

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

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN JOSE GRANTING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE PARTIAL DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND THE REMOVAL OF FIVE ORDINANCE-SIZE TREES FOR THE CONSTRUCTION OF THREE NEW RESIDENTIAL UNITS ON AN APPROXIMATELY 0.28-GROSS ACRE SITE LOCATED AT THE SOUTH SIDE OF BRACE AVENUE, APPROXIMATELY 280 FEET EASTERLY OF NEWPORT AVENUE (1168 BRACE AVENUE; APN: 429-17-006)**

**FILE NO. PD18-047**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 6, 2018, an application (File No. PD18-047) was filed by the applicant, Derek Teo, on behalf of 1168 Brace Ave LLC, with the City of San José for a Planned Development Permit to allow the partial demolition of an existing single-family residence, which includes the removal of the rear wall of the residence, a one-car garage, and an approximately 250-square foot shed, and the removal of five ordinance-size trees for the construction of three new residential units, of which two units are 1,585 square feet and one unit is 1,762 square feet, and a 491-square foot addition to the existing residence on an approximately 0.28-gross acre site, on that certain real property situated in the R-M(PD) Planned Development Zoning District and located at the south side of Brace Avenue, approximately 280 feet easterly of Newport Avenue (1168 Brace Avenue, APN: 429-17-006, San José, which real property is sometimes referred to herein as the “subject property”); and

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

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on July 22, 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 plan for the subject property entitled, "New Multi-Residential Project" received May 28, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, 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 this 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 project:

1. **Site Description and Surrounding Uses.** The approximately 0.28-gross acre site is currently developed with a one-story, 1,144-square foot single-family residence with a garage and accessory structure (shed). The existing residence was built in 1908 and is a Craftsman style house located in the Willow Glen neighborhood. The subject site is surrounded by multi-family residential uses to the north, west, east, and south side of the subject site.
2. **Project Description.** The project consists of a Planned Development Permit to allow the partial demolition of an existing single-family residence, which includes the removal of the rear wall of the residence, a one-car garage, and an approximately 250-square foot shed, and the removal of five ordinance-size trees for the construction of three new residential units, of which two units are 1,585 square feet and one unit is 1,762 square feet, and a 491-square foot addition to the existing residence on an approximately 0.28-gross acre site. The existing single-family residence would be relocated to the northeast corner of the project site to allow the addition of the new units. The new residential units would be attached to the rear of the existing residence. The new units include two three-bedroom, 1,585 square foot units and one four-bedroom, 1,762 square-foot unit. The three new units will have two-car garages within the units. The existing residence would have a one-car garage. Two additional covered parking spaces would also be provided. The project also includes a six-foot wooden fence and ten 24-inch box trees would be planted.
3. **General Plan Conformance.**

The Envision San José 2040 General Plan Land Use/Transportation Diagram designation for the subject site is Residential Neighborhood. This designation is applied broadly throughout the City encompassing most of the established single-family residential neighborhoods. The intent of this designation is to preserve the existing character of residential neighborhoods and to guide new infill projects to conform to the prevailing existing neighborhood character as defined by density, lot

size and shape, massing and neighborhood form and pattern. New infill development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. The Residential Neighborhood land use designation is typically eight dwelling units per acre or matches existing neighborhood character up to 16 dwelling units per acre. For infill projects where 50% or more of the development on the same block (both sides of the street) is developed at a density greater than eight dwelling units per acre, new development can match the prevailing density. For any new project to exceed eight dwelling units per acre, it is necessary that: (1) other policies in this Plan are met, (2) applicable design guidelines are met, and (3) development does not exceed 16 dwelling units per acre.

The surrounding parcels in the Residential Neighborhood land use designation are a mixture of single-family detached and multi-family residential. The average block density is approximately 24 dwelling units per acre. More than 50% of the properties in the same block have a greater density than eight dwelling units per acre. The project includes four residential units on a 0.28-acre site. The three new units with the existing single-family unit (total of four units at the project site) would have a total density of approximately 14.28 dwelling units per acre. As discussed in the sections below, the project would conform to General Plan policies and the Residential Design Guidelines. In addition to conforming to the General Plan land use designation for the site, the project is consistent with the following General Plan and goals and policies:

- a. Land Use Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.

*Analysis: The project site is surrounded by multi-family residences. The project has a density that is consistent with the surrounding development. The surrounding neighborhood has an average density of approximately 24 dwelling units per acre. The Residential Neighborhood limits new development to up to 16 dwelling units per acre. The four units at this site would have a density of approximately 14 dwelling units per acre. The project also incorporates features of the surrounding building designs. The multi-family residences to the north and south are designed to mimic single-family residences. The entrances to the units are accessed through the internal courtyard. The project incorporates the design of single-family*

*residences while connecting all units. The multi-family residence would be consistent with the surrounding neighborhood.*

- b. Land Use Policy 14.4: Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.

*Analysis: The existing single-family residence is not on the City's Historic Resource Inventory List; however, the residence is eligible as a Structure of Merit or Contributing Structure. The project would preserve the existing Craftsman style house in Willow Glen. The project would be moved to the northeast corner of the project site to accommodate the new units at the rear of the project site. This would be consistent with the development across the street, which has Craftsman style homes along Brace Avenue and additional units at the rear of the project site.*

#### 4. Development Standards.

The subject site is located in the R-M(PD) Planned Development Zoning District.

- a. **Use.** Subject to the Development Standards established for the project, the allowed uses are pursuant to the R-M Multi-Family Residence Zoning District per Title 20 of the Municipal Code. Multi-family residences are a permitted use.
- b. **Setbacks.** The table below shows the setbacks in the Development Standards. The project conforms to the following setback requirements.

Setback	Minimum Setback Required	Setback Provided
Front	8 feet	8 feet
Side (westerly side)	4 feet	5.5 feet
Side (easterly side)	4 feet	4 feet
Rear	25 feet	25 feet

The patio along the front setback would be set back eight feet. The building would be setback 15 feet. On the easterly side setback, the existing residence would be moved to a four-foot side setback. The new residential units would have a five-foot side setback.

- c. **Height.** The development standards state that the allowable height is pursuant to the R-M Multi-Family Residence Zoning District in Title 20 of the San José Municipal Code, as may be amended. Therefore, the maximum allowed height would be 45 feet. The height building measures approximately 26 feet.
- d. **Parking.** The Development Standards state the parking requirements are as follows:

Living Unit Size	Parking Requirement
0 Bedroom (Studio)	2.2 spaces
1 Bedroom	2.3 spaces
2 Bedroom	2.5 spaces
3 Bedroom	2.6 spaces
4 Bedroom	2.75 spaces

The parking requirements in the Development Standards incorporate the parking requirements of the Municipals Code except for the requirements of the existing building. The existing single-family residence would only require one parking space. In order to preserve the existing residence, the existing single-family residence would only require one parking space. The project includes the addition of two three-bedroom units and one four-bedroom unit. One parking space would be for the existing single-family residence and eight spaces would be required for the three additional units. Therefore, nine parking spaces are required. The project would provide nine parking spaces.

Therefore, the project is in conformance with the development standards and parking sections of the Zoning Ordinance.

## 5. Residential Design Guidelines

The project is a residential use and is therefore evaluated under the City of San José Residential Design Guidelines.

Per the design guidelines, new development should continue the functional, on-site relationships of the surrounding neighborhood. The project is incorporating the existing Craftsman-style single-family residence and expanding behind the existing home. The property north of the project site is a multi-family residence and has the Craftsman home along Brace Avenue. The porch would remain facing the street. The project would provide a street-facing entry that is consistent with the surrounding neighborhood. The existing residence would keep the same materials, which are similar to the Craftsman on the opposite side of Brace Avenue. The new units would incorporate similar materials. The existing residence would be painted to an earth-tone color that is consistent with the surrounding neighborhood and the new units.

The design guidelines state that enclosed garages that front on parking drives or parking courts should have tree pockets of not less than nine square feet. The project would provide tree pockets along the garage entries that are nine square feet. The project includes a mix of trees, shrubs, and groundcover.



Pursuant to the Residential Design Guidelines, each unit should provide a minimum of 400 square feet of private open space. There should also be a minimum of 150 square feet of common open space for every dwelling unit. The four units would each provide at least 400 square feet of private open space. Unit A would provide 433 square feet, Unit B1 and B2 would provide 405 square feet, and Unit D would provide 453 square feet. For the four units, 600 square feet of common open space should be provided. The project includes 650 square feet of common open space.

## **6. California Environmental Quality Act.**

On July 1, 2020, the Director of Planning, Building and Code Enforcement approved a Statement of Exemption for the project. Under the provisions of Section 15303(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303(c) New Construction or Conversion of Small Structures, Class 3, consists of construction and location of limited numbers of new, small facilities or structures; installation of small equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Examples of the exemption include but are not limited to a duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units. The project is located in an urbanized area. The project involves the construction of three new residential units for a total of four residential units at the project site. The subject site is served by public services such as water, sewer, trash and is not in an environmentally sensitive area. Based on the Santa Clara Valley Habitat Agency, the subject site is in an Urban-Suburban land cover area.

## **7. Planned Development Permit Findings.**

Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit for the partial demolition and onsite relocation of an existing single-family residential unit and the construction of three residential units. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.

- a. The Planned Development Permit, as issued, is consistent with and will further the policies of the general plan; and

*Analysis: As discussed in the General Plan conformance section above, the project is consistent with the General Plan land use designation of Residential Neighborhood, as the density and building form are consistent with the existing surrounding residential developments.*

- b. The Planned Development Permit, as issued, conforms in all respects to the planned development zoning of the property; and

*Analysis: As discussed in the Development Standards section above, the project conforms in all respects to the Planned Development Zoning's General Development Plan. The attached multi-family residences are an allowed use and the units are below the maximum height. The project is consistent with the setback and parking requirements.*

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

*Analysis: The project is consistent with the City Council Policy 6-30 for Public Outreach. The project installed an on-site sign at the project site. Additionally, the public hearing notices were mailed to property owners and tenants within a 500-foot radius of the project site.*

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

*Analysis: The project would result in four attached residential units. All four units would be two stories. The massing of the units is located toward the east side of the project site. The driveway is located on the west side of the project site. Parking would be located within the residential units, with each unit having a garage space. There are also two additional parking spaces located on the first floor between the front and rear units. The building, parking, and landscaping are compatible with each other and function as one single building.*

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

*Analysis: The project would be located on a site designated for residential use and includes the addition of three residential units. The development is located in an urbanized area that is adequately served by all required utilities and public services, and the Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Construction activities would result in temporary noise, vibration, and air quality impacts. Therefore, the project will not have unacceptable negative effects on adjacent properties.*

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## 8. Demolition Findings.

Pursuant to Section 20.80 of the San José Municipal Code, the following criteria have been considered by the Director of Planning to determine whether the benefits of the demolition of the existing building outweighs the impacts of the demolition:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The project includes partial demolition of the existing single-family residence, a garage, and shed to allow the addition of three new residential units. The existing residence is a Craftsman-style structure built in 1908. Although the residence is not in the historic resource inventory list, a historic evaluation was prepared by Archaeological Resource management (dated January 28, 2018) for this project. The evaluation recommended the existing residence be preserved since the structure is a Craftsman-style and is architecturally and chronologically compatible with many residences in this area of Willow Glen. The project applicant is preserving a majority of the residence by moving the existing residence to the northeast of the property. The existing residence will become one of the four residential units and the rear wall of the building would be demolished to connect the residence with the three new residential units. The project would create a multi-family residence which would be compatible with the surrounding neighborhood. The project site is surrounded by multi-family residences. The rehabilitation or reuse of the garage and shed would limit the addition of the three units and a driveway to access the units.*

9. **Tree Removal Permit Findings.** Section 13.32.100 of the San José Municipal Code established required findings for issuance of a Live Tree Removal Permit.

- a. The tree affected is of a size, type and condition that in such a location in such surrounding, that its removal would not significantly frustrate the purposes of this chapter as set for in Section 13.32.010

*Analysis: The project would remove three non-ordinance size trees. The trees are located where the project driveway would be located along the west side of the site. The removal of the trees (one English Hawthorn, one Osmanthus, and one Black Acacia) would allow a new driveway to access the new units. The replacement trees required for the non-ordinance size trees are seven 15-gallon trees.*

- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

*Analysis: In order to accommodate the residences and driveway, the project includes the removal of three ordinance-size trees consisting of one native tree (Black Walnut) and two non-native trees (Elm). Thirteen 15-gallon trees would be required for the removal of the three ordinance-size trees.*

*Between the non-ordinance size trees and ordinance-size trees removed, a total of twenty (20) 15-gallon replacement trees, or equivalent, would be required. Two 15-gallon trees may be replaced by one 24-inch box tree. The project applicant would plant ten (10) 24-inch box trees. The replacement trees would be seven Bay Laurels and three Sycamores.*

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

## **CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this 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 Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. 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 agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance with Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "New Multi-Residential Project" received May 28, 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. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
9. **Discretionary Review.** The City 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.
10. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
11. **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.
12. **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.
13. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
14. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
15. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.

16. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Fences Standards.** Fences shall be erected in accordance with the standards established on the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the City of San José Municipal Code.
18. **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.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **Recycling.** Scrap construction and demolition materials shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, and including information available haulers and processors.
21. **Storm Drain Protection.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain system flows to the Bay.
22. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
23. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning, Building and Code Enforcement. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
24. **Fire Clearance for Issuing Permits.** Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

**25. 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, PD18-047 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 will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- e. *Project Addressing Plan.* Prior to issuance of 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 proposed 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 requirements as may be specified by the Chief Building Official.

**26. Public Works Clearance for Building Permit:** Prior to the issuance of Building permits, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:**
  - i. In alignment with Senate Bill 743 (SB743), the City's Transportation Impact Policy – Council Policy 5-3 has been replaced with a new Transportation Analysis Policy – Council Policy 5-1. Council Policy 5-1 establishes Vehicle



Miles Traveled (VMT) as the transportation metric for evaluating CEQA transportation impacts.

<https://www.sanjoseca.gov/home/showdocument?id=28459>.

- ii. In conformance with the newly adopted Council Policy 5-1, this project meets the requirement for the small project exemption for CEQA transportation analysis. Furthermore, no additional transportation analysis is required.

c. **Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. A soils report may be required to be submitted and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.

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

- i. The project's Stormwater Management Plan have been reviewed and this project will be in conformance with City Policy 6-29.
- ii. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.

e. **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).

- f. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- h. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within the chapter.
- i. **Undergrounding:** The project is exempt from paying the in-lieu undergrounding fee because the site is zoned residential.
- j. **Street Improvements:**
  - i. Remove existing curb/gutter/sidewalk and replace with 9-foot wide detached sidewalk with park strip along Brace Avenue project frontage. A 1-foot wide street easement is required.
  - ii. Close unused driveway cut.
  - iii. Construct 16-foot wide driveway per City of San José standard detail R-5.
  - iv. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - v. 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.
- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- l. **Street Trees:**
  - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install 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 park

strip. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

**27. Affordable Housing Compliance.** This Permit is subject to its Affordable Housing Compliance Plan as set forth by the Department of Housing, which includes the following conditions:

- a. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the IHO.
- b. If a development requests an IHO exemption in the Plan, the conditions of that exemption shall be complied with through the issuance of the certificate of occupancy.
- c. Permittee's approval is for development of less than 20 qualifying dwelling units, as determined by Housing. Any changes in the number of units or the type of units in the development may result in additional requirements up to and including a requirement to comply with the IHO.
- d. No building permit may be issued until evidence of compliance with the IHO and exemption process.

No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.

**27-28. Revocation, Suspension, Modification.** This Planned 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, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

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

### **Effective Date**

The effective date of this Permit (File No. PD18-047) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC18-041, passed for publication on \_\_\_\_\_, 20\_\_ (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance

APPROVED 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.*

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 429-17-006**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT NO. NINE (9) OF THE THOMAS SUBDIVISION NO. 3, AS THE SAME IS SHOWN AND DELINEATED UPON THE OFFICIAL MAP OF SAID SUBDIVISION OF RECORD IN BOOK "M" OF MAPS, AT PAGE 98, RECORDS OF SANTA CLARA COUNTY, STATE OF CALIFORNIA.