

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW DEMOLITION OF FOUR TOTAL APPROXIMATELY 19,850-SQUARE FOOT, ONE-STORY STORAGE BUILDINGS, AND THE CONSTRUCTION OF A FOUR-STORY, 125,303-SQUARE FOOT, 152-UNIT ASSISTED LIVING AND MEMORY CARE FACILITY (RESIDENTIAL CARE FACILITY) AND REMOVAL OF TWENTY ORDINANCE-SIZE TREES ON AN APPROXIMATELY 3.79-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF UNION AVENUE, APPROXIMATELY 360 FEET NORTHERLY OF LOS GATOS ALMADEN ROAD (5175 UNION AVENUE; A PORTION OF APN: 421-20-010)

FILE NO. CP18-025

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 28, 2018, an application (File No. CP18-025) was filed by Belmont Village Union Avenue, LLC, with the City of San José for a Conditional Use Permit to allow the demolition of four approximately 19,850-square foot, one-story existing storage buildings, and the construction of a four-story, 125,303-square foot, 152-unit assisted living and memory care facility (residential care facility) and removal of twenty ordinance-size trees on an approximately 3.79-gross acre site, on that certain real property situated in the CN Commercial Neighborhood Zoning District and located on the west side of Union Avenue, approximately 360 feet northerly of Los Gatos Almaden Road (5175 Union Avenue; a portion of APN: 421-20-010, 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,” and depicted in Exhibit "B," entitled “Plat Map,” 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 October 9, 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, "Belmont Village Union Avenue," dated received on April 29, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The project site is located on the west side of Union Avenue, approximately 360 feet northerly of Los Gatos Almaden Road. The site is currently utilized as a storage/maintenance yard of the Union School District with four total approximately 19,850-square foot, one-story storage buildings. The primary access to the site is from a driveway on Union Avenue. Secondary access/egress may be taken via the adjacent Union School District administrative offices and their three existing driveways (two on Union Avenue and one on Los Gatos Almaden Road). The site is surrounded by residential and commercial uses. The site is bounded by Ross Creek and single family residential to the north, medical offices to the west, multi-family residential and school district office to the south and single-family and multi-family residential to the east across Union Avenue. The project site is approximately 12 to 20 feet from the Ross Creek riparian corridor/top of bank. Two of the existing storage buildings near the northern property line are approximately 20 to 22 feet from Ross Creek riparian corridor/top of bank. The site is mostly paved and is landscaped along segments of its perimeter. Landscaping includes grass areas and 36 trees, of which 29 are ordinance-size trees.
2. **Project Description.** The project is for a Conditional Use Permit to allow the demolition of four total approximately 19,850-square foot, one-story, existing storage buildings, and the construction of a four-story, 125,303-square foot, 152-unit assisted living and memory care facility and removal of twenty ordinance-size trees and four non-ordinance size trees on an approximately 3.79-gross acre site. The project includes 106 surface vehicle parking spaces and eleven bicycle parking spaces. An ingress/egress driveway is located on Union Avenue and a pickup/drop off area located at the back of the building.

Operations

The project will be a fully-licensed residential care facility for the elderly (RCFE) as defined by the California Department of Social Services. Only assisted living and memory care will be offered at the facility. No independent living will be provided. The facility will provide care to seniors who require assistance with many functions of daily

life as well as those with forms of dementia ranging from mild cognitive impairment to Alzheimer's disease. The average age of residents at the facility is over 80 years. Residents will be provided a range of services including three meals per day prepared in an on-site commercial kitchen and served in a common dining room, organized activities and outings, specialized brain health programs, transportation and personal care which may include (without limitation) medication management, nursing and assistance with dressing, bathing, grooming and eating. The proposed facility will also include an on-site space for physical therapy and rehabilitation a salon.

This residential care facility consists of 110 assisted living units and 42 memory care units with a maximum of 198 beds. Each unit includes a refrigerator and sink, but no stoves or cooktops as the assisted living and memory care facility would provide all meals for clients in the ground floor commercial kitchen and common dining room area. All memory care units are located on the first and second floors and are separated from the assisted living units. The facility includes activity rooms, dining rooms, a great room, terraces and parlors, salon, wellness areas and a multi-purposes flexible space.

The facility will have approximately 83 employees including nurses, nursing assistants, medication technicians, culinary staff, housekeepers, maintenance staff, and other support staff. The number of staff on-site depends on the shift. Shift 1 (6:30 am to 2:30 pm) includes 47 staff on-site. Shift 2 has 31 staff (2:30 pm to 10:30 pm) and shift 3 has 5 staff (10:30 pm to 6:30 am). The facility's hours of operation and visitor hours will be 24 hours a day, seven days a week. The front doors will be secured after 8 pm, with a lock-code provided to staff and family members.

3. **General Plan Conformance.** The project is consistent with the Mixed Use Commercial General Plan land use designation, as the residential care facility functions as a commercial use that provides jobs that providing assisted living and memory-care services. In addition, the proposed project is consistent with the following General Plan goal and policies:

- a. Education and Services Goal ES-6: Access to Medical Services: Provide for the health care needs of all members of the San José community.
- b. Education and Services Policy ES-6.1: Facilitate the development of new and promote the preservation and enhancement of existing health care facilities that meet all the needs of the entire San José community.

Analysis for Goal ES-6 and Policy ES-6.1: The assisted living and memory care facility provides on-going daily care for clients requiring assistance with daily hygiene and activities. The assisted living and memory care facility would provide spaces for a client's therapist to come on-site and the facility would provide transportation services to all clients for off-site medical visits. This project would serve an aging population demographic, as well as those with assisted living needs.

- c. Education and Services Policy ES-6.11: Provide sufficient land for facilities to accommodate future health care needs of the aging population, such as nursing home care, assisted living, and continuing care retirement communities.

Analysis for Policies ES-6.11: This project would enable the development of a facility with both memory-care and assisted living for senior citizens.

- d. Land Use and Employment Goal IE-1: Proactively manage land uses to provide and enhance economic development and job growth in San José.
- e. Land Use and Employment Policy IE-1.4: Manage land uses to enhance employment lands to improve the balance between jobs and workers residing in San José. To attain fiscal sustainability for the City, strive to achieve a minimum ratio of 1.1 jobs/employed resident by 2040. In the near term, strive to achieve a minimum ratio of 1 job per employed resident by 2025.

Analysis for Goal IE-1 and Policy IE-1.4: The project would provide 83 new jobs as described in the project description. The type of staff needed would increase the number of jobs available for a wide variety of skill levels. Staffing of the facility would include nurses, nursing assistants, medication technicians, culinary staff, housekeepers, administrative staff, maintenance staff, and other support staff.

- 4. **Riparian Corridor Policy Conformance.** City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design is for the protection, preservation and restoration of the riparian habitat. The Policy provides general guidelines for riparian corridor protection and requires a minimum 100-foot setback from a riparian corridor's top of bank or a vegetative edge, whichever is closest, to minimize intrusion into the riparian corridor, and allows consideration of reduced setbacks under limited circumstances. A riparian project is a project that requires approval of a development permit, that is within 300 feet of a riparian corridor's top of bank or vegetative edge, whichever is greater. The subject site is adjacent to Ross Creek to the north hence the project is subject to this riparian policy.

Section A.2 of this policy includes some conditions under which the City may consider a setback reduction. The project meets the following conditions:

- a. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.

Analysis: Ross Creek is a lower order tributary and is classified as a Category 2 stream as defined in Santa Clara Valley Habitat Plan. It is an engineered channel within the jurisdiction of SCVWD. Currently, the areas outside the Ross Creek levee on the project site are occupied by a hard-packed dirt road, buildings, and pavement, which prohibit the encroachment of vegetation and extent of the Riparian Corridor from expanding from the existing riparian boundaries. According to the riparian assessment study prepared by Denise Duffy & Associates on June

17, 2019 (see Appendix B of the Initial Study/Mitigated Negative Declaration), the creek does not exert a “riparian” influence over such disturbed habitats, and even if those habitats were restored (e.g., with native vegetation), the riparian influence on vegetation is not expected to extend farther than 35 feet, and definitely not to the full 100-foot setback.

- b. Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.

Analysis: Currently asphalt hardscape and existing structures extend to approximately 12 to 20 feet from the top of bank of Ross Creek. The proposed project would remove the current hardscape and structures, provide site-appropriate native vegetation entirely within 35 feet of the top of bank and replace existing entirely impervious paving between 35 and 100 feet from the top of bank with a mix of vegetative landscaping (approximately 28 percent) and paved parking and vehicular/pedestrian circulation (approximately 72 percent). Furthermore, the project building would be sited entirely outside 100 feet from top of bank, with the exception of a small 188-square foot corner of the building encroaching approximately 10 feet into the 100-foot riparian setback area (0.3 percent of the setback area). The ecological value of the 35-foot setback with the project would therefore be greater than that of the existing development.

To qualify for the reduced setback, the project must illustrate the existence of some or all of the conditions under Section A.3 of the Riparian Policy by a qualified biologist. A memorandum to evaluate the stream setback was prepared by H.T Harvey & Associates on March 25, 2019 and was peer reviewed by Denise Duffy & Associates, Inc. on June 17, 2019. Both reports concluded that the project is qualified for a setback reduction in that the findings for the following extenuating circumstances under Section A.3 can be made:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

Analysis: Four potential alternatives were examined, including the project design. Given the irregular shape of the project parcel, the surrounding sensitive land uses, and the applicable development standards, it was determined that there was no other reasonable alternative that would avoid encroachment into the 100-foot setback area.

Because Ross Creek runs parallel to the longest edge of the project site (northern boundary), a continuous 100-foot setback area would result in a loss of 30% of the total net area of the property for development and leave the remaining western portion of the site unusable, due to the resulting acute triangular shape that does

not permit an efficient parking area or building footprint. The existing northern curb cut at Union Avenue is partially within the 100-foot setback area. Relocating this curb cut and drive aisle out of the 100-foot setback to a location farther south on Union Avenue would further diminish the area available for building and parking. The aggregate effect of the constraints resulting from a continuous 100-foot setback would reduce the size of the project building by approximately 30% to 50% even with all four floorplates of the four-story building reaching the maximum possible size without any stepping back at upper floors or articulation of building masses. The project would be infeasible.

If re-orienting the building along an east-west axis perpendicular to Union Avenue instead of on a north-south axis along the eastern edge of the site as the current design, the rest of the site could not accommodate sufficient off-street surface parking spaces. In addition, the southern edge of the building would then be closer to and facing the existing townhomes to the southwest of the project site, which the current design avoids and would be inconsistent with design guidelines requiring building mass to be minimized adjacent to low density residential development. Furthermore, orienting the building this way would prevent adequate Fire Department access around the entire building, and circulation of fire department vehicles through the site. Therefore, re-orienting the building is not a reasonable alternative for the project.

Another potential alternative that was considered was to provide underground parking. However, this would require additional floor area to offset the significant added cost of underground parking, which would result in greater use intensity and massing as stated above. The CN Commercial Neighborhood Zoning District limits the building height to a maximum of 50 feet. Thus, there is no opportunity to gain additional floor area by adding another story. Additionally, it is uncertain whether an efficiently shaped subterranean structure is feasible due to soil conditions adjacent to Ross Creek. Therefore, providing underground parking would not be a reasonable alternative to the project, particularly given the lower-order status of the creek and significant enhancements to the creek setback already being provided by the project.

The project was designed to keep improvements as far from Ross Creek as is reasonably possible and ensure that encroachments into the creek setback area consist to the greatest extent possible of landscaping and surface improvements rather than buildings. In addition, the proposed design provides required emergency vehicle circulation for the Fire Department, with the inclusion of a Fire Apparatus Access Road. The Fire Apparatus Access Road allows Fire Department vehicles to either turn or loop around on site and exit the property via the same curb cut by which it accessed the property or exit the property via another route that will return them to a public street. The project reduces the encroachment into

the riparian setback to the greatest extent possible while continuing to satisfy project objectives.

- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

Analysis: As discussed above, the project would remove hardscape and structures from the 35-foot setback and plant site-appropriate native vegetation in the area, thereby increasing the ecological value of land adjacent to the Riparian Corridor. Additionally, the boundaries of the project do not traverse the Riparian Corridor. Therefore, the reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

- c. The proposed uses are not fundamentally incompatible with riparian habitats.

Analysis: Section 1B of the City's Riparian Corridor Policy Study defines land uses that are incompatible with riparian systems to include uses which typically generate littering and/or dumping, off-road vehicle use, removal of native vegetation, uses that create noxious odors or use, store, or create toxic materials, and uses that generate high volumes of vehicular traffic. The project would not result in any of these uses defined to be fundamentally incompatible with riparian habitats and the project's land use does not typically result in any of the described incompatible land use categories. Therefore, the project is not fundamentally incompatible with the riparian habitat.

- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.

Analysis: The two reports prepared by H.T. Harvey & Associates and Denise Duffy & Associates, Inc. confirmed that there was no observable evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the project. Additionally, Ross Creek is an engineered channel within the jurisdiction of SCVWD and stream bank erosion features are subject to the maintenance and management regime of SCVWD, and outside of the applicants' sphere of responsibility. Finally, the project is designed to retain stormwater on-site, and not discharge to the creek.

- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Analysis: The project would neither change the creek alignment nor impact the creek flow in that no stormwater runoff would be discharged to the creek. Instead, stormwater runoff would be treated locally then discharged to the existing storm drain system along Union Avenue. In addition, the project is required to comply with City's Stormwater Policies to avoid soil erosion and minimize runoff.

Therefore, the project would not be detrimental or injurious to adjacent and/or downstream properties.

Section A.4.b of the Riparian Policy requires that Lighting should not be directed into Riparian Corridors. The project includes shielded lighting fixtures to direct light downwards. The photometric grid on the lighting plan (see development plans) shows that lighting would produce zero or nearly zero light spillover along the project site's northern boundary which is approximately 12 to 20 feet away from the riparian corridor. Hence the exterior lighting is consistent with Section A.4.b of the Riparian Policy.

Based on the above analysis, the project is consistent with the City's Riparian Corridor Policy.

5. **Zoning Ordinance Compliance.** A Conditional Use Permit is required for a residential care facility in the CN Commercial Neighborhood Zoning District (Table 20-90 in Section 20.40.100 of the San José Municipal Code). Pursuant to Section 20.200.1030 of the Zoning Ordinance, a residential care facility is defined as a facility licensed by the state of California where care, services or treatment is provided to persons living in a community residential setting.
 - a. **Setback.** Pursuant to the Zoning Ordinance, the project meets the front, side, and rear setbacks of the CN Commercial Neighborhood Zoning District. The CN Commercial Neighborhood Zoning District requires a minimum front setback of 15 feet and zero setback requirements to the side and rear. The project proposes a front setback of 20 feet, side setbacks of 16 feet, and a rear setback of 48 feet. The project is in compliance with the zoning setbacks.
 - b. **Height.** Pursuant to the Zoning Ordinance, the CN Commercial Neighborhood Zoning District has a maximum height for buildings and structures of 50 feet and Section 20.100.1300 allows exceptions to be granted for elevator shafts and stairwells to exceed the height limit by up to 17 feet. The proposed building has a maximum height of 49.83 feet with a stairwell projection of 51.5 feet. Therefore, the project meets the maximum height requirement.
 - c. **Parking.** Pursuant to Section 20.90.060 of the Zoning Ordinance, the required parking for a residential care facility is one space per the first six client beds, plus one additional space for up to four client beds above the first six, plus one space for each employee or staff member. With a total of 198 beds and 47 staff maximum on-site at a time, a total of 96 parking spaces is required. Additionally, the project is required to have bicycle parking at the ratio of one bicycle parking space per ten full-time employees, which equals five bicycle spaces. The project provides 106 vehicle parking spaces and 11 bicycle spaces. Therefore, the project is in compliance with the parking requirement.

- d. **Lighting.** Exterior lighting will be installed for the assisted living building and parking area for security and access. The project includes the installation of LED pole-mounted luminaries in the parking area, LED cylinder wall-mounted lights on the building exterior, and LED cylinder down lights at the building's canopied entrance. The height of the pole lighting fixtures ranges from eight feet to 22.5 feet depending on the distance to the residential use, in compliance with the maximum allowed height of 25 feet. The pole light closest to the shared residential property line is located near the southwest edge of the building and has a height of 8 feet. The project's 22.5-foot high pole lights on the parking lot are at least 64 feet away from the shared residential property line, which exceed the 45-foot (double the height of the light fixture) setback requirement pursuant to Zoning Code Section 20.40.540. The exterior lighting also conforms to the City Council's Outdoor Lighting Policy (4-3), in that all exterior lighting is shielded to direct light downwards to ensure that light and glare does not spill over onto nearby residential properties. The photometric grid on the lighting plan shows that lighting would produce zero or nearly zero light spillover along the project site boundaries.
- e. **Screening adjacent to residentially zoned properties.** Pursuant to Section 20.40.560 of the Zoning Ordinance, a masonry wall or a solid wooden fence of at least five feet in height is required to screen the abutting residentially zoned properties and such screening should include trees or plants if the use includes outdoor activities. There is an existing approximately 6-foot-high solid wall along property line separating the site from the adjacent residential use to the southwest of the project site. The single-family residences located to the north of the project site across Ross Creek are approximately 76 feet from the project site and have fences at the rear yard along Ross Creek. The project also provides at least 5-foot landscape buffers with trees surrounding the parking lot and the driveway to provide effective screening to the nearby residentially zoned properties. The project complies with this screening requirement.
- f. **Noise.** Outdoor areas are available to residents of the facility through terraces located on the 2nd to 4th floors (approximately 172 feet from the nearest residential building to the north and 160 feet from the residential building to the southwest of the property) and outdoor courtyards that are enclosed by the building or fence (approximately 152 feet away from the single family residents to the north across Ross Creek and approximately 64 feet from the nearest townhouse building to the southwest of the project site), and would be for passive use; no scheduled outdoor activities, events, nor amplified music would occur. Noise generating on-site operational components of the project would include mechanical equipment and parking lot activities. The nearest residential land uses are located 25 feet south and 100 feet north of the parking lot. The mechanical equipment would be installed in a mechanical equipment room inside the southern portion of the proposed building and the generator would be located within an enclosed service yard to the

south of the building, not adjacent to residential use (approximately 136 feet away from the nearest residential building to the southwest of the site). Such equipment and the enclosed generator would not be audible at off-site locations.

6. **Commercial Design Guidelines Consistency.** The project is a commercial use and is evaluated under the Commercial Design Guidelines. The Institutional Use Section of the Commercial Design Guidelines encourages buildings to be designed and placed on site so that they avoid overwhelming nearby residential development with their mass and scale. The townhouses to the southwest of the site are up to two stories in height. The four-story project is designed to buffer this residential use with 48-foot to 66-foot setbacks along the shared property line, including a landscape buffer and driveway. The nearest residential building to the southwest of the project site is approximately 10 feet from the shared property line, providing an approximately 60-foot buffer between the existing residential community and the project on the ground floor. Additionally, the project building steps back approximately 30 feet from the 2nd floor to the 4th floor at the southwest wall, which results in an approximately 90-foot distance from this nearest residential building to the southwest edge of the proposed building from the 2nd floor to the 4th floor.

The project also stepbacks at the north and west ends of the building on the 4th floor to reduce the building massing and provide a large setback (greater than 145 feet) to the single-family houses to the northwest of the project site, across Ross Creek. The windows at the north edge of the building have been reduced in size to reduce the privacy impact on those single-family houses. The front elevation along Union Avenue is designed to break up the long façade with a significant notch on the fourth floor in the middle of the building to create a 3-story mass at the central and north portion of the building facing the street. This design avoids overwhelming the nearby residential development.

In addition to breaking up the building massing, the front facade includes one and a half story height projected columns with trellis on top to define the lower base of the northeast part of the building to provide an appropriate transitional relationship with the street and the adjoining sidewalk. The architectural design breaks up large scale design elements with smaller modules such as balconies, patios, terrace with architectural projections and recessions in different colors and a variety of materials such as metal, wood siding, fiber cement siding, stone veneer and stucco.

Landscaping buffers with trees are located along the property lines to provide screening to the adjacent residential uses. The project provides one central courtyard bounded by the building for the assisted living clients and one enclosed courtyard for the memory care clients and reduce the visual impact to the surrounded residential use. Therefore, the project is consistent with the Commercial Design Guidelines

7. **Environmental Review.** An Initial Study (IS)/Mitigated Negative Declaration (MND) was prepared by the Director of the City of San José's Department of Planning,

Building and Code Enforcement for the subject Rezoning and Conditional Use Permit. The document was circulated for public comment between September 6, 2019 and September 26, 2019. Five formal comments/emails were received from the public during the public circulation period. Comments from the general public are mainly about traffic, aesthetics, noise, air and water pollution, and alternative uses at the project site. The comments did not result in any substantial changes to the project description, analyses, and/or impacts that was previously disclosed in the IS/MND. The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at: <http://www.sanjoseca.gov/index.aspx?NID=6422>.

The project will demolish four existing storage buildings on the project site. The City's Historic Preservation Officer visited the site in July 2019 and concluded pursuant to Section 15064.5 of the CEQA Guidelines that the structures would not qualify for listing on any of the historic resources lists because it lacks design distinction and is not associated with important people or events.

The predominant existing noise source around the project area is the vehicular traffic along Union Avenue. Outdoor areas are open to residents of the facility through terraces located on the 2nd to 4th floors (approximately 160 feet from the nearest residential use) and outdoor courtyards that are enclosed by the building or fence and would be for passive use; no scheduled outdoor activities, events, nor amplified music would occur. Noise generating on-site operational components of the project would include mechanical equipment and parking lot activities. The nearest residential land uses are located 25 feet south and 100 feet north of the parking lot. According to the Noise Report prepared by Illingworth & Rodkin, Inc. dated April 8, 2019, residences to the south would experience hourly average noise levels up to 46 dBA Leq and residences to the north would experience up to 34 dBA Leq from parking activities. The mechanical equipment would be installed in a mechanical equipment room inside the southern portion of the proposed building and the generator would be located within an enclosed service yard to the south of the building, not adjacent to residential use (approximately 136 feet away from the nearest residential building to the southwest of the site). Such equipment and the enclosed generator would not be audible at off-site locations and would not contribute to the ambient noise at sensitive receptors near the project area.

The Initial Study also analyzed the noise generated by emergency vehicles because emergency vehicle could include the use of a siren along the roadways serving the project site. The emergency ambulance visits would be infrequent based on the data (an average of 3 to 4 times per months during the year of 2017 and 2018) provided by the applicant for the other two similar facilities that they operate in the south Bay Area. This is consistent with information provided for other project reviews for similar facilities in San José. At a distance of approximately 50 feet, sirens could produce

noise levels that reach levels of 92 to 94 dBA Lmax. Such noise levels are currently produced along roadways serving the site by existing ambulance trips. In most instances, sirens are only used as necessary in areas near roadway intersections or other congested areas and oftentimes, emergency vehicle response does not require the sounding of sirens when approaching the location of the emergency. The Initial Study concludes that infrequent emergency vehicle sirens would not be expected to measurably increase existing ambient DNL noise levels in the project area which currently include occasional emergency vehicle sirens or other loud vehicles. Traffic noise generated by the proposed project would only increase the noise level by 1 dBA DNL at existing noise sensitive land uses according to the noise report, which would be considered less-than-significant utilizing the thresholds (5 dBA DNL or greater) established by General Plan Policy EC-1.2.

According to the transportation analysis, the project would generate 16.47 vehicle miles traveled (VMT) per employee that exceeds the threshold of 12.21 VMT per employee based on the City's VMT impact criteria, therefore resulting in a significant transportation impact. To reduce this impact to a less-than-significant level, the project applicant shall prepare and implement a transportation demand management (TDM) plan which shall include the following three measures: 1) provide and maintain bicycle parking spaces and facilities; 2) provide fully (100%) subsidized transit passes (e.g., SmartPass) for all (both full-time and part-time) employees; 3) designate an on-site TDM coordinator who will be responsible for implementing and managing the TDM plan. The TDM plan shall be prepared by a traffic engineer and approved prior to issuance of any Public Works clearance. An annual verification of consistency with the TDM plan shall be submitted to the Director of Public Works or Director's designee for on-going monitoring and reporting.

Other primary environmental issues that require mitigation measures are air quality, biological resources, hazards and hazardous materials. The IS/MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions in regard to construction dust controls and equipment of the site, including Best Management Practices and Standard conditions, are included as conditions of approval to ensure all potential impacts have been addressed.

8. Conditional Use Permit Findings. Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans, and area development policies; and

Analysis: As explained in detail above, the project is consistent with the General Plan designation and policies in that the project is a facility that would provide a

commercial use with up to 83 staff employees and provide health care and daily care services to clients.

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: The project conforms to the definition of a residential care facility. These facilities are considered commercial uses and are conditionally permitted uses within the CN Commercial Neighborhood Zoning District. As discussed above, the project building is approximately 49.83 feet tall and is within the maximum building height of 50 feet and the stairwell projection (51.5 feet high) is within the allowable 17-foot exception projection. The project is required to provide parking at one space per the first six client beds, plus one additional space for up to four client beds above the first six, plus one space for each employee totaling a minimum of 96 parking spaces. The project provides 106 vehicle parking spaces. Additionally, the project is required to provide five bicycle parking spaces and the project would provide 11 bicycle parking spaces to fulfill the parking requirements.

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

Analysis: Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A sign describing the project was posted on the project site on August 9, 2018. A community meeting was held on May 20, 2019 to inform surrounding community of the project's intent to develop. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. In addition, a City website was created for the project. The website includes the project information, architectural plans and the project contact. Staff have been available to answer questions from the public. Per a few community members' request, on June 28, 2019 staff met with them to discuss their concerns and questions, and staff followed up on pending questions after the meeting. The project is also consistent with Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design as discussed in the Riparian Corridor Policy Section.

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

Analysis: As described above, the project is located in an area with a mix of residential and commercial uses, therefore, the proposed residential care facility use would be compatible with the surrounding residential and commercial uses. The project would provide clients having medical impairments or in need of assistance with daily activities with permanent or long-term care. Most of the activities are primarily indoors and any outdoor activities are for passive uses with limited impact. Therefore, the project would not adversely affect the surrounding developments.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The outdoor common areas, fences, parking, loading area, and landscaping are all located within the 3.79-gross acre site.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public or private service facilities as are required.

Analysis: Access to the site would be primarily from Union Avenue, a two- to four-lane roadway. VTA bus stops for bus route 27 are located within 350 feet of the project site. VTA bus stops for route 62 are within approximately 0.3 mile of the project site. The site is approximately 1,700 feet from California Highway 85 and is within a developed area that is currently served by necessary private and public facilities.

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

Analysis: As stated above, the project occurs in an urbanized area that is adequately serviced by all required utilities and public services, and the Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. The project would not discharge stormwater to the creek. Activities with the Assisted Living and Memory Care community requiring memory care and continuous supervision would occur indoors; therefore, the project would not generate noise or odor above the existing ambient levels.

The noise level generated by the parking lot activities also does not exceed the Zoning Code requirement. The project would therefore not have an unacceptable impact on adjacent properties.

9. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, 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.

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General plan and applicable specific plans and area development policies.

Analysis: See 8a above.

- b. The site development permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: See 8b above.

- c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: See 8c above.

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

Analysis: The project is located in the eastern portion of the site along Union Avenue and the parking lot is located to the west of the building. This site design allows vehicles to circulate on site. The main entrance of the proposed building is located to the rear of the building, facing parking lot, to allow on-site passenger pick-up and drop off. The service yard is enclosed and is located to the south of the project building and is accessed from an internal driveway. The project design includes a color scheme with vibrant sections which contribute to an interesting and varied design and is compatible with the surrounding uses.

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

Analysis: The existing neighborhood near the site consists of primarily one-story to two-story residential buildings and one-story to two-story commercial buildings. As discussed above, the project building would be located in the eastern portion of the site along Union Avenue, to provide substantial distance from the creek and the nearby residential uses. The building massing has been

reduced and broken up by providing step backs on the upper floors, applying architectural projections and recessions, incorporating smaller modular such as patios, balconies and terraces and some pedestrian-scale architectural elements such as columns and trellis along Union Avenue with different colors and materials to provide variation in design. Although the project is a commercial use, the building design presents residential building features which is aesthetically harmonious with adjacent development or the character of the neighborhood.

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

Analysis: See 8g above.

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

Analysis: As shown on the plan sets, the landscaping, irrigation systems, all walls and fences, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. The project would provide screening trees surrounding the parking lot, adjacent to the townhome development to the southwest of the project site. The project includes native plantings within the 35-foot of the riparian setback area in conformance with the Riparian Corridor Policy. The courtyards for outdoor activities are enclosed by building or fences. The trash facility is inside the building and is accessed from the enclosed service yard.

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

Analysis: The project is primarily accessible by a driveway off Union Avenue and a second access from the adjacent Union School District site. As described above, the site design allows vehicular circulation on site. The project provides 106 parking spaces, which exceeds the 96 parking spaces requirements. The project provides a pedestrian path from Union Avenue to the main entrance at the rear of the building.

- 10. **Evaluation Criteria for Demolition.** Chapter 20.80.460 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 this Permit.

- 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 four existing total approximately 19,850-square foot storage buildings on-site would facilitate the construction of an assisted living and memory care facility. Re-use or rehabilitation of the buildings would not be practical given the small size of the buildings, and the project would not remove residential units from the existing housing stock.

The existing on-site structures are over 45 years old and a Historical Evaluation was completed by the City's Historic Preservation Officer for the existing buildings in July 2019, which concluded that the structures would not qualify for listing in any of the historic resource lists because it lacks design distinction is not associated with important people or events.

11. Tree Removal Permit Findings. Chapter 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees.

- a. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
- c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis: Twenty ordinance-sized trees would be removed to facilitate the development of the residential care facility. The subject trees range in size from twelve inches in diameter to 25.5 inches in diameter. The project also involves the removal of four other non-ordinance size trees to facilitate the new construction. The trees to be removed are located within the sidewalk, project's building footprint and the parking lot. According to the City's Tree Replacement ratios, the project

would require 87 15-gallon replacement trees or 43 24-inch box and one 15-gallon replacement trees. Pursuant to the project landscaping plan, a total of 51 twenty-four-inch box trees will be planted on-site consistent with the City's Tree Replacement ratios and the project's environmental document.

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

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use 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 Conditional Use Permit by the permittee; 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.** This Conditional Use Permit shall automatically expire two 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 Planning Commission. However, the Director of Planning may approve a Permit Adjustment 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 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 Conditional Use 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 Conditional Use Permit plans entitled, "Belmont Village Union Avenue" dated received April 29, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
6. **Scope and Use Authorization of the Conditional Use Permit.** This Conditional Use Permit will allow the demolition of four total approximately 19,850-square foot, one-story storage buildings, and the construction of a four-story, 152-unit assisted living and memory care facility and removal of twenty ordinance-size trees on an approximately 3.79-gross acre site, pursuant to the approved operation management plan which states that care and services are provided 24-hours per day, seven days a week. This facility does not allow unassisted living options for patients with units that contain a full kitchen.
7. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Grading Permit has been issued.
8. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection

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

9. **Replacement Trees.** A total of 87 fifteen-gallon trees is required for the removal of the 20 ordinance-sized trees and the four non-ordinance size trees as part of the project. Two fifteen-gallon trees could be replaced by one twenty-four-inch box tree. The permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with said mitigation requirements. Such evidence shall be labeled "File Number CP18-025" and provided to the Planning Project Manager, prior to the issuance of Building Permits or any Public Works clearances.
10. **Timing for Demolition.** Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Public Works Grading Permit has been issued.
11. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
 - a. The copy of the Permit shall be a minimum size of 8.5 inches by 11.0 inches; shall be posted at each public street frontage within two feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the Permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the Permit shall be posted at a location where the Permit is readable from a common access driveway or roadway.
12. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
13. **State Licensing.** The Permittee shall maintain conformance with all applicable State licensing regulations for a residential care facility for the elderly, as may be amended.

14. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
15. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. 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 defined below.
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 the San José Municipal Code.
17. **Building and Property Maintenance.** The permittee 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.
18. **Green Building Requirements for Tier 2 Non-Residential Development (≥25,000 square feet).** This development shall be subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this Permit, the permittee shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this Permit. The project shall achieve the minimum green building certification of LEED Silver. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within one year after the Building Permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
19. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
20. **Colors and Materials.** All building colors and materials shall be those specified on the Approved Plan Set.
21. **Window Glazing.** Unless otherwise indicated on the Approved Plan Set, all windows shall consist of a transparent glass.

22. **Outdoor Activity.** No outdoor activity, including loading, sweeping, landscaping or maintenance shall occur within one-hundred fifty feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 a.m.
23. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set. No outdoor storage is allowed in common areas.
24. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
25. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
26. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect 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.
27. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement, including during construction.
28. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The permittee shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
29. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
30. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping. Any phasing of the project resulting in undeveloped areas for more than six months shall

be temporarily landscaped in order to provide dust and erosion control. This temporary landscaping shall consist of mulch and drought-resistant plants and ground cover.

31. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that shall conform to the Zonal Irrigation Plan in the Approved Plan Set. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
32. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
33. **Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.
34. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, CP18-025 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. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
35. **Public Works Clearance.** 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:**

- i. A Transportation Analysis has been performed for this project. With the inclusion of the conditions identified in the Traffic memo dated 05/31/19, the subject project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1) and a determination for a mitigated negative declaration can be made with respect to traffic impacts.
- ii. The project shall provide a Transportation Demand Management (TDM) Plan prior to Public Works Clearance. The annual monitoring report must be prepared by a licensed Traffic Engineer. The TDM plan should include the following items:
- a) Provide bike parking/end of trip bike facilities;
 - b) Provide 100 percent subsidized or discounted transit passes for all (both full-time and part-time) employees; and
 - c) Designate an on-site TDM coordinator who will be responsible for implementing and managing the TDM plan.

Annual verification of consistency with the TDM plan shall be submitted to the Director of Public Works or Director's designee for on-going monitoring and reporting.

c. **Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.

- iii. The project site is within the State of California Seismic Hazard Zone of Required Investigation for Liquefaction. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to the PW Project Engineer for review and approval by the City Geologist prior to issue of a grading permit or Public Works Clearance. Foundation, earthwork and drainage recommendations should be included in the report. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation.
- 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.
- d. **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.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.
 - i. The project's HM plan and sizing calculations have been reviewed and this project will be in conformance with City Policy 8-14.
 - ii. Final inspection and maintenance information for the HM controls must be included on the final HM plans.

- f. **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.
- g. **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 issuance of Public Works clearance.
- h. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Union Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2019 base fee is \$489 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- i. **Street Improvements:**
 - i. Remove the existing curb, gutter, and sidewalk and construct a 12-foot wide City standard attached sidewalk along Union Avenue project frontage with 4-foot by 5-foot tree wells at back of walk.
 - ii. Construct two (2) 26-foot wide City Standard driveways along Union Avenue.
 - iii. Improvement of the public streets to the satisfaction of the Director of Public Works.
 - iv. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - v. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage
 - vi. Repair, overlay, or reconstruction of asphalt may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- j. **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.
- k. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in

cut-outs at the back of walk. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

36. Affordable Housing Conditions. 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.

37. No Drive Piling Allowed. All construction contract or relevant document (e.g., equipment rental) shall include language indicating that no pile driving will be permitted without further vibration assessment.

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

39. Standard Environmental Conditions.

- a. Air Quality.
 - 1) Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - 2) 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.

- 3) 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.
- 4) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- 5) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- 6) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- 7) Replant vegetation in disturbed areas as quickly as possible.
- 8) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- 9) 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 California Code of Regulations). Provide clear signage for construction workers at all access points.
- 10) 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.
- 11) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. **Biological Resources.**

- 1) Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

//

//

//

//

//

Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size Replacement Tree
	Native*	Non-Native	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
<p>*Native trees are those that are naturally inherent to the Santa Clara Valley. These species include, but are not limited to, California Bay Laurel, Aptos Blue Redwood, Valley Oak, California Buckeye, Box Elder, Western Sycamore, and Red Willow.</p> <p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial and industrial properties, a permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p>				

In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement:

- i. 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.
 - ii. 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.
- 2) Implement the following City's Tree Protection Standards. The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and

signage shall be maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

- 3) Native Planting Plan: The permittee shall retain a landscape designer to develop, in coordination with a qualified restoration biologist/practitioner, a Native Landscape Plan for areas within the riparian setback area that are designated for vegetative cover. The Native Landscape Plan shall include, but is not limited to, the following: planting palette, planting plan, success criteria, implementation schedule, monitoring protocols to determine if the success criteria have been met, adaptive management protocols in the case that the success criteria are not met, and funding assurances. The Native Landscape Plan shall be submitted to the Director of Planning or the Director's designee.
- 4) Monitoring and Maintenance: A qualified restoration biologist/practitioner shall conduct a minimum of three years of monitoring and maintenance after planting activities are complete. Plantings and revegetation conducted in compliance with this condition shall be monitored and maintained until all success criteria are achieved. A final report outlining compliance with the monitoring protocols as outlined the Native Landscape Plan shall submitted to the Director of Planning or the Director's designee.
- 5) 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 the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.

c. Cultural Resources

- 1) 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 (PBCE) 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 PBCE 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.

- 2) If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. 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 (PBCE) 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:
 - a) 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.
 - b) The MLD identified fails to make a recommendation; or
 - c) 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.

d. Geology and Soils

- 1) 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.

- 2) If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) 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 PBCE.

e. Hazards and Hazardous Materials

- 1) In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of the on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
- 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- 3) All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- 4) 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.
- 5) Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- 6) Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.

- i. 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.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
- iii. 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.

f. Hydrology and Water Quality

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- 9) 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.
- 10) 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.
- 11) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - 12) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - 13) Prohibit unnecessary idling of internal combustion engines.
 - 14) 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.
 - 15) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - 16) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
 - 17) 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.
 - 18) 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.
 - 19) 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.

g. Noise and Vibration

- 1) 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.

- 2) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- 3) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- 4) Prohibit unnecessary idling of internal combustion engines.
- 5) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- 6) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- 7) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- 8) Notify all adjacent 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.
- 9) 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.
- 10) 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.
- 11) A suitable form of forced-air mechanical ventilation, as determined by the City’s Building Official, shall be provided for all occupied areas of the proposed building with east and north fronting façades, so that windows can be kept closed to control noise.

40. Financing Plan and Fees. The San José City Council (“City”) approved the Envision San José General Plan 2040 (“General Plan”) in 2011. The General Plan provides the framework for development located in San José. The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based

Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

41. Future Additional Landscaping. Any modifications to the surface parking area (including reduction in area) shall conform to the Off-Street Parking and Loading requirements of the Zoning Ordinance, as amended; and any surface parking area removed within the 100-foot riparian setback area, without replacement improvements, shall be landscaped. Should future amendments of the parking requirements of the Zoning Ordinance allow, and should it be determined by the Planning Director that the existing parking area on the site is persistently underutilized, the permittee shall replace the paved parking area adjacent to Ross Creek with landscaping, to the extent feasible. Said landscaping ~~within the 100-foot riparian setback area~~ shall be installed and maintained in accordance with the Native Planting Plan requirements set forth in the Standard Environmental Conditions for Biological Resources, Part 3, herein (Condition of Approval 39.b.3 and 4, Native Planting Plan; and Monitoring and Maintenance).

42. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or 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, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

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

EFFECTIVE DATE

The effective date of this Conditional Use Permit (File No. CP18-025) shall be the effective date of the Conventional Rezoning Ordinance for File No. C18-018 adopted on [REDACTED], 2019 (the "Conventional Rezoning Ordinance") and shall be no earlier than the effective date of said Conventional 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.



May 30, 2018
HMH 5320.00.270
Page 1 of 1

EXHIBIT "A"
REZONING FROM R-1-8 TO CN
PORTION OF APN 421-20-010

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of that certain parcel of land described in the grant deed recorded April 18, 1962, in Book 5537 of Official Records, page 697, a portion of that certain parcel of land described in the grant deed recorded April 6, 1962, in Book 5528 of Official Records, page 84, and a portion of Parcel No. 2 described in the quitclaim deed recorded in 1962, in Book 5710 of Official Records, page 360, all of Santa Clara County Records, described as follows:

BEGINNING at the northeast corner of said parcel of land described in the grant deed recorded April 18, 1962, being on the centerline of Union Avenue;
Thence along said centerline, South 00°27'17" West, 605.82 feet to the southerly line of Zone R-1-8 as shown on the City of San Jose Land Use Zoning Map;
Thence along said southerly line, North 89°28'06" West, 278.27 feet, to the general westerly line of said parcel of land described in the grant deed recorded April 6, 1962;
Thence along said general westerly line, the following three courses:

1. Thence North 00°27'17" East, 180.00 feet;
2. Thence North 89°28'06" West, 216.10 feet;
3. Thence North 00°27'17" East, 35.39 feet, to the westerly line of said parcel of land described in the grant deed recorded April 18, 1962;

Thence along said westerly line and the northerly line of said parcel of land the following three courses:

1. Thence North 00°27'17" East, 132.31 feet,
2. Thence North 59°32'17" East, 383.07 feet;
3. Thence along a tangent curve to the right, having a radius of 470.00 feet, through a central angle of 21°38'26" for an arc length of 177.52 feet, to the POINT OF BEGINNING.

Containing 4.69 acres, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

For zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 5-30-18

Tracy L. Giorgetti
Tracy L. Giorgetti, LS 8720





0 60 120
1 IN. = 120 FT.

ROSS CREEK

N59°32'17"E 383.07'
5537-OR-697

R=470.00' L=177.52'
Δ=21°38'26"

45'

43'

POB

N00°27'17"E
132.31'

N89°28'06"W
216.10'

5528-OR-84

S00°27'17"W 605.82'

HEATHER DRIVE

LINE TABLE		
LINE	BEARING	LENGTH
L1	N0°27'17"E	35.39'

N00°27'17"E 180.00'

PARCEL NO. 2
5710-OR-360

N89°28'06"W 278.27'

UNION AVENUE

45'

VAR.

45'

45'

LOS GATOS ALMADEN ROAD



LEGEND

POB

POINT OF BEGINNING

SHEET 1 OF 1

Date: 2018-05-30
Designed: -
Drawn: RF
Checked: TG
Proj. Engr.:
53200



EXHIBIT "B"
REZONING FROM R-1-8 TO CN
PORTION OF APN 421-20-010

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



Page 1 of 1

MAPCHECKS Tue May 29 08:55:59 2018

Parcel Map Check

Parcel name: 532000PL02

S 00-27-17 W 605.82

N 89-28-06 W 278.27

N 00-27-17 E 180.00

N 89-28-06 W 216.10

N 00-27-17 E 35.39

N 00-27-17 E 132.31

N 59-32-17 E 383.07

Arc 177.52 Rad 470.00
S 30-27-43 E INCen 21-38-26 Tan 89.83
N 08-49-17 W OUTCh: 176.47
Radius Point

N 54-53-56 E 0.01

2101.6282, 44160.2536

1495.8273, 44155.4456

1498.4094, 43877.1876

1678.4038, 43878.6161

1680.4090, 43662.5254

1715.7979, 43662.8063

1848.1037, 43663.8564

2042.3072, 43994.0497

N 70-21-30 E

1637.1831, 44232.3237

2101.6236, 44160.2470

2101.6293, 44160.2552

Perimeter: 2008.49

Area: 204,127 Sq Ft 4.69 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Total: 0.0019 N 54-53-54 E

Error (N, E) 0.00110, 0.00156

Precision 1:1,057,100.00

