

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF ALL EXISTING STRUCTURES ON THE SITE INCLUDING TWO COMMERCIAL ACCESSORY STRUCTURES, THREE RESIDENTIAL BUILDINGS TOTALING NINE UNITS AND APPROXIMATELY 5,150 SQUARE FEET, AND TWO RESIDENTIAL GARAGES; THE REMOVAL OF SEVEN ORDINANCE-SIZE TREES; AND THE CONSTRUCTION OF A MIXED-USE PROJECT INCLUDING A 190-BED COMMERCIAL RESIDENTIAL CARE FACILITY WITH 116 ASSISTED LIVING RESIDENTIAL CARE GUEST ROOMS AND 49 MEMORY CARE GUEST ROOMS, FOUR MULTI-FAMILY UNITS, AND A BACK-UP GENERATOR, INCLUDING A DEVELOPMENT EXCEPTION TO ALLOW A REDUCED 12-FOOT HEIGHT FOR THE REQUIRED ON-SITE LOADING SPACE ON A 0.90-GROSS ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF WEST SAN CARLOS STREET AND GIFFORD AVENUE (470 WEST SAN CARLOS STREET)**

**FILE NO. CP20-019**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 26, 2020, an application (File No. CP20-019) was filed by the applicant, Tim Woloshyn of Urban Catalyst LLC, on behalf of owner Thang N Do Trustee, et al, with the City of San José for a Conditional Use Permit to allow the demolition of all existing structures on the site, including two commercial accessory buildings associated with a used car sales lot, three residential buildings totaling nine units and approximately 5,150 square feet with associated garages; the removal of seven ordinance-size trees; and the construction of an approximately 185,000-square foot mixed-use project including a 190-bed commercial residential care facility with 116 assisted living guest rooms and 49 memory care guest rooms, four multi-family residential units, and a back-up generator, including a development exception to allow a reduced 12-foot height for the required on-site loading space on a 0.90-gross acre site,

on that certain real property located on the southwest corner of West San Carlos Street and Gifford Avenue (470 West San Carlos Street, 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 concurrent applications on December 9, 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 recommendation of the Planning Commission and the City’s Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, “Delmas Senior Living” dated November 4, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before 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 proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the southwest corner of West San Carlos Street and Gifford Avenue. The subject 0.90-gross acre site is currently developed with three residential buildings, two residential garages, two commercial accessory buildings, and one carport. The three residential buildings total nine units and approximately 5,150 square feet with associated garages. The residential buildings were analyzed by the Housing Department and determined as not subject to the Ellis Act Ordinance, and therefore no relocation assistance or other restrictions are applicable.

Adjacent land uses to the northwest are high-density multi-family residential, to the north are commercial uses, to the east are auto-related light industrial uses and single-family residences, to the west is a martial arts school, and to the south are commercial and light industrial uses, including a painting company and a warehouse.

2. **Project Description.** A Conditional Use Permit to allow the demolition of all existing structures on the site, including two commercial accessory buildings associated with a used car sales lot, three residential buildings totaling nine units and approximately 5,150 square feet with associated garages, the removal of seven ordinance-size trees,

the construction of a mixed-use project including a 190-bed commercial residential care facility with 116 assisted living residential care guest rooms and 49 memory care guest rooms, four residential multi-family units, and a back-up generator, including a development exception to allow a reduced 12-foot height for the required on-site loading space on a 0.90-gross acre site on an approximately 0.90-gross acre site at 470 West San Carlos Street.

Operations of the commercial residential care facility include 24-hour care of up to 190 residents. Services include a shuttle service, meals, programs, activities, and events designed to maximize residents' dignity, autonomy, independence, choice, and safety. For memory care residents, activities are designed to stimulate cognitive abilities, while also enjoying passions and hobbies. There will be up to 60 full-time staff members employed by the facility, with a maximum of 36 employees at any time. This facility will be licensed by Department of Social Services through the State of California. The Operator and Staff must comply with relevant laws and regulations as set forth by the RCFE license needed to operate the community, including pre-employment screening via FBI & DOJ background checks as well as staff continuing education and certifications. The four multi-family residential units will be primarily used as staff housing.

The project also requires a development exception for the loading space height to allow the proposed reduced 12-foot ceiling height. The Zoning Code requirement is 15 feet clear; however, development exceptions are allowed with certain findings, as discussed in the Permit Findings section below. The project is conditioned to restrict delivery trucks to Class 4 thru Class 6 trucks only, which can be accommodated by the 12-foot ceiling height. See the Development Exception Findings below.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan land use designation of Downtown and is within the Diridon Station Area Plan (DSAP), an adopted Urban Village Plan area. The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership. Residential care facilities are allowed within the DSAP Area through the City's discretionary review and permitting process.

*Analysis: The project is consistent with the General Plan and DSAP policies, as discussed further below, and is therefore consistent with the Downtown General Plan designation. Additionally, the changes to the General Plan land use designation are consistent with Senate Bill 330 as discussed below.*

### **General Plan Policies**

The project is consistent with the following key General Plan goal and policies:

- a. Major Strategy #3 - Focused Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified

“Growth Areas” (Urban Villages, Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.

- b. Growth Area Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
- c. Commercial Lands Policy LU-4.3: Concentrate new commercial development in identified growth areas and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods when such development is appropriately located and designed.

*Analysis for Major Strategy 3, LU-2.1, LU-4.3, and TR-3.4: The project is within the DSAP and is approximately 0.6-mile from Diridon Station. The project would result in a higher intensity of development on the subject site consistent with General Plan major strategy, and policies supporting focused growth and development near transit. Furthermore, the project would facilitate a more intense mixed-use development in place of the existing auto-oriented used car lot at the site.*

- 4. Maximize Use of Public Transit Policy TR-3.4: Maintain and improve access to transit stops and stations for mobility-challenged population groups such as youth, the disabled, and seniors.
- 5. Social Equity and Diversity Policy H-1.4: Encourage the location of housing designed for senior citizens in neighborhoods where health and community facilities and services are within a reasonable walking distance and are accessible by public transportation.
- 6. Access to Medical Services Policy ES-6.5: Encourage new health care facilities to locate in proximity to existing or planned public transit services.

*Analysis for Policies TR-3.4, H-1.4, and ES-6.5: The project site is located along Bus Route 23 and Rapid Bus Route 523, providing service to Downtown, Blossom Hill, and Mountain View. The site is within 2.5 miles of O’Connor Hospital and Santa Clara Valley Medical Center, and is within four miles of the Santa Clara Senior Center. This development is intended for seniors and would provide close access to transit services, health services, and community facilities.*

### ***Diridon Station Area Plan***

The subject site is located within the boundary of the Diridon Station Area Urban Village and subject to the Diridon Station Area Plan (DSAP). On June 14, 2014, City Council certified the DSAP Program Environmental Impact Report (EIR) and adopted the existing DSAP. In December 2018, the City Council certified the Downtown Strategy 2040 EIR which includes the DSAP area. The DSAP analyzes the expansion of the existing Diridon Station and the development of land uses within the 250-acre Area Plan boundary surrounding the station. Development of the subject site would need to be consistent with the goals, objectives, and guidelines of the DSAP.

Within DSAP, the subject site is located in Subarea F of the Southern Zone. The Southern Zone is the urban neighborhoods zone consisting predominantly of residential and mixed uses as well as nonresidential uses including office, retail, service, hotel, medical, and entertainment uses. Per the Land Use Plan of the DSAP, Figure 2-1-1, the site is partially within the Downtown land use designation and partially within the Residential Neighborhood designation. However, with the General Plan Amendment, the project is proposing to amend the designation to be wholly Downtown as discussed above. The changes to the General Plan land use designation over the Project Site are consistent with Senate Bill 330 as discussed below.

#### **Diridon Station Area Plan Design Guidelines**

The DSAP's Design Guidelines represent a long-term vision for the area. Various design aspects are discussed in detail below. Pedestrian activity and bike access are key to the development of the Diridon Station Area as a vibrant urban destination. High levels of pedestrian activity can be achieved by good overall connectivity and an interesting and varying street environment. Wide sidewalks, safe crossings, slow traffic, street trees, street furniture, and mid-block connections all contribute to a walkable and bikeable environment. Attributes include: high-density, active ground floor uses, broken-up building massing and articulated façades at the ground level that respond to the pedestrian scale, as well as small integrated plazas and seating areas.

*Analysis: The project is conditioned to widen the public sidewalks to fifteen feet along West San Carlos Street and ten feet along Gifford Street, planted with street trees every thirty feet along West San Carlos Street and every twenty feet along Gifford Avenue. The ground floor includes active uses such as a resident coffee shop, activity center, wellness center, and salon, and includes substantial transparency, which will provide an active sidewalk presence, making the pedestrian experience visually interesting. The project would provide the required number of bicycle parking spaces, which will encourage employees to use a multi-modal transportation network.*

### Floor Area Ratio (FAR)

The project site is proposed to be located entirely within the DSAP Downtown land use designation per the General Plan Amendment. Per the Downtown designation, the project site is allowed up to 15.0 FAR.

*Analysis: The FAR for the project site is 4.8 and is consistent with this requirement.*

### Height

Guidelines are provided on the maximum height of buildings in the Diridon Station Area per Figure 3-2-1, which indicates a height limit of 65 feet for this area. The building height guidelines for the Southern Zone are intended to ensure the compatibility of new development with the surrounding relatively low density residential neighborhoods. Guidelines in the DSAP discourage taller buildings adjacent to existing single-family residential uses.

*Analysis: The project is adjacent to commercial and light industrial uses. There are no residential uses directly adjacent to the project site, but there are single-family residences across Gifford Avenue from the project. For neighborhood compatibility, the project is stepped back at the Gifford Avenue street frontage at the southeastern portion of the property to create a common open space balcony facing the street, therefore stepping the building height and massing down at this location by one floor to a height of 55 feet at the street facade.*

*The project consists of one six-story building, and the maximum height is 65 feet, plus an additional four feet to the parapet, as allowed within the Building Heights section on Page 3-6 of the DSAP. Therefore, the project is consistent with the height requirement.*

### Retail Requirement

Per the Land Use Plan of the DSAP, Figure 2-1-1, this section of West San Carlos Street is required to have retail frontage. This requirement is further detailed in the Plan on Page 2-11. This requirement is intended to provide restaurants and services to residents and workers in the area to reduce the need for driving.

*Analysis: The project is proposing active uses on the ground floor facing the street. The ground floor will provide transparency and will showcase the proposed active uses including communal spaces for residents and visitors, a wellness center, and a salon, among other uses, making the pedestrian experience more visually interesting. Additionally, the proposed uses will be provided for residents and workers within the building. Therefore, the project is consistent with this requirement.*

4. **Zoning Code Compliance.** The project is consistent with the development standards as set forth in the DC Downtown Primary Commercial Zoning District. The subject site is currently located in the LI Light Industrial and R-2 Two-Family

Residence Zoning Districts. However, the project is proposing to rezone to DC Downtown Primary Commercial, for which consistency is analyzed below:

### Land Uses

Pursuant to the Zoning Code Section 20.70.100, the DC Downtown Primary Commercial Zoning District is a conforming zoning district to the Downtown General Plan Designation. The purpose of the Downtown Primary Commercial Zoning District is to provide development standards for the property within the designated Downtown Area.

*Analysis: The project site is within the stated boundary of Downtown per Section 20.70.100 of the Zoning Code. In the DC Downtown Primary Commercial Zoning District, multi-family residential units and back-up generators are allowed, and residential care facilities can be permitted with a Conditional Use Permit.*

### Development Regulations

The project conforms to the DC Downtown Primary Commercial Zoning District Development Standards, beginning with Zoning Section 20.70.200, as discussed below. Building height and FAR are regulated by the Diridon Station Area Plan (DSAP) as discussed above. Additionally, per Section 20.70.210 of the Zoning Code, the DC Downtown Primary Commercial District is not subject to setback regulations.

#### a. Vehicle Parking:

The required number of vehicle parking spaces for the residential care facility is 0.75 parking space per employee per Section 20.70.100, Table 20-140 of the Zoning Code. With a maximum of 36 employees per shift, this calculates to 27 spaces required. The residential multi-family housing units require one space per unit per Table 20-210, for a total of four spaces. The total required vehicle parking is therefore 31 spaces.

*Analysis: The project has 32 parking spaces in the at-grade garage accessed by a driveway from Gifford Avenue. The project is consistent with the parking requirement.*

#### b. Bicycle Parking:

The project is required to provide one bicycle space per ten employees for residential care facility per Table 20-190 of the Zoning Code and one space per four housing units per Table 20-210. For 36 employees, the requirement is four spaces, plus one space for the housing units for a total of five bicycle parking spaces required.

*Analysis: The project includes a secure bicycle storage room on the ground floor adjacent to the staff lounge, accessible to the street, and a bike rack for short-term parking along Gifford Avenue, adjacent to the building pedestrian entrance.*



*The long-term storage room has five spaces, and the short-term bike rack has four spaces, for a total of nine spaces provided. The project is therefore consistent with the requirement.*

c. Loading Spaces:

This project requires one loading space per Section 20.70.440 of the Zoning Code. The loading space must be ten feet wide, thirty feet long and fifteen feet high, exclusive of driveways for ingress and egress and maneuvering areas per Section 20.90.420. Alternately, per Section 20.70.450.B, the director may reduce the number of off-street loading spaces based on the available loading space within the public right-of-way.

*Analysis: The loading space does not meet the 15 feet clear height as required by Section 20.70.420 of the Zoning Code. An exception is requested to allow twelve feet of height for the loading space, which would allow Class 4 thru Class 6 delivery trucks. The applicants will also apply for an on-street loading space along West San Carlos Street via a separate Public Works permit process. See the Exception Findings below.*

**5. San Jose Downtown Design Guidelines Consistency**

In addition to the DSAP Design Guidelines, as discussed above, the project was analyzed for consistency with the 2014 San Jose Downtown Design Guidelines and Standards to achieve an attractive residential environment. The project complies with standards of the Downtown Design Guidelines specifically in the following areas:

Urban Form and Massing. The massing of a podium level greater than 100 feet wide facing the sidewalk is required to be visibly articulated into smaller masses using projections and recesses, materials, shadow relief, or other architectural elements (Standard 4.3.1).

*Analysis: The facades at both Gifford Avenue and West San Carlos Street are greater than 100 feet wide. The project has provided sufficient articulation in massing along both facades through the use of varying colors, materials, and projections and recessions along the façade. The project is therefore consistent with this requirement.*

Street Wall/Active Frontage. The base of the building is required to contribute to the vibrancy of the street at the ground level through transparency and durable materials. Further, the Guidelines state that building frontage should appear safe, welcoming, and open to the general public. Active frontage means transparent to the interior of the building. This standard applies to both West San Carlos Street and Gifford Avenue (Standards 4.3.3 and 5.3.1).

*Analysis: The project design includes transparent glass at ground level along 60% of Gifford Avenue and 77% along West San Carlos Street. The project provides active*

*uses interior to the site at ground level along both street frontages. The project is therefore consistent with this requirement.*

Architecture and Materials. Green roofs, high-quality materials, and a prominent pedestrian entry are required. Specifically, for buildings less than 150 feet in height, a green roof or solar panels must cover at least 20% of the roof area, the project must use high-quality materials at the Pedestrian Level, and pedestrian entries must be emphasized and clearly identifiable. (Standards 4.4.3, 4.4.7, and 5.5.1)

Analysis: *The project is providing a combination of solar panels and green roof for a total of 20% of the roof area. The project is providing materials such as glass, aluminum, concrete, cement plaster, and horizontal plank siding. The pedestrian entry is located at the corner of the intersection, and is recessed, framed, and labeled with signage to be clearly identifiable. Therefore, the project complies with these requirements.*

## **6. City Council Policy Consistency**

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

Under City Council Policy 6-30, the project is considered to be a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since August 25, 2020, to inform the neighborhood of the project. A community meeting was held to discuss the project on October 1, 2020 via Zoom webinar. Approximately 17 members of the public were in attendance for the meeting. Comments received during the community meeting and project review are discussed in the staff report. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

## **7. Senate Bill 330 Compliance**

Governor Gavin Newsom signed Senate Bill 330, Housing Crisis Act of 2019, on October 9, 2019 to catalyze housing that would offset the high rents and home ownership costs leading to increasing homelessness. The bill is intended to speed up housing construction in California by decreasing the time it takes to obtain building permits and limiting fee increases on housing applications. The bill also bans local governments from reducing the number of homes that can be built on properties that allow housing, including downzoning, changing general or specific plan land use designations to a less intensive use, reductions in height, density or floor area ratio, or other types of increased requirements. The exception to this is that a property may be

allowed to reduce intensity of residential uses if changes in land use designations or zoning elsewhere ensure no net loss in residential capacity within the jurisdiction.

The proposed General Plan Amendment (GP19-012) does not reduce the intensity of residential uses because the proposed Downtown land use designation allows for greater residential density than the existing Residential Neighborhood land use designation. GP19-012 would increase the residential capacity by 353 units. Further, the proposed amendment, if approved concurrently with GP20-001 (net 69 units) and GP20-002 (net 74 units) would offset reduced intensity of residential capacity for proposed project file no. GP20-003 (loss of 248 units) resulting in no net loss of residential capacity.

## **8. California Environmental Quality Act.**

The Director of Planning, Building and Code Enforcement prepared an Initial Study in support of an Addendum to the 2018 Downtown Strategy 2040 FEIR for the Delmas Senior Living Project, which includes a General Plan Amendment to change the land use designation from the Residential Neighborhood designation to the Downtown designation, a conforming rezoning from the LI Light Industrial and R-2 Two-Family Residence districts to the DC Downtown Primary Commercial (district, and a Conditional Use Permit for the development of the proposed project. The Downtown Strategy 2040 FEIR contains sufficient information to provide project-level environmental clearance for certain impacts by including standard measures that apply to all projects in San José. The Initial Study did not identify any new impacts beyond those analyzed in the Downtown Strategy 2040 FEIR. Therefore, the proposed project meets the criteria of an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 and was completed in compliance with CEQA to reflect the independent judgement of the City.

The Initial Study identified relevant mitigation measures included in the Downtown Strategy 2040 FEIR for potential impacts to air quality during construction, nesting birds, buried and unknown archaeological resources, contamination during and after construction, and construction vibration impacts on adjacent buildings and businesses. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for controlling dust and exhaust during construction, tree replacement, compliance with the Habitat Plan, uncovering buried archaeological or historic resources and human remains during construction activities, preventing impacts from lead-based paint and asbestos during demolition activities, preventing stormwater pollution during construction, managing mechanical equipment noise, and interior noise levels. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and both the mitigation measures and standard permit conditions are made a part of this permit.

The Initial Study concluded that the proposed project would not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the Downtown Strategy 2040 FEIR. Therefore, a supplemental or subsequent EIR is not required, and an Addendum to the Downtown Strategy 2040 FEIR is the appropriate level of CEQA clearance for the project.

The Addendum and supporting Initial Study, associated technical studies (in appendices to the Initial Study) are available on the Planning Division environmental review webpage at: <https://www.sanjoseca.gov/activeeirs>.

## 9. Permit Findings.

### ***Conditional Use Permit Findings***

Chapter 20.100 of the San José Municipal Code (SJMC) establishes required Findings for issuance of a Conditional Use Permit. These criteria are applied to the project based on the above-stated findings related to General Plan and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.

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

*Analysis: As analyzed above, the mixed-use project including a commercial residential care facility and four multi-family housing units is consistent with the Downtown General Plan Land Use Designation and General Plan Policies. The use is allowed within Downtown, the project is providing a FAR of 4.8, a maximum height of 65 feet, and active use frontage along West San Carlos Street, consistent with requirements of the Diridon Station Area Plan (DSAP).*

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

*Analysis: Residential care facilities are conditionally permitted within the DC Downtown Primary Commercial Zoning District. The project is required to have 31 vehicle parking spaces and five bicycle parking spaces. The project provides 32 vehicle parking spaces and nine bicycle parking spaces to fulfill the parking requirements. The project is also providing one on-site loading space, subject to the development exception contained herein. Therefore, the project conforms with the municipal code development standards.*

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

*Analysis: The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The on-site sign has been posted at the site since August 25, 2020 to inform the neighborhood of the project. A*

*community meeting was held to discuss the project on October 1, 2020 via Zoom webinar. Approximately 17 members of the public were in attendance for the meeting. Comments received during the community meeting and project review are discussed below. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

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

*Analysis: The project would not negatively affect the utility or value of surrounding properties in the neighborhood, as the project would replace a vacant used car lot and low-density housing. The residential buildings proposed to be demolished were analyzed by the Housing Department and determined as not subject to the Ellis Act Ordinance, and therefore no relocation assistance or other restrictions are applicable. The project operations have been designed to be compatible with the surroundings, including outdoor activities primarily oriented to the interior of the site and minimize negative impacts such as noise and glare. Although the facility will provide 24-hour care to the residents, visiting hours and the outdoor terrace facing the street will be available from 7am to 8pm.*

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

*Analysis: As identified above, File No. T20-020 was submitted to the City for a Vesting Tentative Map to merge seven parcels into one parcel. The CUP would authorize the development of a mixed-use project including a commercial residential care facility and four multi-family residential units on the approximately 0.90-gross acre subject site. The subject site is physically suitable for the project because all project components are designed within the project site. The site is surrounded by multi-family residential and commercial uses to the north, light industrial and single-family residential uses to the east, a painting company and warehouse to the south, and a martial arts school to the west. The project also provides an internal courtyard with open space terraces.*

- f. The proposed site is adequately served:

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

*Analysis: The subject site is well-served by West San Carlos Street and Gifford Avenue, as well as by bus routes and Diridon Station. The existing streets and utilities are of sufficient capacity to serve the affordable project. All public utilities are adequate as evidenced by the issuance of the Final Public Works Memo dated 11/6/20. The project is required to widen the public sidewalks to include street trees within the public right-of-way.*

*As identified above, the project is located within the DSAP and is approximately 0.6 mile from Diridon Station. Additionally, bus routes 23 and 523 run along West San Carlos Street, providing local bus services to De Anza College, Downtown, Blossom Hill, and Mountain View.*

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

*Analysis: The project incorporates measures to address noise, stormwater runoff, drainage and erosion. The project would implement site design measures, such as creating new pervious areas, adding landscaping around walkways, sidewalks, and parking spaces, and source control measures such as use of efficient irrigation systems, covered trash and recycling containers, and providing an interior parking area. Construction noise and any resulting air quality issues will be temporary in nature. All operations of the facility will take place indoors and within the interior courtyard area.*

### **Site Development Permit Findings**

To make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the City Council must determine that:

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

*Analysis: The project is consistent with this finding, as analyzed for Conditional Use Permit finding 'a' above.*

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: The project is consistent with this finding, as analyzed for Conditional Use Permit finding 'b' above.*

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

*Analysis: The project is consistent with this finding, as analyzed for Conditional Use Permit finding 'c' above.*

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

*Analysis: The subject building provides a mixed-use project including a 190-bed commercial residential care facility with 116 assisted living residential care guest rooms and 49 memory care guest rooms, and four multi-family housing units, and will be the only structure on the site. The project design includes a modern contemporary architecture including aluminum and glass at the ground floor and variations on color, materials, projections, and recessions at the podium level, which contribute to an interesting and varied design. The façade along Gifford Avenue steps down toward the southern property line to better integrate with the adjacent single-story commercial structure.*

- 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 would front West San Carlos Street, a Grand Boulevard which serves as an east-west connector. The existing neighborhood is a mix of residential, commercial, and light industrial uses. The architecture and materials of the building are modern and the change in colors and materials provide a variation in design and help break up the massing. The façade along Gifford Avenue steps down toward the southern property line to better integrate with the adjacent single story commercial structure.*

- 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: The project is consistent with this finding, as analyzed for Conditional Use Permit finding 'g'.*

- 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 landscaping, irrigation systems, all walls and fences, utility, and trash facilities will upgrade the appearance of the neighborhood. The mechanical*

*equipment will be behind screening on the rooftop. Additionally, the transparent glazing at the pedestrian level will enhance the public street by providing activity and adding a vibrant feeling to the neighborhood.*

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

*Analysis: The project is accessible to vehicles by a driveway off Gifford Avenue and to pedestrians via the main entry on Gifford Avenue at the corner of West San Carlos Street. Thirty-one parking spaces are required, and 32 parking spaces are provided. Therefore, the amount of parking spaces provided is consistent with the requirement and adequate for the project. The project is required to widen the public sidewalks to ten feet wide along Gifford Avenue and 15 feet wide along West San Carlos Street and is required to provide street trees within the public right-of-way.*

### **Development Exception Findings**

To make the Development Exception findings pursuant to San José Municipal Code Section 20.100.1320, the Planning Commission and City Council must determine that:

The exception, subject to such conditions as may be imposed thereon, will not impair:

- a. The utility or value of adjacent property or the general welfare of the neighborhood; and
- b. The integrity and character of the zoning district in which the subject property is situated.

*Analysis: The reduced height of the loading space does not affect the exterior of the building or the compatibility to adjacent buildings in the surrounding neighborhood. Therefore, the granting of the exception for the height of the loading space will not affect the health, safety and welfare of adjacent properties or the neighborhood as whole. The project otherwise follows all development standards and requirements of the DC Downtown Primary Commercial Zoning District as referenced above. Therefore, the project will retain and promote the integrity and character of the zoning district in which the subject property is situated.*

### **Evaluation Criteria for Demolition**

Section 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;



- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
- 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:** As noted above, the project includes the demolition of all buildings and structures on site. As discussed in Site Development Permit Findings 4 and 5, the project is compatible with the surrounding neighborhood, and would not have an adverse impact. The demolition would facilitate a mixed-use project including a 190-bed commercial residential care facility with 116 assisted living guest rooms and 49 memory care guest rooms, four multi-family residential units, and a back-up generator. Re-use of the buildings would not be feasible to implement the goals of the project. Existing supply of housing would be maintained through the provision of four housing units and residential care for a greater number of people than the current housing on the site provides.*

*The changes to the General Plan land use designation and Zoning District over the Project Site are in compliance with Senate Bill 330 as discussed below. The residential buildings proposed to be demolished were analyzed by the Housing Department and determined as not subject to the Ellis Act Ordinance, and therefore no relocation assistance or other restrictions are applicable.*

*A Historic Resources Survey and Report was prepared for existing structures within and adjacent to the project site by TreanorHL. The residential buildings were constructed in 1905, 1908, and 1961, but according to the report, none of the properties within the project site, nor the adjacent properties within the boundaries of the Area of Potential Effect, appear on any local, state or federal lists of historically or architecturally significant structures and/or sites, landmarks, or points of interest. The City generally identifies a 200-foot radius from the project site as the Area of Potential Effect. None of the nearby properties within the APE appear to be eligible for the National Register of Historic Places. Accordingly, the project will not affect any properties eligible for or listed on any national, state or local historical resources register.*

### **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 Live Tree Removal

Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

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

*Analysis:* As identified above, seven existing non-native, ordinance-size trees and 14 non-ordinance trees will be removed. To construct the project, the trees will need to be removed and replaced at the City-required ratio. Based on this reason, and to accommodate the project, the trees proposed for removal cannot be preserved.

*Fifty replacement trees at 15-gallon size or 25 replacement trees at 24-inch box size are required to be replanted. Pursuant to the project landscaping plan, the development would plant a total of 26 replacement trees at 24-inch box size, which exceeds the City's Tree Replacement ratios per the table below.*

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio				
Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.				
A 38-inch tree equals 12.1 inches in diameter.				
A 24-inch box tree = two 15-gallon trees				

*The seven ordinance-size trees to be removed are of non-native species, including Glossy Privet, Tree of Heaven, White Mulberry, and Peruvian Pepper. These seven trees are required to be replaced at a ratio of 4:1, calculating to 28 replacement trees.*

*Of the remaining 14 non-ordinance trees, eight are sized between 19 and 38 inches in circumference, and are of the non-native species Tree of Heaven, Japanese Cheesewood, Olive, London Plane, and Common Fig. These eight trees will be replaced at a ratio of 2:1, calculating to 16 replacement trees.*

*The final six trees proposed to be removed are less than 19 inches in circumference, and are required to be replaced at a 1:1 ratio regardless if they are native or non-native species. This calculates to six replacement trees. The project is therefore required to provide a total of 50 replacement trees at 15-gallon size or 25 trees at 24-inch box size.*

*The project will provide 13 replacement trees at 24-inch box size at-grade and an additional 13 trees at 24-inch box size in planters. Planter details and specifications show that the containers have enough soil capacity to prevent stunting growth as the trees mature. Therefore, the project is providing 26 trees at 24-inch box size and is consistent with this requirement.*

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have 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) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Site Development Permit (collectively referred to herein as "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; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** The Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit 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, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Conditional Use Permit.

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

The City is in the process of developing financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof.

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

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

#### 4. **Housing Conditions of Approval.**

- a. The development may be subject to the Affordable Housing Impact Fee (AHIF) or subject to the Inclusionary Housing Ordinance (IHO). If the development is a rental project between 3 to 19 units, the permittee must pay the Affordable Housing Impact Fee prior to the issuance of any building permits, unless an exemption claim has been made and conditionally accepted. Rental developments are developments that do not include the filing of a tentative map,

parcel map or other plan intended to allow the separate conveyance of individual residential units or interests.

- i. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the AHIF.
  - ii. If a development qualifies for a conditional exemption to the AHIF in the approved Plan, the permittee and owner must execute and record an Affordable Housing Agreement with the City prior to the issuance of any building permits.
  - iii. 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.
  - iv. No building permit may be issued until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
- b. The development may be subject to the City's Inclusionary Housing Ordinance (IHO) or the Commercial Linkage Fee whichever applies at the time of building permits and each of the conditions below:
- i. The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.
  - ii. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
  - iii. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
  - iv. 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.
5. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a

different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

6. **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 makes a determination that such action 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.
7. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Delmas Senior Living" dated November 4, 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".
8. **Use Authorization.** Subject to all conditions herein, this Permit allows the construction and operation of an approximately 185,000-square foot mixed-use project including a 190-bed commercial residential care facility project with 165 assisted living and memory care guest rooms, four multi-family residential units, and a back-up generator, in accordance with the Approved Plan Set.
9. **Permit Adjustment Required.** This Permit shall not be effective unless prior to the issuance of any Building Permit, Permittee obtains a Permit Adjustment which addresses the following items to the satisfaction of the Director of Planning, Building and Code Enforcement: **Back-up Generator:** A back-up generator must meet the following:
  - a. Be enclosed within the building

- b. Be consistent with the Municipal Code Section 20.80.2030:
  - i. Operation of a temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
  - ii. Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
- 10. **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 conditioned.
- 11. **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 Title 20 of the San José Municipal Code.
- 12. **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.
- 13. **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.
- 14. **Tree Replacement.** The removed trees would be replaced according to tree replacement ratios required by the City, as provided in the Tree Removal Policy Consistency section herein.
- 15. **Delivery Trucks.** All delivery vendors shall use Class 4 to Class 6 trucks that can clear a 12-foot ceiling height and turning radius in the parking garage; larger trucks shall not be allowed.
- 16. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
- 17. **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.
- 18. **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.

19. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
20. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
21. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
22. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
23. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
24. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.
25. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
26. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
27. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
28. **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.
29. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
30. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient



Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

31. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
32. **Street Trees.** Street trees, as shown on Approved Plans, shall be planted on the street frontage. A permit for planting street trees shall be obtained from the City Department of Transportation, Trees and Landscaping Section, (408) 794-1900.
33. **Noise.** Prior to the issuance of any building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any building permits.
34. **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.
35. **FAA Clearance Required.** The permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA

determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

**36. 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.

**37. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of any 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 <https://www.sanjoseca.gov/your-government/departments/public-works/development-services>.

- 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. Diridon Station Area Infrastructure Impact Fee:
  - i. Associated with the implementation of the Diridon Station Area Plan (Chapter 14.35 of Title 14 of the San Jose Municipal Code) this project is subject to the City’s Diridon Station Area Basic Infrastructure Impact Fee. Projects located within the Diridon Station Area are required to pay an impact fee in categories of Transportation, Plaza, Sanitary Sewer and Storm Drainage.
  - ii. The existing 2020 Infrastructure Impact Fee, that includes all infrastructure categories, is \$6.10 per square foot of Office/R&D, \$4.08 per square foot of Retail, \$2,931 per Hotel room and \$2,735 per residential unit. This fee is subject to an annual escalation on January 1st per the Engineering News-Record (ENR) Construction Cost Index for San Francisco. This fee must be paid prior to issuance of Public Works Clearance. Credits will be applied for any infrastructure built as identified in the Diridon Nexus Study by the permittee.
- c. Transportation: See traffic memo dated 11/06/2020 summarizing the Local Transportation Analysis prepared by Hexagon Transportation Consultants dated July 13, 2020. Prior to issuance of any Public Works permits, the permittee shall satisfy the following conditions:

- i. Permittee has agreed to provide a voluntary fair-share contribution of \$55,000 towards multi-modal area improvements; addressing pedestrian connectivity crossing West San Carlos Street.
  - ii. Provide a minimum 18-foot travel way along the circular drive aisle to allow vehicles to bypass vehicles that may be stopped while dropping-off/picking up passengers.
- d. 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 four 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 latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 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. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- e. Stormwater Runoff Pollution Control Measures: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.

- ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- f. 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).
- g. 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.
- h. 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.
- i. 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 Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose 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 in the chapter.
- j. Undergrounding:
  - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Gifford Avenue prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2020 base fee is \$515 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works clearance is issued.
  - ii. The Director of Public Works may, at his discretion, allow the permittee to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Gifford Avenue. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works clearance.
- k. Street Improvements:
  - i. Construct curb, gutter, and 15-foot wide attached sidewalk with tree wells at back of curb along San Carlos Street frontage.
  - ii. Construct curb, gutter, and 10-foot wide detached sidewalk with trees in park strip along Gifford Avenue frontage.

- iii. Easement dedication will be required to accommodate the new sidewalks. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- iv. Close unused driveway cuts.
- v. Provide a 26-foot wide driveway on Gifford Avenue.
- vi. Install handicap ramp at the southwest corner of San Carlos Street and Gifford Avenue.
- vii. Provide 3-inch diameter conduit along San Carlos Street frontage to connect to future traffic signals.
- viii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- l. Downtown Construction: This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- m. Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures): At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
  - i. The following may be included with, but are not limited to, the Site Utilization Plan and Revocable Permit application:
    - 1) Site Utilization Plan and Letter of Intent: The site utilization plan shall provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent shall provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses within the Public right-of-way cannot occur within the construction site. These include the use of the right-of-way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (e.g., swinging loads over the sidewalk are not safe for pedestrians).
    - 2) Multi-Phased Site-Specific Sketches: These sketches shall show the phased closures during the course of construction with a provided

timeframe estimate of when each phase would be implemented. These sketches shall include the type and location of the work to be accomplished within the right-of-way. The exhibit shall show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.

ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:

- 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
- 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition m.i.2), above.
- 3) If the proposed lane and parking closures are a part of the Revocable Permit Application, Permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

n. 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.

o. Street Trees: The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in park strip on Gifford Avenue and in cut-outs at the back of curb on San Carlos Street. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

i. Gifford Avenue: The recommended street trees are *Tristanopsis laurina* planted 20 feet on center in park strip.

ii. West San Carlos Street: The recommended street trees are *Carpinus betulus* 'Fastigiata' planted 30 feet on center in tree wells.

**38. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. Construction Plans. This permit file number, CP20-019, shall be printed on all construction plans submitted to the Building Division.
  - b. Americans with Disabilities Act. The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. Emergency Address Card. The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e. Project Addressing Plan. Prior to issuance of any 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).
39. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the 2016 California Fire Code, or as amended and adopted by the City of San Jose.
43. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].
44. **STANDARD ENVIRONMENTAL CONDITIONS.**
- a. **Air Quality**
    - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
    - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
    - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
    - iv. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).

- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measures Title 13, Section 2485 of the California Code of Regulations [CCR]). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.

**b. Cultural Resources**

- i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the



site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- 1) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
  - 2) The MLD identified fails to make a recommendation; or
  - 3) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the PBCE.

**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.** The project shall implement the following measures to reduce impacts related to lead-based paint and asbestos:
- i. 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 building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
  - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
  - iii. All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

- iv. 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.
- v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
  - 1) 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.
  - 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, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
  - 3) 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**

Best Management Practices to prevent stormwater pollution and minimize potential sedimentation shall be applied to project construction, including but not limited to the following:

- 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.** The project applicant shall implement the following Standard Permit Conditions to minimize the impacts of construction-generated noise.
- i. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
  - ii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - iii. Prohibit unnecessary idling of internal combustion engines.
  - iv. 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.
  - v. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - vi. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - vii. Notify all adjacent businesses, 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.
  - viii. 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.

- ix. 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.
- x. Limit construction to the hours of 7:00 AM to 7:00 PM 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.

**38. Revocation, Suspension, Modification.** This Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- c. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation;
- d. 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
- e. 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**.

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**EFFECTIVE DATE**

The effective date of this Permit (File No. CP20-019) shall be the effective date of the Conforming Rezoning Ordinance for File No. C19-042, approved for publication on \_\_\_\_\_, 20\_\_ (the "Conforming Rezoning Ordinance") and shall be no earlier than the effective date of said Conforming Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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**

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

ALL OF LOTS 24, 25 AND 26, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF GIFFORD ADDITION BEING LOT 2 SUNOL PARTITION OF A PART OF THE LOS COCHES RANCHO SANTA CLARA CO. CAL.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 5, 1905 IN [BOOK K OF MAPS, AT PAGE 71](#).

[APN: 264-20-086 \(LOT 26\), 264-20-087 \(LOT 25\) AND 264-20-088 \(LOT 24\)](#)

## EXHIBIT A

### LEGAL DESCRIPTION

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

PARCEL ONE:

All of Lot 27, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

[APN: 264-20-085](#)

PARCEL TWO:

All of Lot 30, and the Westerly one-half of Lot 29, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

EXCEPTING THEREFROM all that portion conveyed to the City of San Jose, a municipal corporation, by Instrument recorded January 17, 1956, in [Book 3388, Page 453 of Official Records](#).

[APN: 264-20-083](#)

PARCEL THREE:

The Northeasterly 39.00 feet of Lot 31, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

EXCEPTING THEREFROM all that portion conveyed to the City of San Jose, a municipal corporation, by Instrument recorded January 17, 1956, in [Book 3388, Page 450 of Official Records](#).

[APN: 264-20-082](#)



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

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

All of Lot 28, and the Northeasterly one-half, front and rear measurements of Lot 29, as shown upon that certain map entitled "Map of the Gifford Addition, being Lot 2 Sunol Partition of a part of the Los Coches Rancho, Santa Clara Co., Cal.", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 22, 1904, in [Book F3 of Maps, at Page 85](#).

EXCEPTING THEREFROM all that portion conveyed to the City of San Jose, a municipal corporation, by Instrument recorded April 25, 1956, in [Book 3476, Page 623 of Official Records](#).

[APN: 264-20-084](#)