

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN APPROXIMATELY 2,154-SQUARE FOOT SINGLE-FAMILY RESIDENCE, A DETACHED SECONDARY UNIT, MULTIPLE SHEDS, AND A SWIMMING POOL FOR THE CONSTRUCTION OF SIX SINGLE-FAMILY HOMES, THE REMOVAL OF 13 ORDINANCE SIZED TREES, ON AN APPROXIMATELY 1.3-GROSS ACRE SITE, LOCATED ON THE WEST SIDE OF ALMADEN ROAD, APPROXIMATELY 150 FEET NORTHERLY OF COVALLIS DRIVE (6805 ALMADEN ROAD)

FILE NO. H19-039

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 10, 2019 an application (File No. H19-039) was filed by John Moniz, on behalf of R & J Properties, with the City of San José for a Site Development Permit to allow the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool for the construction of six single-family homes, the removal of 13 ordinance sized trees on an approximately 1.3-gross acre site, on that certain real property situated in the R-1-5 Single-Family Residence Zoning District and located on the west side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road, 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 Director of Planning, Building and Code Enforcement

("Director") conducted a hearing on said application on September 16, 2020, notice of which was duly given; and

WHEREAS, at said hearing, the Director gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Director approved the requested Site Development Permit, for which decision an appeal to the City Council was timely filed by neighbors of the subject property; and

WHEREAS, on September 16, 2020, a timely appeal of the Director's approval of the Site Development Permit was filed by Lance and Karen Danbe, owners of a residence adjacent to the project site, citing 1) non-conformance with the Residential Neighborhood section of the 2040 General Plan; 2) inconsistency with the neighborhood pattern; 3) lack of improvements or enhancements to existing neighborhood conditions; and 4) the need for a 20-foot setback for Lot 6 of the project; 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 *de novo* hearing on said application and the appeals of the Director's decision, 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 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, "Site Development Permit A Six-Lot Single-Family Subdivision" dated

September 10, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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 and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located on the westside of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road). The 1.3-gross acre site is currently developed with an approximately 2,154 square foot single-family residence, detached secondary unit, multiple sheds, and a swimming pool, and the site is adjacent to single-family residential on the north, south, and west. Almaden Road and Almaden Expressway is located east of the site.
2. **Project Description.** This is a Site Development Permit to allow the demolition of the approximately 2,154-square foot single-family residence, detached secondary unit, multiple sheds, and the swimming pool, for the construction of six two-story single-family homes and the removal of 13 ordinance-sized trees. This project includes an associated Tentative Map (File No. T19-033) for the subdivision of the one 1.3 gross acre parcel into six parcels. The six parcels range from approximately 8,020 square feet up to 10,200 square feet.
3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Residential Neighborhood. This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern.

Additionally, the project would conform to the following General Plan goal and policy:

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 is consistent with the Residential Neighborhood land use designation and policies described above by providing an infill development and subdivision within an existing neighborhood for similar single-family residences. As defined by density, lot size and shape compared to other development that fronts onto the same public street, the nearby development maintains consistency with the area. The nearby development has an average lot frontage of approximately 78 feet. The average lot size is approximately 9,032 square feet. Combined with the project, the average width of lots for the neighborhood would be approximately 76 feet with an average lot size of 9,230 square feet. Additionally, the average density of the existing neighborhood is 4.87 dwelling units per acre (DU/AC) and combined with the project, the average density is approximately 4.7 du/ac.

As shown on the development plan set, all units from the project share architectural characteristics and similar materials to the existing development and the project provides similar second-story stepbacks as exhibited with nearby existing development as well. Additionally, all units are below 45 percent floor area ratio (FAR) which is also consistent with the surrounding development. Therefore, the project is consistent with the General Plan designation of Residential Neighborhood.

4. **Zoning Conformance.** The subject site is located in the R-1-5 Single-Family Residence Zoning District. The single-family residence district is primarily reserved land for the construction, use and occupancy of single-family subdivisions. The project is subject to the following regulations of the Zoning Ordinance:

- a. Minimum lot area (square feet or acreage): 8,000 square feet.

The size of the lots range from approximately 8,020 square feet up to 10,200 square feet. Therefore, the project includes six lots that are greater than 8,000 square feet.

- b. Heights and Setbacks:

Minimum Front Setback	Minimum Side Interior Setback	Minimum Side Corner Setback	Minimum Rear Setback	Maximum Height
20 feet	5 feet	12.5 feet	20 feet	35 feet

- i. Heights: The maximum allowed height is 35 feet. The project includes varying heights with the maximum heights of all homes at approximately 28 feet.
- ii. Setbacks: The project includes the following setbacks for each lot.

Lot Number	Front Setback	Side Setback	Rear Setback
1	Approx. 24 feet	At least 6.5 feet	Approx. 26.5 feet
2	Approx. 24.5 feet	At least 5.5 feet	Approx. 43 feet
3	Approx. 25 feet	At least 5.5 feet	Approx. 62.5 feet
4	Approx. 22.5 feet	Interior Setback (Approx. 5 feet), Corner Setback (Approx. 29 feet)	20 feet
5	Approx. 23.5 feet	Approx. 5 feet	Approx. 48 feet
6	Approx. 20 feet	Approx. 5 feet	Approx. 85.5 feet

- c. **Vehicle Parking:** One family dwelling units are required to provide two covered off-street vehicle parking space per unit. The project provides a two-vehicle garage for each unit.

5. Environmental Review. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is 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 15332 Infill Development Projects (Class 32) consists of projects characterized as in-fill development meeting the conditions described as follows: (a) The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value as habitat for endangered, rare, or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public service.

Analysis: As described above, the project is consistent with the general plan and zoning designations and regulations. The project is within an urbanized area, on a site that is less than five acres, and in an established residential area with adequate sewer, water, and electricity service. The project is for the construction of six single-family detached residential units which fits within the BAAQMD screening criteria of the policy of small projects. As a single-family residence development within an existing residential development, the anticipated trips and operation of this project would not result in a permanent increase in exterior noise that would conflict with the General Plan policies.

A Phase I and Phase II Environmental Site Assessment (ESA) was prepared by Almar Environmental on July 17, 2020, due to previous agricultural and other uses related to hazardous materials. Based on the analysis, a gas pump was removed from the property prior to this project and a closure permit with the County of Santa Clara was completed in 2016. Based on the findings in the Phase I and II ESA, in March 2016, soil samples were taken from a sub-surface work area that was four feet wide, ten feet long, and four feet deep. Results from soil testing showed elevated concentrations of total petroleum hydrocarbons as motor oil and diesel, hexavalent chromium, and lead. Over-excavation of the work area was conducted in May 2016. An underground storage tank system closure permit application was filed in 2016 with the County of Santa Clara Department of Environmental Health (SCCDEH) and was approved. Prior to the issuance of any demolition, grading or building permits, the project applicant shall be required to seek oversight and confirmation from the SCCDEH and to complete a Site Management Plan (SMP). The project would implement all construction standard permit conditions during all ground-disturbance phases to minimize construction effects in noise, dust and run-offs. For these reasons, the project is categorically exempt pursuant to CEQA Guidelines Section 15332.

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

- 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; and
 - i. 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 is consistent with the Residential Neighborhood land use designation and policies above by providing an infill development and subdivision within an existing neighborhood for similar single-family residences. As defined by density, lot size and shape compared to other development that fronts onto the same public street, the nearby development maintains consistency with the area. The nearby development has an average lot frontage of approximately 78 feet. The average lot size is approximately 9,032 square feet. Combined with the project, the average width of lots for the neighborhood would be approximately 76 feet with an average lot size of 9,230 square feet.

Additionally, the average density of the existing neighborhood is 4.87 dwelling units per acre (DU/AC) and combined with the proposed project, the average density remains similar, at approximately 4.7 du/ac.

As shown on the plan set, all units from the project share architectural characteristics and similar materials to the existing development and the project provides similar second-story stepbacks as exhibited with nearby existing development as well. Additionally, all units are below 45 percent floor area ratio (FAR) which is also consistent with the surrounding development. Therefore, the project is consistent with the General Plan designation of Residential Neighborhood.

- 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; and

Analysis: As detailed above, the project includes six single-family residences on six lots that are greater than 8,000 square feet. Each structure has a maximum height of approximately 28 feet which is well within the maximum height requirement of 35 feet. Additionally, each unit contains an off-street two-vehicle garage and maintains all minimum setback requirements. Therefore, the project is consistent with the Zoning Code and the applicable San Jose Municipal Code requirements.

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

Analysis: Pursuant to Council Policy 6-30: Public Outreach Policy, , the applicant posted the on-site sign to inform the neighborhood of the project. Staff's contact information has also been available on the hearing notices and the staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

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

Analysis: The project is oriented to front along Petroni Way and Almaden Road and have similar front setbacks along each street. There are three different unit types that are used interchangeably throughout the project. Each type of unit includes a two-story single family residence with similar height, stepbacks, materials, and color. Therefore, the buildings are mutually compatible and aesthetically harmonious with the uses and development proposed on the site.

- 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 project is oriented to front along Petroni Way and Alamden Road and have similar front setbacks to the adjacent neighborhood that shares a public street. The existing neighborhood includes two-story residences and the project shares similar characteristics in the form of the buildings and in the materials of the buildings. Therefore, the project is compatible with and aesthetically harmonious with the character of the neighborhood.

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

Analysis: An exemption pursuant to CEQA Guidelines 15332 for Infill Development Projects was prepared to reflect an independent judgment and analysis of the project. Even insignificant for the purpose of CEQA, the project construction would be approximately 8 months and would be required to implement all conditions to minimize temporary construction effects. Therefore, construction of the project will not have an unacceptable negative effect on adjacent property or properties because of City limitations on construction hours, and additional best management practices, shall be implemented as part of this project. Furthermore, the project is within an urbanized area and the addition of six single family home is consistent with the immediate surroundings. The operation of the project is single-family residential and therefore, would not generate excessive noise or odor. The project has been evaluated to be in compliance with the City's stormwater requirements and provides on-site bio-treatment. Therefore, the project would not have an unacceptable negative affect on adjacent properties.

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

Analysis: The project includes landscaping to beautify the public right-of-way with adequate pedestrian and vehicle access, fencing to conceal outdoor activities, and tree planting around the entire site, sufficient to maintain the appearance of the neighborhood.

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

Analysis: The project contains parking consistent with the Zoning Ordinance along with adequate pedestrian and vehicular access into each lot. Pedestrians can easily access each building. The project was reviewed in combination by the Department of Public Works, the Department of Transportation and Fire Department and was found to be consistent with the City policies.

9. **Demolition Findings:** Pursuant to Section 20.80.460 of the San José Municipal Code, prior to the issuance of the Site Development Permit, the City Council shall determine whether the benefits of permitting the demolition of the existing buildings outweigh the impacts of the demolition. In making such a determination, the following criteria shall be considered:
- 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 benefits of allowing the demolition of the existing structures and facilities on the parcel outweigh the impacts of removal because the demolition of the existing 2,154 square foot single-family residence, detached secondary unit, multiple sheds, and a swimming pool would facilitate the construction of six single family residences that would be compatible with the surrounding neighborhood and provide needed housing. Therefore, the project maintains and increases the supply of housing stock within the City. The structures onsite were built in the 1950s however the project was reviewed for historic integrity and it was determined to not be historically significant due to alterations and redevelopment of the land from orchards to a single-family neighborhood. Additionally, the site is not listed on the City's Historic Resources Inventory. The existing footprint is situated such that it would prohibit construction of the six new residences on the site.

10. **Tree Removal Findings.** Chapter 13.32 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, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;

Analysis: The project involves the removal of 13 ordinance-size trees and 15 non-

ordinance size trees. The trees to be removed are located within the buildings and structures or within close proximity. According to standard Tree Replacement Ratios, the project is required to provide 41 replacement trees at the size of 24-inch box; the project provides a total of 48 replacement trees on-site at the size of 24-inch box.

In accordance with the facts and findings set forth above, the permit appeal is denied and a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Site Development Permit ("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 years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. 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 applicant's agreement to fully comply with all of said conditions.
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, "Site Development Permit A Six-Lot Single-Family Subdivision" dated received September 10, 2019 on file with the Department of Planning, Building and Code Enforcement as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
6. **Use Authorization.** Subject to conditions herein, this Site Development Permit allows the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool, and allows the construction of six single-family homes and the removal of 13 ordinance sized trees.
7. **Conformance with Other Permits.** The subject Site Development Permit conforms to and complies in all respects with the Tentative Map Permit (File No. T19-033) on which such Site Development is based.
8. **Demolition Permit.** A demolition permit may be issued for the buildings and associated structures only upon the issuance of a Public Works Grading Permit.
9. **Timing for Demolition.** Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Public Works Grading Permit has been issued.
10. **Recycling.** Scrap construction and demolition material 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, including information on available haulers and processors.
11. **South Bay Water Recycling (SBWR).** The development is adjacent to an existing recycled water pipeline and therefore shall conform to Chapters 15.10 and 15.11 of

the San José Municipal Code. These chapters require all new and restored landscaping for projects that require a development permit from the City to be designed and constructed to receive recycled water. All irrigation systems shall be metered separately from the potable water supply system, shall have no on-site cross-connections to the potable water supply, and shall meet all other legal requirements necessary to allow for recycled water use. The use of potable water to irrigate any outdoor landscaping plumbed for recycled water where recycled water is available to the property is prohibited.

The design and construction of the irrigation system shall conform to SBWR Rules and Regulations and shall be submitted to and approved by SBWR. Standard details, specifications, and notes are available online at www.sanjoseca.gov/sbwr or by calling (408) 793-1865. The permittee shall also consider using recycled water in lieu of drinking water for other non-potable applications such as toilet flushing, commercial laundry, and building cooling. Refer to SBWR's website for a complete list of approved uses of recycled water. Questions regarding recycled water use should be directed to SBWR staff at the above number.

12. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Public Works Grading Permit has been issued.
13. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
14. **Compliance with All Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
15. **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.
16. **Discretionary Review.** The Director of Planning, Building and Code Enforcement

maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.

17. **Refuse.** All trash areas shall be effectively screened from view, shall be covered or shall consist of self-contained weather tight compactor(s), and shall be 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.
18. **Outdoor Storage.** No outdoor storage shall be allowed or permitted.
19. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
20. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
21. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
22. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
23. **Housing Department:** The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced IHO or AHIF, the permittee must execute and record their Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.
 - a. 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 are met.

24. **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.
25. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
26. **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.
27. **Fence 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.
28. **Parcel Map Required.** Prior to the issuance of any Building Permit, the Permittee shall secure approval and provide proof of recordation of a Parcel Map to remove or relocate any existing Lot Lines and public easements as shown on the Approved Plan Set.
29. **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.
30. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code.
31. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall 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/your-government/departments-offices/transportation/planning-policies/vehicle-miles-traveled-metric>.
 - 1) In conformance with the newly adopted Council Policy 5-1, this project meets the requirement for the small project as this project involves less than 15 residential units and therefore is exempt from 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.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. 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. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and additional information is required per the Actions/Revisions section.
 - 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. A deed restriction will be required on each property to protect treatment control measures (TCM's) for the life of the project.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area. However, it will not create and/or replace one acre or more of impervious surface. Therefore, the project 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 issuance of 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 contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- i. **Undergrounding:** The project is exempt from paying the in-lieu undergrounding fee because the site is zoned residential.

j. **Street Improvements:**

- i. Permittee shall be responsible to remove and replace curb and gutter damaged during construction of the project.
- ii. Construct 12-foot wide detached sidewalk with parkstrip along Almaden Road project frontage. Require an approximately 2-foot wide dedication.
- iii. Construct 12-foot wide detached sidewalk with parkstrip along Petroni Way project frontage.
- iv. Project driveways width to be 16 feet wide pursuant to City standard.
- v. Install ADA complaint handicap ramp at the southwest corner of Almaden Road and Petroni Way per City Standard R-8.
- vi. 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.
- vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

- 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 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 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.

32. Standard Environmental Conditions.

- a. *Air Quality.* The following conditions shall be implemented during any ground disturbance activities to reduce construction-related air quality impacts.
 - i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be water two times per day.
 - ii. All haul trucks transporting soil, sand, or other loose material off-site shall be

covered.

- iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
 - vi. Replant vegetation in disturbed areas as quickly as possible.
 - vii. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - viii. All diesel-powered off-road equipment larger than 25 horsepower and operating at the site for more than two days continuously shall meet U.S. Environmental Protection Agency (EPA) nitrogen oxides (NOx) and particulate matter emissions standards for Tier 3 engines with CARB-certified Level 3 Diesel Particulate Filters or equivalent. Alternatively, equipment that meets U.S. EPA Tier 4 interim standards or use of equipment that is electrically powered or uses non-diesel fuels would meet this requirement.
 - ix. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - x. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - xi. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- b. *Tree Replacement Ratio.* According to the type and size of ordinance trees to be removed 13 trees would be replaced at a 2:1 ratio and 15 non-ordinance trees would be replaced at a 1:1 ratio. There are no native trees on-site. The total number of replacement trees required to be planted would be 41 trees. The species of trees to be planted would be determined in consultation with the City Arborist and 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, at the development permit stage:

- i. The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
 - ii. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- c. Geology And Soils
- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
 - ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
 - v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- d. *Hazards and Hazardous Materials*. Consistent with federal, state, and local policies and regulations, the following conditions are included to reduce impacts from asbestos and lead-based paint to a less than significant level:
- i. Prior to issuance of grading permits, the permittee shall enter the Site Cleanup Program with the Santa Clara County Department of Environmental Health (SCCDEH). The SCCDEH may require the permittee to implement appropriate management procedures, such as removal of the contaminated soil and

implementation of a Site Management Plan (SMP), Removal Action Workplan (RAP), or equivalent document.

- ii. All documentation of completion of the SCCDEH Clean Up Program shall be provided to City prior to issuance of building permits, as applicable.
 - 1) In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.
 - 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
 - 3) All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
 - 4) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
 - 5) Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
 - 6) Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - a) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - b) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 - c) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

e. Hydrology and Water Quality. Construction-related water quality.

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- f. Noise
- i. **Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following:
 - ii. Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
 - iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - v. Prohibit unnecessary idling of internal combustion engines.
 - vi. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

- vii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - viii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
 - ix. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
 - x. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - xi. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
 - xii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
 - xiii. **Interior Noise Standard For Residential Development.** The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.
- 33. 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, H19-039 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.
 - f. *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 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).
 - g. *Other.* Such other requirements as may be specified by the Chief Building Official.
34. **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 1, Section 20.100.350, 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.