

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT, TO ALLOW THE DEMOLITION OF THE NINE (9) EXISTING ON-SITE BUILDINGS (INCLUDING CANDIDATE CITY LANDMARKS), THE REMOVAL OF FOURTEEN (14) ORDINANCE SIZE TREES, AND THE CONSTRUCTION OF AN APPROXIMATELY 3.79 MILLION SQUARE FOOT DEVELOPMENT COMPRISED OF 24,000 SQUARE FEET OF GROUND FLOOR RETAIL AND 3,640,033 SQUARE FEET OF OFFICE SPACE AND INCLUDING A REQUEST FOR 24-HOUR CONSTRUCTION AND DOWNTOWN DESIGN GUIDELINE EXCEPTIONS ON AN APPROXIMATELY 8.1-GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF SOUTH ALMADEN BOULEVARD AND PARK AVENUE (150 SOUTH ALMADEN BOULEVARD)**

**FILE NO. H19-016**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 19, 2019 an application (File No. H19-016) was filed by the , Casey Kraning, on behalf of SJ Cityview LLC, for a Site Development Permit to allow the demolition of the nine (9) existing on-site buildings, the removal of fourteen (14)) ordinance size trees and twenty-one (21) non-ordinance size trees, and the construction of an approximately 3.79 million square feet development comprised of 24,000 square feet of ground floor retail and 3,640,033 square feet of office space, with exceptions to certain Downtown Design Guidelines and a request for 24-hour construction on an approximately 8.1-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located at the northeast corner of South Almaden Boulevard and Park Avenue (150 South Almaden Boulevard, San José, which real property is sometimes referred to herein as the “subject property”); and

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

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 27, 2020, 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, "CityView Plaza," dated revised on March 12, 2020, 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 at the northeast corner of South Almaden Boulevard and Park Avenue in Downtown San José. The project site has a DC Downtown Primary Commercial Zoning District and a Downtown General Plan Land Use/Transportation Diagram designation. Portions of the project site are also within the Active Use Overlay of the Zoning Ordinance. The project site includes the majority of the downtown block bounded by Park Avenue, South Almaden Boulevard, West San Fernando Street, and South Market Street, except for the lot located at the northwest corner of the block (190 Park Center Plaza).

Commercial, institutional, and open space uses surround the project site. Immediately north of the site, across West San Fernando Street, are one- and two-story commercial and hotel buildings and a nine-story, office building. The Plaza Hotel Building located 110 feet north of the project site was converted into interim housing in 2017. Located east of the site is Plaza de César Chávez, a public park. There are office and commercial developments, ranging from 18 to 22 stories in height, located east of Plaza de César Chávez. To the south of the site is the Tech Museum of Innovation and a 19 story office tower which is currently under construction. The Park Avenue frontage, along the south side of the project site, has an approved new plan line to re-design Park Avenue into a lush, pedestrian-friendly street. To the west of the site are three high-rise office buildings and a mid-rise office building.

Vehicular access to the existing development is provided via five curb cuts (one for a driveway along South Almaden Boulevard, one for a driveway and one for a loading dock along West San Fernando Street, and two for driveways along Park Avenue).

The existing project site, City View Plaza, is comprised of nine buildings over a single-level subterranean parking garage; the buildings have a total square footage of 1,017,846 square feet and are currently occupied with office and commercial/retail uses. City View Plaza is one of the City's first redevelopment sites and the buildings were constructed between 1968 and 1985 as part of the Victor Gruen master plan. The Project's Historic Resource Assessment, prepared by Archives and Architecture as part of the project's review, identified City View Plaza, in its entirety, and four of the individual buildings on-site as candidate City Landmarks and one building as a structure of merit. The Bank of California/Sumitomo Bank Building located at 170 Park Avenue is identified in the City's Historic Resources Inventory as a Candidate City Landmark, eligible for the California Register of Historical Resources (CRHR), and the National Register of Historic Places (NRHR). The Wells Fargo Building, United California Bank Building, and Bank of America Building located at 121 South Market Street, 177 Park Avenue, and 125 South Market Street, respectively, were found eligible for the CRHR and eligible to be Candidate City Landmarks. Finally, the Landmark Building and Pavilions, located at 100 West San Fernando Street, was identified as a structure of merit.

All structures on the project site, including the identified historic resources, will be demolished.

- 2. Project Description.** The project is a Site Development Permit to demolish the nine (9) existing on-site buildings and remove fourteen (14) ordinance size trees and twenty-one (21) non-ordinance size trees.

The project includes the construction of three 19-story office towers (A, B, and C) connected by habitable, multi-level bridges, with retail, office lobbies, and active office tenant space on the ground floor. The office buildings include approximately 3,583,033 square feet of office space on floors one through 19, approximately 33,000 square feet of ground floor active office tenant space (such as office dining facilities, office gyms, and office meeting/show rooms), 24,000 square feet of ground floor office lobby space, and a minimum of 24,000 square feet of ground floor retail/restaurant/commercial space. The ground floor of the building would be designed with warm shell fixtures (such as cooling, heating, plumbing, and vents) to accommodate commercial/retail uses and allow for flexibility in leasing and breaking up the ground floor space.

The development proposal includes a request for a 20% parking reduction. The project includes the construction of five levels of below-grade parking with a total of 6,230 parking spaces accommodated through an alternative parking arrangement (including car lifts, over-aisle lifts, and valet parking) within the subterranean parking garage. Additionally, a 15-space surface parking lot would be developed with a driveway on South Almaden Boulevard to accommodate an existing parking agreement with the

adjacent property on the block, 190 Park Center Plaza. The surface parking lot would have an ingress/egress driveway along South Almaden Boulevard. The subterranean parking garage would be accessible through one ingress/egress driveway on South Almaden Boulevard, two ingress/egress driveways on West San Fernando Street, and one single-lane driveway (reversible) on South Market Street. The single-lane driveway would allow ingress during the peak morning parking hours and egress during peak afternoon parking hours. Signage would be located along the driveway entrance to clearly indicate the direction of traffic on the driveway. No driveways would be located along Park Avenue in the development.

The development's design includes pedestrian pathways, outdoor seating areas, and robust landscaping to enhance the pedestrian experience along the project's frontage and within the development. Interior east-west and north-south pedestrian paseos divide the site with circulation patterns and provide interior connections for the surrounding Downtown and future development users. Active office tenant spaces, ground floor retail, and office lobbies are positioned along all the project's frontages and along the interior walkways. The primary bicycle parking room is located along the northern part of the project site to provide the development direct connection to West San Fernando Street, a designated Better Bikeway Street in Downtown.

This project requests an exception to six design standards of the Downtown Design Guidelines, as described further below. Finally, to expedite the project construction, 24-hour construction is requested including up to 20 concrete pours. The construction of the entire project is anticipated to take 69 months. In order to activate the site as soon as possible, the project includes a phasing plan. Phase 1 would include the demolition of eight of the on-site buildings; the 150 South Almaden Boulevard Office Tower and associated garage would remain to provide office space for existing on-site tenants. Phase 1 would include the construction of the eastern portion of the parking garage (up to 2,096 parking spaces) and Tower A. Phase 2 would include the construction of an additional 2,067 parking spaces, Tower B, and the connecting pedestrian bridge. Phase 3 would include the demolition of the remaining on-site building (150 South Almaden Boulevard), construction of 2,067 remaining parking spaces, and Tower C with its connecting pedestrian bridge.

- 3. General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Downtown. The Downtown land use designation supports office, retail, service, residential, and entertainment uses that enhance the "complete community" in Downtown. The designation supports increased transit ridership and promotes bicycle circulation. The Downtown General Plan designation allows a maximum Floor Area Ratio (FAR) of 30.0 and supports redevelopment at very high intensities unless there are major incompatibilities with other major policies within the General Plan (such as Historic Preservation Policies).

*Analysis: The project is consistent with the uses and FAR supported by the Envision*

*San José 2040 General Plan's Downtown land use designation. The 3.79-million square feet of office and commercial/retail space would further establish Downtown as a major job center in the area. The project's 10.73 FAR does not exceed the maximum FAR permitted in the land use designation. The development's site layout includes pedestrian paseos designed to foster pedestrian and bicycle activity through and to the site. The development fosters a "complete community" in Downtown by increasing jobs in Downtown and activating the development's ground floor with a storefront design and active ground floor uses.*

Furthermore, the project's consistency with the following General Plan Major Strategies, Policies, and Goals are analyzed below.

*General Plan Strategies and Policies*

- a. Land Use Policy LU-1.1: Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.
- b. Land Use Goal LU-3: Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José.

*Analysis: The development of an intense 3.79-million square foot office and commercial/retail development in the Downtown area would foster a "complete community" with respect to locating jobs and amenities in an area surrounded by retail, residential, entertainment, and open spaces uses. The project is projected to create 20,911 jobs. As an identified Growth Area, Downtown is intended to be a place for people to live, work, and visit. In order to accomplish this goal, there needs to be opportunities for all types of uses including office and commercial/retail uses. The project's commercial/retail space will serve Downtown residents, employees, and visitors while the office space will support existing and future Downtown businesses and entertainment venues. The intense office space will increase the City's jobs-to-employed resident ratio and strengthen Downtown San José as a regional job center.*

- c. Land Use Policy LU-3.4: Facilitate development of retail and service establishments in Downtown, and support regional- and local-serving businesses to further primary objectives of the General Plan.
- d. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

*Analysis: In order to mature into the great place envisioned by the General Plan, Downtown projects need to facilitate the growth of Downtown as a regional job center. High-rise development is anticipated as a way to create synergy between residents, workers, and visitors. As larger and more intense projects are built in*

*Downtown, more people would be in the area, which would foster pedestrian activity, transit ridership, and increased social activity in the Downtown. With more jobs in the Downtown area, the viability of retail would increase, encouraging new retail services and amenities to locate in the area. The project's retail/commercial space would provide a benefit to future office employees on-site as well as serve the surrounding Downtown area.*

*The project includes ground floor commercial space to support retail and restaurant uses with warm shell infrastructure in all active tenant use and retail spaces on the ground floor (a total of 57,000 square feet). The warm shell infrastructure and flexibility of tenant space sizes would make it easy for a variety of different tenants to move into the development and provide these very important amenities to the residents, visitors and workers in the Downtown area.*

- e. Land Use Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown Area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision San José 2040 General Plan.

*Analysis: The development's architecture and site plan layout are designed to complement and further enliven the surrounding Downtown area. The project's design, mass, pedestrian paseos, plazas, and on- and off-site improvements will reinforce the site and its surrounding area as a focal point in Downtown by improving pedestrian and bicycle circulation, supporting active ground floor uses, and supporting an intensive employment use in the neighborhood. The ground floor of the development is designed to support and maximize social interactions. The site plan will foster pedestrian and bicycle circulation within and around the site through the use of permanent and moveable furniture, a variety of landscaping features, and multiple access points through the site. The project's frontages will be comprised predominantly of active uses including lobbies, retail spaces, and active office tenant spaces such as gyms, coffee shops, meeting halls, etc. The project frontage is designed with high transparency to reduce barriers between the public realm and private development.*

*The project includes unique landscaping to enhance the visitor interest to the site. The two north-south pedestrian walkways and the South Market Street frontage have plaza spaces, planters, and trees lining the thoroughfares. Each north-south walkway is planted with a different plant palette and color schematic, thereby creating a unique experience along each walkway unified through the similar planter geometries and walkway pavers. Additionally, the project includes a condition of approval to encourage the location and coordination of future art pieces on the project site.*

- f. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

*Analysis: The project site is in close proximity to several transit options. It is located approximately 600 feet north of the Convention Center Light Rail Station, approximately 2,000 feet from two rapid bus line stops, and  $\frac{3}{4}$  of a mile easterly from Diridon Station. Additionally, West San Fernando Street is a designated Better Bikeway street and has bicycle lanes which would be further enhanced with public street improvements conditioned for this project.*

*Having an intensive office development close to a variety of public transportation options encourages the use of transit and creates more access for workers to have a car-free commute. Furthermore, it is envisioned that employees in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site. Finally, the development's commercial/retail spaces would serve the surrounding Downtown neighborhood with more opportunities to dine and conduct business nearby.*

- g. Community Design Policy CD-1.26: Apply the Historic Preservation Goals and policies of the General Plan to proposals that modify historic resources or include development near historic resources.
- h. Land Use Policy LU-13.8: Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.
- i. Land Use Policy LU-16.4: Require development approvals that include demolition of a structure eligible for or listed on the Historic Resources Inventory to salvage the resource's building materials and architectural elements to allow re-use of those elements and materials and avoid the energy costs of producing new and disposing of old building materials.
- j. Downtown Urban Design Policy CD-6.6: Recognize Downtown's unique character as the oldest part the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.

*Analysis: Land Use Policies LU-13.8 and LU-16.4 and Downtown Urban Design Policy CD-6.6 are applied to the project. The development includes the demolition of the above-mentioned historic resources. The project site is also adjacent to the Old Post Office Building City Landmark on South Market Street and is diagonally across from to the Cathedral Basilica of Saint Joseph and the Center for Performing Arts at the southwest and northeast corners of the site, respectively.*

*Consistent with Land Use Policy LU-13.8 and Downtown Urban Design Policy CD-6.6, the new development responds to the adjacent City Landmarks through the incorporation of building step backs along Park Avenue, South Market Street, and West San Fernando Street. These step backs which are designed to respond to the general scale and massing of the buildings surrounding Plaza de César Chávez and the adjacent historic buildings. Additionally, the ground floor incorporates terra cotta as a building material to reflect its usage in the historic vicinity.*

*Although the development would result in the demolition of the historic buildings on site, the project applicant as part of their mitigation measures, will curate and commemorate the historic structures, their associated features, and the entire plaza. The project will be required to submit an Action Plan documenting commemorative actions to the satisfaction of the City's Historic Preservation Officer. On-site commemoration could include historic displays along the project site, historic markers, and/or physical remnants of the historic site features commemorated on-site.*

*Prior to demolition of the historic resources on site, the project applicant will be required to make the historic buildings and their elements or materials available for salvage and re-use consistent with Land Use Policy 16.4. Additionally, several potted/moveable trees and private art pieces are located on the project site, and the applicant has initiated contact with Downtown partners to relocate and reuse these existing elements in the spirit of the sustainability goals of the General Plan.*

- k. Community Design Policy CD-2.9: Encourage adaptable space that can be used for multiple employment or public/quasi-public purposes.

*Analysis: The ground floor of the development will be designed with warm shell features to support retail/dining uses. While the development has a minimum of 24,000 square feet of commercial/retail space, the ground floor space designated as tenant space in the development is designed with warm shell features to facilitate additional commercial/retail downtown needs should the demand increase in the future. Additionally, the landscaping and hardscaping of the project is designed to promote different active and passive uses on the site. A condition of approval is included to require a water hook up, electric hook ups, and minimum tree canopies along Park Avenue to facilitate private and public events. The tall tree canopy with a minimum height of nine feet would allow pop-up tents to be placed along Park Avenue which would support private and public events such as Farmer's Markets, Holiday Fairs, food vendors, etc. along Park Avenue.*

- l. Downtown Urban Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.

*Analysis: The project capitalizes on the development potential for the project site. The project entails the development of three interconnected office towers up to 293 feet in height, in conformance with the maximum height permitted. The project has located all development required parking in a subterranean parking garage, except for the 15-required surface spaces to serve an adjacent development. The project includes pedestrian walkways through the site to divide the mass and scale of the development and enhance the urban vibrancy through and around the project site.*

- m. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.

*Analysis: The project has a maximum height of 293 feet and will redevelop the existing approximately 1-million square foot development with a 3.79 million-square foot office development. This would contribute to Downtown's growth as a vibrant urban area and help the City realize its vision for the Downtown core. The project has been reviewed for its conformance with the Downtown Design Guidelines so that its scale, quality, and character strengthen Downtown's status as an urban center, as discussed in the Design Guidelines Section.*

- 4. Zoning Conformance.** The project is located in the DC Downtown Primary Commercial Zoning District. This Zoning District permits office and commercial/retail with the issuance of a Site Development Permit. Additionally, portions of the project site are within the Ground Floor Active Use Area Overlay which regulates ground floor uses and exterior building design within the overlay areas, as identified in Section 20.70.100 and Table 20-140 of the San José Municipal Code. The overlay is on the project's West San Fernando Street and Park Avenue frontages and includes the corner tenant spaces at the intersections of Park Avenue and South Almaden Boulevard, Park Avenue and South Market Street, and West San Fernando and South Market Street. A corner tenant space is defined by the Municipal Code Section 20.70.100, Table 20-140 note B, as a minimum of 30 feet along the street in either direction from the intersection. The development is also required to have store front style façade design and window transparency.

The ground floor façade of the development consists of transparent glass storefronts, with aluminum canopies and terra cotta curtain wall elements framing the glass to provide breaks and articulation along the frontage. The project ground floor uses within the Active Use Overlay consist of retail and active tenant space, consistent with the uses permitted in the Active Use Overlay. Further, the project is conditioned to permit only retail and active uses consistent with the Active Use Overlay Sections of the Municipal Code.

#### *Height and Setbacks*

Section 20.70.210 of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning

District. The height of development in the Zoning District is limited only to the height limitations necessary for the safe operation of the San José International Airport and Federal Aviation Regulations Part 77 as discussed in Section 20.70.200 of the Municipal Code. The project would be 293 feet in height. Conditions of approval require the project applicant to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the building's height prior to vertical construction.

### *Parking*

Required vehicle parking is established in Section 20.70.100 and Table 20-140 of the San José Municipal Code. Office uses require a minimum 2.5 parking spaces per 1,000 square feet of office space floor area. General retail, dining and commercial uses do not have required parking minimums. The development would require 7,736 parking spaces for the 3,583,033 square feet of office space in the development.

Section 20.90.220 of the San José Municipal Code allows projects that are within growth areas and within 2,000 feet of a light rail station, rail station, or rapid bus and which provide all the required bicycle parking to receive a 20% reduction in parking. As described above, the closest Light Rail station is the Convention Center Light Rail Station located 600 feet south of the site; Diridon Station is located 0.75 mile west of the project site, and bus stops for rapid bus lines 522 and 523 are located approximately 2,000 feet northeast of the site at the East Santa Clara and 1st Street intersection. Therefore, the project includes a request for up to a 20% parking reduction to require a minimum 6,188 parking spaces on-site.

The project is designed with five levels of subterranean parking to accommodate 6,230 parking spaces. The number of parking spaces is achieved with an alternative parking arrangement which includes tandem parking stalls, valet parking stalls, parking lifts and over-aisle parking lifts to provide 6,230 parking spaces. . The first basement level would consist of Americans with Disabilities Act (ADA) parking stalls and would have a dedicated space for "transient" office parking for short-term parking; basement levels one and two would provide parking for all electric vehicle spaces (10% of the total parking). Basement levels two through five would include tandem, stacked parking and over-aisle stacked parking which would be facilitated through the parking attendant/valet service.

### *Bicycle Parking*

The project requires a minimum one bicycle parking space per 4,000 square feet of office floor area totaling 774 spaces and one bicycle parking space per 3,000 square feet of retail use floor area totaling 10 spaces. The project has 781 long-term bicycle parking spaces and 41 short-term bicycle parking spaces consistent with the requirement. Additionally, the project will provide 30 shower and changing rooms for bicycle users consistent with Table 20-216 of the Municipal Code, which requires a minimum of 26 showers. Long-term bicycle parking will be located on the ground floor

within secured bicycle rooms. Short-term bicycle parking spaces will be scattered through the site along the project's frontages.

### *Phasing*

Each phase of the project would provide the minimum required parking and bicycle parking spaces required for the completed tower(s). Phase 1 (build-out of 1,232,193 square feet) would provide 2,096 vehicle parking spaces, 258 long-term bicycle parking spaces, and 7 short-term bicycle parking spaces. Phase 2 (build-out total of 2,448,117 square feet) would result in 4,163 vehicle parking spaces, 515 long-term bicycle parking spaces and 10 short-term bicycle parking spaces. Phase 3 would result in the final project (build-out total of 3,664,033 square feet), as described above with 6,230 vehicle parking spaces, 15 surface parking spaces, 782 long-term bicycle parking spaces, and 41 short-term bicycle parking spaces.

### *Loading*

Pursuant to Section 20.79.420, the project requires offices with 100,000 to 175,000 square feet of floor area to provide one loading space plus one additional loading space for each 100,000 square feet of total gross floor area in excess of 175,000 square feet. Retail requires two loading spaces for uses less than 50,000 square feet. This would require a total of 38 loading spaces. Section 20.70.450 permits reduced loading spaces if findings show the provided loading spaces would meet the project needs, and Section 20.90.410 of the San José Municipal Code permits approval of a development with no on-street loading space based on a finding that the project includes adequate provision for loading based on the nature of the allowed uses, the configuration of buildings and their relationship to the street. The project includes 12 off-street loading spaces and two on-street loading spaces. The off-street loading would be provided along West San Fernando Street and South Almaden Boulevard within the development. The 12 loading spaces would meet the needs for the project and the reduction would result in less of the development's frontage being occupied by blank space. The loading activities would be coordinated through the on-site management of the site and all loading spaces are designed to avoid loading trucks backing out onto the public right-of-way.

- 5. Design Guidelines.** Section 20.70.500 of the Zoning Ordinance requires that any project in the DC Downtown Primary Commercial Zoning District be subject to the design guidelines adopted by the City Council; therefore, this project has been reviewed for its consistency with the San José Downtown Design Guidelines and Standards.

Chapter 2 of the Downtown Design Guidelines and Standards outlines the framework and design settings applicable to the project site. West San Fernando Street and Park Avenue are designated "Primary Addressing Streets", South Market Street is an "Urban/Park Plaza Frontage", and South Almaden Boulevard is a "Secondary

Addressing Street” pursuant to the Downtown Design Guidelines. A Primary Addressing Street is a primary commercial street that includes retail and other active ground floor uses. A Secondary Addressing Street is a street with a commercial or residential focus and it may provide some active ground floor uses but retail is not the street’s primary focus. An Urban Park/Plaza Frontage is a frontage whose façade forms the urban framework for an existing civic space in Downtown; this façade should create a sense of enclosure for the civic spaces Other applicable framework and design settings include:

- South Market Street is an “Image-Defining frontage”.
- The project site has Civic Icon adjacency; the Tech Museum of Innovation is located south of the site.
- The project has Historic adjacency; the project site is diagonally opposite the Cathedral Basilica of Saint Joseph and across Market Street from the Old Post Office Building, currently the San José Museum of Art. Both buildings are historic City Landmarks.
- Park Avenue is a natural view corridor.
- Park Avenue is an “Enhanced Lighting Corridor”.

The development’s conformance with Sections 3.4.2 (Locating Semi-Private Open Space), 3.4.3 (Locating Ground Floor Private Open Space), 4.4.10 (Signage-Skyline Level), and 5.3.3 (Ground Floor Residential Space), 5.3.5 (Signage-Podium Level and Pedestrian Level) are not analyzed below because the project does not include any residential components, residential open space, or signage. Project signage is subject to the Downtown Design Guidelines and applicable Zoning requirements.

The Downtown Design Guidelines include an exception process for design standards which cannot be met and establish findings in Section 1.4 of the San José Downtown Design Guidelines that are required to be made by decision makers in order to grant the requested design standard exceptions. These findings include:

- (1) There is physical constraint or unique situation not caused by the applicant or financial reasons
- (2) Approving the waiver will not impair the integrity and character of the neighborhood or create a safety hazard
- (3) The project meets the design standard at issue to the extent physically feasible and
- (4) The project meets all other guidelines and standards in the Design Guidelines.

Consistency with the Design Guidelines and the requested exceptions to Design Guidelines are outlined below:

- a. Chapter 3.2 Site Context: This chapter's sections and standards promote human-scale blocks and the placement of buildings along the block's edges to frame the public space.

*Analysis: Consistent with the design standards, the development will divide the project site with the use of pedestrian walkways, two north-south walkways, and one east-west walkway within the project development. The north-south walkways would connect to Park Avenue and the paseo along the Tech Museum. The east-west walkway would connect to a relocated crosswalk with access directly to Plaza de César Chávez. The project includes a condition of approval requiring public access through the site. A security fence may be located on site along the east-west paseo; however, public access shall be maintained between the hours of 7AM and 11PM.*

*Exception: An exception is requested for Section 3.2.1 Standard (a) which establishes a maximum project lot size of 4 acres total or 500 feet in length. This standard states that parcels that make up more than 75% of the area of a block, which exceed the maximum block size, should be divided with new streets such that all resulting blocks are less than the maximum block size allowed. As to the first exception finding, the project site is physically constrained by its unique location in Downtown. The irregular shaped project site includes two public streets (Almaden Avenue and South San Pedro Street) that dead end on the northern property line of the project site. These streets also do not continue beyond Park Avenue to the south. Additionally, the one-way Market Street and pedestrian-focused Park Avenue re-design, physically constrain the site from adding public streets to further break up the block. Extension of any mid-block public streets would create auto and pedestrian conflicts and issues with the existing circulation system in Downtown.*

*As to the second exception finding, the project will enhance the character of the neighborhood and not result in a safety hazard by creating a development accessible on the ground floor to pedestrians and bicyclists.*

*In the spirit of this Standard and in accordance with the third exception finding, the block is subdivided with pedestrian paseos which create pedestrian and bicycle connectivity that meet the intent of the guidelines and result in "blocks" which meet the intent design standard. Although the project does not include streets to break up the block size, the development divides the project site with pedestrian walkways. The development includes two north-south walkways and one mid-block east-west walkway for the use of bicyclists and pedestrians. These thoroughfares divide the project site into four blocks with an average size of two acres, which would be consistent with maximum project lot size. Additionally, parking has been located fully underground so that the walkways are at grade and inviting to the public without ramps or stairs to hinder circulation.*

*The standard in Section 3.2.2 of the Design Guidelines requires the ground level of the building façade to be located within 10 feet of the property line for a minimum of 70% of the project's frontage; Section 4.3.3, Standards (a), (b), (c), (d), and (g), of the Design Guidelines further clarify the street wall requirement. Primary Addressing Streets (Park Avenue and West San Fernando Street) shall have at least 70% of the building façade within 10 feet of the property line. Urban Park/Plaza frontages (South Market Street) shall have at least 70% of the building façade within 10 feet of the property line and Secondary Addressing streets (South Almaden Boulevard) should have at least 50% of the building façade within 10 feet of the property line.*

*The project is consistent with the 70% street wall requirement for a Primary Addressing Street on West San Fernando; 87% of the building façade along West San Fernando Street will be located within 10 feet or less of the property line. Consistent with the 50% street wall requirement for Secondary Addressing streets, 64% of the building façade along South Almaden Boulevard is within 10 feet or less of the property line.*

*Exception: An exception is requested because the development does not meet the street wall standard in Section 3.2.1 and Section 4.3.3, Standards (b), (c), and (g) for the South Market Street and Park Avenue frontages. The irregular shape of the project site and the project's unique location, abutting César Chávez Plaza and the re-designed Park Avenue are unique circumstances for which the project seeks an exception to the street wall requirement along South Market Street and Park Avenue. The project will meet the street wall requirements along the other project frontages.*

*The project is designed with hardscaped and landscaped setbacks along South Market Street and Park Avenue in order to maximize the public realm and the site's unique location in the heart of Downtown San José. In accordance with the second exception finding, the street walls along Park Avenue and South Market Street are intended to respond to its urban environment to enhance the neighborhood's public space character. The project fronts onto Plaza de César Chávez which hosts many public events and Park Avenue which will be redesigned as a continuation of the pedestrian Paseo de San Antonio from the east side of the Plaza de César Chávez. While Park Avenue will continue to have one lane of vehicular traffic in each direction, the Park Avenue vision, which will be realized through the project's required public street improvements, is intended to maximize its width as a lush, pedestrian thoroughfare. Ultimately, Park Avenue's re-design is intended to connect the Plaza and greater Downtown to the Guadalupe River and recreational pathway. The façade of the development on South Market Street will be set back between 10 feet, 8 inches and up to 66 feet, 8 inches; two plazas with seating and landscaping connect the development with the adjacent street and plaza. Along South Market*

*Street, the location of the street wall is designed to mimic the other buildings fronting César Chávez Plaza.*

*The façade of Park Avenue will be set back between 9 feet, 11 inches and 94 feet, 11 inches; seating areas, plazas, and landscaping along Park Avenue to connect the public pedestrian realm with the project's frontage. The street wall along Park Avenue aligns with the Adobe Campus west of the project site, allowing visitors to look along Park Avenue from César Chávez Plaza at the new project and Adobe project in the background. Conformance to these standards would negatively obscure views along and from the Park, a central public space in Downtown.*

*Finally, consistent with the third exception finding, the additional space provided with the increased setbacks along Park Avenue and South Market Street provides the opportunity to include privately owned public open spaces to activate the public realm and enhance retail uses on the site. The intent of a street wall is to frame the public space to create a safer "eyes on the street" mentality and strengthen the connection between buildings and public space to encourage walking and bicycling. Although the development is set back further than street wall requirements, the design of the development meets the intent of the Standard by using the setback space to create usable public plazas. The setbacks are not intended to set the buildings back and isolate the development; rather they are intended to foster public use of the site and complement the surrounding public spaces.*

- b. Chapter 3.3 Site Organization: This chapter's sections and standards aim to enhance the vitality of Downtown, to support a vibrant public realm, emphasize transit, and create safe and inviting pedestrian walkways to enhance the Downtown circulation network.

*Analysis: Consistent with the Design Guidelines, the development places ground floor active uses along all the site's public frontages through a combination of retail, lobby, and active use tenant leasable space. All ground floor tenant and retail spaces will be outfitted with warm shell construction; making the space "move-in ready" for future users. The project limits the non-active uses along project frontages (such as utility rooms and vehicle driveways) by consolidating the curb cuts on the site and creating deeper utility rooms which minimize street frontage needs. Of the 1,757 linear feet of building frontage, only 313 linear feet are utilized by non-active uses such as driveways, electrical rooms, utility rooms, etc. There is one bus stop located along South Almaden Boulevard, the western property line. The project emphasizes transit opportunities by locating its curb cuts away from the bus stop along South Almaden Boulevard and placing active uses with building transparency along the interface with the bus stop on the project's frontage. Finally, the project includes pedestrian and bicycle access around and through the site including interior walkways located on the ground level for easy and welcoming*

*access. The pedestrian walkways are wide, and landscaped and hardscaped for bicycle and pedestrian connections for access through and around the site.*

- c. Chapter 3.4 Site Element Locations. This chapter's sections and standards include provisions for the location of privately-owned public open spaces (POPOS), vehicle parking and access, loading/services, pedestrian entrances, and bicycle entrances.

*Analysis: POPOS are privately-owned outdoor spaces that function as a public space, but may have limited hours of availability. Consistent with the Design Guidelines, the project includes ample POPOS on the ground floor and adjacent to the public streets surrounding the site. The POPOS include public open spaces along the South Market Street and Park Avenue frontages and between the towers. There are a variety of open spaces with direct sunlight access and views of the nearby Plaza de César Chávez, historic buildings, and Tech Museum. These open spaces which are publicly accessible include informal gathering spaces for people watching, dining, and enjoying the outdoors. The spaces have been designed to complement the future retail/commercial uses on the ground floor of the development and to support outdoor dining through creating a combination of spaces with hardscaped seating, passive landscaping, and informal spaces with moveable furniture. The open spaces are landscaped to complement the public realm and development's uses without creating a barrier between the public and private realms.*

*Consistent with the Vehicle and Bicycle Parking Locations standards, short term bicycle parking will be located along the project's frontages and long-term bicycle parking will be located in secured ground floor bicycle rooms separated from the subterranean parking garage and easily accessible and identifiable from the project's frontages. Bicycle rooms will include signed entrances indicating bicycle parking is available and the bicycle rooms will have access to building lobbies.*

*Exception: An exception to Design Guidelines Section 3.4.4 Standard (a) is requested. This standard does not permit surface parking lots adjacent to any addressing street or Urban Park/Plaza Frontage. In accordance with the first exception finding for unique circumstances, the property only has frontages along Addressing Street and an Urban Park/Plaza Frontage and due to an existing parking agreement on the property; the site is required to provide surface parking. Additionally, this surface parking lot is designed in accordance with all other applicable Downtown Design Guidelines pertaining to Surface Parking Lots, see further discussion for Chapter 5.4, below. The surface parking lot is shielded by landscaping and located on the most car-oriented project frontage to avoid negatively impacting the surrounding neighborhood, in accordance with the second exception finding. As per the third exception finding, the location of the surface parking lot was carefully considered with regard to the intent of the standard and is*

*located on the Secondary Addressing Street frontage, which is the lowest pursuant to the hierarchy of streets outline in Section 3.5.1.*

- d. Chapter 3.5 Site Access Locations. This chapter's sections and standards regulate pedestrian, bicycle, and vehicle entries to the site. Easy-to-find entries that minimize conflicts between different modes of transportation and link the development to its immediate neighborhood are encouraged within this Chapter.

*Analysis: Consistent with the Design Guidelines, the overall architecture of the development is designed to have a grand entrance facing South Market Street and Plaza de César Chávez, which is the Urban Park/Plaza frontage of the project site. The grand entrance includes an outdoor staircase along a double height office lobby and a pedestrian walkway to offer circulation options to visitors of the area. Beyond the grand architecture gesture, the project site has retail and lobby access points along all of the project's frontages.*

*Service entries for the project will be located along West San Fernando Street and South Almaden Boulevard and have been consolidated to minimize their impact to the street frontages. The service entries are located over 25 feet from pedestrian and bicycle entries on the street. These entries were designed so that the loading and unloading activities would take place within the project site, away from the street frontages to further minimize the impact of this inactive and noisy use. The West San Fernando Street loading area has a separate ingress and egress driveway which aligns with the new traffic signals to be constructed at the intersections of West San Fernando and Almaden Avenue and West San Fernando Street and South San Pedro Street. Between the vehicle driveways along West San Fernando Street, the development has incorporated retail spaces to wrap the loading and parking use within the building. These retail spaces will offer additional retail opportunities along West San Fernando Street and enliven this façade of the development.*

*The driveways for the subterranean parking garage are located over 20 feet from pedestrian and bicycle entries to the development, consistent with this Chapter. Four subterranean garage access points are located on the development site, one on South Almaden Boulevard, two on West San Fernando Street, and one on South Market Street. Consistent with the Park Avenue re-design vision for a bicycle and pedestrian-centric street on Park Avenue, the project does not include any curb cuts for parking or loading access.*

- e. Chapter 4.2 Building Context. This chapter's sections and standards require clear and linked building architecture, transitions between high-rises and lower scale residential and historic development, consideration of how development will contribute to civic icon buildings and respond to historic context buildings.

*Analysis: The development incorporates strong harmonious architecture throughout the development and along all of the project's frontages, consistent with this chapter's sections and standards. The top of the building is differentiated from the remainder of the building through the use of a triple height top. The building and landscaping materials draw inspiration from the neighborhood context surrounding the project site. The ground floor of the development uses black granite stone, terra cotta, and glass to create storefronts with high visibility and grounding materials to frame the transparent glass. Aluminum canopies help shape the pedestrian level frontage.*

*The development includes massing transitions. Along Park Avenue, South Market Street, and West San Fernando, the building steps back on the third floor to provide a height transition along the streets and create an interesting building form. These step backs which are designed as terraces for outdoor use by the office space, align with the general scale and massing of the buildings surrounding Plaza de César Chávez and help maintain views of the park, adjacent historic buildings, and the adjacent Tech Museum.*

- f. Chapter 4.3 Building Massing. This chapter's sections and standards promotes high quality architecture which creates a compelling skyline, supports a human-scale streetscape, and uses the street wall (building façade along the public street) to define the public realm. This chapter encourages designs which reduce potential shadow and wind impacts.

*Analysis: Consistent with the Design Guidelines, the façade is expressed at the ground floor with 20-foot and 30-foot modules which include projections and recesses to articulate the building. The towers of the building are not simple rectangles, and use their unique shapes and angles to add interest to the building's massing and skyline. The project incorporates seven-story pedestrian bridges, a minimum of sixty feet wide, as an integral part of the building. These common bridges connect the building to create an interconnected development campus while adding unique shapes to the project's massing. The towers are separated by a minimum of 120 feet which establishes distinct towers, provides for sunlight exposure, and maintains an appropriate wind speed at the pedestrian level.*

*Exception: An exception is requested to Design Guidelines Standard (a) in Section 4.3.2, which mandates a maximum of 450 feet for any horizontal dimension of a building, including diagonally in the skyline level massing. Tower A has a diagonal of 457 feet and Tower B has a Diagonal of 473 feet. The horizontal dimensions of the length and widths of the towers are compliant however due to the unique shaping of the tower massing, the diagonals exceed the standard. However, the shape of these buildings meets the intent of the Downtown Design Guidelines to create an interesting skyline level. Pursuant to the first finding, the unique situation which warrants the exception is the size of the development combined with the*

*intent of the other Downtown Design Guidelines and Standards to have unique and interesting tower massing. The towers are not shaped as rectangles but rather irregular quadrilateral shapes which result in a longer diagonals in one direction. In order maintain the interesting massing while maximizing the development capacity on-site, the two tower diagonals would exceed the maximum length of 450 feet. Simple rectangle towers would meet the standard but would sacrifice the unique massing. In accordance with the second exception finding, the tower design does not cause any safety or health concerns. Additionally, the average diagonals of the three towers is below 450 feet as well as all other horizontal measurements (length and width of each building) meeting the intent of the standard, pursuant to the third exception finding.*

*Exception: An exception is requested for the street wall requirement set forth in Design Guidelines Section 4.3.3, Standards (b), (c), and (g) for the South Market Street and Park Avenue frontages. This exception request is outlined above in the Chapter 3.2 discussion. The frontages along West San Fernando Street and South Almaden Boulevard comply with the street wall standards set for in Section 4.3.3.*

- g. Chapter 4.4 Building Elements. This chapter's sections and standards promote high quality architecture and materials, centralized heating and cooling systems to eliminate individual units along windows, bird-safe building design, and a reduction of blank walls. The sections and standards encourage prominent stairways to create a pleasant experience for users, promote the minimization of parking garages and visible mechanical equipment, and include guidelines for building lighting, signage, and pedestrian bridges.

*Analysis: Consistent with Section 4.4.1, which encourages a cohesive façade which does not overpower the overall building form, the development utilizes a consistent gridded window pattern with terra cotta and aluminum to frame the windows. The tower façade has a three-story, elongated expression at the rooftop to differentiate the top of the building's massing from the rest of the towers. The development utilizes angles in the towers' massing to create visual interest and breaks down the boxy- or blocky-ness of the development when viewed along Park Avenue and West San Fernando Street. The east-west walkway is visible from the transparent building lobby along South Almaden Boulevard and through walkway on South Market Street. Roof top terraces on the third floor building step backs break up the massing of the development and reflect the volumes of surrounding buildings along Plaza de César Chávez. Finally, an exterior staircase is located along South Market Street to complement the building's grand entry off of Plaza de César Chávez. The design of the staircase is woven into the overall design of the main South Market Street entry.*

*The project does not include through-window and through-wall air conditioning or heater units nor mirrored glass, consistent with this chapter. The environmental*

*analysis for the project identified the potential for birds to collide with the glassy pedestrian bridge elements of the project design; to reduce this impact and comply with the mitigation measure outlined in the environmental document, the project will implement bird safe design features including glass with low-reflectivity glazing and architectural features along the pedestrian bridges.*

*The development's ground floor materials include black granite stone for the base, aluminum canopies, glass, and terra cotta; these high-quality materials were selected to reflect existing materials and color palettes in the project's neighborhood context. Parking garage driveways are designed to reduce off-site queueing and conflicts with pedestrians and bicyclists. The location and design of the vehicular driveways have been coordinated with the City's Departments of Public Works and Transportation. Garage exhaust from the below-grade parking structure will be vented out on the third floor directed away from the sidewalks. The venting design has been integrated into the building design and will include aluminum louvers combined with a terra cotta pattern to screen the vents. Roof top mechanical equipment will also be screened within a steel structure screening system; using low intensity non reflective colors and organized as a component of the overall building architecture. Window washing equipment is designed into the building and would not be visible when inactive.*

*Pedestrian bridges are integrated into the project design; however, they do not extend over public rights-of-way consistent with Section 4.4.8. Additionally, the bridges comply with the design standards with a 60-foot width, clearance of 50 feet in height, and transparent yet bird-safe design. The width of the bridge is intended to support office uses on the bridge, and not just be a walking path.*

*The development complies with pedestrian and building lighting design standards. The development's pedestrian lighting includes the illumination of accentuating architectural features such as lobby entryways, to provide a safe pedestrian experience. Additionally, the pedestrian walkways are lit with a variety of lighting features including down-shielded bollards, lighting trimming under the pedestrian bridges, lighting along the walkways and landscaping, and building lighting. The development includes simple exterior façade lighting along the top of the building to add to the City Skyline but not detract from the Gateway sites designed in the Downtown Design Guidelines. This permit does not include commercial signage; however, future signage would be reviewed for compliance with the Municipal Code and Downtown Design Standards.*

- h. Chapter 5.2 Public Art in Private Development. This chapter and standards require development projects at transit gateways, bicycle and pedestrian gateways, and lighting gateways to include public art.

*Analysis: The project site is not on a transit gateway, bicycle pedestrian gateway, nor lighting gateway site designated in the Downtown Design Guidelines and*

*therefore is not required to provide public art. The project proponent has indicated they may endeavor to place art pieces on the site and a condition of approval has been added to coordinate the landscaping design with Planning and consider the placement of art pieces. Additionally, the project includes a condition of approval, above and beyond these standards to coordinate include an artistic/graphic display on fifty percent of the construction barriers facing South Market Street, West San Fernando Street, and South Almaden Boulevard during construction.*

i. Chapter 5.3 Ground Floor Treatments and Uses. This chapter's sections and standards requirements include the maximization of active frontages, treatment of blank walls, screening for services and utilities, ground floor design standards to promote flexibility for future use needs, and pedestrian lighting and signage standards. This chapter emphasizes active frontages which are defined as a pedestrian level building frontage which allows visual and physical access to the active use within the building via windows, doors, or both. The standards require a minimum of 80% active frontages length in feet along Primary Addressing Streets, Urban Park/Plaza frontages, and Secondary Addressing Streets (every project frontage for this site). Section 5.3.1 categorizes active frontages into three active frontage types:

- Type 1 counts triple the frontage width and includes retail/restaurants/offices under 5,000 square feet, hotel lobbies, fitness centers open to the public, and other public lobbies such as museums, libraries, etc.
- Type 2 counts double the frontage width and includes commercial office windows, office lobbies, daycares etc.
- Type 3 only counts the frontage width and includes building entrances and exits with transparent glass and windows within 5 square feet of transparent glass
- Structured parking, driveways, service entries, fire exits and utilities do not count towards active frontages

*Analysis: Consistent with the Active frontage requirements, every street frontage for the project site will exceed the minimum 80% active frontage requirements:*

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Frontage	Total building frontage	Uses along frontage	Type 1 (x3)	Type 2 (x2)	Type 3 (x1)	Non-active	Total Frontage Percentage
West San Fernando Street	561 feet	-Retail (type 1) -Active tenant space (type 2) -Garage entrances/utility rooms (non-active)	149 feet x3=447 feet	175 feet x 2= 300 feet	0 feet	237 feet	142% active frontage
South Almaden Boulevard	252 feet	-Active tenant space (type 2) -Garage entrances/utility rooms (non-active)	0 feet	192 feet x 2=384 feet	0 feet	60 feet	152% active frontage
Park Avenue	548 feet	-Retail (type 1) -Active tenant space (type 2)	372 feet x3=1,116 feet	176 feet x 2 = 252 feet	0 feet	0 feet	268% active frontage
South Market Street	396 feet	-Retail (type 1) -Active use/lobby (type 2) -Garage entrance (non active)	120 feet x 3= 360 feet	260xx2= 520 feet	0 feet	16 feet	222% active frontage

*In terms of design, the development's façade design is modularized across the entire frontage. Utility, mechanical and other service spaces have detailed articulated facades with terracotta soffits, metal grills, and shadow boxes behind glass curtain walls that harmonize with the overall building façade. The façade is expressed at the ground floor with 20-foot and 30-foot modules that are flexible to accommodate a variety of entry door locations. Entries all have direct access public space. Interior tenant spaces are conceptual in these plans and will be refined with prospective tenants; this allows the development to cater to the size and frontage needs of different retailers. Retail along Park Avenue has depths between 40 feet and 70 feet deep with an average retail depth of 55 feet. Retail on West San Fernando Street, which shields the project's loading activities, has a depth of 30 feet. Pedestrian main entries within the development are recessed with a distinctive portal for ease of identification and entry lighting will be integrated into the architectural frame of these entries. The ground floor has a minimum 19 foot height with some portions of the ground floor including double height spaces.*

*Exception: An exception to Section 5.3.1.c, Standard (a) is requested for garage venting to be located at the third floor of the building along West San Fernando Street and South Almaden Boulevard. This will reduce the amount of screened blank wall space and is designed to avoid noise, exhaust, or smell impacts to the*

*public realm. The venting will be located 18 feet above the public right of way and will be screened with terra cotta. In accordance with the first exception finding, the step backs of the building result in three-story massing along the South Almaden Boulevard and West San Fernando frontages. The unique project design includes terraces atop the third floor constraining the placement of the vents on top of the step back. The fans used for the venting are located within in the five-level subterranean parking garage the depth of which will reduce noise impacts. As described above, the venting location would not negatively impact the area, as the vents would be located a minimum of 18 feet above the public right-of-way and the noisiest equipment for the venting would be within the subterranean garage. Finally, the location of the venting and the terra cotta louver screening the vents would meet the intent of the standard to deliver essential service functions of the building while not impacting the quality of the adjacent public realm.*

- j. Chapter 5.4 Surface Parking Lot. This chapter includes design standards for surface parking lots to negative impacts with a well-designed space.

*Analysis: The surface parking lot in the development would provide 15 surface parking lot spaces in accordance with an existing parking agreement the project site has with 190 Park Center Plaza (adjacent property on the northwest corner of the block). Consistent with this section, the surface lot will be screened with landscaping including two trees along the sidewalk.*

- k. Chapter 5.5 Entrances. This chapter's sections and standards establish design requirements to create clearly identifiable entries for pedestrians and bicyclists and ensure a separation between vehicles and pedestrians and bicyclists. Common entries for pedestrians and bicyclists should be emphasized through the project design including the use of horizontal projections such as a canopy.

*Analysis: Consistent with the Design Guidelines, the paseos are paved and include landscape "carpets" to draw pedestrians towards the lobbies. Individual lobbies are identifiable with extra height, and distinctive entry portals with recessed doorways. These pedestrian entries are scattered throughout the site for the ground floor retail and tenant spaces. Bicycle lobbies are identifiable with recessed doors in distinctive architectural portals and are internally connected to the building lobby consistent with the design standards. Lobby entrances are located along the central east-west pedestrian walkway and pedestrians are drawn towards the center of the site by the highly visible bridges which are visible from Park Avenue and West San Fernando Street and expressed through the building onto South Almaden Boulevard and South Market Street. Additionally, the landscape paving extends into the sidewalk right of way to catch pedestrian attention and direct them towards the lobbies.*

*Service entries are less than 20 feet in height and have been designed to bring the loading activity off of the frontage and onto the site. Park Avenue includes two*

*pedestrian drop-off/pick-up areas and the project's frontage along Park Avenue provides ample space for passengers awaiting rides to avoid blocking the sidewalk.*

- I. Chapter 5.6 Paseo Design. This section includes design guidelines and standards for the design of paseos.

*Analysis: Consistent with the chapter, the pedestrian walkways/paseos are a minimum of sixty feet in width and include pedestrian lighting designed to provide safe access through the walkway. No freestanding walls line the paseo, rather the paseo edges are formed with the development's buildings and landscape design.*

- m. Chapter 5.7 Privately Owned Public Open Space Design. Privately-owned Public Open Spaces (POPOS) can provide amenity and use to residents, workers, and visitors of downtown. This chapter includes standards on creating interesting, useful, flexible, active, safe and durable common spaces for Downtown.

*Analysis: The spaces where the development is set back from the property lines would be considered POPOS. These public open spaces are designed to be an integral part of the public realm and to connect the development with the surrounding neighborhood. The design of these spaces in the development includes temporary and permanent seating. The POPOS utilize landscaping and hardscaping to dimension the space yet maintain visibility, and these spaces are lined by active frontages including lobbies, retail, and active tenant spaces, consistent with the Design Guidelines.*

## **6. Council Policy Conformance**

### *City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals*

Under City Council Policy 6-30, the project is a large development. Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. A community meeting was held to discuss the project on August 19, 2019 at the Bower's Institute Meeting Room at 145 West San Carlos Street. The community meeting was coordinated with Council District 3 and Council District staff attended the community meeting. Comments from the public were received during the community meeting and addressed by staff.

Staff contact information have also been available on the community meeting notices and project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### *City Council Policy: Historic Landmarks Preservation*

The City Council adopted Council Policy for Preservation of Historic Landmarks, last revised on May 23, 2006. This Council Policy directs applicants to make every effort to incorporate candidate or designated landmark structures into the future plans for development and to preserve the integrity of the structure whenever possible.

However, this policy acknowledges that in some instances, demolition of a candidate landmark can occur, assuming the appropriate public notification is given, an appropriate comment period is provided to comment on the demolition, and if the demolition or alteration can be justified through documentation that it is not reasonably feasible to retain the candidate landmark or there is an overriding consideration that warrants the loss of the structure.

The Bank of California/Sumitomo Bank Building was identified on the project site as a candidate City Landmark and the project was referred to the Historic Landmarks Commission (HLC) for an “early referral” discussion and input. The HLC is an advisory body to the Planning Director, Planning Commission, City Council and City Manager on the designation, acquisition, and preservation of historic landmarks and site, artifacts and other property of historic significance and value.

On September 4, 2019, the project was heard by HLC for early referral during the SEIR Scoping Period.

At the HLC hearing, the Commission offered comments relating to design options and suggestions on what should be considered in the historic analysis. These comments included:

- A member of the Preservation Action Council of San José (PAC\*SJ) stated concerns regarding the demolition of the Bank of California/Sumitomo Bank Building and although it is Brutalist architecture is an exemplary example of this historic architecture style and should be preserved. The members harkened back to when Victorian architecture was considered undesirable in the 1960s and many Victorian homes were demolished.
- HLC noted concerns about the height and number of stories of other historic resources in the area (not on-site) in relation to the large project proposal.
- HLC noted concerns about the impacts on historic properties and that the surrounding landmarks would get lost in the large project.
- HLC noted concerns over the loss of the candidate City Landmark (the Bank of California/Sumitomo Bank Building).
- HLC requested the project consider ways to retain the Bank of California/Sumitomo Bank building or integrate it into the development.

During the public circulation of the draft Supplemental EIR, the project was presented to HLC on April 1, 2020, to receive comments on the circulating draft SEIR. Comments included:

- A member of PAC\*SJ noted the Bank of California/Sumitomo Bank Building is likely eligible for the National Register and the decision makers should consider the impact of the project on the totality of the historic area including the Museum of Performing Arts.

- A member of PAC\*SJ recognized the Candidate City Landmark Post Office Building across the street and its Romanesque architecture.
- A member of PAC\*SJ stated the City goal is to preserve history and that the project goals preclude preservation.
- A property owner near the project site recognized the need for historic preservation but stated the need should be balanced with the overall benefit projects bring to an area. The speaker stated the historic buildings do not reflect the goals to enhance pedestrian activity or provide value to the public. He stated the preservation of the existing building on-site would detract from the significant that the project would bring to Downtown.
- A member of PAC\*SJ noted this was an opportunity to integrate historic buildings of different materials, massing, and scale to create a unique development and scraping the site should be discouraged.
- The project applicant noted Brutalist buildings are hard to preserve due to their lack of windows, access, and transparency and hard to relocate due to their high use of concrete which is heavy.
- HLC members noted the redesign of the building still lacked compatibility but was an improvement from the first HLC meeting.
- HLC members reiterated concern of the demolition, particularly the demolition of the Sumitomo Bank Building.

Additionally, on January 30, 2020, the Preservation Action Council of San José (PAC\*SJ) submitted a request to the Historic Preservation Officer for HLC consider the nomination of the former Bank of California/Sumitomo Bank building as a City Landmark. On March 4, 2020 the item was on the HLC agenda for discussion and HLC expressed interest and requested PAC\*SJ provide additional information to support their request. On May 6, 2020, HLC voted (5-0-1, Polcyn absent) to direct Staff to prepare an application for the HLC to consider the nomination of the Bank of California/Sumitomo Bank Building as a City Landmark. Comments during the meeting included:

- Members of PAC\*SJ stated their support for City Landmark designation and desire that decision makers would consider the Landmark nomination as well.
- HLC Commissioners confirmed the need to preserve the historic building and expressed concern the nomination would trail the City View Plaza application.
- Staff noted, the project and nomination are separate items. Decision makers would be aware of the nomination proceedings when considering this project.

- The recommendation for nomination is scheduled for the June 3, 2020 HLC meeting. The recommendation for HLC would be considered for a final decision by City Council.

The Draft SEIR analyzed the Bank of California/Sumitomo Bank building as a Candidate City Landmark and an historic resource eligible for the NRHP and the CRHR in accordance with the guidelines for identifying historic resources under CEQA are set forth in Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5(a). Should the Bank of California/Sumitomo Bank building be formally nominated ahead of finalization of this project, the environmental analysis would be adequate because the building was reviewed as a historic resource eligible for local, state, and national listings. The formal nomination of the building would not change the impact of the project on the historic resources. This impact would continue to be a Significant Unavoidable Impact due to the loss of the historic resources and candidate historic district on-site.

*Analysis: The project is consistent with the Council Policy, in that this policy acknowledges that in some instances, demolition of a candidate landmark can occur. The Policy requires that appropriate public notification of the project and demolition should be given in addition to an appropriate public comment period to receive feedback on the demolition. The project outreach for the project included a community meeting, two HLC meetings, and the public hearings to notify the public of the site demolition and project.*

*Additionally, the policy requires a finding that either 1) it is not reasonably feasible for any interested party to retain the candidate or designated landmark structure or the integrity of the district, or 2) a finding which records the overriding considerations which warrant the loss of the candidate or designated landmark structure or district integrity. The project review analyzed alternatives to the project which included retaining all or some of the historic resources on-site.*

*As to the first finding of infeasibility, the relocation of the identified historic structures would be infeasible due to the historic structures' concrete construction with significant overhangs, covered walkways incorporated into the structures, and decorative features (such as the large columns on the entrance of the Bank of California/Sumitomo Bank building). Relocation of all these buildings would not be feasible without substantive dismantling of the buildings which could damage the historic fabric of the buildings. Reuse of all the historic buildings on-site would be difficult given the structures are located above a subterranean parking garage which would need to be removed to support the underground parking for the new development. Reuse would be difficult because it would reduce the intensity and overall size of the new development which is currently designed to the maximum allowed height and the towers are arranged to enhance pedestrian and bicycle circulation through the site. Finally, the reuse of the Bank of California/Sumitomo*

*Building and Bank of America Building could require modifications to the historic buildings (such as enhancing transparency and access to the building) which could detract from the building's historic significance. The unique design of the brutalist buildings would limit the types of uses that could easily reuse the building. The SEIR analyzed six preservation alternatives to the project which are described in detail in the SEIR and summarized below in the California Environmental Quality Act Section.*

*As to the second finding of overriding considerations, the creation of approximately 20,000 jobs, provisions of multi-modal and pedestrian enhancements in Downtown, increase in economic development, and furthering of the Envision San José 2040 General Plan's Strategies, Goals, and Policies (specifically Strategies 3 and 9, Land Use Goal 3, and Policy TP-4.1) are overriding considerations for the project which counterbalance the loss of the historic structures. Further discussion of the project alternatives and overriding considerations is provided in Environmental Review Section, below.*

- 7. Environmental Review.** A Supplemental Environmental Impact Report (SEIR) (State Clearinghouse Number 2018022032) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), was prepared by the Director of Planning, Building and Code Enforcement for the CityView Office Project (H19-016) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The Initial Study prepared for this project concluded that implementation of the project would result in significant impacts to air quality, biological resources, hazards and hazardous materials, land use, noise, and cultural resources; therefore, an SEIR was prepared for the project.

*Identified Significant Unavoidable Impacts*

The Draft SEIR determined that the project would result in significant unavoidable impacts which could not be mitigated to the following resources:

- **Air Quality Impact Air-1:** Construction activities associated with the project would result in nitrogen oxide (NOx) emissions in excess of Bay Area Air Quality Management District (BAAQMD) thresholds.
- **Air Quality Impact AIR-2:** Construction activities associated with the proposed project would expose infants near the project site to TAC emissions in excess of BAAQMD thresholds. In addition, construction activities on-site would expose sensitive receptors to PM2.5 emissions in excess of acceptable thresholds. particulate matter of 2.5 microns or less (PM<sub>2.5</sub>) in excess of acceptable thresholds.
- **Cultural Resources, Impact CUL-1:** Implementation of the project would result in the demolition of the historic Park Center Plaza, including four buildings which are individually historic and contributors to the historic significance of the Park Center Plaza.

- **Land Use and Planning LND-1:** The project would have a significant unavoidable shade and shadow impact on Plaza de César Chávez creating a 10% increase in shadows on the public park.
- **Noise Impact NOI-1a:** Implementation of the project would result in a permanent traffic noise level increase in the project vicinity.
- **Noise Impact NOI 1b:** Project construction would last for a period of more than 12 months and nighttime construction would exceed steady noise levels of approximately 35 decibels (dBa) and fluctuating noise levels of approximately 45 dBa which would impact hotel guests, interim housing residents, and future residents.

Mitigation measures were developed to lessen the following impacts to less than significant levels for Biological Resources: bird strikes on the development's bridges and Hazards and Hazardous Materials: exposure of construction workers and nearby land uses to hazardous materials. Standard Permit Conditions, which include best management practices, related to air quality, compliance with the Santa Clara Valley Habitat Plan, Building Code for seismic safety of the building, erosion control during construction activities, protection of unknown subsurface resources, protection of construction workers from hazards related to asbestos containing materials and lead-based paint, water quality impacts during construction, and impacts to public facilities were incorporated into the project conditions.

#### *CEQA Alternatives*

As required under CEQA, the Draft SEIR identified and evaluated alternatives to the project. Three critical factors considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered eleven project alternatives as briefly outlined below, further analysis is included in the SEIR.

- **Location Alternative:** This alternative was considered and rejected as the 8.1-acre site is unique to the downtown area and other properties in the downtown would not be large enough to support the same scope of project.
- **Preservation Alternative 1 and No-Project No Development Alternative:** This alternative considered the preservation of all historic resources on-site. Since City View Plaza in its entirety was identified as a historic resource, this alternative would result in no demolition and would be considered the No Project- No Development Alternative. These alternatives would result in no immediate development on-site. As such, the Preservation Alternative 1 and the No-Project No Development alternative would not result in any immediate significant unavoidable impacts; however, they would also not meet the project's objectives. The City would lose the opportunity to redevelop an underutilized site Downtown and to meet the

strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density office development on a Downtown site near transit. Therefore, this alternative is rejected.

- **Preservation Alternative 2 - Relocation of Historic Resources:** This alternative would result in the relocation of the historic resources on-site. The alternative was considered and rejected because it would be largely infeasible due to the need to relocate a large number of buildings together to maintain the historic district. Additionally, the historic structures are large, constructed of concrete, and would require substantial building dismantling for relocation which could damage the historic structures.
- **Preservation Alternative 3 - Preservation of all Buildings Existing in 1974.** This alternative would allow the demolition and redevelopment of 193 Park Avenue and 150 South Almaden Boulevard (the non-historic structures), the remaining buildings would be retained and reused. It is estimated the redevelopment, built to the maximum height, could be 1.2 million square feet and a reduced parking garage could be constructed, however the footprints of the preserved historic buildings would constrain the garage size and capacity. This alternative would reduce the construction air and noise impacts to a less than significant level with the incorporation of mitigation measures. Additionally, the land use impact for shading the Plaza de César Chávez would be eliminated since this project would maintain the existing buildings on the eastern side of the property. This alternative would require conformance to the City's Historic Design Guidelines to ensure that the alternative would not impact the historic buildings retained on-site. This alternative would retain the existing plaza layout which is separated from the public realm by buildings, staircases, and ramps thus reducing project's ability to activate the ground floor with pedestrian paseos and access. This alternative would not maximize the uses on this prime office location site, and would not achieve the vision of the Envision San José 2040 General Plan and Downtown Strategy 2040. Therefore, this alternative is rejected.
- **Preservation Alternative 4 - Preservation of Candidate Landmark Buildings.** This alternative would retain two or more of the candidate landmark buildings on-site (Bank of California/Sumitomo Bank Building (170 Park Avenue), Wells Fargo Building (121 South Market Street), United California Bank Building (177 Park Avenue), and/or Bank of America Building (125 South Market Street). The partial preservation would retain and reuse at least two of the candidate City Landmark historic resources on-site while allowing a new development capacity estimated to range between 1.6 to 3 million square feet, depending on the number of buildings and which buildings would be preserved. This alternative would likely still have land use-shadow impacts and construction and operational air quality and noise significant impacts due to the new development size. In addition, this alternative would still result in an impact to the cultural resources since not all historic

resources would be preserved. While this alternative would generally meet the project's goals, it would result in a loss of between 700,000 to 2.1 million square feet of modern Class A office development on the site and would continue to have a significant impact to land use, historic resources, air quality, and noise. The loss of approximately 772,420 to 2,235,503 square feet of office space would not, by itself, be inconsistent with the project objectives, however, the City would lose the opportunity to provide high density office space in this prime Downtown location. Therefore, this alternative is rejected.

- **Preservation Alternative 5 - Preservation of the Wells Fargo Building.** This alternative would preserve the Wells Fargo building (125 South Market Street) and surrounding plaza. The preservation of this building would allow a development alternative of approximately 3.2 million square feet and a subterranean parking garage to support the new development. This alternative would likely still have land use shade impacts and operational and construction air quality and noise impacts. While this alternative would predominantly meet the project's objectives, the retention of the Wells Fargo Building would result in a lost opportunity to enhance the pedestrian connections on the northwest corner of the project site. The Wells Fargo Building is raised 5-7 steps above the sidewalk level and is separated from South Market Street by steep planting areas that slope downward to provide lighting for basement windows. This separation conflicts with the project's objectives to enhance the pedestrian experience and retention of the building would result in a lost opportunity to revitalize the South Market Street and West San Fernando Street block corner with retail space and an active use frontage. The loss of approximately 347,657 square feet of office space would not, by itself, be inconsistent with the project objectives, however, the City would lose the opportunity to provide high density office space in this prime Downtown location. Therefore, this alternative is rejected.
- **Preservation Alternative 6 - Preservation of the Sumitomo Bank Building.** This alternative would preserve and reuse the Bank of California/Sumitomo Bank Building (170 Park Avenue) and due to structural needs, would also require the retention of the 150 South Almaden Building. The preservation of this building would allow a development alternative of approximately 2.35 million square feet and a subterranean parking garage. This alternative would continue to have significant and unavoidable land use-shadow impacts, construction and operational air quality and noise impacts, and cultural resource impacts due to the loss of other historic structures on-site. The loss of approximately 605,958 to 1,211,916 square feet of office space would not, by itself, be inconsistent with the project objectives, however, the City would lose the opportunity to provide high density office space in this prime Downtown location. Additionally, the retention of the Bank of California/Sumitomo Bank Building would result in a lost -opportunity to integrate the re-designed pedestrian friendly, Park Avenue plan with project site.

The Bank of California/Sumitomo Bank Building is setback and above the property line on a sloping lawn the building's architecture incorporates smooth concrete and dark glazing contrary to storefront designs. This separation conflicts with the project's objectives to enhance the pedestrian experience and retention of the building would result in a lost opportunity to activate this Park Avenue frontage. Therefore, this alternative is rejected.

- **Reduced Development Alternative 1 - Square Footage Reduction.** This alternative would reduce the size of the project to 1.5 million square feet to reduce significant and unavoidable construction impacts to air and noise. Under this alternative the significant and unavoidable construction air quality impact would be reduced to a less than significant level. However, the significant and unavoidable operational noise impact would remain. While the size of the project would be substantially reduced, the Reduced Development Alternative 1 would generally meet the project objectives to provide Class A office space and enhance the ground floor, however, the City would lose the opportunity to provide high density office space in this prime Downtown location. Therefore, this alternative is rejected.
- **Reduced Development Alternative 2 - Reduced Parking.** This alternative would include a 50% parking reduction resulting in a reduction of the total number of parking levels to three levels. The elimination of two levels of below-grade parking would reduce the necessary excavation and construction, thereby reducing the duration of heavy equipment usage needed to build the garage. The reduction in parking levels would not reduce the significant and unavoidable construction air quality and noise impacts, even with the mitigation implemented by the project. This alternative would meet the project objectives, and would have the same impacts as the proposed project. With the overall reduction in parking in the City's Downtown, it is a benefit to have centrally located parking that could be used for special events such as Christmas in the Park, or concerts at SAP Stadium that bring in people from further afield in the San Francisco Bay Area. For this reason, this alternative is rejected.
- **Reduced Development Alternative 3 – Height Reduction for East Tower.** This alternative would reduce the height of Tower A from 19 stories to 12 stories to reduce the shadow impact on the adjacent Plaza de César Chávez. With the height reduction, the project would have a less than significant shading impact on César Chávez Plaza. All other impacts would be the same as the project. This reduction would result in the loss of 175,000 square feet and would alter the skyline design of the development. The Reduced Development Alternative 3 would generally meet the project objectives, but would result in a reduction in building size of 174,958 square feet. Taking into consideration the loss of revenue to the City from the smaller project and the shadow impact which only occurs during a short period of time in the year, this alternative is rejected.

### *Circulation and Public Comments*

The Draft Supplemental Environmental Impact Report (Draft SEIR) was circulated for a 45-day public review and comment from March 11, 2020 through April 24, 2020. Seven comment letters were received. Comments were submitted by one individual and six agencies and organizations, as shown below:

- Peter Bennet-Community Member
- Department of Toxic Substances Control
- San José Downtown Association
- Firsthand Capital Management, Inc. -- Tenant of 150 South Almaden Boulevard
- National Trust for Historic Preservation
- Santa Clara Valley Water District
- PAC\*SJ

Issues raised in these comment letters include the following:

- Traffic Analysis, excess of parking provided, and inaccuracies in the transportation setting
- Recommendation to augment the Hazardous mitigation measures for Impact HAZ-1
- Support for the design of the Project and redevelopment of the site with pedestrian access provided through the site
- Phasing Impacts to 150 South Almaden Boulevard including air quality and noise/vibration impacts
- Concern regarding demolition of the Bank of California/Sumitomo Bank Building and lack of sufficient discussion in the alternatives to substantiate demolition
- Conflict of the demolition with General Plan policies to preserve historic structures and environmental stewardship goals
- Corrections to the hydrology section and notice of three active water wells on-site
- Inadequate historic preservation alternatives analysis

A First Amendment to the Draft SEIR was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. The First Amendment, taken together with the Draft SEIR, constitutes the Final EIR. The Draft SEIR and First Amendment to the Draft SEIR are available for review on the project page on the City's Active EIRs website at: [www.sanjoseca.gov/ActiveEIRs](http://www.sanjoseca.gov/ActiveEIRs).

### *SEIR Recirculation Unnecessary*

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft SEIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft SEIR is not "significant" unless the Draft SEIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

### *Statement of Overriding Considerations*

The City Council adopted and made a Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant and unavoidable impact of the Project is acceptable in light of the economic and social considerations noted below, because the benefits of the Project outweigh the significant and unavoidable impact of the Project. The City Council finds that the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant and unavoidable environmental impact and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, Zoning Ordinance and the Downtown Design Guidelines:

- **Develop approximately 20,000 jobs that are Accessible to Transit, Activities, Services, and housing in the Downtown Core.** The Project includes ground floor commercial and 3,640,033 square feet of office space that are within walking and biking distance of existing and planned transit stops, retail, entertainment, and educational institutions such a San José State University within the Downtown Core. The Project would increase the number of employees that would support existing and proposed commercial and retail spaces in the area and will increase transit ridership in the Downtown.
- **Provides Multi-Modal and Pedestrian Enhancements.** The development's design incorporates three pedestrian paseos that would enhance circulation through the site and within the Downtown core. The ground floor of the development will have retail opportunities, active uses, and storefront designs to enhance the pedestrian experience in Downtown. Additionally, the project would contribute to enhancing the City's multimodal corridors which would help reduce single occupancy improvements and vehicles miles travelled. Multi-modal public improvements the project will undertake include: a dedicated and

- raised bikeway along the project's San Fernando Street and Almaden Boulevard frontage per the City's Better Bikeway program, implementation of the City's planned public improvements along all project frontages, frontage improvements consistent with the Park Avenue Reconfiguration Plan and in coordination with the City's Park Recreation, and Neighborhood Services, and placement of planters and benches within the right-of-way to support pedestrians around the site. The on-site and off-site improvements of the development will enhance the multi-modal experience for visitors in Downtown.
- **Increases Economic Development.** The Project will advance the goals of the Envision San José 2040 General Plan by adding approximately 3.6 million square feet of office space and 24,000 square feet of retail space in an area with a mix of office, commercial/retail development in Downtown.
  - **Further Envision San José 2040 General Plan Strategies, Goals, and Policies.**
    - Major Strategy #3 Focused Growth: The Project site is located within an identified Growth Area (Downtown), as specified in the Envision San José 2040 General Plan. The Project proposes to significantly intensify the site with a 3.79 million square foot office and retail development with pedestrian-friendly designs and located in proximity to a variety of services, employment centers, educational institutions, and transit. Planning such sites for intense job growth in Downtown will spur further development and create the "complete community" consistent with development strategies in the Envision San José 2040 General Plan.
    - Major Strategy #9 Destination Downtown: The Project would increase the number of jobs in Downtown; the project anticipates the creation of 20,911 jobs. Employees will partake in the activities and contribute to business growth in the Downtown area by increasing the customer base for downtown businesses. The Project also introduces active commercial uses at the ground floor, consistent with the rhythm and activities of Downtown Core.
    - Land Use Goal LU-3 and Transportation Policy TR-4.1: The Project encourages the use of alternative transportation options through its proximity to public transit, the inclusion of bicycle parking and bicycle showers for employees and commercial uses. The project incorporates pedestrian paseos within the development and will include public improvements along all four of the project's street frontages to create a more pedestrian oriented development that what is currently on-site. The project will significantly contribute to the re-design of Park Avenue to create a verdant and pedestrian friendly street.

Each of the above benefits of the proposed Project were weighed against its significant unavoidable impact identified in the EIR. The City Council determined that these benefits outweigh the adverse environmental effect of the Project and, therefore, further determined that the adverse environmental effect is acceptable and overridden.

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the DEIR. No significant new information has been added to the EIR since publication of the Draft SEIR; therefore, the SEIR does not require recirculation.

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

**1. Site Development Permit Findings**

- 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 discussed above, the project is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial, retail, and residential uses at high densities. The project is also consistent with the various General Plan policies listed above including urban design policies, transportation policies, historic policies which encourage the reuse and salvage of historic materials and the commemoration of the historic buildings on-site, and community design policies. The pedestrian-friendly design of the development which eliminates the existing separation of the site today and the project's intensification of the site overall furthers the policies of the General 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 discussed in detail above, the project is consistent with the DC Downtown Primary Commercial Zoning District. The project complies with the maximum height of the DC Downtown Primary Commercial Zoning District; there are no minimum setback requirements established in the Zoning District for the project site. The project applicant has applied for a Determination of No Hazard with the Federal Aviation Administration (FAA). The project must file a Notice of Actual Construction within 5 days of completing each building's highest corner*

*point and requires the installation of roof-stop obstruction lights as prescribed by the FAA.*

*The required parking would be 7,736 vehicle parking spaces and 783 bicycle parking spaces. Section 20.90.220 of the San José Municipal Code allows projects that are within growth areas and within 2,000 feet of a light rail station and which provide all the required bicycle parking to receive a 20% reduction in parking. As described above, the closest Light Rail station is at the San José Convention Center, 600 feet south of the site and additionally there are rapid bus lines and the Diridon Station are in close proximity to the project site. The project is utilizing the 20% parking reduction to provide 6,230 vehicle parking spaces for the development in a five-level subterranean parking garage, 15 spaces at-grade for an existing parking agreement, 781 long term bicycle parking spaces 41 short term bicycle parking spaces, and 30 bicycle shower/changing room stalls in compliance with the Municipal Code.*

*The number of parking spaces would be achieved with an alternative parking arrangement including tandem parking stalls, valet parking service, parking lifts and over-aisle parking lifts to provide 6,230 parking spaces. Parking attendants would manage the parking of the garage and parking management would be a condition of approval for the site. Additionally, the project would have an on-site Transportation manager to inform tenants of alternative transportation options and to coordinate shuttles, buses, and loading activities to and from the site.*

*Twenty-four hour construction to develop the project is requested pursuant to Section 20.100.450 of the Municipal Code. Sensitive residential receptors in the vicinity of the project include multi-family residences at One South Market Street, residents of the temporary housing of Plaza Hotel located 110 feet north of the project, and future residential projects approved by the City including 70 South Almaden Avenue, 171 Post Street. With 24-hour construction, the construction of the project is anticipated to last 69 months and include 24-hour concrete pours for up to 20 days over the course of the project. The project construction would not include pile driving. The project would be phased so that portions of the development could be operational as construction continues. The environmental analysis of the project considered the extended construction hours impacts to surrounding neighborhood including noise and air quality impacts. To reduce noise impacts the project is required to submit a noise logistics plan prepared by an acoustical consultant to reduce noise levels as much as possible during construction activities. The Noise and Vibration Assessment prepared by Illingworth & Rodkin, Inc. in February 2020 estimated construction noise by 5 to 10 decibels with the implementation of mitigation measures MM NOI-1.1b. Although the extended construction hours will increase noise during construction, the intent is to reduce the overall construction time period and impact of the constructions on the neighborhood.*

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

*Analysis: The project is consistent with the City's Preservation of Historic Landmarks Policy for the following reasons: 1) There was public notification of the proposal to alter or demolish the existing historic structures on-site, and a community meeting was held on August 19, 2019, wherein the project was presented and the demolition of the buildings were discussed. Additionally, the project was presented at the Historic Landmarks Commission meetings on September 4, 2019 and April 1, 2020, and the public was informed that the project would involve the demolition of the structures on-site; 2) The project was heard at the Planning Commission Meeting on May 27, 2020; 3) The SEIR discusses and analyzes the historic structures on-site and provides mitigation measures to facilitate relocation of the historic resources. The environmental analysis included project alternatives to preserve some or all of the historic structures on-site; and 4) the findings justifying the demolition of the historic structures are discussed in the SEIR and environmental resolution.*

*The project is also consistent with the City's Public Outreach Policy, 6-30. Project development signs were posted on all frontages of the project site. A community meeting was held to inform the community of the project and receive feedback. The hearing notice and community meeting notice were sent to all tenants and owners within 1,000 feet of the project site. The Draft SEIR and hearing documents were posted online and Staff has been available to answer questions from the public.*

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

*Analysis: As described in the Downtown Design Guidelines Section above, the project towers, pedestrian pathways and elevations of the building were designed as an aesthetically harmonious project with interesting massing and public open space features to highlight the city's Downtown skyline and engage the public realm. Pedestrian entries are located on all project frontages and the careful consideration was made in the location of the vehicular driveways. The project's design incorporates canopies and lighting over the entries to enhance the pedestrian experience. The project is conditioned to provide several public right-of-way improvements for the site including the re-design of Park Avenue, addition or modification of traffic signals along project frontages, and improvements to the bike way along West San Fernando Street. Additional design analysis is provided in the San José Downtown Design Guidelines conformance section.*

- 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 massing of the building is influenced by its proximity to the Plaza de César Chávez, historic structures, and civic icon adjacency. The project's north-south paseos integrate with the Park Avenue re-design and paseo on the block south of the project. The materials and color scheme of the development are drawn from the surrounding neighborhood with the use of terra cotta and warm colors from the surrounding building.*

- 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 discussed above, a SEIR to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942) was prepared for the CityView Office Project in compliance with CEQA and the CEQA Guidelines. The project's impacts are discussed in the Environmental Review section and resolution. Based on the findings of the SEIR and as discussed above, the project was found to have no unacceptable negative effects in terms of dust, drainage, erosion, stormwater runoff or odor on adjacent properties. Based on review of the project by all of the various departments, there are no non-CEQA related impacts anticipated for this project. A Water Supply Assessment was submitted to the water agency as part of the project which confirmed there is sufficient water supply for the intense development. There is no outdoor storage of hazardous materials, and given the site's use, no odors are anticipated.*

- 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: The project would enhance the pedestrian-friendly appearance of the site through opening the site up and integrating the site's landscaping and walkways into the Downtown circulation. As shown on the approved plan set, the landscaping, irrigation systems, all walls and fences, exterior heating, ventilating, plumbing, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. The project would enhance the existing site through the elimination of ramps and stairways to access the publicly owned private space (POPOS). All pedestrian paseos, seating areas, and landscaping are designed at grade and the parking to located below the development. All mechanical equipment is located within the building or screened on the rooftop in the mechanical penthouse on the roof; the screening is designed to integrate into the overall architectural design. The project would be conditioned to provide*

*street trees along the ground floor of the project. The trash facilities would be located on the ground floor within the buildings or screened behind the surface parking lot.*

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

*Analysis: As discussed above, the project would have ample pedestrian and bicycle access along all project frontages. These entries would be sufficiently separated from vehicular entries to reduce conflicts between different modes of transportation. The primary entrance of the development would be along South Market Street with a grand architectural entry along the east-west pedestrian paseo and a double-height office lobby. The project would provide adequate parking and parking access.*

2. **Exception Findings.** Chapter 1.2 of the Downtown Design Guidelines establish the findings the decision-maker would need to make in order to grant an exception to Standards in the San José Downtown Design Guidelines.

- a. There is physical constraint or unique situation that
- i. is not created by the project applicant or property owner; and
  - ii. is not caused by financial or economic constraints considerations.
- b. Approving the waiver will not impair the integrity and character of the neighborhood in which the subject property is located or create a safety hazard.
- c. The proposed project meets the design standard at issue to the extent physically feasible.
- d. The proposed project meets all other guidelines and standards in the Design Guidelines.

*Analysis: Except for the following exceptions, the project meets all other standards within the Downtown Design Guidelines, as discussed above and consistent with the fourth finding for the design standard exception requests. The project includes exception requests to Standard (a) in Section 3.2.1 (Block Size), the only standard in Section 3.2.2 (Building Placement), Standards (b), (c), and (g) of Section 4.4.4 (Street wall), Standard (a) of Section 3.4.4 (On-Street Parking), Standard (a) of Section 4.3.2, and Standard (a) of Section 5.3.1 (Venting) which are explained above and summarized as follows:*

**Standard (a), Section 3.2.1:** *In regards to the first finding, the irregular shaped project site with public streets (Almaden Avenue and South San Pedro Street) that dead end on the northern property line of the project site and do not continue beyond Park Avenue to the south and additionally, the one-way Market Street and Park, physically constrains the site from adding public streets to break up the project site. Extension of any mid-block public streets would create auto and pedestrian conflicts*

*and conflicts with the existing circulation system. Per the second finding, the project will enhance the character of the neighborhood by creating a development accessible on the ground floor, focused on pedestrian design. In the spirit of this Standard and the third exception finding, the block is subdivided with pedestrian paseos which create pedestrian and bicycle connectivity that meet the intent of the guidelines and result in “blocks” which meet the standard.*

**Section 3.2.2 Standard and Standards (b), (c), and (g) Section 4.4.4:** *The irregular shape of the project site and the project’s unique location, abutting César Chávez Plaza and the re-designed Park Avenue are unique circumstances for which the project seeks an exception to the street wall requirement along South Market Street and Park Avenue consistent with the first exception finding. In accordance with the second exception finding, the street walls along Park Avenue and South Market Street are intended to respond to its urban environment to enhance the neighborhood’s public space character. The project will meet the street wall requirements along the other project frontages. Along South Market Street, the location of the street wall is designed to mimic the other buildings fronting César Chávez Plaza. The street wall along Park Avenue aligns with the Adobe Campus west of the project site, allowing visitors to look along Park Avenue from César Chávez Plaza at the new project and Adobe project in the background. Conformance to these standards would obscure views along and from the Park. Finally, consistent with the third exception finding, the additional space provided with the increased setbacks along Park Avenue and South Market Street provides the opportunity to include privately owned public open spaces to activate the public realm and enhance retail uses on the site.*

**Standard (a), Section 3.4.4:** *In accordance with the first exception finding for unique circumstances, the property only has frontages along Addressing Street and an Urban Park/Plaza Frontage and due to an existing parking agreement on the property; the site is required to provide surface parking. The small surface parking lot is designed in accordance with all other applicable Downtown Design Guidelines pertaining to surface parking Lots, shielded by landscaping, and located on the most car-oriented project frontage (South Almaden Boulevard) to avoid negatively impacting the surrounding neighborhood, in accordance with the second exception finding. As per the third exception finding, the location of the surface parking lot was carefully considered and is located on the Secondary Addressing Street frontage (South Almaden Boulevard), which is the lowest pursuant to the hierarchy of streets outline in Section 3.5.1. Finally, except for the 15-space surface parking lot, most of the project’s parking is in a below-grade parking structure predominantly meeting the intent of the standard.*

**Standard (a), Section 4.3.2:** *The shape of the development’s towers meets the intent of the Downtown Design Guidelines to create an interesting skyline level. Pursuant to the first finding, the unique situation which warrants the exception is the*

*size of the development combined with the intent of the other Downtown Design Guidelines and Standards to have unique and interesting tower massing. The towers are not shaped as rectangles but rather irregular quadrilateral shapes which result in a longer diagonals in one direction. In order maintain the interesting massing while maximizing the development capacity on-site, the two tower diagonals would exceed the maximum length of 450 feet. Simple rectangle towers would meet the standard but would sacrifice the unique massing. In accordance with the second exception finding, the tower design does not cause any safety or health concerns. Additionally, the average diagonals of the three towers is below 450 feet as well as all other horizontal measurements (length and width of each building) meeting the intent of the standard, pursuant to the third exception finding.*

**Standard (a), Section 5.3.1.c:** *The step backs of the building result in three-story massing along the South Almaden Boulevard and West San Fernando frontages. Standard (a) in Section 5.3.1.c requires venting to the street to be above the third building story or to the roof. Pursuant to the first exception finding, the unique project design includes terraces atop the third floor massing and venting from the five stories below grade to the top of the 19-story towers would create an enormous blank wall. As per the second exception finding, the garage exhaust vents are located a minimum of 18 feet above ground level and are screened with terra cotta louvers to match the buildings' exteriors and not detract from the surrounding neighborhood. The fans are located within the garage to reduce noise impacting the surrounding neighborhood and garage exhaust odors are not anticipated to be substantial and would be dispersed at 18 feet above would not be significant. Therefore, no health or safety concerns would be associated with the exception. Finally, the location of the venting and the terra cotta louver screening the vents would meet the intent of the standard and third exception finding to deliver essential service functions of the building while not impacting the quality of the adjacent public realm.*

- 9. Demolition Findings:** Pursuant to Section 20.80.460 of the San José Municipal Code, the following criteria have been considered to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:
- a. Criterion 1: The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
  - b. Criterion 2: The failure to approve the permit would jeopardize public health, safety or welfare;
  - c. Criterion 3: The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
  - d. Criterion 4: The approval of the permit should maintain the supply of existing housing stock in the City of San José;

- e. Criterion 5: Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Criterion 6: Rehabilitation or reuse of the existing building would not be feasible; and
- g. Criterion 7: The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: As discussed in detail above, the demolition of the on-site structures, including historic structures would facilitate the construction of the overall project that is compatible with the surrounding neighborhood. Criteria 1 and 2 are not applicable to the reason for demolition of the existing structure as the existing site is not a nuisance or cause of jeopardy to public health, safety, or welfare. The demolition would maintain the supply of existing housing stock, as no residential units would be eliminated with the project. While the demolition is not preserving the historic structures, and Criterion 5 cannot be met, the project is satisfying other goals and policies of the General Plan explained in detail above. The historic resources on-site would be made available for relocation, salvage or reuse, prior to demolition, consistent with Criterion 6. Criterion 7 is not applicable because there is an application for a replacement building on file.*

**10. Tree Removal Findings:** Chapter 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit for ordinance-size trees measuring 56 inches or more in circumference. Findings are made for the project based on the above-stated findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

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

*Analysis: The project would remove fourteen (14) ordinance size trees and twenty-one (21) non-ordinance size trees on-site. None of the removed trees are native tree species. The ordinance size tree range in size from 84 inches in circumference to 38 inches in circumference. All the trees to be removed are located within the development's footprint. Since the existing development is*

*over a subterranean parking garage to be removed, the preservation of the trees in place would be infeasible. Preservation of the trees would create a building footprint that would not be conducive to the growth envisioned for this Downtown project site and would eliminate the ability to provide substantial underground parking.*

*A total 94 replacement 15-gallon trees are required to be required for the removal of the 62 trees on-site. The project would include a robust landscaping plan including 51 trees in 36-inch boxes including maple trees, elms, and southern live oaks. Consistent with the tree replacement policy, trees 24-inch box trees or greater can count as double, therefore the 51 36-inch box trees would count as 102 replacement trees. Additionally, 47 trees in 15-gallon boxes would be planted throughout the site. Therefore, the landscaping plan would plant the equivalent of 149 replacement trees in conformance with the minimum 94 required replacement trees. To ensure viability of the trees planted over the subterranean parking garage, the project has included wide tree planting areas within a minimum depth of 4-5 feet.*

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

## **CONDITIONS**

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site Development Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the 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 applicable to such Permit.
2. **Permit Expiration.** This Site Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the

date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment 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 in 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 and all associated development and improvements shall conform to the approved Site Development plans entitled, "City View" dated March 12, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Scope and Use Authorization of the Site Development Permit.** This Site Development Permit allows the demolition of existing on-site buildings (including all the candidate City Landmarks), the removal of fourteen (14) ordinance size trees,

and the construction of approximately 3.79 million square feet comprised of 24,000 square feet of ground floor retail and 3,640,033 square feet of office space and including a request for 24-hour construction and Downtown Design Guidelines exceptions on an approximately 8.1-gross acre. The project includes the phasing of the construction in the following manner:

- a. Phase One consists of the demolition of 121 South Market Street, 100 West San Fernando Street, 115 Park Center Plaza, 130 Park Center Plaza, 101 Park Center Plaza, 177 Park Avenue, 185 Park Avenue, and 170 Park Center Plaza, a total of 823,167 square feet and the construction of the subterranean parking garage with 2,096 parking spaces, Tower A and the podium along West San Fernando Street totaling 1,232,193 square feet as shown on the Approved Plans.
  - b. Phase Two consists of the expansion of the underground parking garage for a total of 4,163 parking spaces and the construction of Tower B and the connecting bridge between Tower A and B. The total development after the construction of Tower B would be approximately 2,448,117 gross square feet as shown on the Approved Plans.
  - c. Phase Three consists of the demolition of 150 South Almaden Boulevard, expansion of the underground parking garage for a total of 6,230 parking spaces, construction of Tower C and connecting bridge, and the construction of the surface parking lot.
7. **Active Area Overlay Requirement:** The project shall comply with the “Active Area Overlay” requirements of Sections 20.70.100 and 20.70.520 of the Municipal Code, as amended. As such, the project shall provide ground floor, street frontage building space with storefront style façade design and window transparency. Permitted uses within the active area overlay of the site include general retail, education and training, entertainment and recreation, food service, personal service but not financial service, medical and veterinary services, other general services, public, quasi-public and assembly except as permitted by the Municipal Code Table 20-140, as amended.
8. **Retail:** The project shall provide a minimum of 24,000 square feet of retail, commercial and/or dining space on the ground floor including a minimum of 5,800 square feet at the corner of South Market Street and West San Fernando Street, with a minimum length of 30 feet of retail frontage on South Market Street and 75 feet of retail frontage on West San Fernando. A Planning Permit Adjustment may be requested by the permittee to convert 5,800 square feet of retail to active tenant space, should the tenant space remain vacant for two years after issuance of the final Certificate of Occupancy. A Planning Permit Amendment may be requested by the permittee for conversion of more than 5,800 square feet of the required retail, commercial and/or dining space.

9. **Warm Shell Ready:** Upon the first Certificate of Occupancy for the tower in which it is located, the ground floor retail spaces and tenant active use spaces shall be built out to a minimum warm shell state that consists of infrastructure to support a full range of commercial activities (including restaurant use).
10. **Timing for Demolition:** On-site buildings and structures that are being demolished to accommodate the new development shall not be demolished until the related on-site Grading Permit has been submitted.
11. **Timing of Tree Removals.** On-site trees that are being removed to accommodate new development shall not be removed until the related on-site Grading Permit has been submitted.
12. **Lot Merger.** Prior to the issuance of a Building Permit, the permittee shall secure approval and provide proof of recordation of a Tentative Map to consolidate the existing lots.
13. **Construction Fencing:** Prior to the issuance of the demolition permit, the permittee shall submit a temporary fencing art/graphic display plan to the Planning Division. The permittee shall install an art display on a minimum of 50% of the temporary construction fencing along South Market Street, West San Fernando Street, and South Almaden Boulevard. The construction fence shall continue to meet requirements established in the Building Code and Sign Ordinance (Title 23 of the Municipal Code). The art/graphic display shall be maintained throughout the entire construction period for the development and shall be maintained graffiti free.
14. **Pedestrian Access.** Post-construction public access through the site shall be maintained at all times except that future pedestrian gates may be located at or along the east/west pedestrian walkway interior to the site, for security, with the approval of a Planning Permit Adjustment to the satisfaction of the Director of Planning Building and Code Enforcement. Such gates shall remain open for public access through the site between 7:00 a.m. and 11:00 p.m., unless a Temporary Special Event is occurring on-site.
15. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. This Site Development Permit authorizes the project to utilize a parking reduction of up to 20% and alternative parking arrangement including parking lifts, valet parking, and parking attendants. The permittee shall prepare and implement a parking operations plan consistent with parking narrative including operational features such as parking attendants and valet attendants to facilitate tandem parking, parking lifts, and over the aisle lifts. Any changes to the minimum required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.

16. **Southwest Tree Grove:** The grove of twelve trees planted at the southwest corner of the site shall have a minimum 9-foot canopy height (clear to underside of canopy) at the time of planting.
17. **Landscaping Plan:** The landscaping plan and planting palette shall be modified to incorporate tree species that reflect the Downtown context and projected planting vision for Downtown. The permittee shall coordinate with Department of Planning, Building and Code Enforcement and the City Arborist to ensure viability of the project trees and use of larger tree sizes is encouraged.
18. **Art:** The permittee is encouraged to modify the landscaping plan to incorporate art pieces. Art pieces are generally associated with urban environments, provide low-maintenance and year-round place identification, and have the opportunity to reflect the tenant(s) of the building. Such art could be incorporated into paving, application on planters, or stand-alone pieces.
19. **Power and Water hook-ups:** A minimum of three power hook-ups, one in front of each building, and one water hook-up and/or spigot, shall be constructed along Park Avenue for use of future public or private outdoor events. Power and water hookups shall be secured and access shall be coordinated with the property management.
20. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
21. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
22. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
23. **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.
24. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
25. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
26. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.

27. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
28. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
29. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
30. **Bicycle Parking Provisions.** This permittee shall provide a combination of short-term uncovered bike parking as well as long term covered parking consistent with the requirements noted in the Zoning Ordinance.
31. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
32. **FAA Clearance.** Prior to filing an application for a Building Permit for vertical construction, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each building corner and any additional highest point(s) of the project structure. The data on the forms should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
33. **FAA Clearance Permit Adjustment.** Prior to filing an application for a Building Permit for vertical construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications, into the H19-016 conditions of approval.
34. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical, the property owner shall grant an Avigation Easement to the City of San José. Contact either Cary Greene, [cgreene@sjc.org](mailto:cgreene@sjc.org) (408-392-3623), or Ryan Sheelen, [rsheelen@sjc.org](mailto:rsheelen@sjc.org) (408-392-1193), of the San José Airport Department to initiate the easement dedication process
35. **Construction Cranes.** Prior to issuance of a Building Permit for vertical construction, and prior to the required filing with the FAA for airspace obstruction of temporary construction cranes for vertical construction, the permittee shall coordinate with the San José Airport Department to formulate an agreement on crane elevation and operational parameters. Compliance with an Airport-approved construction crane agreement shall become a condition of building permit issuance for vertical construction. Contact either Cary Greene, [cgreene@sjc.org](mailto:cgreene@sjc.org) (408-392-

3623), or Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the construction crane agreement coordination.

36. **Subsequent Permit Adjustments.** Separate from the “FAA Clearance Permit Adjustment” above, any Permit Adjustment application filed by the permittee that proposes a change to maximum structure elevations, or location of the structure’s highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval. Permit Adjustment approval may include new conditions or the requirement to revise or redo compliance with other conditions included in this Permit.
37. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
38. **Operation of Back-up Power Generators.**
  - a. Operation of the temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
  - b. Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
  - c. A Bay Area Air Quality Management District (BAAQMD) permit shall be issued for the use or facility.
39. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
40. **Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
41. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
42. **Building and Property Maintenance.** The property shall be maintained 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.

43. **Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
44. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
45. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
46. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping. The Permittee may request an exception/variance per Section 15.10.380, as amended, if needed in the future.
47. **Extended Construction Hours.** Twenty-four hour construction hours, including staging of vehicles, equipment and construction materials, are permitted. Permittee shall be responsible for educating all contractors and subcontractors of construction restrictions as outlined in the mitigation measures. The Director of Planning, Building and Code Enforcement, at their discretion, may rescind provisions to allow extended hours of construction activities on weekends to accommodate upon written notice to the permittee at least three weeks prior to change.
48. **Affordable Housing Financing Plans.** 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.

49. **Downtown Financing Plans.** The San José City Council (“City”) approved the (i) Envision San José General Plan 2040 (“General Plan”) in 2011, (ii) Diridon Station Area Plan (“Diridon Plan”) in 2014, and (iii) Downtown Strategy 2040 (“Downtown Strategy”) in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San José.

The City is in the process of developing financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other 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.

The City is in the process of amending the Diridon Plan and updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee may include expanding the impact fee to other areas of Downtown. The City Council has also directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. Further, the City is developing a Downtown Transportation Plan that may require funding to construct the public improvements identified in the Downtown Transportation Plan. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for public improvements, affordable housing, and other amenities and services in the Downtown.

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 applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.

50. **Irrigation Standards.** 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, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
51. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050, certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
52. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
53. **Street Trees.** Street trees, as shown on Approved Plans, shall be planted on the street frontage. A permit for planting street trees shall be obtained from the City Department of Transportation, Trees and Landscaping Section, (408) 794-1900.
54. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. **Construction Plans.** This permit file number, H19-016, 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 project 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 begins with the initial plan check submittal to the Building Division.

Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- e. **Project Addressing Plan.** Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - f. **Other.** Such other state or city adopted requirements as may be specified by the Chief Building Official.
55. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code.
56. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions subject to modification by the Director of Public Works based on project phasing and adjacent public improvements. The applicant 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/devresources>.
- 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. Applicant will work with Public Works representatives on phasing of construction agreements to align with requested building permits on adjacent frontages.
  - b. **Multi-Modal Enhancements (Park Avenue Reconfiguration Plan):** The City's goals are to provide multimodal corridors throughout the City, including the Downtown core to reduce single occupancy vehicles and vehicle miles traveled. It will be necessary for the project to construct improvements (such as reduction of traffic lanes, installation of pavers and relocation of utilities, tightening of the corner radius and signal modification (per the conceptual Park Avenue Reconfiguration Plan). This would ultimately lead to the City's goal of providing a dedicated bike lane through this corridor which will provide a more enhanced multi-modal environment. Enhancing the multimodal environment would provide additional options such as biking and walking. Implementation of this plan line

will also allow for additional street vacation that could be utilized by the development. Coordinate with the Office of Economic Development for further information at (408) 535-8172.

**c. Transportation:**

- i. This project is located in the expanded Downtown Core and is covered under the San José Downtown Strategy 2040 EIR; therefore, no CEQA traffic analysis is required. The project, however, performed a Local Transportation Analysis to identify any operational issues.
- ii. The project's Local Transportation Analysis has been approved. See separate Traffic memo dated 04/30/2020 for additional information.
  1. Provide one (1) two-way, 43-foot wide driveway along Almaden Avenue/San Fernando Street intersection.
  2. Provide one (1) two-way, 43-foot wide driveway along San Pedro Street/San Fernando Street intersection.
  3. Provide one (1) full-access, 26-foot wide driveway along Almaden Boulevard. The City typically requires two-way driveways to be a minimum 26 foot wide.
  4. Provide one (1) reversible, 14-foot wide driveway along Market Street. Driveway should be limited to right-in/right-out movements only.
  5. Construct raised bikeway along San Fernando Street and Almaden Boulevard project frontages per the City's Better Bikeway program.
  6. Construct the proposed signal modifications and improvements at the intersections of Almaden Avenue/San Fernando Street and San Pedro Street/San Fernando Street. Implement the planned improvements at the Almaden Boulevard/Park Avenue and Market Street/Park Avenue intersections and Park Avenue project frontage per the Park Avenue Reconfiguration Plan.

**d. Street Vacation:**

- i. A street vacation is required in order to accomplish the land use plan as shown. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. In addition, the preliminary title report provided by the applicant indicates that the City of San José and various heirs own separate portions of the Park Avenue street in fee. As a result, the property will be subject to a sale and disposition process. Additionally, acquiring title from the various heirs may be required Continued coordination with the Public Works Project Engineer and Real Estate staff will be necessary.

- ii. The developer shall coordinate with all applicable utility companies on the removal and relocation of existing facilities that are located in the area to be vacated. Letters from the utility companies will be required as part of the street vacation submittal.
- e. **Private Improvements within Public Property:** The proposed minor encroachment in the right-of-way for planters and benches shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for these improvements. The property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirement(s) and prior to Building Permit issuance or as approved by the Director of Public Works based on project phasing.
- f. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2019 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility

trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

**g. 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-inch within the public right-of-way (i.e. soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties (APN 259-041-069) agreements between the Applicant 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.

**h. 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.
- iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following:  
<http://www.sanjoseca.gov/home/showdocument?id=27405>

**i. 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).

j. **Flood Zone D & X:**

- i. The eastern portion of 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.
- ii. The western portion of the project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.

k. **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.

l. **Assessments:** This project is located within the Premium Zone of the Downtown San José Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for the services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2019-20, commercial properties pay \$0.126479799 and residential properties pay \$0.101938600 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the County property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". Any questions may be directed to Thomas Borden at (408) 535-6831.

m. **Street Improvements:**

- i. Signal modifications are required at Park Avenue and Market Street which includes, but is not limited to, a raised intersection and removal of the east bound Park Avenue *no right on red* restriction. The intersection design shall be approved prior to Public Works Clearance. The signal modification work shall be subject to the following:
  1. If the signal modification work has not been commenced by the Museum Place development prior to building permit issuance for the Developer's Project, shall construct all required public improvements for the signal modification work at its sole cost subject to the conditions below

- a. Developer shall receive reimbursement for a portion of the total cost of the signal modification improvements from the owner of the Museum Place development.
  - b. The Developer shall enter into a private agreement with the owner of the Museum Place development project addressing the terms and conditions of the payment.
  - c. The Developer's failure to receive reimbursement from the owner of the Museum Place development project shall not relieve Developer from its obligation to perform the signal modification work.
2. If the signal modification work has been commenced by the Museum Place development prior to building permit issuance for the Developer's Project, Developer shall pay a portion of the total cost of the signal modification improvements to the owner of the Museum Place development.
- a. The Developer shall enter into a private agreement with the owner of the Museum Place development project addressing the terms and conditions of the payment.
3. Intersection improvements shall be completed by the developer implementing the work prior to that developer's occupancy or at the discretion of the Public Works Director. Occupancy limitations shall not be imposed on the developer whom is not implementing the signal modification work.
- ii. Signal modification is required at Park Avenue and Almaden Boulevard beyond the conditions bonded to 200 Park Avenue development.
  - iii. Signal modification is required at San Fernando Street and Almaden Boulevard to provide a bike "protected intersection".
  - iv. Signal modification is required at San Fernando Street and Market Street to realign the southerly curb line and crosswalk, provide protected San Fernando Eastbound left turn movements, and bulb-outs at all corners.
  - v. Signal modification is required at the existing northbound Market Street and César Chávez Park pedestrian signal to align with the proposed crosswalk realignment/signal modification at southbound Market Street and César Chávez Park (existing signalized pedestrian crossings operate as one signal).
  - vi. Coordination during the implementation stage is required for the following new signal or signal modifications:
    1. Adobe (new signal at Almaden Boulevard and project driveway).

2. Cultural Arts-CSJ (signal modification at Market Street and César Chávez Park).
  3. The hours of operations and/or required signal modification for the outbound garage access and loading docks at the Almaden Avenue/San Fernando Street intersection.
- vii. Any existing cabinets or above grade utility boxes along the project frontage will be required to be relocated below grade unless otherwise approved by Public Works.
  - viii. Place of new signal cabinets within the building at the new signalized intersection locations. Other alternative locations/signal control configurations may be considered during the implementation stage. Final location must be reviewed and approved by Public Works, Department of Transportation and coordinated with Planning Building, and Code Enforcement..
  - ix. Remove and replace curb, gutter, sidewalk and pavement sections along project frontages.
    1. The sidewalk width including bike lane and landscaping along Almaden Boulevard shall be minimum of 23 feet.
    2. The sidewalk width including bike lane and landscaping along San Fernando Street shall be a minimum of 20 feet
    3. The sidewalk width including landscaping along Market Street shall be a minimum of 15 feet.
  - x. Frontage improvements shall be consistent with Park Avenue Reconfiguration Plan and coordinated with City's Park, Recreation and Neighborhood Services (PRNS). The street right of way limit shall be 15 feet from the curb line. Please coordinate with Matthew Arnold at CMG regarding the Park Avenue plan line. He can be reached at (415) 757-2047 or [marnold@cmgsite.com](mailto:marnold@cmgsite.com)
  - xi. Close unused driveway cuts.
  - xii. Proposed signalized driveway widths to be a minimum of 26 feet wide.
  - xiii. The reversible driveway on Market Street shall be 14 feet wide.
  - xiv. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - xv. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.

- xvi. Repair, overlay, or reconstruction of asphalt pavement 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.
  - xvii. Provide a sidewalk easement abutting the right of way limits as necessary to accommodate a 5-foot wide pedestrian through zone along Park Avenue based on the final approved plans as coordinated with CMP and the City
  - xviii. Provide a 3 inch inner-duct and conduit along Park Ave and San Fernando Street project frontage with connection to each of the new signal.
  - xix. Coordinate with PRNS on interphase/connection of Park Avenue with Plaza de César Chávez
- n. **Site Utilization Plan and and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
    - 1. **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
    - 2. **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
  - ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:

1. Implementing the closures at the time the onsite activities dictate the need for the closure.
  2. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 56.n.i.2 above.
- iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
  - o. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
  - p. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San José Downtown Streetscape and Street and Pedestrian Lighting Master Plan unless otherwise shown in approved plans.
  - q. **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 and coordinated with the applicant.
    - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction unless otherwise shown in the approved plans.
  - r. **Street Trees:** The locations of the street trees shown in the approved entitlement plans 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 the park strip on Almaden Boulevard and in cut-outs at the back of curb on Market Street, Park Avenue and San Fernando Street. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - s. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority.
57. **Mechanical Equipment:** Prior to the issuance of building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise sensitive land uses. The permittee shall retain a qualified acoustical consultant to review the mechanical noise equipment to

determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any building permits.

58. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].

59. **Standard Environmental Permit Conditions**

a. **AIR QUALITY.**

- i. The permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site:
  - 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 by 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 at the lead agency to contact regarding dust complaints.

b. **BIOLOGICAL RESOURCES.**

- i. **Avoidance:** The permittee shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 15th (inclusive), as amended. •
- ii. **Nesting Bird Surveys:** If it is not possible to schedule demolition and construction between August 16th and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 15th inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.
- iii. **Buffer Zones:** If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.
- iv. **Reporting:** Prior to any tree removal, or approval of any grading permits (whichever occurs first), the permittee shall submit the ornithologist's report

indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director’s designee, prior to issuance of any grading or building permits.

- v. **Tree Replacement:** The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 3.2-2 below, as amended.

<b>Table 3.2-2: Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio  
**Notes:** 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 equals two 15-gallon trees  
 Single-family and two-dwelling properties may be mitigated at a 1:1 ratio.

- 1) Since all 35 trees on-site would be removed, 14 trees would be replaced at a 4:1 ratio, 17 trees would be replaced at a 2:1 ratio, and the remaining 4 trees would be replaced at a 1:1 ratio for a total of 94 trees. As mentioned previously, there are no native trees on-site. The total number of replacement trees required to be planted would be 94 trees. The species of trees to be planted would be determined in consultation with the City Arborist and staff from the Department of Planning, Building and Code Enforcement. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director’s designee, at the development permit stage:
  - 2) 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.
  - 3) Pay off-site tree replacement fee(s) to the City, prior to the issuance of 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.

- vi. **Santa Clara Valley Habitat Plan Fees:** 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 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-habitatagency.org](http://www.scv-habitatagency.org).

c. **CULTURAL RESOURCES.**

- i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. **Human Remains.** 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 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:

- 1) 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.
- 2) The MLD identified fails to make a recommendation; or
- 3) 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

iii. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the Director's designee 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, Building and Code Enforcement or the Director's designee.

d. **GEOLOGY AND SOIL.**

- i. **Geotechnical Investigation Report:** To avoid or minimize potential damage from seismic shaking, project construction shall use standard engineering and seismic safety design techniques. Complete building design and construction at the site in conformance with the recommendations of an approved geotechnical investigation. The geotechnical investigation report shall be reviewed and approved by the Department of Public Works as part of the building permit review and entitlement process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. Schedule all excavation and grading work in dry weather months or weatherize construction sites.
- iii. Cover stockpiles and excavated soils with secured tarps or plastic sheeting.

- iv. Install ditches to divert runoff around excavations and graded areas if necessary.
- v. Construct the project in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. Obtain a grading permit from the Department of Public Works prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site
- vi. **Dewatering:** If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- vii. **Vertebrate Fossils:** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the Director's designee 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, Building and Code Enforcement or the Director's designee.

e. **HAZARDS AND HAZARDOUS MATERIALS**

- i. **Soil Management Plan.** For any site with the potential for encountering subsurface hazardous materials and/or where soil removal is required, the City or regulatory agencies may require preparation of a site-specific Soil Management Plan (or Waste Disposal Plan) to address the handling of impacted soils during site development. The plan would include the following elements:
  - 1) procedures for transporting and disposing the waste material generated during removal activities,
  - 2) procedures for stockpiling soil on-site,
  - 3) provisions for collecting additional soil samples in previously inaccessible areas to confirm the extent of soil contamination, following demolition activities,

- 4) confirmation soil sampling to verify achievement of remediation goals,
  - 5) procedures to ensure that fill and cap materials are verified as clean,
  - 6) truck routes, and/or staging and loading procedures and record keeping requirements. It is assumed that impacted soils will be appropriately characterized and transported off-site for disposal at a facility licensed to receive such waste.
- ii. **Health and Safety Plan.** For any site where contamination has been identified, construction shall occur in accordance with a site-specific Health and Safety Plan (or “Construction Risk Management Plan”) prepared by an environmental professional. The Health and Safety Plan may be separate from or part of the Soil Management Plan or Removal Action Workplan and shall include the following elements, as applicable:
- 1) provisions for personal protection and monitoring exposure to construction workers,
  - 2) procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered,
  - 3) procedures for the safe storage, stockpiling, and disposal of contaminated soils,
  - 4) provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities, and
  - 5) emergency procedures and responsible personnel. Construction workers at contaminated sites will be required to use proper protective equipment and receive hazardous materials training in accordance with State and federal regulations. Untrained workers and members of the public will be excluded from the area during work that involves contamination.
- iii. **Groundwater.** To avoid the spread of harmful levels of contamination, the discharge of any water from dewatering activities will be required to comply with NPDES permit requirements or wastewater discharge permit conditions to the sanitary sewer, which may involve installation of a treatment system(s) at the dewatering location.
- iv. **Review for Conformance.** All investigations and plans would be completed by a qualified hazardous materials consultant, in conformance with State and local guidelines and regulations. The investigations and plans would be subject to review and approval by the appropriate regulatory oversight

agencies and the City's Environmental Compliance Officer through the City's development review process.

- v. The permittee shall implement the following conditions:
- 1) Conduct a visual inspection/pre-demolition survey, and possible sampling in conformance with State and local laws, to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP) prior to the demolition of on-site building(s).
  - 2) Remove all building materials containing lead-based paint during demolition activities, in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of lead being disposed.
  - 3) Remove all potentially friable asbestos containing materials (ACMs) in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. Undertake all demolition activities in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
  - 4) Retain a registered asbestos abatement contractor 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 Bay Area Air Quality Management District (BAAQMD) regulations. Remove materials containing more than one-percent asbestos in accordance with BAAQMD requirements and notifications.
  - 6) Implement the following conditions in accordance with Cal/OSHA rules and regulations, to limit impacts to construction workers.
    - a) Prior to commencement of demolition activities, complete a building survey, including sampling and testing, to identify and quantify building materials containing lead-based paint.
    - b) During demolition activities, remove all building materials containing lead-based paint in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.

- c) Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of waste being disposed.
- vi. Prior to the issuance of a development permit for any project structures that would exceed the FAA imaginary surface applicable to the project site, the following actions shall be accomplished (2040 General Plan Polices TR-14.2 and CD-5.8):
  - 1) The permittee shall comply with the notification requirements of Federal Aviation Regulations, Part 77, and receive a “Determination of No Hazard” from the FAA.
  - 2) Conditions set forth in the required FAA determination of No Hazard regarding rooftop lighting or marking shall be incorporated into the final design of the structure.
  - 3) Avigation and/or “no build” easements shall be dedicated to the City of San José as a condition of approval (General Plan Policy TR-14.4).
  - 4) The permittee shall comply with safety and noise policies identified in the CLUP for the Norman Y. Mineta San José International Airport (General Plan Policy TR-14.3). CityView Plaza Office Project 90 Supplemental EIR City of San José March 2020
  - 5) The permittee shall design all new exterior lighting within the AIA in a manner that avoids interference with aircraft operations. Such lighting shall be constructed and located so that only the intended area is illuminated and off-site glare is fully controlled. The lighting shall be arrayed in such a manner that it cannot be mistaken for airport approach or runway lights by pilots (CLUP Policy G-7).

**f. HYDROLOGY AND WATER QUALITY.**

- i. Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains
- ii. Suspend earthmoving or other dust-producing activities during periods of high winds
- iii. Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary • Water or cover stockpiles of soil or other materials that can be blown by the wind • Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks
- iv. Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers)

- v. Replant vegetation in disturbed areas as quickly as possible
- vi. Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets, install a tire wash system if requested by the City
- vii. Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- viii. **Construction General Permit Requirements.** Prior to initiating grading activities, the permittee shall file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The following construction BMPs may be included in the SWPPP:
  - 1) Restrict grading to the dry season or meet City requirements for grading during the rainy season.
  - 2) Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
  - 3) Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
  - 4) Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
  - 5) Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
  - 6) Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags. The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to

be incorporated into the project and implemented following construction. When the construction phase is complete, a Notice of Termination (NOT) will be filed with the RWQCB and the DTSC, in conformance with the Construction General Permit requirements. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

- ix. **Dewatering.** The SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent will be contained prior to discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater will be analyzed by a State-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the permittee shall work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.

g. **NOISE.**

- i. **Prepare Vibration Monitoring Plan.** Submit a construction vibration monitoring plan for the use of all heavy construction equipment that are known to produce high vibration levels (e.g., jackhammers, hoe rams, clam shovel drop, large bulldozers, caisson drillings, loaded trucks, and vibratory roller, etc.) to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of demolition or grading permits. This plan shall be used to define the level of effort required for continuous vibration monitoring. Where possible, the use of heavy vibration-generating construction equipment shall be prohibited within 25 feet of any adjacent building. The plan shall include, but not be limited to the following actions:

- 1) Limit the use of vibratory rollers and avoid clam shovel drops within 15 feet of the property lines shared with 190 Park Avenue.
- 2) Place operating equipment on the construction site as far as possible from vibration sensitive receptors Use smaller equipment to minimize vibration levels below the limits.
- 3) Select demolition methods not involving impact tools.
- 4) Avoid dropping heavy objects or materials.

- ii. **Implement Construction Vibration Monitoring Plan:** Implement the approved construction vibration-monitoring plan and document conditions at the 190 Park Avenue building prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan should be implemented to include the following tasks:
- o Conduct a vibration survey of the 190 Park Avenue building to identify the building's sensitivity to groundborne vibration and submit the results of the survey to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval.
- 1) Perform a photo survey, elevation survey, and crack monitoring survey for the 190 Park Avenue building. Surveys shall be performed prior to and after completion of vibration generating construction activities located within 25 feet of the structure. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure. Submit the results of the surveys to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval.
  - 2) Summarize the results of the vibration monitoring and submit a report to the Director of Planning, Building and Code Enforcement or the Director's designee, after substantial completion of each phase identified in the project schedule (prior to, during, and after vibration generating construction activities). The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceed vibration limits shall be included together with proper documentation supporting any such claims.
  - 3) Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
  - 4) Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities.

**60. Revocation, Suspension, Modification.** This Site Development 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 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:

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

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

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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.*

## LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

TRACT I:

PARCEL A:

PARCEL 2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, PARCEL MAP OF A PORTION OF PARCEL "A" AS SHOWN ON RECORD OF SURVEY, RECORDED IN [BOOK 237 OF MAPS, PAGE 24](#), SANTA CLARA COUNTY RECORDS, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 28, 1983 IN [BOOK 520 OF MAPS, PAGES 39, 40, 41 AND 42](#).

PARCEL B:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN GRANT OF EASEMENTS RECORDED MAY 20, 1974 IN [BOOK 0904, PAGE 690](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR THE PARKING AND PASSAGE OF PASSENGER MOTOR VEHICLES AND PASSAGE BY PEDESTRIANS AS DESCRIBED IN THAT CERTAIN PARKING AGREEMENT RECORDED JUNE 20, 1985 IN [BOOK 1377, PAGE 1946](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

PARCEL D:

AN EXCLUSIVE EASEMENT TO USE THE AREA CONTAINED IN LEVEL 1 OF THE PARKING STRUCTURE FOR COVERED AUTOMOBILE PARKING SPACES AND NON-EXCLUSIVE EASEMENTS TO USE THE ROADWAYS, BRIDGES AND TUNNELS TO PROVIDE PASSAGE BY MOTOR VEHICLES AND PEDESTRIANS AS DESCRIBED IN THAT CERTAIN PARKING EASEMENT RECORDED JUNE 20, 1985, IN [BOOK J377, PAGE 1881](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

PARCEL E:

AN EXCLUSIVE EASEMENT FOR THE MECHANICAL BUILDING/GARBAGE DISPOSAL FACILITY SERVICING THE PARKING STRUCTURE AS DESCRIBED IN THAT CERTAIN DECLARATION OF EASEMENTS AND COVENANTS RECORDED DECEMBER 02, 1994 IN [BOOK N686, PAGE 0695](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

PARCEL F:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR INGRESS AND EGRESS AND FOR PEDESTRIAN ACCESS AS DESCRIBED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 23, 1998 AS INSTRUMENT NO. [14152811](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

TRACT II:

PARCEL A:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF PARK AVENUE AS IT NOW EXISTS, SAID POINT OF BEGINNING BEING THE NORTHEASTERLY TERMINUS OF A LINE HAVING A BEARING OF

NORTH 58° 14' 29" EAST, AS SAID LINE IS SHOWN ON A CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF PARCEL 'A' OF SAN JOSE PARK CENTER PROJECT", RECORDED MAY 13, 1968 IN [BOOK 237 OF MAPS, PAGE 24](#), SANTA CLARA COUNTY RECORDS; THENCE ALONG THE SAID NORTHWESTERLY LINE SOUTH 58° 14' 29" WEST 95.04 FEET TO THE POINT OF INTERSECTION THEREOF WITH A NORTHEASTERLY LINE OF THAT CERTAIN 129,187 SQUARE FOOT PARCEL OF LAND DESCRIBED IN THE DEED FROM REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE TO PARK CENTER PLAZA, A PARTNERSHIP, RECORDED DECEMBER 03, 1968 IN [BOOK 8354, OFFICIAL RECORDS, PAGE 85](#), SANTA CLARA COUNTY RECORDS; THENCE ALONG SAID LAST NAMED LINE, NORTH 29° 53' 18" WEST 272.81 FEET TO A POINT ON THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF THAT CERTAIN 38,222 SQUARE FOOT PARCEL OF LAND DESCRIBED IN THE DEED FROM REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE TO SAN JOSE CENTER CORPORATION, RECORDED DECEMBER 03, 1968 IN [BOOK 8354, OFFICIAL RECORDS, PAGE 50](#), SANTA CLARA COUNTY RECORDS; THENCE NORTH 60° 06' 42" EAST ALONG SAID LAST NAMED PROLONGATION AND ALONG SAID SOUTHEASTERLY LINE OF A DISTANCE OF 159.43 FEET TO A POINT ON A CURVE IN THE SOUTHWESTERLY LINE OF MARKET STREET, AS SAID STREET IS SHOWN ON THE AFOREMENTIONED MAP; THENCE SOUTHERLY ALONG SAID CURVE TO THE LEFT, FROM A TANGENT BEARING SOUTH 4° 24' 15" EAST WITH A RADIUS OF 165.78 FEET, THROUGH A CENTRAL ANGLE OF 25° 30' 22", FOR AN ARC DISTANCE OF 73.80 FEET; THENCE CONTINUING ALONG THE SAID SOUTHWESTERLY LINE SOUTH 29° 54' 37" EAST 148.32 FEET; THENCE ALONG THE TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 88° 09' 06" AN ARC DISTANCE OF 76.93 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE AFORESAID PARCEL "A".

PARCEL B:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PROVIDED FOR IN THAT CERTAIN DOCUMENT ENTITLED "GRANT OF EASEMENTS", EXECUTED BY AND BETWEEN PARK CENTER PLAZA, A PARTNERSHIP AND EAST PARK CENTER PLAZA, A PARTNERSHIP, RECORDED SEPTEMBER 30, 1970 IN [BOOK 9072, PAGE 29](#), OFFICIAL RECORDS.

PARCEL C:

RECIPROCAL EASEMENTS PROVIDED FOR IN THAT CERTAIN DOCUMENT ENTITLED "GRANT OF RECIPROCAL EASEMENTS AND AGREEMENT FOR MAINTENANCE", EXECUTED BY AND BETWEEN PARK CENTER PLAZA, A PARTNERSHIP, EAST PARK CENTER PLAZA, A PARTNERSHIP, AND WELLS FARGO BANK, NATIONAL ASSOCIATION, RECORDED SEPTEMBER 30, 1970 IN [BOOK 9072, PAGE 1](#), OFFICIAL RECORDS.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN GRANT OF EASEMENT RECORDED MAY 20, 1974 IN [BOOK 0904, PAGE 690](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

TRACT III:

PARCEL A:

PARCELS 3 AND 4, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP OF A PORTION OF PARCEL "A" AS SHOWN ON RECORD OF SURVEY, RECORDED IN [BOOK 237 OF MAPS, PAGE 24](#), SANTA CLARA COUNTY RECORDS", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 28, 1983 IN BOOK 520 OF MAPS, PAGES 39, [40, 41 AND 42](#).

PARCEL B:

NON-EXCLUSIVE EASEMENTS FOR PEDESTRIAN INGRESS AND EGRESS, AND PEDESTRIAN WALKWAYS, AS DESCRIBED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS AND AGREEMENT FOR MAINTENANCE RECORDED SEPTEMBER 30, 1970 IN [BOOK 9072, PAGE 1](#), SANTA CLARA COUNTY OFFICIAL RECORDS, AND AS FURTHER DESCRIBED BY THOSE CERTAIN JOINDER IN GRANT OF RECIPROCAL EASEMENTS AND AGREEMENT FOR MAINTENANCE AGREEMENTS RECORDED MAY 20, 1974 IN [BOOK 0904, PAGE 714](#), OFFICIAL RECORDS, AND SEPTEMBER 01, 1976 IN [BOOK C260, PAGE 349](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCEL 4 OF SAID PARCEL MAP).

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PROVIDED FOR IN THAT CERTAIN GRANT OF EASEMENTS RECORDED SEPTEMBER 30, 1970 IN [BOOK 9072, PAGE 29](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCEL 4 OF SAID PARCEL MAP).

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN GRANT OF EASEMENTS RECORDED MAY 20, 1974 IN [BOOK 0904, PAGE 690](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCELS 2, 3 AND 4 OF SAID PARCEL MAP).

PARCEL E:

NON-EXCLUSIVE EASEMENTS FOR THE PARKING AND PASSAGE OF PASSENGER MOTOR VEHICLES AND PASSAGE BY PEDESTRIANS AS DESCRIBED IN THAT CERTAIN PARKING AGREEMENT RECORDED JUNE 20, 1985 IN [BOOK J377, PAGE 1946](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCELS 2, 3 AND 4 OF SAID PARCEL MAP).

PARCEL F:

AN EXCLUSIVE EASEMENT TO USE THE AREA CONTAINED IN LEVEL 1 OF THE PARKING STRUCTURE FOR COVERED AUTOMOBILE PARKING SPACES AND NON-EXCLUSIVE EASEMENTS TO USE THE ROADWAYS, BRIDGES AND TUNNELS TO PROVIDE PASSAGE BY MOTOR VEHICLES AND PEDESTRIANS AS DESCRIBED IN THAT CERTAIN PARKING EASEMENT RECORDED JUNE 20, 1985, IN [BOOK J377, PAGE 1881](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCEL 4 OF SAID PARCEL MAP).

PARCEL G:

AN EXCLUSIVE EASEMENT FOR THE MECHANICAL BUILDING/GARBAGE DISPOSAL FACILITY SERVICING THE PARKING STRUCTURES AS DESCRIBED IN THAT CERTAIN DECLARATION OF EASEMENTS AND COVENANTS RECORDED DECEMBER 02, 1994 IN [BOOK N686, PAGE 0695](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCEL 2 OF SAID PARCEL MAP).

PARCEL H:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR INGRESS AND EGRESS AND FOR PEDESTRIAN ACCESS AS DESCRIBED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 23, 1998 AS INSTRUMENT NO. [14152811](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

(THE ABOVE EASEMENT IS APPURTENANT TO PARCEL 2, 3 AND 4 OF SAID PARCEL MAP).

TRACT IV:

PARCEL A:

BEGINNING AT A POINT OF THE NORTHWESTERLY LINE OF PARK AVENUE, AS IT NOW EXISTS, SAID POINT BEING DISTANT THEREON SOUTH 58° 14' 29" WEST, 156.76 FEET FROM THE NORTHEASTERLY TERMINUS OF A LINE HAVING A BEARING NORTH 58° 14' 29" EAST, AS SAID LINE IS SHOWN ON A CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF PARCEL "A" OF SAN JOSE PARK CENTER PROJECT", RECORDED MAY 13, 1968, IN [BOOK 237 OF MAPS, PAGE 24](#) SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING LEAVING SAID NORTHWESTERLY LINE NORTH 29° 53' 18" WEST 118.56 FEET; THENCE AT RIGHT ANGLES SOUTH 60° 06' 42" WEST 177.75 FEET; THENCE AT RIGHT ANGLES SOUTH 29° 53' 18" EAST 124.36 FEET TO A POINT ON THE SAID NORTHWESTERLY LINE; THENCE ALONG THE SAID NORTHWESTERLY LINE NORTH 58° 14' 29" EAST, 177.84 FEET TO THE POINT OF BEGINNING.

PARCEL B:

NON-EXCLUSIVE EASEMENTS FOR PEDESTRIAN INGRESS AND EGRESS, AND PEDESTRIAN WALKWAYS, AS DESCRIBED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS AND AGREEMENT FOR MAINTENANCE RECORDED SEPTEMBER 30, 1970 IN [BOOK 9072, PAGE 1](#), SANTA CLARA COUNTY OFFICIAL RECORDS, AND AS FURTHER DESCRIBED BY THOSE CERTAIN JOINDER IN GRANT OF RECIPROCAL EASEMENTS AND AGREEMENT FOR MAINTENANCE AGREEMENTS RECORDED MAY 20, 1974 IN [BOOK 0904, PAGE 714](#), SANTA CLARA COUNTY RECORDS, AND SEPTEMBER 01, 1976 IN BOOK C260, PAGE 349, SANTA CLARA COUNTY OFFICIAL RECORDS.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN GRANT OF EASEMENTS RECORDED MAY 20, 1974 IN [BOOK 0904, PAGE 690](#), SANTA CLARA COUNTY OFFICIAL RECORDS.

APN: 259-41-068 (Affects Parcel A of Tract I), 259-41-057 (Affects Parcel A of Tract II), 259-41-067 (Affects Parcel 3 of Parcel A of Tract III), 259-41-070 (Affects Parcel 4 of Parcel A of Tract III) and 259-41-066 (Affect Parcel A of Tract IV)

**EXHIBIT A-1**

**121 SOUTH MARKET PROPERTY REAL PROPERTY DESCRIPTION**

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

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF MARKET STREET WITH THE SOUTHEASTERLY LINE OF SAN FERNANDO STREET, AS SAID STREETS NOW EXIST. SAID POINT OF BEGINNING ALSO BEING THE MOST NORTHERLY CORNER OF PARCEL "A", AS SHOWN ON THE RECORD OF SURVEY RECORDED MAY 13, 1968 IN BOOK 237 OF MAPS, AT PAGE 24, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHEASTERLY LINE OF SAN FERNANDO STREET, SOUTH 60° 06' 42" WEST, 232.62 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE AT RIGHT ANGLES SOUTH 29° 53' 18" EAST, 194.00 FEET; THENCE AT RIGHT ANGLES NORTH 60° 06' 42" EAST, 133.85 FEET TO A POINT ON A CURVE ON SAID SOUTHWESTERLY LINE OF MARKET STREET FROM WHICH POINT THE RADIUS POINT OF SAID CURVE BEARS NORTH 85° 35' 45" EAST; THENCE NORTHERLY ALONG SAID SOUTHWESTERLY LINE AND SAID CURVE TO THE RIGHT HAVING A RADIUS OF 165.78 FEET THROUGH A CENTRAL ANGLE OF 21° 21' 09", AN ARC DISTANCE OF 61.78 FEET TO BEGINNING OF A REVERSE CURVE HAVING A RADIUS OF 197.92 FEET; THENCE CONTINUING ALONG SAID SOUTH- WESTERLY LINE AND THE REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 46° 50' 58", AN ARC DISTANCE OF 161.83 FEET TO THE POINT OF BEGINNING.

APN: 259-41-054