m. to 8:00 a.m., a total of 30 athletes are allowed.
 - d. During the weekdays in the spring between 3:00 p.m. to 9:00 p.m., a total of 150 athletes are allowed.
 - e. During the weekends year-round between 9:00 a.m. and 7:00 p.m. a total of 50 athletes are allowed.
8. **FAA Clearance.** In compliance with federal regulations, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard to Air Navigation" for the four light poles prior to City issuance of any building permit for installation.

- a. The permittee shall initiate the FAA review process via filing of FAA Form 7460-1 (“Notice of Proposed Construction or Alteration”) for each 65-foot tall light pole. The technical data on the FAA form shall be prepared by a licensed civil engineer or surveyor using latitude/longitude coordinates in NAD83 datum out to hundredths of seconds and elevation in NAVD88 datum rounded off to next highest foot.
 - b. Any condition set forth in the FAA determination requiring physical alteration, addition of obstruction lighting, or filing of FAA Form 7460-2 (“Notice of Actual Construction or Alteration”) upon project completion shall be incorporated into PD19-001 through a required Permit Adjustment prior to submittal of a building permit application.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
11. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
12. **Lighting Plan.** All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy and FAA requirements and policies. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
13. **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.
14. **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.
15. **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.

16. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
17. **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.
18. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
19. **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.
20. **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.
21. **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.
22. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. Construction Plans. The permit file number, PD19-001, shall be printed on all construction plans submitted to the Building Division.
 - b. Americans with Disabilities Act. The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA), 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. 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.
23. **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.

24. Conformance to Mitigation Monitoring and Reporting Program. This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.

25. Standard Environmental Mitigation Measures.

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. 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.
- vii. 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.
- viii. 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 Bay Area Air Quality Management District's phone number shall also be visible to ensure compliance with applicable regulations.

b. BIOLOGICAL RESOURCES.

- i. **Habitat Conservation Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit a SCVHP Coverage Screening Form 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.

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 permittee 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.

26. 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. PD19-001) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC19-001 approved for publication on _____, 2019 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

Portion of Lots 2 and 3 in Block 19 and Portions of Lots 1 and 4 in Block 26 and a portion of Laurel Street, as shown on that certain map entitled "Map of University Grounds", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on August 25, 1866 in Book A of Maps, at page 80, and described as follows:

Beginning on the Northwest line of Hedding Street, as established by the deed to the City of San Jose, recorded January 7, 1959 in Book 4282 Official records, page 675, distant thereon Southwesterly 100 feet from the intersection thereof with the Southwest line of Laurel Street, now abandoned; thence Northwesterly parallel with said Southwest line of Laurel Street and along the Southwest line of the parcel of land described in the deed to Fred A. Watkins, et ux, recorded January 13, 1954 in Book 2793, Official Records, page 468, 386.5 feet to the Southeast line of McKendrie Street; thence Northeasterly along the Southeast line of McKendrie Street to the Southwest line of the 6 foot strip of land conveyed to Southern Pacific Company by deed recorded December 4, 1946 in Book 1397 Official Records, page 179; thence Southeasterly along the Southwest line of said 6 foot strip of land to said Northwest line of Hedding Street to the point of beginning.

APN: 230-41-043