

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 APPROXIMATELY 76,894 SQUARE FEET OF EXISTING COMMERCIAL BUILDINGS, AND THE CONSTRUCTION OF AN APPROXIMATELY 200,000-SQUARE FOOT COMMERCIAL BUILDING, 590 RESIDENTIAL UNITS, AN ALTERNATIVE PARKING ARRANGEMENT (TANDEM PARKING), AND THE REMOVAL OF 17 ON-SITE ORDINANCE SIZE TREES, ONE ON-SITE NON-ORDINANCE SIZE TREE, AND THREE ORDINANCE SIZE STREET TREES, ON AN APPROXIMATELY 6.98-GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF SOUTH BASCOM AVENUE AND SOUTHWEST EXPRESSWAY (1330, 1388, AND 1410 SOUTH BASCOM AVENUE; APNS: 282-26-007, 282-26-011, AND 282-26-012)**

**FILE NO. PD18-015**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 19, 2018, an application (File No. PD18-015) was filed by the applicant, Pete Beritzhoff, on behalf of Bascom Station Owner LLC, with the City of San José for a Planned Development Permit to allow the demolition of approximately 76,894 square feet of existing commercial buildings, and the construction of an approximately 200,000-square foot commercial building, 590 residential units, an alternative parking arrangement (tandem parking), and the removal of 17 on-site ordinance size trees, one on-site non-ordinance size tree, and three ordinance size street trees, all on an approximately 6.98-gross acre site, on that certain real property situated in the CP(PD) Planned Development Zoning District and located on the northeast corner of South Bascom Avenue and Southwest Expressway (1330, 1388, and 1410 South Bascom Avenue; APNs: 282-26-007, 282-26-011, and 282-26-012, 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 14, 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, "Planned Development Permit for South Bascom Gateway Station," dated received on June 19, 2018 and last dated August 2, 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 project site currently contains approximately 76,894 square feet of existing commercial buildings, surface parking, and approximately 17 ordinance sized and one non-ordinance sized trees. North of the project site are existing three- and four-story condominiums and commercial buildings, south of the project site is the Santa Clara Valley Transportation Authority (VTA) Bascom Light Rail Station and Southwest Expressway, east of the site is existing multifamily residences, and west of the site across South Bascom Avenue are office buildings, a mobile home park, and single-family residences.
2. **Project Description.** The Planned Development Permit allows the demolition of approximately 76,894 square feet of existing commercial buildings, and the construction of an approximately 200,000-square foot commercial building, 590 residential units, an alternative parking arrangement (tandem parking), and the removal of 17 on-site ordinance size trees, one on-site non-ordinance size tree, and three ordinance size street trees on an approximately 6.98-gross acre site. An approximately 42,000-square foot (0.9-gross acre) privately owned, publicly-accessible plaza will also be provided between the commercial and multifamily residential buildings, serving as a pedestrian access between South Bascom Avenue and the Bascom Light Rail Station.

The commercial building provides 545 total automobile parking spaces and the residential building provides 643 total automobile parking spaces. The parking facilities are wrapped with commercial, residential, or active uses which visually

conceal the parking areas from public view. The project also provides 43 bicycle parking spaces and 14 motorcycle spaces. Access to the site is from four driveways along South Bascom Avenue (two to internal parking garages, one to loading, and one to perimeter road).

The project is not subject to the adopted City Council Urban Village Implementation and Amenity Framework (Implementation Framework). The Implementation Framework includes a provision that grandfathered projects that have submitted either a complete Planned Development Zoning or Planned Development Permit application prior to the date of the City Council adoption of the Implementation Framework. Since the Framework was adopted on May 22, 2018 and the subject Planned Development Zoning was submitted on October 30, 2017, the project is grandfathered.

3. **General Plan Conformance.** As shown on the General Plan map, the project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village Commercial and is within the Transit-Oriented Development (TOD) Character Area. This designation and Character Area support intensive commercial uses with an urban and pedestrian-oriented form with the presence of parking and automobile circulation minimized from the adjacent public right-of-way.

However, since this project was filed prior to the adoption of the South Bascom (North) Urban Village Plan, this project is not required to be in conformance with the Urban Village Plan as allowed by South Bascom (North) Urban Village Policy LU-1.4. Policy LU-1.4 states, "Planned development zonings that are applying under the 'Signature Project' policy, as defined in the Envision San José 2040 General Plan may continue to move forward as such and will not be required to be in conformance with this Urban Village Plan. All of the 'Pipeline' applications benefiting from this policy must have been submitted to the City, including full payment of initial application fees, prior to adoption of this Urban Village Plan." The Planned Development Zoning was submitted (and initial application fees were paid) prior to the adoption of this Urban Village Plan on May 8, 2018; therefore, this project is not required to be in conformance with the Village Plan. A Signature Project is a project with a residential component that is located within an unapproved urban village that is in the current or future plan Horizon. The intent of this General Plan Signature Project policy was to only allow very specific projects (with a residential component) meeting specified criteria to move forward ahead of the urban village plan adoption. These development projects are seen to be a catalyst for the implementation of the General Plan Urban Village strategy. Fully commercial projects would not be required to proceed through the Signature Project General Plan policy, as the Signature Project General Plan policy only applies to projects with a residential component. The project satisfies the criteria for a Signature Project as specified in the General Plan under Policy IP-5.10 and described below. The project is also located within a Commercial Corridor & Center Urban Village which is characterized by typically larger underutilized commercial sites with some access to transit (also

described in the General Plan Major Strategy #5 – Urban Villages, Growth Areas Policy LU-2.2, and in detail below).

### *General Plan Policies*

The Planned Development Permit is consistent with the following General Plan policies:

**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.

**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.

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

*Analysis for Major Strategy #3 and #5, and Policy LU-2.1: The project is a Signature Project within the South Bascom (North) Urban Village boundary. Urban Villages are considered growth areas in the General Plan, and Urban Villages are intended to create higher-density housing growth along with a significant amount of job growth. The project is furthering General Plan Major Strategy #3 and #5 by developing a higher-density residential and commercial project as envisioned in the South Bascom (North) Urban Village boundary.*

*The project is providing an additional 590 residential units and approximately 200,000 square feet of commercial uses supporting a vibrant, walkable urban setting, and furthering the General Plan Major Strategies #3 and #5. The commercial building will support and provide additional employment opportunities to the region. The project site is also located adjacent to the Bascom Light Rail Station. According to VTA, the Bascom Light Rail Station has a train arriving at least every 15 minutes, with connections to Downtown Campbell, Downtown San José, Mountain View, and Milpitas. Along the project’s South Bascom Avenue frontage are VTA bus lines 61 and 62 that currently run on weekdays at 30-minute intervals. VTA is proposing combining these routes and decreasing the weekday headways to 15-minute intervals providing increased transit service to the project site.*

**Implementation Policy LU-5.10:** Allow non-residential development to proceed within Urban Village areas in advance of the preparation of an Urban Village Plan. In

addition, a residential, mixed-use “Signature” project may also proceed ahead of preparation of a Village Plan. A Signature project clearly advances and can serve as a catalyst for the full implementation of the Envision General Plan Urban Village strategy. A Signature project may be developed within an Urban Village designated as part of the current Plan Horizon, or in a future Horizon Urban Village area by making use of the residential Pool capacity. 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:

1. Within the Urban Village areas, Signature projects are appropriate on sites with an Urban Village, residential, or commercial Land Use/Transportation Diagram designation.
2. 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. The commercial/office component of the Signature project must be constructed before or concurrently with the residential component.
3. 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:

4. Includes public parklands and/or privately maintained, publicly-accessible plazas or open space areas.
5. Achieves the pedestrian friendly design guideline objectives identified within this General Plan.
6. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.
7. Demonstrates high-quality architectural, landscape and site design features.
8. Is consistent with the recommendations of the City’s Urban Design Review process or equivalent recommending process if the project is subject to review by such a process.

*Analysis for Implementation Policy IP-5.10: The project satisfies the criteria for a Signature Project as specified in the General Plan. The project is located on a site with a General Plan Urban Village Commercial land use designation. The project provides approximately 200,000 square feet of office uses (as shown on Sheet 3.0 in the Planned Development Permit Plan Set) satisfying the minimum commercial requirement of the Signature Project General Plan policy.*

*Pursuant to General Plan Appendix 5, the South Bascom (North) Urban Village boundary is 215 acres with a planned housing growth of 1,560 residential units. Signature Projects are required to provide at least 55 dwelling units per acre; the project has a density of 129 dwelling units per acre, which satisfies the housing density required by this General Plan. As part of the Development Standards for the Planned Development Zoning, the commercial component must be constructed before or concurrently with the residential component.*

*The project site is considered a visible, prominent location as it is located along a major commercial arterial (South Bascom Avenue), visible from Southwest Expressway and the VTA Bascom Light Rail Station, and is of a substantial size (approximately 6.98 acres). Development of the site will not constrain future development of adjacent parcels, as development of the site will not create small remnant parcels.*

*The project provides an approximately 0.9-gross acre (42,000-square foot) publicly-accessible, privately-maintained plaza area that can be accessed by future residents, commercial patrons, and surrounding residents and businesses.*

*The project has had two City-led community meetings. The first community meeting was held on June 11, 2018 and discussed the Planned Development Zoning; the second community meeting was held on February 11, 2019 and discussed the Planned Development Permit. Approximately 60 community members attended the first community meeting and approximately 90 community members attended the second community meeting. Both community meetings were noticed at a 1,000-foot radius.*

*The project demonstrates high-quality architecture, landscaping, and site design features, including but not limited to: substantial changes in building plane, strategic use of materials, variation in roof line, high-quality materials, a variety of materials with different textures and scales, appropriate form and massing, and high-quality ground-floor commercial spaces (in the commercial building) with depths of 45-feet and interior heights of approximately 18 feet.*

*The site and landscape design of the project is high-quality due to the placement of buildings in a functional and logical manner. South Bascom Avenue supports both commercial uses and higher-intensity residential uses to help activate, engage, and add interest along the corridor. South Bascom Avenue is planned to support a buffered bicycle lane, and this project will support this effort by constructing both the bicycle lane and increased 20-foot wide sidewalks along the project frontage. Buildings have minimal setbacks along South Bascom Avenue, and surround the centrally-located, publicly-accessible plaza. The commercial building placed at the corner of the property (closest to South Bascom Avenue and Southwest Expressway) serves as a prominent gateway feature signaling the entrance to both the South Bascom (North) Urban Village and the City of San José. Placing the residential building in the northern portion of the site provides an appropriate*

*interface with the adjacent multifamily condominiums and low-rise commercial uses to the north. To further transition to the adjacent four-story multifamily residential, the project implemented the 45-degree daylight plane as suggested in the South Bascom (North) Urban Village Plan. This daylight plane, in addition to the 30-foot wide emergency access lane and landscaping buffer, reduces the mass and scale of the building to provide a respectful transition.*

*The publicly-accessible plaza is 49 feet 5 inches wide at its narrowest point, expanding to 85 feet along South Bascom Avenue and 150 feet near the Bascom Light Rail Station. The plaza serves as a direct connection from South Bascom Avenue to the Bascom Light Rail Station and the relocated bus stop proposed at the entrance of the plaza along South Bascom Avenue. These direct pedestrian connections increase the accessibility of the transit amenities of the area. The landscape design incorporates a number of elements that will help activate the privately-maintained, but publicly-accessible open space and provides for a number of different activities that can be conducted in this open space area.*

*The project has incorporated design changes as recommended through the Urban Design Review process. The project has also incorporated ground-floor commercial depths of at least 45 feet and has provided a varying roof line in the commercial building. The undulating façade elements on both buildings has been greater emphasized, creating a more dynamic design. The parking garages are both integrated into the buildings with ample shielding with residential units, commercial space, and architectural features. The commercial building has two levels of parking below grade and four levels above grade.*

Community Design Policy CD-1.5: Encourage incorporation of publicly accessible spaces, such as plazas or squares, into new and existing commercial and mixed-use developments.

Community Design Policy CD-1.6: Promote vibrant, publicly accessible spaces that encourage gathering and other active uses that may be either spontaneous or programmed. Place a variety of uses adjacent to public spaces at sufficient densities to create critical mass of people who will activate the space throughout the day and night.

Function 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 for CD-1.5, CD-1.6, CD-2.4: The project incorporates an approximately 0.9-gross acre (42,000-square foot) publicly-accessible, privately-maintained open space (plaza). This open space will be accessible by the new and surrounding residents and businesses. The open space incorporates an amphitheater, various seating, open lawn areas, play structures, and picnic areas. This open space provides a recreational buffer between the office and residential buildings. This open*



*space will be privately owned and maintained, but will be accessible and open to the public through a public access easement. In addition to the main plaza area, an additional 6,700-square foot space is provided for residents' pets as common open space (not part of the publicly-accessible plaza square footage).*

Community Design Policy CD-1.1: Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.

Community Design Policy CD-1.7: Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.

Community Design Policy CD-1.8: Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.

Community Design Policy CD-1.12: Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.

Community Design 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 such as Downtown, Urban Villages, or along Main Streets, 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, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.

Function CD-2.3: Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate.

1. Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-

finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways.

2. Strongly discourage drive-through services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area.
3. Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies.
4. Locate retail and other active uses at the street level.
5. Create easily identifiable and accessible building entrances located on street frontages or paseos.
6. Accommodate the physical needs of elderly populations and persons with disabilities.
7. Integrate existing or proposed transit stops into project designs.

*Analysis for CD-1.1, CD-1.7, CD-1.8, CD-1.12, CD-1.9, and CD-2.3: The project is designed to be pedestrian-oriented. Along South Bascom Avenue, the commercial building incorporates a commercial storefront with ground-floor spaces like office space, retail, restaurants, shops, and a lobby and two pedestrian entrances from the public sidewalk. The residential building has active uses such as a lobby, pet washing facility, business center, townhouse units, office space, and leasing office.*

*Both buildings incorporate awnings and building overhangs to create areas of shade, protection from weather, and to create a comfortable semi-enclosed pedestrian walking environment. In addition to having active uses that face the street, active uses front the publicly-accessible plaza including lobby space, cafés, and office space (business center or office use). The remaining South Bascom Avenue frontage and the Bascom Light Rail Station is activated by the publicly-accessible plaza which includes accented paving, planter pots, and tables and chairs. The Bascom Light Rail Station is fronted with residential units and office space.*

*The commercial building incorporates transparent glass along both South Bascom Avenue and the Bascom Light Rail Station which allows for visual permeability into the building. Street trees and 20-foot wide sidewalks line South Bascom Avenue, and a visually-permeable fence with pedestrian openings separate the Light Rail Station from the plaza, which will encourage walkability by providing a more comfortable walking environment. Once grown, the street trees will provide shade and a landscaped barrier between the pedestrian and the vehicles and train on South Bascom Avenue and the Light Rail line. The buildings are also oriented*

*towards and placed close to both South Bascom Avenue and the Light Rail line which will reinforce the streetscape and create a quality pedestrian experience.*

*The parking facilities are wrapped with commercial, residential, or active uses which visually conceal the parking areas from public view. Even though the commercial building has four levels of above-grade parking, the parking is heavily screened with undulating, decorative metal panels and a private stair case that accesses the commercial building's private open space. The undulating panels are at varying angles creating reliefs of seven inches to two feet, which will create texture and visual interest. Furthermore, trees will be planted within the publicly-accessible plaza further shielding the commercial parking from view.*

Land Use Policy LU-1.1: Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

Land Use Policy LU-9.1: Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas. Consistent with Transportation Policy TR-2.11, prohibit the development of new cul-de-sacs, unless it is the only feasible means of providing access to a property or properties, or gated communities, that do not provide through- and publicly-accessible bicycle and pedestrian connections.

*Analysis for LU-1.1 and LU-9.1: The project is also located within a Commercial Corridor & Center Urban Village which is characterized by typically larger underutilized commercial sites with some access to transit. This urban village type functions as a complete destination that integrate a mix of high-density housing, employment, and services within existing key business areas to create dynamic urban settings. This project supports the goal of this type of village by providing both larger scale multifamily residential (at 590 units) and commercial uses (200,000 square feet) next to higher-frequency transit lines near many supportive retail services. The project is located one-half mile from five shopping centers with grocery stores, restaurants, clothing and goods shops, banks and other retail services, and a movie theater. Locating residential and commercial uses adjacent to employment and recreational opportunities help create complete communities within San José because it allows residents and employees to be able to work, shop, live, and recreate within close proximity to their homes and jobs. The project is also incorporating an approximately 0.9-gross acre (42,000-square foot) privately-maintained, publicly-accessible open space, which will serve as a direct pedestrian pathway from South Bascom Avenue and the bus stop to the Bascom Light Rail Station.*

Land Use Policy LU-9.6: Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.

*Analysis for LU-9.6: The Residential Design Guidelines state that private open space should be provided at a minimum of 60 square feet per unit and common open space should be provided at a minimum of 100 square feet per unit. Based on 590 residential units, approximately 35,400 square feet of private open space and approximately 59,000 square feet of common open space should be provided. The project is providing approximately 44,010 square feet of private open space as balconies, and approximately 59,100 square feet of common open space, exceeding both open space requirements. The amenities within the common open spaces include fitness rooms, pool areas, community amenity rooms, barbeque areas, lounge seating, and picnic areas.*

*In addition to the private and common open space, the project is providing an approximately 0.9-gross acre publicly-accessible, privately-maintained plaza satisfying the Signature Project General Plan Policy (IP-5.10) which requires a project to provide public parklands and/or privately-maintained, publicly-accessible plazas or open space areas.*

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.

Promote Fiscally Beneficial Land Use Policy FS-4.8: Emphasize mixed-use development for most new development, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

*Analysis for CD-2.10 and FS-4.8: The project is a two-building horizontal mixed-use project at a 2.66 floor area ratio. One building is a 590-unit multifamily residential building at 129 dwelling units per acre and the second building is a 200,000-square foot commercial building. The project is a higher-density residential and medium-intensity commercial building located adjacent to commercial and residential uses that is efficiently utilizing the land in a compact, dense form. The parking structures are each wrapped within their associated buildings, and are mostly not visible from the public streets. This wrap approach is compact in nature, as there is not a separate, stand-alone parking structure for these buildings. Lastly, the project places commercial uses (i.e., employment) adjacent to residential uses.*

Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas,

create complete, mixed-employment areas that include business support uses, public and private amenities, child care, restaurants and retail goods and services that serve employees of these businesses and nearby businesses.

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

*Analysis for IE-1.3 and FS-3.6: The Planned Development Permit is providing approximately 200,000 square feet of commercial uses, which includes the replacement of approximately 77,800 square feet of existing commercial buildings. This total square footage is consistent with the Signature Project General Plan Policy commercial requirements (IP-5.10).*

Urban Villages Design Policy CD-7.1: Support intensive development and uses within Urban Villages, while ensuring an appropriate interface with lower-intensity development in surrounding areas and the protection of appropriate historic resources.

Urban Villages Design Policy CD-7.9: Build new residential development within Urban Village areas at a minimum of four stories in height with a step down in height when building new residential development immediately adjacent to single-family residential sites that have a Residential Neighborhood designation. Individual Urban Village Plans may establish more specific policies or guidelines to ensure compatibility with adjacent single-family neighborhoods, and development should be consistent with these policies and guidelines, established in approved Urban Village Plans.

*Analysis for CD-7.1 and CD-7.9: The residential building of the project has varying heights of seven-stories to eight-stories. Even though the adjacent multifamily condominium project is four stories and of a medium intensity, the residential building provides a compatible transition by stepping down from eight to seven stories in conformance with the 45-degree daylight plane.*

4. **Development Standards Compliance.** The subject site is in the CP(PD) Commercial Pedestrian Planned Development Zoning District.

The CP(PD) Planned Development Zoning District has three Areas (Area A, Area B, and Area C). This CP(PD) Planned Development Zoning District, as a whole, allows up to 300,000 square feet of commercial uses with a minimum requirement of 200,000 square feet of commercial uses, up to 600 residential units, and a minimum of 40,000 square feet of publicly-accessible, privately maintained and owned open space. In Area A Residential and Supportive Commercial Area, up to 600 residential units (at a minimum of 70 dwelling units per acre) are allowed, in addition to 15,000 square feet of commercial uses (the capacity is taken from the overall allowed 300,000 square feet of

commercial). Area B Public Plaza and Open Space Areas is a minimum of 40,000 square feet of publicly-accessible, privately owned and maintained open space. The allowed uses in Area B are limited to farmer's markets, outdoor recreational uses, outdoor vending (i.e., mobile food vendors, temporary pop-ups, and other similar non-impactful uses), and temporary outdoor events. The privately-owned, publicly-accessible open space will remain open to the public and will not be allowed to decrease in size. Area C Commercial Area allows a maximum of 300,000 square feet for commercial uses (with a minimum of 200,000 square feet of commercial uses).

Consistent with the Development Standards for this project, the project complies with the setback requirements. At the northern setback (closest to the existing multifamily residences) the setbacks are (1) for structures 45 feet or shorter: 20'-0" minimum setback, or (2) for any structures taller than 45 feet adjacent to properties with a General Plan designation of Mixed-Use Neighborhood: 30-foot side and/or rear setback. Starting at a height of 45 feet, buildings and structures shall not intercept the 45-degree daylight plane. The current project will conform to setback standard 2. The heights of the buildings are allowed up to 150 feet consistent with the South Bascom (North) Urban Village Plan, as amended. the proposed residential building is at 87 feet 6 inches tall and the commercial building at 139 inches tall.

Automobile and bicycle parking are pursuant to Title 20 in the San José Municipal Code, and motorcycle parking is one space per every 10 automobile parking spaces for the residential building and per the Municipal Code for the commercial building. The commercial building utilizes the Municipal Code Section 20.90.220 parking reduction exception which allows a 20 percent reduction in the automobile parking with a development permit for uses located within an urban village. The commercial building provides automobile parking spaces at a rate of one space per 250 square feet of floor area (with floor area is defined as 85% of the total gross floor area of a building). The 200,000-square foot commercial building requires 680 parking spaces, and the 20 percent reduction results in 544 required spaces. The commercial building provides 545 total automobile parking spaces, which is a 12% reduction of the parking requirements. Consistent with the Municipal Code requirement, the commercial building provides one bicycle parking space per 4,000 square feet of floor area, resulting in 43 bicycle parking spaces. Consistent with the Municipal Code, the commercial building provides motorcycle parking spaces at a ratio of one space per every 50 automobile parking spaces, resulting in 14 required motorcycle spaces. The commercial building provides 14 motorcycle parking spaces consistent with this requirement.

The residential building utilizes the Municipal Code Section 20.90.220.A parking reduction exception which allows a 20 percent reduction in the automobile parking with a development permit for any use located within an urban village. The 590-unit residential building requires 788 parking spaces, and the 20 percent reduction results in 631 required spaces. The residential building provides 643 total automobile parking spaces, which is an 18 percent reduction of the parking requirements. Consistent with

the Municipal Code requirement, the residential building provides one bicycle parking space per living unit resulting in 590 bicycle parking spaces. Consistent with the general development standards, the residential building provides motorcycle parking spaces at a ratio of one space per every 10 automobile parking spaces. The residential building provides 63 motorcycle parking spaces which is four more than the required 59 spaces.

5. **Residential Design Guidelines Conformance.** The project complies with the Residential Design Guidelines by being designed for the pedestrian at the ground-level and providing an interesting architectural aesthetic. The project demonstrates high-quality architecture, landscaping, and site design features. The project overall utilizes a variety of different materials with different textures and scales, but are all compatible with one another. Both project buildings 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 (in the commercial building) with depths of 45 feet and interior heights of approximately 18 feet.

This project is pedestrian scaled by placing the building within close proximity of the sidewalk, providing an awning and a ground floor entrance enhanced by a distinctive base with a darker wood veneer and glass along the residential ground floor. The building façade is accented with orange metal panels that is carried through pops of color throughout the building. The middle of the building is defined by the various volumetric expressions, and the top of the building is defined by metal awnings, strong rectilinear corner elements, and the recessions in building plane. Furthermore, reduced building setbacks are appropriate to higher-density housing types in growth areas to reinforce the planned urban character of the neighborhood. The building steps down toward the adjacent four-story multifamily condominiums increase the compatibility. There are individual unit balconies on all floors fronting both South Bascom Avenue and the northern property line, allowing for additional “eyes on the street.”

The project incorporates a variety of materials, ranging from cement board for the ground floor, roof top cornice element, and body of the building, to an orange vision glass material to provide additional interest. The project also includes a varied building façade, recessed windows, and protruding balconies, which all contribute to an interesting aesthetic (Planned Development Permit plan set Sheet A-7a.1.0). The change in building plane, the recessed windows, and protruding balconies will provide additional shadow lines to the building and, therefore, provide dimensionality to the building façades which will provide additional architectural interest to the building.

6. **Commercial Design Guidelines Compliance.** The project complies with the Commercial Design Guidelines. The commercial building is placed near the front setback line facing South Bascom Avenue and the wrapped parking garage is

screened from view through the use of landscaping and decorative perforated metal panels. The primary two building entrances are located along the privately-maintained, publicly-accessible plaza and South Bascom Avenue, allowing this open space to be activated. There is also a protruded building feature that acts like an awning, protecting users from the elements. The building utilizes transparent glass and glass fiber reinforced concrete throughout the building to create a modern aesthetic. The height of the commercial building is comparable to the height of the residential building, measuring at 10 stories or 139 feet tall (measured to the mechanical screen on the roof). The building does not have the “back of house”, mechanical equipment, or unarticulated, blank walls placed towards South Bascom Avenue, the plaza or the Bascom Light Rail Station, which creates a better street presence and pedestrian experience.

The building also contains a defined base, middle, and top. The base of the building helps “ground” the building by utilizing a warm champagne colored perforated metal panel and clear glass (refer to Planned Development Permit plan set sheet A-7b.1.3). This material also has a smaller scale as the individual pieces are narrower, which helps relate to the pedestrian-scale of the first floor. The defined middle of the building is the building mass that steps back and is primarily glass. Lastly, the building top is defined by creating a thicker gray metal fascia which projects from the top floor, further articulated by the inset mechanical screening.

7. **California Environmental Quality Act.** An Initial Study (IS) and Mitigated Negative Declaration (MND) entitled “South Bascom Gateway Station Project” was prepared by the Director of Planning, Building, and Code Enforcement for the subject Planned Development Rezoning and Planned Development Permit. The IS/MND was completed in compliance with the California Environmental Quality Act (CEQA) to reflect the City’s independent judgment and analysis of the project.

The IS/MND identified potentially significant environmental impacts and determined that the project would not have a significant effect on the environment with the incorporation of mitigation measures. The primary environmental issues addressed in the IS/MND were the potential impacts to air quality, biological resources, hazards and hazardous materials, and noise from the project. The MND includes mitigation measures for the previously stated resource areas that would reduce any potentially significant project impacts to a less-than-significant level. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and in the associated permit as a part of the project.

The document was circulated for public review from June 27, 2019 to July 29, 2019, for a 30-day comment period. The IS/MND was sent to the relevant state agencies (through the State Clearinghouse), local agencies, and interested community members. A total of three public comments were submitted during the comment period from the County of Santa Clara Roads & Airports Department, Catalyze SV, and a community member. A late comment was received by the California Public



Utilities Commission on August 5, 2019. Additionally, since the public circulation of the IS/MND, the San José Water Company's Board of Directors approved the Water Supply Assessment (WSA) for the project. The findings and conclusions in the final WSA (dated June 2019) will result in no changes to the analysis and impacts presented in the circulated IS/MND and is included as an attachment to the Responses to Comments document.

The IS/MND, supporting technical documents, Response to Comments, and other related environmental documents are available on the Planning web site at: <http://www.sanjoseca.gov/index.aspx?nid=6385>.

8. **Planned Development Permit Findings.** Chapter 20.100 of the San José Municipal Code (SJMC) establishes required Findings for issuance of a Planned Development Permit for the demolition of five existing buildings and the construction of four new buildings. These criteria are applied to the project based on the above-stated findings related to General Plan and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.

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

*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; and

*Analysis: The Planned Development Permit conforms in all respects to the CP(PD) Planned Development Zoning District of the property, including the project's development standards, uses, setbacks, and height.*

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

*Analysis: As described in the City Council Policy section above, the project is consistent with the City Council Policies on Public Outreach. The project also has been evaluated with City Council Policy number 6-29 Post-Construction Urban Runoff Management and has been found in compliance. The project complies with stormwater requirements and is providing a number of stormwater treatment methods. Additionally, the project would connect the trash area to the sanitary sewer, utilizing water efficient irrigation systems, and provide beneficial landscaping.*

- d. 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; and

*Analysis: The interrelationship between the orientation, location, mass and scale of building volumes and elevations of the project buildings, structures and other uses*

*on-site are appropriate, compatible, and aesthetically harmonious. The architectural styles between the two buildings contain complementary, but distinctive volumes, mass, scale, and materials. The eight-story residential building relates in form and massing to the 10-story office building with a compatible scale and incorporation of neutral-colored composite metal panels (see sheet A-7.0.0 of the Planned Development Permit plan set). The undulation expression of both building exteriors creates reliefs and visual interest, effectively screening service facilities and the commercial building parking garage. A consistent horizontal element is carried along the South Bascom Avenue frontage and around through the publicly-accessible plaza. The project residential and commercial uses are compatible and are not negatively impactful to one another.*

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

*Analysis: The demolition of existing buildings, removal of trees, and the construction of the project will not have an unacceptable negative affect on adjacent property or properties. In addition to the Initial Study/Mitigated Negative Declaration prepared pursuant to the California Environmental Quality Act (CEQA), the project was also evaluated per adopted stormwater requirements and has been found in compliance by providing a number of stormwater treatment measures on the project site. Additionally, the project's residential and commercial uses are not anticipated to create odor as much of the activity occurs indoors. Lastly, noise and ground vibration related to construction and demolition are the only anticipated temporary noise sources. Moreover, to reduce the potential construction noise impacts the project will implement mitigation measures to prepare and implement a construction noise logistics plan and will also be subject to Standard Permit Conditions to implement best management practices to reduce construction and demolition effects.*

- 9. **Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes required findings for Tree Removals which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit. Pursuant to Section 13.32.100 of the San José Municipal Code, tree removal findings must determine that:

- a. 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 this chapter as set forth in Section 13.32.010; or
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
- 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 17 on-site ordinance sized trees, one on-site non-ordinance sized tree, and three ordinance sized street trees. The trees are currently located around the perimeter of the site. Approximately 19 trees (both 17 on-site ordinance sized trees and one non-ordinance) are located within the project site's emergency vehicle access route and building footprints. The trees range in condition from fair to good but cannot be preserved because the project must satisfy the densities and commercial square footage requirements of a Signature Project to achieve the growth envisioned for the area, and the trees are within the project site's access roads and buildings. Also, the entire project site will be graded for the two buildings and the privately-maintained, publicly-accessible plaza to the extent that the 17 ordinance-sized trees (and one non-ordinance sized tree) will be impacted and will not likely survive. These 17 ordinance-sized trees restrict the economic development of the parcel and must be removed.*

*Municipal Code Section 13.28.310 Pruning or removal of street tree - Permit required and Section 13.28.330 - Development permit combined, allow street trees to be removed with a development permit if the street tree "is in conflict with an approved development permit for the adjacent property or right-of-way pursuant to Title 20 of this Municipal Code." The three ordinance-sized street trees conflict with the project's sidewalk widening required as part of the development permit to facilitate a pedestrian environment consistent with the urban village concept.*

- 10. Evaluation Criteria for Demolition.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.
- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
  - b. The failure to approve the permit would jeopardize public health, safety or welfare;
  - c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
  - d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
  - e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
  - f. Rehabilitation or reuse of the existing building would not be feasible; and
  - g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The demolition of the existing approximately 76,894 square feet of commercial buildings will not result in the creation or continued existence of a nuisance, blight, or dangerous condition as the current buildings and site are underutilized, mostly vacant, and blighted; however, the demolition will help implement the General Plan by furthering Major Strategy # 3 and #5 along with a number of other General Plan policies. The demolition of the existing commercial buildings will facilitate the construction of an approximately 200,000-square foot commercial building, a 590 multifamily residential unit building, and an approximately 42,000-square foot (0.9 acre) publicly-accessible, privately-maintained plaza that will be accessible to surrounding workers and residents. The project is replacing the existing commercial square footage (of approximately 76,894 square feet) and providing an additional 123,106 square feet of commercial uses. The surrounding uses are comprised of one-to two-story commercial buildings and three- to four-story multifamily condominiums (Sonador Commons), both of which are within the South Bascom (North) Urban Village boundary. While the project is not compatible with the surrounding area (areas both inside and outside of the Village boundary) in terms of scale, the project is completely consistent with what is envisioned in the South Bascom (North) Urban Village Plan in terms of densification and build-out.*

*The project will not diminish the existing housing stock in the City of San José since the project does not remove any residential units and adds 590 residential units. As part of the environmental review process, a cultural resources evaluation was completed for the project. As part of that evaluation a record search was conducted at the Northwest Information Center at Sonoma State University, which included a search of previous studies and identified cultural resources within the project area and out to a 1-mile radius. The results of the records search indicated that at least four cultural resources studies have been conducted that included all or part of the subject property. None of these resulted in the discovery or recordation of any archaeological sites on or within a 0.5-mile radius of the property, based on a records search with the Northwest Information Center. However, the project is subject to a Standard Permit Condition that requires the implementation of standard inadvertent discovery measures in the event historic resources are encountered during construction. This ensures that construction shall stop in the vicinity of any potential resource until the significance of the resource is confirmed, and that significant resources will be avoided or excavated and preserved.*

*Furthermore, a historical evaluation for historic-period built-environment resources was prepared for the project by a qualified historic consultant. This evaluation determined that Dick's Center, Dick's Dragon, and 1420 South Bascom Avenue buildings, which were all constructed on the project site between early 1950s to 1970s, do not meet the published criteria for historical listing at the national or State level (Brunzell Historical, February 15, 2019). However, two structures on the project site, the Dick's Center neon sign and the Moderne-style gas station, were*

*determined to be eligible as Structures of Merit at a local level (First Carbon Solutions, June 3, 2019).*

*Reuse of the existing commercial buildings was found to not be feasible due to the smaller size and age of the structure. The current configuration of the site is not conducive to encouraging pedestrian activity along South Bascom Avenue as all the existing buildings are set further back from the street and are fronted with surface parking lots and is auto-oriented, which is not consistent with the General Plan and Urban Village policies. Furthermore, the current location of the existing buildings would not allow the creation of the privately-maintained, publicly-accessible open space area and for compact development to occur.*

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 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 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, "Planned Development Permit for South Bascom Gateway Station," dated received on June 19, 2018 and last dated March 7, 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 territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
7. **Project Phasing.** Building permits cannot be released for the residential building until such a time as the commercial building permit has been issued. Temporary certificates of occupancy and certificates of occupancy shall not be issued for the residential building prior to the publicly-accessible plaza being completed for public use.

8. **Timing for Demolition and Tree Removals.** Buildings, structures, and trees that are being removed to accommodate the new development shall not be removed prior to the issuance of building permits for the new buildings or until the related Public Works Grading Permit has been issued.
9. **Lot Line Adjustment.** Prior to the issuance of building permits (not including demo only), the permittee shall record a Lot Line Adjustment.
10. **Covenant of Easement.** Prior to the issuance of certificates of occupancy for both buildings, the permittee shall offer to the City of San José a Covenant of Easement for joint use and emergency access purposes, in accordance with Part 1 of Chapter 20.110 of Title 20 of the San José Municipal Code, across lots as shown approved by the pending Lot Line Adjustment (Condition No. 9). Said easements shall be binding upon, and all benefits shall insure to, all successors in interest to the affected real property.
11. **Public Access Easement.** Prior to the issuance of certificates of occupancy for both buildings, the permittee shall offer to the City of San José a Public Access Easement for public use of the publicly-accessible, privately owned and maintained plaza as shown on the approved plan set. The Public Access Easement shall be applied to the central approximately 42,000-square foot area located between the multifamily residential building and commercial building. Said easement shall be binding upon, and all benefits shall insure to, all successors in interest to the affected real property.
12. **Privately Owned, Publicly Accessible Open Space.** The project's plaza located on the property between the commercial building and multifamily residential building (as referenced on the approved Plan Set) will be a privately owned, publicly accessible ground level open space. The plaza shall be an area designated for use by the general public while owned and maintained by a private owner, as described by the following:
  - a. Permittee (including property owners and successors in interest of Permittee or property owner) providing this publicly accessible open space shall, to the fullest extent permitted by law, hold harmless and indemnify the City of San José, its officers, agents and employees, from any and all damage or injury caused in any manner by the design, construction, use, or maintenance of the open space; and
  - b. Permittee (including property owners and successors in interest of Permittee or property owner) shall be solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
  - c. Liability Insurance satisfactory to the City's Risk Manager and the City Attorney, naming the City of San José and its officers and employees as additional insureds, shall be provided for all such spaces. The property owner shall record with the County Recorder and provide a copy to the City prior to the issuance of

building permits a special restriction on the property satisfactory in substance to the Department and sufficient to give notice to subsequent owners, lien holders, mortgagors, tenants, and others having any economic interests in the property of the open space requirement and the means by which the requirement has been, and must continue to be, satisfied.

- d. Maintenance - Open spaces shall be maintained at no public expense. Permittee (including property owners and successors in interest of Permittee or property owner) for the property on which the open space is located shall maintain the open space by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the publicly accessible open space and subject project.
  - e. Plaza Hours of Operation –The privately owned, publicly accessible open space shall remain open and unobstructed to public pedestrians 24 hours a day, 7 days a week.
  - f. Security – The Permittee (including property owners and successors in interest of Permittee or property owner) shall put in place and maintain appropriate security and safety measures including, but not limited to, adequate lighting for nighttime visibility, textured or minimal slip paving, and access to a public “blue light” emergency phone or similar device situated within the plaza.
  - g. The Permittee (including property owners and successors in interest of Permittee or property owner) shall install and maintain in good condition signage that is clearly readable and visible from the public street or public sidewalk at every entry to the public plaza within 20 feet of the public right-of-way.
13. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows located on the ground floor shall consist of a transparent glass.
14. **Hours of Construction within 500 feet of a Residential Unit.** Unless otherwise expressly allowed in a development permit or other planning approval, no permittee or agent of the permittee shall suffer or allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
15. **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.
16. **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.



17. **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.
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. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
22. **Noise.** Noise shall be contained within the buildings and the buildings shall be adequately insulated to prevent excessive sound from emanating outside. Adequate HVAC (air conditioning) shall be provided to allow all doors and windows on the subject site to remain closed during the operation and activities of the site.
23. **Sign Approval.** No signs are approved at this time. All project signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
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. **Perimeter wall.** Wall height and materials shall be provided as shown on the Approved Plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
26. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement.

## **27. FAA Clearance.**

- a. Prior to the issuance of a building permit for the office structure and residential structure, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building's highest point. The permittee shall initiate the required FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each building high point, with the technical data on the FAA forms prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
- b. The permittee shall comply with any condition set forth in an FAA Determination of No Hazard, including expiration date. If the FAA determination requires a subsequent filing of a "Notice of Actual Construction or Alteration" (FAA Form 7460-2) upon completion of construction, such filing shall occur prior to City issuance of any certificate of occupancy.

## **28. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, PD18-015, shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- e. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).

## **29. Access Control.** When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire department emergency access to the building are installed, such devices shall be approved by the Chief. All access control devices shall be provided with an approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.

30. **Security Gate Access.** All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear with of 14 feet for each direction of travel when split by median. Gates shall be recessed beyond the turning radius required by the San José Fire Department and without obstruction of any median island dividers. All gate installing shall be reviewed and approved prior to construction. Electric gate operators must have UL 325 listing and it gate must comply with ASTM F2200.
31. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING," shall be provided as required by the Fire Department.
32. **General Fire Prevention Requirements.** The permittee shall provide the following improvements:
- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
  - b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
  - c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
  - d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Standpipes shall be equipped with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
  - e. *Complex Map.* A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
  - f. *Public Safety Radio Coverage.* Public Safety Radio Coverage is to be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.
  - g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
  - h. *Management Association Responsibilities for Life & Safety Systems.* The Subdivider/owner shall create and maintain a Management Association which will

be responsible for the fire/life safety systems inspections per Title 19 and access to the systems if applicable.

- i. *Hazardous Materials.* The permittee must contact the Hazardous Materials Division at (408) 535-7750 as soon as possible to initiate the process to determine if the type and quantity of hazardous material is acceptable per code and whether a Hazardous Materials Plan Review is required.
- j. *Construction Fire Protection Plan.* A "Construction Fire Protection Plan" shall be prepared by the Permittee and submitted for approval by San José Building and Fire Departments prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.

**33. 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.

**34. 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 will 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:  
<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:* A Transportation Analysis was performed by Hexagon Transportation Consultants and was reviewed and approved the City of San José. See separate Traffic Memorandum prepared by Public Works dated May 3, 2019.
- c. *Urban Village Plan:* This project is located in a designated Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth. The project must incorporate the public improvements along the project frontage as identified in the adopted South Bascom (North) Urban Village Project.
- d. *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 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
  - iii. If the project will 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 permittee 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.

e. *Shoring:*

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000.
- iii. If tie-backs are used along the adjacent properties (APN's 282-26- 004/008, Tract 9311, and Santa Clara Valley Transportation Authority), agreements between the permittee and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

f. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
- ii. Final inspection and maintenance information on the post-construction treatment control measures 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 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 José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the

San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.

k. *Street Improvements:*

- i. Construct public improvements consistent with the South Bascom (North) Urban Village Plan as follows:
  - 1) Full raised median improvements along the project frontage. The medians shall include street trees.
  - 2) 11-foot travel lane widths.
  - 3) 8-foot wide parking spaces with planter, 4-foot planted buffer, and 8-foot wide bike lane.
  - 4) Curb, gutter, and 20-foot wide sidewalk with tree wells on South Bascom Avenue to City standards. An approximate 10-foot wide street easement will need to be dedicated.
- ii. Provide 26-foot wide City standard EVA/loading only driveway at the southernmost entrance.
- iii. Provide maximum 40-foot wide City standard driveway at the commercial only entrance.
- iv. Provide 26-foot wide City standard driveway at the southernmost residential only entrance.
- v. Provide 26-foot wide City standard driveway at the northernmost residential only entrance.
- vi. Install a new signal at the intersection of Pamlar Avenue and project driveway.
- vii. Traffic signal improvement plans have been designed by the City. The design is available for the permittee's use.
- viii. Reconstruct the curb line and accessible ramps on the west side of Bascom Avenue at Pamlar Avenue in conjunction with the new traffic signal.
- ix. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- x. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- xi. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.

- I. **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.

m. **Street Trees:**

- i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cutouts at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that will be removed.

**35. Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) entitled "South Bascom Gateway Station" approved for this development, dated July 2019.

**36. Standard Environmental Conditions.**

Air Quality

- a. AQ No. 1: The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
  - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
  - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
  - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
  - vii. Replant vegetation in disturbed areas as quickly as possible.



- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - ix. Minimize idling times either by shutting off equipment 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). Provide clear signage for construction workers at all access points.
  - x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
  - xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.
- b. AQ No. 2: The permittee shall install high efficiency MERV filters with a rating of 13 in the intake of the residential ventilation systems. MERV 13 filters have a Particle Size Efficiency Rating that results in a 60 reduction of particulates in the 1.0 to 3.0 micron range, which includes PM<sub>2.5</sub>. To ensure long-term maintenance and replacement of the MERV filters in the individual units, the owner/property manager shall maintain and replace the MERV 13 filters in accordance with the manufacturer's recommendations, which typically is after 2 to 3 months.

#### Biological Resources

- c. BR No. 1: The removed trees would be replaced according to tree replacement ratios required by the City, as provided in the table below.

Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-native	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
<p>Notes:</p> <p>x:x = tree replacement to tree loss ratio</p> <p>Trees greater than 38-inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size. A 12.1-inch tree equals 38 inches in circumference.</p> <p>One 24-inch box tree = two 15-gallon trees</p>				

- i. 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:
  - ii. 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.
  - iii. 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.
- d. BR No. 2: 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.

#### Cultural Resources

- e. CR No. 1: Consistent with General Plan Policies LU-14.2 and LU-14.4, prior to issuance of any demolition permit for the neon sign, which is eligible as a Structure of Merit, the permittee shall offer the neon sign for preservation to an entity/individual at an off-site location within the City of San José. The advertisement shall include a photograph of the structure, contact information for the permittee, and contact information for the City's Historic Preservation Officer. The permittee shall provide evidence to the City's Historic Preservation Officer that the neon sign has been advertised for relocation in a newspaper of general circulation, posted on a website, and posted on the sites for a period between 30 and 60 days. If an entity or individual is interested in relocating the neon sign to a new site, the costs and liability of the relocation will be borne entirely by that entity/individual. The purchasing entity/individual is required to coordinate with the City's Historic Preservation Officer to prepare an approved preservation plan and receive appropriate City permits.

If an entity/individual is not identified for relocation, the permittee is required to offer the neon sign for donation with preference to a local organization within the County of Santa Clara.

If relocation entity/individual or donation organization is not identified, the conditions of salvage and documentation shall be coordinated with the City's Historic Preservation Officer.

- f. CR No. 2: Prior to issuance of any demolition permit for the previous gas station at 1410-1420 South Bascom Avenue, a qualifying Structure of Merit, photo-documentation consisting of selected views of the building for research and archival use shall be taken under the following standards:
- i. *Cover sheet*—The documentation shall include a cover sheet identifying the photographer, providing the address of building, significance statement, common or historic name of the building, date of construction, date of photographs, and photograph descriptions.
  - ii. *Camera*—A 35mm camera or comparable.
  - iii. *Lenses*—No soft-focus lenses. Lenses may include normal focal length, wide angle and telephoto.
  - iv. *Film*—Color film is recommended.
  - v. *View*—Perspective view-front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure. Detailed photographs of character-defining features shall be included.
  - vi. *Lighting*—Sunlight is preferred for exteriors, especially of the front facade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
  - vii. *Technical*—All areas of the photograph must be in sharp focus.
  - viii. *Digital Form*—All photographs shall be provided in print and digital form
- The permittee shall coordinate the submission of the photo-documentation, including the original prints and negatives, to History San José. Digital photos shall be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and submitted with the above documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted as a standard measure to address the loss of the Structure of Merit, which shall be named and the address stated, in coordination with the City's Historic Preservation Officer.
- g. CR No. 3: If 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 Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any

significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- h. CR No. 4: 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 AB 2641, shall be followed. If human remains are discovered 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 Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (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. 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:
  - i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
  - ii. The MLD identified fails to make a recommendation; or
  - iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

#### Geological Resources

- i. GEO No. 1: The following measures shall be implemented:
  - i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project

- shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- j. GEO No. 2: If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, 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 implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Director of Planning, Building and Code Enforcement.

Hazardous Waste/Materials

- k. HAZ No. 1:
- 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(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
  - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations, Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
  - iii. All potentially friable asbestos containing materials (ACMs) shall be removed

- in accordance with National Emission Standards for Air Pollution Guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, California Code of Regulations, 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 Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
  - vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
  - vii. Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
  - viii. 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 of Regulations, Section 1532.1, including employee training, employee air monitoring and dust control.
  - ix. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

#### Hydrology/Water Quality

- I. HYD No. 1: During construction, the following measures shall be employed:
  - 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 shall be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces shall 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 shall be watered or covered.
  - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
  - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).

- vii. Vegetation in disturbed areas shall 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 shall be installed if requested by the City.
- ix. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Noise

- m. Noise No. 1: Noise minimization measures include, but are not limited to, the following:
  - i. Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
  - ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
  - iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - iv. Prohibit unnecessary idling of internal combustion engines.
  - v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
  - vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
  - ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

- x. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall 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 it in the notice sent to neighbors regarding the construction schedule.
- xi. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- n. Noise No. 2: In order to reduce the potential for sleep disturbance related to noise from railroad activity along the VTA Light Rail railroad line, the project shall incorporate the following design features, or the equivalent thereof:

Additional detailed site-specific noise modeling shall be performed that accounts for window-to-wall surface ratio to determine more exactly the design measures that would be required to maintain an interior noise level of 50 dBA/55 dBA  $L_{max}$  in bedrooms/other rooms, respectively, that have a direct line of sight to the rail line. The analysis shall be performed by a qualified acoustical consultant and submitted to the City for approval prior to issuance of building permits. One possible noise reduction design measure is to require wall assemblies (windows, doors, and wall combinations) of the residential bedroom façades that are facing the rail line to be upgraded to have a combined minimum STC rating of STC-43; and other room façades to have a combined minimum STC-38 rating. The combined window and wall assemblies must be designed and constructed in a manner that ensures that no gaps are permitted around windows and all protrusions or openings are properly sealed.

**37. Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

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- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby **approved**.

### **Effective Date**

The effective date of this Permit (File No. PD18-015) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC17-047, passed for publication on \_\_\_\_\_, 20\_\_ (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.*

JUNE 13, 2018  
JOB NO.: 2785-000

**PROPERTY LEGAL DESCRIPTIONS  
CITY OF SAN JOSE, COUNTY OF SANTA CLARA, CALIFORNIA**

REAL PROPERTY IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**1410 SOUTH BASCOM AVENUE:**

COMMENCING AT AN IRON PIN SET ON THE EASTERLY LINE OF SOUTH BASCOM AVENUE (FORMERLY THE SAN JOSE-LOS GATOS ROAD), 60 FEET WIDE, DISTANT ALONG SAID EASTERLY LINE SOUTH  $0^{\circ} 35'$  EAST 300 FEET FROM AN IRON PIN SET AT THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY CHARLOTTE BENJAMIN TO GEORGE W. BLACKFORD BY DEED DATED SEPTEMBER 30, 1880 AND RECORDED NOVEMBER 1, 1880 IN BOOK 57 OF DEEDS, PAGE 329, SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE FROM SAID TRUE POINT OF BEGINNING NORTH  $89^{\circ} 46' 45''$  EAST AND ALONG THE SOUTHERLY LINE OF THAT CERTAIN 2.066 ACRE PARCEL OF LAND CONVEYED BY DICK YEE AND BETTY YEE TO A. & F. DEVELOPMENT COMPANY, BY DEED DATED OCTOBER 17, 1957, AND RECORDED OCTOBER 28, 1957, IN BOOK 3923 OF OFFICIAL RECORDS, PAGE 452, SANTA CLARA COUNTY OFFICIAL RECORDS 300 FEET; THENCE SOUTH  $0^{\circ} 35'$  EAST 12.34 FEET; THENCE NORTH  $89^{\circ} 05'$  EAST 464.84 FEET TO AN IRON PIN SET IN THE WESTERLY LINE OF THE SOUTHERN PACIFIC RIGHT OF WAY; THENCE SOUTH  $41^{\circ} 13' 30''$  WEST 1,147.3 FEET TO THE EASTERLY LINE OF SOUTH BASCOM AVENUE (FORMERLY SAN JOSE-LOS GATOS ROAD); THENCE ALONG THE EASTERLY LINE OF SOUTH BASCOM AVENUE (FORMERLY SAN JOSE-LOS GATOS ROAD), NORTH  $0^{\circ} 35'$  WEST 866.71 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION AS CONVEYED IN THE DEED FROM DICK YEE, INC., A CORPORATION, TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION BY DEED RECORDED MAY 11, 1970, IN BOOK 8916 OF OFFICIAL RECORDS, PAGE ONE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF THAT CERTAIN PARCEL NO. 1 OF LAND DESCRIBED IN THE DEED FROM DICK YEE, ET UX TO DICK YEE, INC., A CORPORATION, RECORDED JANUARY 2, 1958 IN BOOK 3973 OF OFFICIAL RECORDS, OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AT PAGE 334, WITH THAT CERTAIN MONUMENT LINE ESTABLISHED FOR RECORD ON THAT PARTICULAR MAP ENTITLED, "RECORD OF SURVEY OF A MONUMENT LINE OF SOUTH BASCOM AVENUE FROM UNION AVENUE TO WEST SAN CARLOS STREET" FILED FOR RECORD ON 22ND, JANUARY 1969 IN BOOK 247 OF MAPS OF OFFICIAL RECORDS, OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AT PAGES 35-56; THENCE FROM SAID POINT OF COMMENCING EASTERLY ALONG SAID PROLONGATION TO THE NORTHWESTERLY CORNER OF SAID PROPERTY BEING IN THE EASTERLY LINE OF BASCOM AVENUE AND ALSO BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING EASTERLY ALONG SAID NORTHERLY LINE OF SAID PROPERTY TO THE POINT OF INTERSECTION THEREOF WITH A LINE PARALLEL WITH AND 73.00 FEET DISTANT EASTERLY MEASURED AT RIGHT ANGLES FROM SAID MONUMENT LINE; THENCE SOUTHERLY ALONG SAID PARALLEL LINE TO THE POINT

OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF PARCEL 1 OF LAND DESCRIBED IN THE SAID DEED; THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF INTERSECTION THEREOF WITH SAID EASTERLY LINE OF BASCOM AVENUE ALSO BEING THE SOUTHWESTERLY CORNER OF SAID PROPERTY; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID BASCOM AVENUE TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING THEREFROM ALL THAT PORTION CONDEMNED BY THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY IN THAT CERTAIN DOCUMENT ENTITLED "AMENDED FINAL ORDER OF CONDEMNATION" AND RECORDED JANUARY 13, 2004 AS INSTRUMENT NO. 17570053 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY AND BEING DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON JANUARY 2, 1958 IN BOOK 3973 OF OFFICIAL RECORDS AT PAGE 334, SANTA CLARA COUNTY RECORDS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID PARCEL 1; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 1, ALSO BEING THE NORTHWESTERLY LINE OF PARCEL 26 AS DESCRIBED IN THAT CERTAIN DOCUMENT TO SANTA CLARA VALLEY TRANSPORTATION AUTHORITY RECORDED ON SEPTEMBER 27, 2001 AS RECORDER SERIES 15886078, BEING 50 FEET WIDE, SOUTH 42° 16' 58" WEST, 257.363 METERS; THENCE LEAVING LAST SAID LINES, NORTH 36° 33' 29" EAST, 61.065 METERS; THENCE NORTH 42° 16' 58" EAST, 170.479 METERS; THENCE NORTH 45° 29' 00" EAST, 21.740 METERS TO THE NORTHERLY LINE OF SAID PARCEL 1; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SOUTH 89° 52' 44" EAST 6.580 METERS TO THE POINT OF BEGINNING.

APN: 282-26-011 AND 282-26-012

**1330 SOUTH BASCOM AVENUE:**

PARCEL "A", AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP CONSISTING OF ONE SHEET, BEING A PORTION OF SECTION 25, T. 7 S., R. 1 W., M. D. B. & M., LYING WITHIN THE CITY OF SAN JOSE, CALIFORNIA, MAY 1, 1973", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MAY 14, 1973 IN BOOK 323 OF MAPS, AT PAGE 14.

APN: 282-26-007