

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT AND SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN APPROXIMATELY 9,200-SQUARE FOOT RESTAURANT, AND THE CONSTRUCTION OF A FIVE-STORY, 93,736-SQUARE FOOT OFFICE BUILDING WITH AN ALTERNATIVE PARKING DESIGN (PARKING STACKERS), AND REMOVAL OF EIGHT ORDINANCE-SIZE TREES AND 20 NON-ORDINANCE SIZE TREES ON AN APPROXIMATELY 0.71-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF SOUTH WINCHESTER BOULEVARD, APPROXIMATELY 200 FEET SOUTHERLY OF STEVENS CREEK BOULEVARD (335 SOUTH WINCHESTER BOULEVARD; APNS: 303-39-051 AND -047)

FILE NO. SP18-049

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 19, 2018, an application (File No. SP18-049) was filed by Courtenay Bauer on behalf of Pacific Row Development, LLC, with the City of San José for a Special Use Permit and Site Development Permit to allow the demolition of an approximately 9,200-square foot restaurant, and the construction of a five-story, 93,736-square foot office building with an alternative parking design (parking stackers), and removal of eight ordinance-size trees and 20 non-ordinance size trees on an approximately 0.71-gross acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located on the west side of South Winchester Boulevard, approximately 200 feet southerly of Stevens Creek Boulevard (335 South Winchester Boulevard; APNs 303-39-051 and -047, 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, 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 recommendation of the 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, "335 S. Winchester" dated September 17, 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 South Winchester Boulevard, approximately 200 feet southerly of Stevens Creek Boulevard. The site is currently developed with an approximately 9,200-square foot restaurant (Khanh's) and surface parking. Vehicle access to the site is from two driveways on South Winchester Boulevard. The site is bordered by single-family residences to the west, including a dense row of cypress trees along the shared rear property line; and by commercial retail uses on all other sides, including Santana Row to the east, across South Winchester Boulevard.
2. **Project Description.** The project is for a Special Use Permit and Site Development Permit to allow the demolition of an approximately 9,200-square foot restaurant, and the construction of a five-story, 93,736-square foot office building with an alternative parking design (parking stackers), and removal of eight ordinance-size trees and 20 non-ordinance size trees.

The project building would front onto South Winchester Boulevard. The project includes 207 below-grade parking stalls in an automated stacking system, and 22 bicycle parking spaces in both rack and locker configurations. An ingress/egress driveway would be placed along the south side of the property, leading behind the building to a small surface parking lot and the below-grade parking garage. An eight-foot masonry wall would be installed along the rear property line shared with the residence to the rear of the site.

Operations

The project would install a parking stacker system designed to be operated by the vehicle driver. The driver would park in an open stacker stall, exit the vehicle and parking space, then use a key pad that closes a safety barrier and moves the vehicle to an available space within the stacker module, and provides a retrieval code to the driver.

3. **General Plan Conformance.** The project is within the Urban Village General Plan land use designation. This designation supports a wide variety of commercial, residential, institutional or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan.

The project site is within the adopted Santana Row/Valley Fair Urban Village Plan (SRVF), and has a land use designation within the Urban Village Plan of Mixed Use Commercial. According to the SRVF Urban Village Plan, this designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use and residential use, if also proposed, allowed in a secondary role. New development of a property with this designation allows from 0.50 to 4.5 Floor Area Ratio (FAR) for commercial projects. Appropriate commercial uses include neighborhood retail and mid-rise office. The office use with ground floor

retail are primary allowed uses within the Mixed Use Commercial designation of the SRVF Urban Village, and proposes an FAR of 3.5. Therefore, the project is consistent with the Urban Village designation of the General Plan and Mixed Use Commercial land use designation of the SRVF Urban Village. In addition, the project is consistent with the following General Plan policies:

- a. **Policy CD-7.3** Review development proposed within an Urban Village Area prior to approval of an Urban Village Plan for consistency with General Plan design policies and any other applicable design policies pertaining to the proposed use. Following adoption of an Urban Village Plan, review new development for consistency with design goals, policies, standards, and guidelines included within the Urban Village Plan

Analysis: As the project site is within the approved SRVF Urban Village, the project is evaluated below for consistency with key design goals, policies, standards, and guidelines of the Urban Village. The project is consistent, as analyzed below. Consistency with height and setback design standards is evaluated in the Zoning Consistency section, as the CP Commercial Pedestrian Zoning District defers to these standards. The project is consistent with the following design goals, policies, standards, and guidelines of the SRVF Urban Village:

- i. Vibrant Pedestrian Corridors

Urban Design Goal UD-8: Create continuous building frontages that frame the Village's public realm and streets

Design Guideline DG-47: Buildings should align with street frontages and public pedestrian pathways to create continuous street walls.

Design Guideline DG-12: Consider designing space that will allow the commercial use to spill over onto the public right of way to activate the street and engage the pedestrians. This may require a permit from the City of San José Department of Public Works.

Design Standard DS-11: Where the existing sidewalk in front of a development project is less than the required sidewalk (20 feet along Winchester and Stevens Creek boulevards and 12-15 feet on all other streets; see Chapter 6), the project must make up the difference such that the entire required sidewalk width is publicly accessible and functions as a sidewalk.

Analysis: The project creates a continuous building frontage along the South Winchester Boulevard public sidewalk, with the exception of the required vehicle driveway along the southern property line. The project provides a 20-foot wide public sidewalk, through a combination of property dedication and a sidewalk easement. The project will incorporate ground floor commercial space with pedestrian entries directly onto the sidewalk, which will facilitate commercial activity on the sidewalk, such as sidewalk cafes.

ii. Active Ground Floor Uses

Policy 3-14: Ensure new development along Stevens Creek and Winchester Boulevard includes ground floor commercial and/or active spaces such as lobbies fronting the street and wrapping the corner when located on a corner lot.

Design Standard DS-1: Ground floor building frontages shall have clear, untinted glass or other glazing material on at least 60% of the surface area of the facade between a height of two and seven feet above grade.

Design Standard DS-2: Primary pedestrian entrances for both ground floor and upper-story uses shall face Winchester Boulevard.

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

Design Standard DS-4: The depth of ground floor commercial space shall be 50 feet minimum and preferably 60 feet.

Design Guideline DG-1: Along all active frontages, a minimum of 75 percent of the ground floor linear frontage of any building should be active.

Analysis: Approximately 135 feet (or 84%) of the 160-foot wide ground floor building frontage is active, consisting primarily of ground floor retail storefront, with the remainder of the active area being the entry lobby for the upper office floors. The storefront glass is non-tinted, allowing views into the active ground floor spaces. The floor-to-ceiling height is 15 feet; and the ground floor commercial space depth is 65 feet. All pedestrian entrances directly face the sidewalk and street, and the upper floor uses also face the street.

iii. High Quality Architecture

Urban Design Goal UD-5: Architecture and design of new or remodeled buildings should be high-quality and visually compelling.

Design Standard DS-6: All buildings shall contain the three traditional parts of a building: a base, a midsection, and a top. While a tower (typically above eight stories) may not have a distinct top feature, the building design shall distinguish the pedestrian-oriented base portion from the massing above.

Design Standard DS-7: Buildings shall maintain facade quality of architectural articulation and finishes on all sides of a building that is visible to the public. Some of the architectural features of the main facade shall be incorporated into the rear and side elevations.

Analysis: The building incorporates high quality exterior materials including metal and glass storefront and curtain walls, and solid, warm-tone panels framing deep bays within the storefront. The off-set pattern of bays within the front façade, and the contrast between solid and transparent materials create

a compelling architectural design. While windows cannot be included within interior side property lines due to Fire Code requirements, these elevations are divided into proportionate modules using recessed planes and material changes. The large, white panels will include a subtle pattern of score lines to add visual interest. Moreover, it is anticipated these elevations will be visually obstructed by future development along South Winchester Boulevard. The rear elevation incorporates a step back design that breaks down building mass, and a variegated pattern of solid and transparent panels for articulation. The building contains distinct base, mid-section, and top elements, as defined by the recessed ground floor storefront; curtain wall upper floors, and projecting roofline elements, respectively.

iv. Compatibility with Adjacent Residential Neighborhoods

Urban Design Goal UD-9: Ensure that Village development respects the scale, light, and privacy of existing residential neighborhoods in and near the Village.

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

Design Standard DS-12: Includes transitional height standards for projects adjacent to residential neighborhoods.

Analysis: In accordance with DS-12, the project incorporates a stepdown design at the rear, where it is adjacent to the rear yards of two single-family residences on Spar Avenue. For buildings up to 65 feet in height, a 15-foot rear setback is required, at which point the building is required to step back at a 45-degree angle, for any height above 35 feet. As shown on Sheet A-202 of the project plans, the project complies with this requirement. The setback respects the smaller scale and privacy of the adjacent residential neighborhood. The variegated pattern of glazing and solid elements within the rear façade also limits reflected glare toward the neighborhood. Furthermore, an existing dense row of cypress trees along the rear property of the residence sharing the property line with the project will substantially screen views of the building.

v. Open / Amenity Space

Policy 4-9: As new development occurs, space on each site should be dedicated to some form of open space. These spaces should be located so as to easily and logically connect with other open spaces in the surrounding area to create a connected Green Web of open space throughout the Urban Village

Figure 4-1 Parks and Open Space Framework indicates a potential paseo, a form of open space, along the northern side property line of the subject site.

This paseo is intended as a pedestrian connection to and from the residential neighborhood to the west.

Design Standard DS-13: Paseos shall be no less than 16 feet (preferably 20 feet) wide with a minimum 10-foot (preferably 12 feet) clear walking/biking path.

Analysis: The project will contribute a six-foot wide area along the northern property toward a future paseo, that would be completed by a corresponding ten-foot wide paseo section to be provided by separate future development on the parcels north of the subject site, and continuing along the rear of the commercial parcels facing Stevens Creek Boulevard. In the interim, the portion of the paseo provided by the subject project will serve as an egress corridor for the building, with exterior gate access open during business hours.

4. Zoning Ordinance Compliance.

- a. Land Use: Office and retail uses are allowed by right within the CP Commercial Pedestrian Zoning District (Section 20.40.100 of the Zoning Ordinance). A Special Use Permit is required for the automated parking stackers, as an alternative parking design (Section 20.90.200 of the Zoning Ordinance).
- b. **Development Standards.** For the CP Zoning District, the Zoning Ordinance defers to the height and setback established in an approved Urban Village Plan. The project complies with height and setbacks established in the plan, as follows:
 - Height: The SRVF Urban Village Plan (Figure 5-2) establishes a maximum height of 65 feet for the parcels on the west side of South Winchester Boulevard, between Stevens Creek Boulevard and Olin Avenue (with the exception of the Stevens Creek corner parcels.) Non-occupiable architectural features such as roof forms, chimneys, stairwells and towers may project up to ten feet above the maximum height (Design Guideline DG-35).

In addition, Design Standard DS-12 applies a 45-degree stepback plane for buildings up to 65 feet in height, starting at 15 feet from the rear property line, at a height of 35 feet.

The building has a maximum height of 65 feet, with 10-foot roof form and stairwell projections of ten feet above this height, consistent with the height limit. The project also complies with the stepback requirements, as shown on Sheet A-202, North Elevation.

Setbacks: Table 5-1: Building Placement and Bulk Standards, contains required minimum and maximum building setbacks. The project complies with these setbacks as follows:

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Standard	SRVF UV Plan	Project
<i>Front Setback, Non-Residential Ground Floor Use</i>	0-10 feet	10 feet (after sidewalk dedication)
<i>Street Setback</i>	0-10 feet	10 feet (ground floor); 0 feet (cantilevered upper floors)
<i>Rear Setback</i>	15 feet minimum	20 feet

- **Automobile Parking:** The project provides the number of parking spaces required by the Zoning Ordinance (Section 20.90.60), with an up to fifty-percent reduction allowed for being located within an Urban Village and implementing Transportation Demand Management (TDM) measures, as summarized below:

Use	Automobile Parking Ratio	Required	With 50% Reduction	Provided (35% reduction)
<i>Retail (ground floor), 10,638 net SF</i>	1 per 200 SF	54	27	34
<i>Office (floors 2-5), 69,037 net SF</i>	1 per 250 SF	277	138	181
Combined uses		331	165	215

The project will include the following TDM measures for all tenants and employees at the project site:

- Commute trip reduction marketing and education programs
- Rideshare program
- 50% subsidized transit passes

With implementation of these measures, the project is authorized for up to a 50 percent reduction in the required number of parking spaces.

- **Bicycle Parking:** As shown in the table below, the project provides the bicycle parking required by required by the Zoning Ordinance (Section 20.90.60). As stated above, bicycle parking is provided by a combination of bicycle racks (front of the building); and lockers (rear of the building, adjacent to the surface parking spaces).

Use	Bicycle Parking Ratio	Required	Provided
<i>Retail (ground floor), 10,638 net SF</i>	1 per 3,000 SF	4	4
<i>Office (floors 2-5), 69,037 net SF</i>	1 per 4,000 SF	18	18
Combined uses		22	22

- **Screening adjacent to residentially zoned properties.** Pursuant to Section 20.40.560 of the Zoning Ordinance, a masonry wall or a solid wooden fence five feet in height is required to screen the abutting residentially zoned properties and such screening should include trees or plants if the proposed use includes outdoor activities.

Analysis: The project includes a solid eight-foot tall masonry wall along the shared rear property line with the residence to the rear. An existing dense row of cypress trees exists along this property line, on the residential property, and would remain in place. The project therefore complies with this screening requirement.

5. **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 Conforming Rezoning, Special Use Permit, and Site Development Permit. The documents were circulated for public review and comments from August 14, 2019 to September 3, 2019. Two formal comment letters and/or emails were received from the public. The comments included inquiries regarding intersection analysis and traffic level of service (LOS), as well as a recommendation regarding bus stop bench placement. The comments did not result in any substantial changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. The public comments on the IS/MND have been addressed by the City in a formal Responses to Comments document dated October 16, 2019.

As stated in the IS/MND, the primary environmental issues that require mitigation measures are air quality, biological resources, hazards and hazardous materials, and noise. The IS/MND includes mitigation measures that will reduce the identified potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions are included in the Special Use Permit as conditions of approval to ensure all potential impacts have been addressed. The entire IS/MND and Responses to Comments, and other related environmental documents are available on the Planning website at:
<http://www.sanjoseca.gov/index.aspx?NID=6411>.

6. **Special Use 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 Special 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 of Urban Village, as well as the Santana Row/Valley Fair Urban Village designation of Mixed Use Commercial, because the project's office and retail uses are allowed within these designations. Furthermore, the project is consistent with the goals, policies, standards and guidelines of the Urban Village Plan, as described above. In particular, the parking stacker system is consistent with Goal UD-12 of the Urban Village Plan to minimize visibility of parking and service areas; because it enables a compact, efficient parking system within a below-ground garage, where it will not be visible from the public realm.
 - b. The Special 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: As described above, the project meets the requirements of the CP Commercial Pedestrian Zoning District, including building height, setback and stepback requirements, as well as the required number of off-street automobile parking spaces, with allowed reductions, and bicycle parking spaces. The automated parking stacker system is allowed with a Special Use Permit, and has been determined to adequately provide for the parking needs of the project. The building is designed for office and retail uses, which are both permitted uses in the CP Commercial Pedestrian Zoning District.
 - c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and
Analysis: The project has been conditioned to provide an exterior lighting plan, prior to issuance of Building Permits, to ensure the ground-mounted light bollards and wall-mounted exterior lights will direct light downward, minimize glare, and avoid off-site light spillage. With this condition, the project will conform to the Outdoor Lighting Policy. The project also complies with the Stormwater Management Policy, and Public Outreach Policy, as described.
 - 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: Parking stacker systems have been incorporated in projects throughout the city and have not negatively affected the health, safety or welfare of the public, or the utility of surrounding properties. The safety of the system is reviewed as part of the Building plan check process.

- 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: As shown on the project plans, the parking stacker system incorporates the required uniform parking stall dimensions; and also incorporates the allowed reduced 20-foot wide, two-way drive aisle for parking facilities. The reduced width will allow for safe and convenient access to the parking lift stalls; and is not required for emergency vehicle access, which will be from South Winchester Boulevard.

- 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 from South Winchester Boulevard via a two-way commercial driveway at the southern property line of the site. Site access, and in particular the commercial driveway access to the parking area, has been reviewed by the Public Works Department and determined to be adequate. The site adjacent to the VTA Route 60 Bus Stop; providing public transit access to the site. The site is within an urban area that is currently served by necessary private and public facilities and utilities.

- 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 development 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. Offsite glare from exterior lighting will be minimized through the use of low-height and concealed light fixtures. Construction activities will result in temporary noise and air quality impacts; however, these impacts will be temporary, and will be minimized through standard construction

mitigation measures, as listed in the project conditions of approval. The project would therefore not have an unacceptable impact on adjacent properties.

7. **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: As described in Special Use Permit Finding 1, the project is consistent with the General Plan designation of Urban Village, as well as the Santana Row/Valley Fair Urban Village designation of Mixed Use Commercial, as well as goals, policies, standards and guidelines of the SRVF Urban Village Plan.

- 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: As described above in Special Use Permit Finding 2, the project meets the requirements of the CP Commercial Pedestrian Zoning District, including building height, setback and stepback requirements; as well as the required number off-street automobile parking spaces, with allowed reductions, and bicycle parking spaces. The building is designed for office and retail uses, which are both permitted uses in the CP Commercial Pedestrian Zoning District.

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

Analysis: As described above in Special Use Permit Finding 3, the project is consistent with applicable City Council policies.

- 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 consists of a single building, oriented to the public sidewalk along the front, with access to required parking and service areas at the rear of the building, where these areas will be not be visible from the public realm. The project's building elevations are mutually compatible and harmonious in that they are of a consistent, contemporary style using visually compatible materials including glass, metal, and solid surfaces. Each elevation has an appropriate level of detail, with the most prominent front and rear elevations providing the most detail; and interior side elevations providing adequate visual relief through recesses and material and color changes.

- 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 building fronts onto South Winchester Boulevard, onto which other commercial developments of a similar nature also front. Existing surrounding structures are of a variety of architectural styles, with which the contemporary glass and metal building would be compatible. The project is harmonious with the adjacent residential neighborhood to the rear, as described above, in that the building incorporates a stepped back design away from the neighborhood, and is also visually screened from the neighborhood by an existing dense row of cypress trees along the rear property line of the residence to the rear of the site.

The cypress trees along the rear property line are at some risk due to their close proximity to the masonry separation wall along the rear property line. The cypress trees are within one to four feet of the property line, and the required footings for the wall will partially intrude into the root zones of the cypress trees. The project applicant will take measures to minimize root damage; however, survival of the trees cannot be guaranteed. Tree planting along the rear boundary of the subject site is not feasible or appropriate, given the immediate proximity to the existing cypress row, as discussed above. Should some of the trees not survive, the project applicant shall work with the property owner to plant replacement trees once the site work is complete.

- 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: As stated above, the project development 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. Offsite glare from exterior lighting will be minimized through the use of low-height and concealed light fixtures. Construction activities will result in temporary noise and air quality impacts; however, these impacts will be temporary, and will be minimized through standard construction mitigation measures, as listed in the project conditions of approval. The project would therefore not have an unacceptable impact on adjacent properties.

- 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, and all walls and fences, are adequate to screen utility and trash facilities on the site,

maintaining and upgrade the appearance of the neighborhood. In particular, the project includes a solid eight-foot tall masonry wall along the shared rear property line with the residence to the rear, ensuring no utilities or service facilities will be visible from this property.

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

Analysis: Access to the site would be from South Winchester Boulevard via a two-way commercial driveway at the south property line of the site. Site access, and in particular the commercial driveway access to the parking area, has been reviewed by the Public Works Department and determined to be adequate. The site adjacent to the VTA Route 60 bus stop; providing public transit access to the site. As analyzed in the MND, the new transit trips generated by the project are not expected to create demand in excess of the transit service that is currently provided. The site is currently served by all necessary private and public facilities.

8. **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 existing restaurant on-site would facilitate the construction of an office building. Re-use or rehabilitation of the buildings would not be practical given the small size of the buildings; and the building has not been determined to be historically significant. The project would not remove residential units from the existing housing stock.

9. **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: The eight ordinance-sized trees would be removed to facilitate the development of the office. The subject trees range in size from 38 inches to 43 inches in circumference. The project also involves the removal of 20 non-ordinance size trees to facilitate the new construction. These trees to be removed are located within the sidewalk, project building footprint and the parking areas of the site. Given that the building occupies the majority of the site, with the remainder of the site required for driveway circulation and utility access; on-site replacement trees are not feasible for the project; therefore, the project will be required to pay the Off-Site Tree Replacement Fee for 118 trees, based on the city's tree replacement ratios.

In accordance with the findings set forth above, a Special Use Permit and Site Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **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 Special Use Permit and Site Development Permit (collectively "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 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 Permit shall automatically expire two years from the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment 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 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. **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.

6. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "335 S. Winchester" dated September 17, 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."
7. **Use Authorization.** This Permit will allow the demolition of an approximately 9,200-square foot restaurant, and the construction of a five-story, 93,736-square foot office building with an alternative parking design (parking stackers), and removal of eight ordinance-size trees and 20 non-ordinance size trees on an approximately 0.71-gross acre site.
8. **Timing of Tree Removals.** Trees identified for removal to accommodate new development shall not be removed until the related Grading Permit has been issued.
9. **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.
10. **Replacement Trees.** A total of 118 twenty-four-inch box trees will replace those removed as part of this project, through payment of the Tree Replacement Fee. 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 SP18-049" and provided to the Planning Project Manager, prior to the issuance of Building Permits or any Public Works clearances.

11. **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.
12. **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.
13. **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.
14. **Cypress Trees on Adjacent Residential Property.** Should any of the existing cypress trees not survive construction of the rear property line masonry wall, the permittee shall work with the property owner of the residential property to replace the trees not surviving.
15. **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.
16. **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.
17. **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.

18. **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.
19. **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.
20. **Reclaimed Water.** The project shall conform to Chapters 15.10 and 15.11 of the San José Municipal Code. The Chapters address 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.
21. **Colors and Materials.** All building colors and materials shall be those specified on the Approved Plan Set.
22. **Window Glazing.** Unless otherwise indicated on the Approved Plan Set, all windows shall consist of a transparent glass.
23. **Outdoor Activity.** No outdoor activity, including loading, sweeping, landscaping or maintenance shall occur within one-hundred fifty (150) feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 a.m.
24. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set. No outdoor storage is allowed in common areas.
25. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
26. **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.
27. **Permit Adjustment Required – Exterior Lighting Plan.** Prior to issuance of any Building Permits for the project, the permittee shall obtain a Permit Adjustment for an

outdoor lighting plan. Said plans shall include the location and design of all exterior lighting fixtures, and shall comply with the City's Policy for Outdoor Lighting on Private Developments.

28. **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.
29. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement, including during construction.
30. **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.
31. **Sign Approval.** No signs are approved at this time. All project signs shall be subject to approval by the Director of Planning.
32. **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.
33. **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.
34. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
35. **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.

36. 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, SP18-049 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.

37. 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:* A Traffic Impact Analysis has been performed for this project based on 98 AM and 129 PM peak hour trips. With the inclusion of the following conditions, we conclude that the subject project will be in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts. See separate Traffic memo dated 9/9/2019 for additional information:
 - i. Projects that add new vehicle trips to the Winchester Boulevard/I-280 Northbound Off-Ramp intersection are subject to pay an impact fee per added

- vehicle trip to the Interstate 280 Winchester Boulevard Transportation Development Policy (TDP). The project is expected to add three trips to the off-ramp during the PM peak hours. Therefore, based on the January 1, 2019 Traffic Impact Fee schedule, the project is required to pay \$80,631 toward future improvements.
- ii. Implement a Transportation Demand Management (TDM) plan with the following measures to mitigate the adverse effects on the intersection operations at Stevens Creek Boulevard and Winchester Boulevard:
 - 1) End of Trip Bike Facilities.
 - 2) Limited Parking Supply.
 - 3) 50% subsidized or discounted VTA monthly transit passes.
 - 4) Commute Trip Reduction Marketing/Education to 100% of employees.
 - 5) Ride Sharing Programs for 100% of employees.
 - 6) Annual Driveway Monitoring for Trip Reduction of 39.8% or 51 trips.
 - iii. Trash bins shall not be staged in the street. Push service must be purchased through the trash hauler to move trash bins from an on-site staging area to the point of loading and remove from the street immediately after loading.
 - iv. Locate gated entrance a minimum of 50 feet from the back of sidewalk to provide adequate vehicle queuing space.
 - c. Urban Village Plan: This project is located in the Santana Row-Winchester Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
 - d. Grand Boulevard: This project fronts Winchester Boulevard which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
 - e. Grading/Geology:
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. 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 engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- f. Shoring:
- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e. soldier beams).
 - iii. If tie-backs are proposed for use along the adjacent property(ies) (APNs 303-39-051, 303-39-022, 303-39-063), agreements between the permittee and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- g. 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.

- h. Stormwater Peak Flow Control Measures: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - i. 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.
 - j. Sewage Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
 - k. Street Improvements:
 - i. Construct curb, gutter, with 12-foot wide attached sidewalk along project frontage. An approximate 2-foot wide street easement dedication will be required to cover extent of public improvements.
 - ii. Construct 26-foot wide two-way driveway.
 - iii. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade and locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - iv. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
 - l. Electrical:
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
 - m. 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 curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
38. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. .

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

*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.

x:x = tree replacement to tree loss ratio

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.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree = two 15-gallon trees

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) The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to 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 building with east and north fronting façades, so that windows can be kept closed to control noise.

40. Revocation, Suspension, Modification. This Permit may be revoked, suspended or modified by the City Council, 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 Special 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 permit to use the subject property for said purpose specified above is hereby approved.

EFFECTIVE DATE

The effective date of this Permit (File No. SP18-049) shall be the effective date of the Conventional Rezoning Ordinance for File No. C18-043 approved for publication on _____, 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 Procedures Section 1094.6.

EXHIBIT "A"
LEGAL DESCRIPTION
FOR: PLANNING PURPOSES

All that real property situated in the City of San Jose, County of Santa Clara, State of California, being Parcels One, Two and Three as described in that certain Grant Deed recorded on October 06, 2016 as Document No. 23454220, Official Records of Santa Clara County, described as follows:

Beginning at the northeast corner of Lot 3, as shown on that certain Parcel Map filed for record on May 10, 1995 in Book 543 of Maps, at Pages 2 and 3, Santa Clara County Records, said point also being on the westerly right-of-way line of South Winchester Boulevard;

Thence leaving said westerly right-of-way line and along the exterior boundary of said Parcels One, Two and Three the following five (5) courses and distances:

1. South 89°49'00" West, 153.00 feet;
2. North 00°00'00" East, 200.00 feet;
3. North 89°49'00" East, 155.00 feet to said westerly right-of-way line;
4. South 00°00'00" East, 114.38 feet;
5. Along the arc of a curve to the right having a radius of 1880.00 feet, through a central angle of 02°36'38", an arc distance of 85.66 feet to the Point of Beginning.

Containing 30,942 ± square feet.

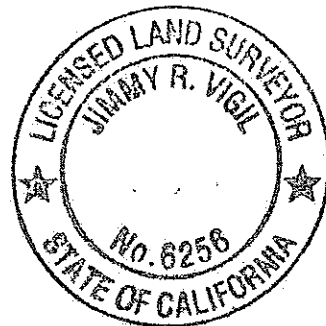
As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

This legal description is for planning purposes only and does not create a "subdivision" as defined in the Subdivision Map Act.

Legal Description prepared by Kier & Wright Civil Engineers and Surveyor's, Inc.

11-21-18
Date

Jim R. Vigil
Jimmy R Vigil, LS 6256



STEVENS CREEK BOULEVARD

LANDS OF
MARK G & SHERYL A
MAHAFFEY
(APN: 303-39-049)

LOT 4
(41 M 30)
(APN: 303-39-022)

LANDS OF
MOSKOVITZ PROPERTIES
(APN: 303-39-060)

N89°49'00"E 155.00'

PARCEL ONE
(DOC. NO. 23454220)
(APN: 303-39-051)

N89°49'00"E 155.00'

PARCEL TWO
(DOC. NO. 23454220)
(APN: 303-39-047)

N89°49'00"E 154.89'

PARCEL THREE
(DOC. NO. 3454220)
(APN: 303-39-047)

POINT OF
BEGINNING

S89°49'00"W 153.00'

LOT 3
(543 M 2&3)
(APN: 303-39-063)

285.72'

52.0'

55.0'

52.00'

66.66'

N0°00'00"E 485.72'

52.00'

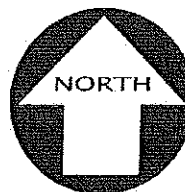
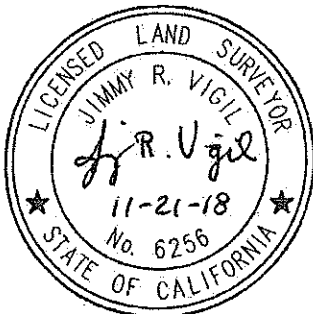
66.66'

133.34'

L=85.66'

R=1880.00' D=2°36'38"
L=85.66'

SOUTH WINCHESTER BOULEVARD



0 25' 50' 100'
Scale 1" = 50'



KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.

3350 Scott Boulevard, Building 22

Santa Clara, California 95054

www.kierwright.com

Phone (408) 727-6665

Fax (408) 727-5641

EXHIBIT "B"

PLAT FOR
PLANNING PURPOSES ONLY

SAN JOSE,

CALIFORNIA

DATE NOV. 2018

SCALE 1" = 50'

BY TWL

JOB NO. A17179-1

SHEET 1 OF 1

Z:\2017\A17179\DWG\SURVEY\A17179_EXH.dwg 11-21-18 10:24:55 AM crabberson

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