

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE, ACCESSORY BUILDING, AND THE REMOVAL OF THREE ORDINANCE-SIZE TREES FOR THE CONSTRUCTION OF SIX MULTIFAMILY UNITS ON AN APPROXIMATELY 0.3-GROSS ACRE SITE LOCATED AT THE WEST SIDE OF NORTH CAPITOL AVENUE, APPROXIMATELY 300 FEET SOUTHERLY OF BERRYESSA ROAD (967 NORTH CAPITOL AVENUE; APN: 254-29-019)

FILE NO. H18-051

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 30, 2018, an application (File No. H18-081) was filed by the applicant, Martin Quintana, with the City of San José for a Site Development Permit to allow the demolition of an existing single-family residence, accessory building, and the removal of three ordinance-size trees for the construction of six multifamily units on an approximately 0.3-gross acre site, on that certain real property situated in the R-M Multiple Residence Zoning District and located at the west side of North Capitol Avenue, approximately 300 feet southerly of Berryessa Road (967 North Capitol Avenue, APN: 254-29-019, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on March 10, 2021, notice of which was duly given; and

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

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing this City Council received in evidence a plan for the subject property entitled, "Capitol Attached Single-Family Homes" date received February 20, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement, and available on the Department's Planning Division webpage, and is available for inspection by anyone interested therein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this project:

1. **Site Description and Surrounding Uses.** The approximately 0.3-gross acre site is currently developed with a one-story single-family residence with a detached garage. The existing residence was built in 1935 and is a Spanish Colonial Revival architectural style house. The site has a driveway off North Capitol Avenue. The subject site is surrounded by multi-family residential uses to the south and east, and commercial uses to the north and west side of the subject site. The project is located along a Santa Clara Valley Transportation Authority (VTA) light rail line and is located approximately 850 feet from the Berryessa Light Rail station.
2. **Project Description.** The project consists of a Site Development Permit to allow the demolition of an existing single-family residence, accessory building, and the removal of three ordinance-size trees and eight non-ordinance size trees for the construction of six multifamily units on an approximately 0.3-gross acre site. The project includes two buildings, each with three units. The six new units would be three-story, three-bedroom residences, and each unit would have an attached two-car garage. Two additional parking spaces would also be provided. The project also includes a six-foot high wooden fence around the perimeter of the site and between the residential buildings to create private yards for each unit. Seven 24-inch box trees and six 15-gallon trees would be planted on the site.
3. **General Plan Conformance.**

The Envision San José 2040 General Plan Land Use/Transportation Diagram designation for the subject site is Mixed Use Neighborhood. This designation is applied broadly throughout the City encompassing most of the established single-family residential neighborhoods. This designation is applied to areas intended for development primarily with either townhouse or small lot single-family residences and, also to existing neighborhoods that were historically developed with a wide variety of housing types, including a mix of residential densities and forms. This designation supports commercial or mixed-use development integrated within the Mixed Use Neighborhood area. This designation should be used to establish new neighborhoods with a cohesive urban form, to provide transition between higher-density and lower-density neighborhoods, or to facilitate new infill development within an existing area

that does not have an established cohesive urban character. Existing neighborhoods with this designation are typically characterized by a prevalence of atypical lot sizes or shapes and a parcel-by-parcel development pattern where small townhouse development may exist adjacent to more traditional single-family development or more intense multi-family development.

In addition to conforming to the General Plan land use designation for the site, the project is consistent with the following General Plan and goals and policies:

- a. Implementation Policy IP-1.1: Use the Envision General Plan Land Use/ Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.
- b. Implementation Policy IP-1.3: Ensure that proposals for redevelopment or significant intensification of existing land uses on a property conform to the Land Use / Transportation Diagram.

Analysis: The project consists of a multifamily residence development. The project is subject to the development standards of the Multiple Residence Zoning District. As described in further detail in the section below, the project conforms to the development standards of the zoning district. The project meets the use and density requirements of the Mixed Use Neighborhood land use designation. The project would have a density of approximately 20 dwelling units per acre in a neighborhood of multifamily residences with a mix of densities. The project complies with development standards of the R-M Multiple Residence Zoning District and the parking requirements for multifamily residences.

4. Zoning Ordinance Conformance.

The subject site is located in the R-M Multiple Residence Zoning District.

- a. **Use.** Multifamily residences are a permitted use in the R-M Multiple Residence Zoning District.
- b. **Setbacks.** The table below shows the setbacks for Multiple Residence Zoning District. The project conforms to the following setback requirements.

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Setback	Minimum Setback Required	Setback Provided
Front	10 feet	10 feet
Side (westerly side)	5 feet	10 – 12.25 feet
Side (easterly side)	5 feet	11 feet
Rear	25 feet	25 feet

As shown in the table above, the two residential buildings are consistent with the setback requirements. Two open car spaces would be located in the rear setback. An accessory structure (trash enclosure) would be located in the rear setback area. Accessory structures have no side and rear setback requirement in residential zoning districts.

Pursuant to Section 20.30.410, unenclosed porches and stairways may extend into a front setback area not more than five feet if they do not extend more than three feet above surface grade. A six-inch-high porch on the two units along the front property line extends approximately seven inches into the front setback area. Therefore, the porch meets the front setback exception.

Pursuant to Section 20.30.400, sills, eaves, belt courses, cornices, canopies, and other similar architectural features may project horizontally for a distance of not more than two feet into the air space above the surface of the ground in any setback area. The roof eaves on the two units along the front property line extend up to two feet into the front setback area. Unit A would project 19 inches into the setback area and Unit AR would project 22 inches into the front setback area. Therefore, the eaves meet the setback exception.

- c. **Parking.** Table 20-210 in the Municipal Code states the parking requirements are as follows:

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

The project includes six three-bedroom units which requires 16 parking spaces. Pursuant to Section 20.90.220, a parking reduction of up to 20% may be granted for projects within 2,000 feet of a light rail station. The project is located on North Capitol Avenue along the light rail line. The project is located approximately 850 feet from the Berryessa light rail station. Therefore, 13 vehicle spaces would be

required. The project includes a two-car garage for each residential unit and two open parking spaces for a total of 14 vehicle parking spaces.

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

5. Residential Design Guidelines.

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

Per the design guidelines, the residences would utilize materials and colors consistent with the surrounding neighborhood. The new residences would use stucco and be painted to an earth-tone color that is consistent with the surrounding neighborhood and the new units. The project would provide covered parking spaces under the residential buildings enclosed by garage doors. The garages are designed as an integral part of the architecture and maintain the material, colors, and details used throughout the living portion of the residences.

The design guidelines state that enclosed garages that front on parking drives or parking courts should have tree pockets of not less than nine square feet. The project would provide tree pockets along the garage entries that are between 16 – 26 square feet. The project includes Jasmine shrubs in the tree pockets.

The design guidelines state projects should provide a minimum of 400 square feet of private open space for each unit. The six units would each provide between 522 – 577 square feet of private open space.

6. Council Policies.

The project is subject to Council Policy 6-30 for Public Outreach. As part of the project's public outreach, an on-site sign was installed at the project site. Additionally, the public hearing notices were mailed to property owners and tenants within 500-foot radius of the project site. The permit and plan set are available to view on the City's Planning website.

7. California Environmental Quality Act.

On February 10, 2021, the Director of Planning, Building and Code Enforcement approved a Statement of Exemption for the project. Under the provisions of Section 15303(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), Site Development Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303(b) New Construction or Conversion of Small Structures, Class 3, consists of construction and location of limited numbers of new, small facilities or structures; installation of small equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor

modifications are made in the exterior of the structure. Examples of the exemption include but are not limited to a duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units. The project is located in an urbanized area. The project involves the construction of six new residential units at the project site. The subject site is served by public services such as water, sewer, trash and is not in an environmentally sensitive area. The project site is within an urbanized area with existing conditions to sewer, water, and electricity service. The project site is not within close proximity to any rivers or waterways or is located in biological sensitive habitats. The project would not result in significant impact to applicable resources such as air quality, biological resources, cultural resources, hazards and hazardous materials, and noise. Furthermore, for the reasons mentioned above, the project would not result in significant impacts during construction or operation. As the project would result in the construction of a multi-family development with a maximum 6 dwelling units, the project qualifies for Section 15303(b) of the CEQA Guidelines.

Pursuant to Section 15300.2(f) of the CEQA Guidelines, a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The existing residence is more than 50 years old (built in 1935). The City's Historic Preservation team reviewed and determined that the residence does not qualify as eligible for listing in the California Register of Historic Resources because its historic integrity would be based on the character of the surrounding area. Since the other surrounding buildings have been demolished, the individual structure does not qualify as a cultural resource.

8. Site Development Permit Findings.

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

- a. The 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. As described above, the project is consistent with the General Plan; and

Analysis: As discussed in the General Plan conformance section above, the project is consistent with the General Plan land use designation of Mixed Use Neighborhood, as the multifamily residence meets the allowable density and provides new infill development in a neighborhood with commercial and multifamily residence properties.

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

Analysis: As discussed in the Zoning Ordinance Consistency section above, the project conforms in all respects to the development standards of the Multiple Residence Zoning District. The attached multi-family residences are consistent with the setback, height, and parking requirements.

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

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

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

Analysis: The project consists of demolishing all buildings on site for the construction of six residential units. All six units would be three stories. The two buildings (each containing three attached units) are located along the north and south property lines and are of compatible scale with one another. The two buildings would be of similar mass and scale. As discussed above, the elevations of the buildings would be aesthetically harmonious as they contain the same materials, colors, and architectural features. The driveway is located between the two buildings. Parking would be located within the residential units, with each unit having a two-car garage. There are also two additional parking spaces located in the rear setback area. The buildings, parking, and landscaping are compatible with each other and function as one project. The project includes a new six-foot high wooden fence along the perimeter of the project site.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood; and

Analysis: As discussed above, the project is compatible and aesthetically harmonious with the surrounding mixed use neighborhood in that there is a mix of commercial, single-family residence, and multifamily residences. The project provides two new three-story multifamily residential buildings that incorporate stucco and earth tone colors readily blends in with what is generally found in the existing surrounding neighborhood.

- f. 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; and

Analysis: As discussed above, the project provides a mix of landscaping and irrigation throughout the site. The project would plant 13 trees, shrubs, and groundcover. The trash enclosure is located in the rear setback area away from the public right-of-way and is behind the northly building. The trash enclosure would be surrounded with new trees. The project includes a six-foot high wooden fence along the perimeter of the project site and between the residential units to create private yards for each unit.

- g. Traffic access, pedestrian access and parking are adequate; and

Analysis: The project site is accessible from North Capitol Avenue. A driveway would be located between the two new residential buildings. The project provides 14 parking spaces, which meets the parking requirements.

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

Analysis: The project would be located on a site designated for residential use and includes of the replacement of a single-family house and accessory structure with six residential units. The development is located in an urbanized area that is adequately served by all required utilities and public services, and the Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. The project will implement standard permit conditions in accordance with City standards and regulations for construction and operation. Standard construction conditions and stormwater control measures would apply to this project in order to minimize construction activities that may affect the surrounding area relating to noise, air quality, and water quality. Therefore, the project will not have unacceptable negative effects on adjacent properties.

9. Demolition Findings.

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

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

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

Analysis: The project includes demolition of the existing single-family residence and accessory structure to allow the construction of six new residential units. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The project would create a multifamily residence which would be compatible with the surrounding neighborhood. The project would increase the housing stock. The existing residence was built in the Spanish Colonial Revival architectural style in 1935 as part of the Shaw Orchard Tract. The residence is not listed in the City's Historic Resource Inventory,

Since the existing residence is more than 50 years old, the City's Historic Preservation team reviewed and determined that the residence does not qualify as eligible for listing in the California Register of Historic Resources because its historic integrity would be based on the character of the surrounding area. Since the other surrounding buildings have been demolished, the individual structure does not qualify as a cultural resource.

The project site is surrounded by multi-family residences. The rehabilitation or reuse of the existing residence would prevent the addition of the five units. The project would provide replacement buildings and would not have an adverse impact on the surrounding neighborhood.

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

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

Analysis: The project would remove eight non-ordinance size trees and three ordinance-size trees. The non-ordinance size trees include three orchard trees

(Loquat, Meyer Lemon, and Lemon) and five non-native trees (two Italian Cypress, one Irish Yew, one Euonymus, and one Bottle Brush). The three ordinance-size trees consist of two native trees (Incense Cedar and Coast Live Oak) and one orchard tree (Plum). An arborist report was prepared on March 20, 2020 by Nigel Belton, Consulting Arborist. The removal of the trees would allow the two new buildings and a new driveway to access the new units. Six of the trees are located within the project footprint or within five feet of the project structures. The Incense Cedar is located within five feet of the existing residence and would be within the footprint of the new building. The incense cedar has poor foliage and is in declining health. The Coast Live Oak tree would also be within the footprint of the new building and would restrict the addition of residential units. The Oak tree has a fair structural condition having developed four scaffold limb structures, one of which has trapped bark. Thirteen 15-gallon trees would be required for the removal of the three ordinance-size trees. The replacement trees required for the non-ordinance size trees are seven 15-gallon trees.

Between the non-ordinance size trees and ordinance-size trees removed, a total of twenty (20) 15-gallon replacement trees, or equivalent, would be required. Two 15-gallon trees may be replaced by one 24-inch box tree. The project applicant would plant seven 24-inch box trees and six 15-gallon trees. The replacement trees would be five Flowering Ash trees, two Flowering Plum trees, and six Olive Trees.

In accordance with the findings set forth above, a Site Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby 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), should the permittee fail to file a timely and valid appeal of this Site Development Permit ("Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire four (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. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the permittee agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **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.
5. **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.
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 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 with Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "Capitol Attached Single-Family Homes" dated received February 20, 2021, 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. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
12. **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, Building and Code Enforcement.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
14. **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.
15. **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.

16. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
17. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
18. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
19. **Fences Standards.** Fences shall be erected in accordance with the standards established on the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the City of San José Municipal Code.
20. **Homeowner's Association.** A Homeowner's Association shall be established for maintenance of all common areas, including driveways/courtyards, landscaping and the community amenity area. A copy of the Development Permit, the accompanying Approved Plans, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner's Association by the Permittee no later than 30 days upon completion of each phase
21. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
22. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
23. **Recycling.** Scrap construction and demolition materials shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, and including information available haulers and processors.
24. **Storm Drain Protection.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain system flows to the Bay.
25. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
26. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning,

Building and Code Enforcement. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

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

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

28. Fire Clearance for Issuing Permits. Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

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

- a. *Construction Plans.* This permit file number, H18-051 shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
 - e. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - f. *Other.* Such other requirements as may be specified by the Chief Building Official.
30. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee 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: <http://www.sanjoseca.gov/devresources>.
- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. **Transportation:** This project qualifies as a Small Infill Project because it would construct 25 single-family attached units or less. This project would not require a detailed CEQA transportation analysis because the project is expected to result in less-than-significant VMT impacts based on Table 1 - Screening Criteria for CEQA Transportation Analysis for Development Projects (Transportation Analysis Handbook 2018, pg. 11).
 - c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be

reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José 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. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- iv. Project shall conform to the City's Solid Waste Enclosure Guidelines (www.sanjoseca.gov/home/showdocument?id=15629). This includes covering all trash enclosures and connecting all drains within trash enclosures to the sanitary sewer system.

d. Stormwater Runoff Pollution Control Measures:

- i. This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls.
- ii. A design of the pervious pavement by a licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.

e. Stormwater Peak Flow Control Measures: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

f. Flood Zone: AO, Depth 1 Foot:

- i. Elevate the lowest floor of each unit to 2 feet or more above the existing highest adjacent grade to the proposed unit (depth of flooding plus 1 foot per 2016 CRC).
- ii. An Elevation Certificate (FEMA Form 086-0-33) for each proposed unit, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built unit, based on finished construction is required prior to issuance of an occupancy permit.
- iii. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated 2 feet or more above the existing highest adjacent grade

- to the proposed structure (depth of flooding plus 1 foot per 2016 CRC) or protected from flood damage.
- iv. Construction materials used below the depth of flooding plus 1 foot must be resistant to flood damage.
 - v. Provide vent openings for all enclosures below the depth of flooding (ex. crawlspaces, at-grade garages). The design must either be certified by a registered professional engineer or meet the following requirements:
 - a) Provide flood vent openings on at least two exterior walls of each enclosure to automatically equalize the lateral pressure of the floodwaters.
 - b) Provide a minimum of two vent openings having a total net area of not less than one square inch per one square foot of enclosed area.
 - c) The top of each opening shall be no higher than twelve inches above the exterior adjacent grade.
 - g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
 - h. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits," contained within the chapter.
 - i. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Capitol 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 2021 base fee is \$532 per linear foot of frontage and is subject to change every January 31st 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.
 - j. **Street Improvements:**
 - i. Construct 12-foot wide detached sidewalk with 4.5-foot wide park strip along Capitol Avenue project frontage. Provide approximately 2-foot wide street dedication along Capitol Avenue project frontage to accommodate new sidewalk width.
 - ii. Construct 26-foot wide City Standard driveway along Capitol Avenue project frontage.

- iii. Close unused driveway cut(s).
- iv. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- l. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only. The recommended street trees are Tristaniopsis laurina, planted 20 feet on center within park strip, or contact the City Arborist for alternatives.

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

m. **Private Streets:**

- i. Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
- ii. At the implementation stage, private street plans shall reflect the following:
 - 1) Provide profile of proposed private street.
 - 2) Provide crown or cross slope street for the private drive aisle to avoid the use of valley gutter. Valley gutter across circulation streets is not permitted. Standard hooded inlets shall be used.
 - 3) The cross slope of the private drive shall be 2% minimum.
- iii. Permittee to submit Geotechnical Report to support the use of Permeable Concrete Pavers for Private Street.

n. **Referrals:** This project should be referred to the Valley Transportation Authority.

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

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

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

Effective Date

The effective date of this Permit (File No. H18-051) shall be the effective date of the Rezoning Ordinance for File No. C18-030, passed for publication on _____, 2021 (the "Rezoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance

APPROVED 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

For APN/Parcel ID(s): 254-29-019

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

BEGINNING AT AN IRON PIPE IN THE SOUTHWESTERLY LINE OF CAPITOL AVENUE DISTANT THEREON S. 41° 26' 30" E. 398 FEET FROM THE INTERSECTION OF SAID LINE OF CAPITOL AVENUE WITH THE SOUTHEASTERLY LINE OF BERRYESSA ROAD, SAID POINT OF BEGINNING BEING THE SOUTHEASTERLY CORNER OF THE 0.945 ACRE TRACT OF LAND CONVEYED BY THOMAS BECK, ET UX, TO L. E. HANCHETT BY DEED DATED JANUARY 9, 1906 AND RECORDED JANUARY 9, 1906 IN BOOK 302 OF DEEDS, AT PAGE 261 IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE ALONG SAID LINE OF CAPITOL AVENUE S. 41° 26' 30" E. 78.81 FEET TO A 1" IRON PIPE; THENCE LEAVING SAID LINE OF CAPITOL AVENUE AND RUNNING S. 46° 53' 30" W. 185 FEET TO AN IRON PIPE; THENCE PARALLEL WITH THE CENTER LINE OF CAPITOL AVENUE N. 41° 26' 30" W. 91.73 FEET TO AN IRON PIPE IN THE SOUTHEASTERLY LINE OF SAID 0.945 ACRE TRACT; THENCE ALONG SAID SOUTHEASTERLY LINE N. 50° 54' E. 185.07 FOOT TO THE POINT OF BEGINNING AND BEING A PORTION OF 500 ACRE LOT 62.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO SANTA CLARA VALLEY TRANSPORTATION AUTHORITY IN DEED RECORDED NOVEMBER 27, 2000 IN INSTRUMENT NO. 15470552 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID FOSTER PARCEL; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL, SOUTH 52° 13' 51" WEST, 37.95 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE, SOUTH 41° 57' 54" EAST, 51.00 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 992.00 FEET; THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01° 45' 44", FOR AN ARC LENGTH OF 30.51 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG SAID SOUTHEASTERLY LINE, NORTH 48° 05' 51" EAST, 35.94 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL; THENCE LEAVING SAID SOUTHEASTERLY LINE, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL, NORTH 40° 14' 09" WEST, 78.81 FEET TO THE POINT OF BEGINNING.