

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF AN 18-STORY COMMERCIAL BUILDING WITH APPROXIMATELY 12,771 SQUARE FEET OF COMMERCIAL RETAIL AND APPROXIMATELY 482,026 SQUARE FEET OF COMMERCIAL OFFICE, AN ALTERNATIVE PARKING ARRANGEMENT, AND A DOWNTOWN DESIGN GUIDELINE EXCEPTION ON AN APPROXIMATELY 1.49-GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF SOUTH MARKET STREET AND EAST SAN CARLOS STREET (282 SOUTH MARKET STREET)

FILE NO. H19-033

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 23, 2019 an application (File No. H19-033) was filed by the Robert Tersini, on behalf of SI 58, LLC, for a Site Development Permit to allow the construction of an 18-story commercial building with approximately 12,771 square feet of commercial retail and approximately 482,026 square feet of commercial office, an alternative parking arrangement, and a Downtown Design Guideline exception on an approximately 1.49-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located at the northeast corner of South Market Street and East San Carlos Street (282 South Market 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 application on March 24, 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 development plan for the subject property entitled, "Block 8 282 S. Market Street San José, California," dated revised on December 8, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

- 1. Site Description and Surrounding Uses.** The subject site is currently used as a surface parking lot and is located on the northeast corner of South Market Street and East San Carlos Street. The site shares a property line with the Four Points by Sheraton Hotel (The Montgomery) and an apartment building to the north. South Market Street and a park (Plaza de Cesar Chavez) are situated to the west. South First Street, Federal Court, and other governmental offices are located to the east. Lastly, West San Carlos Street, Westin San José/St. Claire Hotel, the St. Claire Apartments/St. Clair Building, the Dohrman Building/Trinkler-Dohrman Building, the Valley Title Building/Hale's Department Store, are located to the south and southeast of the site (282 South Market Street).
- 2. Project Description.** The project would remove the existing surface parking lot and construct an 18-story high-rise tower with approximately 12,771 net ground floor commercial square feet, six levels of parking, approximately 482,026 net commercial office square feet from floors 8 through 18, and a rooftop outdoor amenity space. To access the parking, the vehicular ingress and egress into the project site would be from South Market Street located on the northwest corner of the project site. The total area of the building would be up to approximately 916,273 gross square feet. To accommodate the required number of parking spaces, the project incorporates an alternative parking arrangement by including tandem and stacker parking spaces. The project requests an exception to one Downtown Design Guidelines and Standards as described further below. The 18-story building would have a maximum height of approximately 295 feet with a floor area ratio (FAR) of 14.1.
- 3. General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Downtown. The Downtown

designation supports, office, retail, service, residential, and entertainment uses that enhance the “complete community” in Downtown and promotes bicycle circulation and increased transit ridership. The Downtown General Plan designation allows for a maximum of 800 dwelling units per acre with a maximum floor area ratio (FAR) of 30.0. This project would provide commercial offices along and a mix of ground floor commercial, which is designed to allow commercial retail or services.

Analysis: The project is consistent with the uses and FAR supported by the Envision San José 2040 General Plan’s Downtown land use designation. The development fosters a “complete community” in Downtown by increasing jobs in Downtown and activating the development’s ground floor with a storefront design and active ground floor uses. The project also includes a Transportation Demand Management plan that promotes transit ridership. Additionally, the project would have a FAR of approximately 14.1, making it consistent with the General Plan land use designation of Downtown.

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

General Plan Strategies and Policies

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

Analysis: The development includes approximately 916,273 gross square feet of commercial office and retail development in the Downtown area, which would foster a “complete community” with respect to locating jobs and amenities in an area surrounded by retail, residential, entertainment, and open space uses. As an identified Growth Area, Downtown is intended to be a place for people to live, work, and visit. To accomplish this goal, there needs to be opportunities for all types of uses including office and commercial/retail uses. The project’s commercial/retail space would serve Downtown residents, employees, and visitors while the office space would support existing and future Downtown businesses and entertainment venues. The intense office space would increase the City’s jobs-to-employed resident ratio and strengthen Downtown San José as a regional job center.

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

Analysis: To mature into the great place envisioned by the General Plan, Downtown projects need to facilitate the growth of Downtown as a regional job center. As an identified Growth Area, Downtown is intended to be a place for people to live, work, and visit. To accomplish this goal, there need to be opportunities for all types of uses, including office and commercial/retail uses. The project's commercial/retail space would serve Downtown residents, employees, and visitors, while the office space would support existing and future Downtown businesses and entertainment venues. The intense office space would help increase the City's jobs-to-employed resident ratio and strengthen Downtown San José as a regional job center. The flexibility of tenant spaces sizes would make it easy for a variety of different tenants to move into the development and provide these additional amenities to the residents, visitors, and workers in the Downtown area.

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

Analysis: The development's architecture and site plan layout are designed to complement and further enliven the surrounding Downtown area. The entire ground floor is creating approximately 12,771 square feet of tenant space with various sizes to accommodate for a variety of use, adding to the Downtown amenities for residents, workers, and visitors. The project's design, mass, on- and off-site improvements would reinforce the site and its surrounding area as a focal point in Downtown by improving pedestrian and bicycle circulation, supporting active ground floor uses, and supporting an intensive employment use in the neighborhood.

The ground floor of the development is designed to support and maximize social interactions. The project's frontages would be comprised predominantly of active uses including lobbies, retail spaces, and service spaces. The project frontage is designed with high transparency to reduce barriers between the public realm and private development.

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

Analysis: The project site is in close proximity to several transit options. There are several bus lines within a quarter mile of the project site; Diridon Station is within a mile of the project site; the San Antonio Light Rail Station is approximately 250 feet from the project site. The project includes a Transportation Demand Management Plan that promotes transit ridership by incorporating a transit use

incentive program that provides VTA SmartPasses to employees. The additional ground floor retail space would provide residents and workers in the Downtown area with more amenities which would get people out of their cars.

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

- g. Downtown Urban Design Policy CD-6.1:** Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.
- h. Downtown Urban Design Policy CD-6.2:** Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
- i. Downtown Urban Design Policy CD-6.6:** Recognize Downtown's unique character as the oldest part the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.

Analysis: The project has a FAR of 14.1 with a maximum height of approximately 295 feet, making this a very dense commercial project and requiring Federal Aviation Administration Part 77 clearance for this height prior to approval for construction as discussed below. This amount of density would contribute to Downtown's growth as a vibrant urban area, and help the City actualize its vision for the Downtown core. The project has undergone extensive design review so that its scale, quality, and character strengthen Downtown's status as an urban center, as discussed in the Design Guidelines conformance section. The building would be a recognizable part of the skyline as it has a strong design presence of a window panel system, helping to shape the overall massing of the tower and offers a unique tiered tower approach with lighting and sky gardens in a way that is unique in Downtown San José.

- 4. Zoning Conformance.** The project site is located in the DC Downtown Primary Commercial Zoning District. This zoning district permits commercial office, commercial retail projects, and alternative parking arrangements with the issuance of a Site Development Permit. The alternative parking arrangement includes the use of tandem parking spaces and stackers provided completely within the building on floors 2 through 6. The DC Downtown Primary Commercial Zoning District has no minimum setback requirements. Additionally, the project site is partially within the Ground Floor

Active Use Area Overlay, which regulates ground floor uses and exterior building design within the overlay areas, as identified in Section 20.70.100, Table 20-140 and Section 20.70.520 of the San José Municipal Code. The overlay is on the project's West San Carlos and South First Street frontages. These portions of the project site are required to include ground floor "active uses" as identified in Section 20.70.100 and Table 20-140 of the San José Municipal Code. The development is also required to have storefront style façade design and window transparency.

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

Height and Setbacks

Section 20.70.210 of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is limited only to the height limitations necessary for the safe operation of the San José International Airport and the requirements of FAA Part 77 as discussed in Section 20.70.200 of the Municipal Code. The project would be 295 feet in height. Conditions of approval require the project applicant to secure required FAA and aviation clearances for the building's height prior to construction.

Parking

Commercial offices require 2.5 vehicle spaces per 1,000 square feet of net floor area and one bicycle space per 4,000 square feet of net floor area of office space. Commercial retail uses have no minimum parking requirement. Based on the net floor area of 482,026 square feet the project requires 1,206 vehicle parking spaces and 136 bicycle parking spaces. The project provides 1,206 vehicle parking spaces and provides 139 bicycle parking spaces. The project's conformance to these development regulations are further discussed below in the findings.

Historic Landmarks Commission

Under Section 20.70.110, new structures exceeding 150 feet and a FAR of 6:1 constructed within 100 feet of a City landmark shall be reviewed by the Historic Landmarks Commission (HLC). The project site is immediately south of the historic Montgomery Hotel (now known as Four Points by Sheraton San José Downtown), a designated San José City Landmark and a National Register and California Register listed property. The Federal Building, which is listed on the City of San José's Historic Inventory, is located across South First Street from the project site. The Valley Title Building (known as Hale's Department Store) is listed as a Structure of Merit and is

located on the southeastern side of the South First Street and West San Carlos intersection, diagonally opposite from the project site. The Westin San José Hotel (known as the St. Claire Hotel) and St. Claire Apartments are located across West San Carlos Street and are City Landmarks.

On December 4, 2019, the project was considered by the HLC for an “early referral” discussion and input. At the HLC hearing, Commissioners offered comments related to design options and suggestions on what should be considered. These comments included an overall favorability towards the project, with concerns including massing, the extensive use of glass material used in contrast to the historic buildings nearby, consideration of using additional materials found in the nearby historic structures, the height contrast with the St. Claire and Montgomery, requests to focus on first floor and the pedestrian experience, switching the placement of the higher part of the tower to a location with more compatible heights, and incorporating different materials toward the reveal corners where the glass curtain wall is parted to expose the corner of the parking podium. One member of the public, Andre Luthard from Preservation Action Council – San José (PAC*SJ) supported the redevelopment of the site and requested more consideration towards emphasizing consistency with the nearby historic buildings and not just the Montgomery Hotel. Mr. Luthard also suggested reorienting the height maximums to the opposite side of site in order to help scale down the building next to the adjacent recourse.

In response to these comments, the applicant has revised the design to include swooping facade treatments that are referred to as “veils” or revealing corners, with the intent to relate in size, scale, and sense of materials with the lower elevations of the surrounding historic buildings, and to contribute to the pedestrian emphasis to the urban Downtown. The upper five levels of the two taller points have also been revised with a change of material color, intended to visually group the highest floors together. The revised storefront areas to note include textured precast panels represented horizontally, painted metal belt course and canopy, textured precast panel-clad interior columns, and glazed aluminum storefronts.

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

Chapter 2 of the Downtown Design Guidelines and Standards outlines the framework and design settings applicable to the project site. West San Fernando Street and Park Avenue are designated “Primary Addressing Streets”, South Market Street is an “Urban/Park Plaza Frontage”, and South Almaden Boulevard is a “Secondary Addressing Street” pursuant to the Downtown Design Guidelines. A Primary Addressing Street is a primary commercial street that includes retail and other active ground floor uses. A Secondary Addressing Street is a street with a commercial or

residential focus and it may provide some active ground floor uses but retail is not the street's primary focus. An Urban Park/Plaza Frontage is a frontage whose façade forms the urban framework for an existing civic space in Downtown; this façade should create a sense of enclosure for the civic spaces. Other applicable framework and design settings include:

- South Market Street is an "Image-Defining frontage" and an "Urban Park/Plaza Frontage."
- West San Carlos and South First Street are Primary Addressing Streets.
- The project has Historic adjacency; the project is adjacent to or near the Westin San José/St. Claire Hotel, the St. Claire Apartments/St. Clair Building, the Dohrman Building/Trinkler-Dohrman Building, the Valley Title Building/Hale's Department Store, the Twohy Building, and the Four Points by Sheraton/Montgomery Hotel.
- West San Carlos is a Natural View corridor. South First Street is an Urban View corridor.
- West San Carlos and South First Street are Enhanced Lighting Corridors. South Market Street is an Image-Defining Frontage.

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

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

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

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

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

Analysis: Consistent with the design standards, the development is less than 2 acres and less than 300 feet in all sides of the development. The building mass extends throughout the majority of the site except for vehicle circulation and would not be constructed within an existing public right of way along the view corridor. The project is consistent with the 70% streetwall requirement for a Primary Addressing Street on each street frontage and the building would be located within 10 feet or less of each street facing property line. All loading docks and service areas are interior and away from Public Space.

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

Analysis: Consistent with the Design Guidelines, the development places ground floor active uses along all the site's public frontages through a combination of retail, lobby, and active use tenant leasable space. All ground floor tenant and retail spaces would be outfitted with warm shell construction, making the space "move-in ready" for future users. The project limits the non-active uses along project frontages (such as utility rooms and vehicle driveways). Finally, the project includes pedestrian and bicycle entrances around and through the site including multiple entrances located on the ground level for easy and welcoming access. The pedestrian entrances are wide, accommodate bicycle storage, and provide pedestrian access through and around the building.

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

Analysis: POPOS are privately-owned outdoor spaces that function as a public space, but may have limited hours of availability. Consistent with the Design Guidelines, the project includes a POPOS on the ground floor at the intersection of South First Street and West San Carlos Street. This open space is publicly accessible and includes an informal gathering space for people-watching, dining, and enjoying the outdoors. The space has been designed to complement the future retail/commercial uses on the ground floor of the development and to support seating.

Consistent with the Vehicle and Bicycle Parking Location standards, short-term bicycle parking would be located along the project's frontages and long-term bicycle parking would be located in secured ground floor bicycle rooms separated from the parking garage and easily accessible and identifiable from the project's frontages.

Bicycle rooms would include signed entrances indicating bicycle parking is available and the bicycle rooms would have access to building lobbies.

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

Analysis: Consistent with the Design Guidelines, the overall architecture of the development is designed to have pedestrian access along each street entrance. Vehicular access is located further into the site, accessed from a driveway located on South Market Street, and the service entrance is accessed from South First Street. The entrances to the parking levels and services such as loading and trash are grouped next to each other away from the street frontages to further minimize the impact of this inactive use from the street. Bicycle entrances are also accessible on multiple street frontages.

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

Analysis: Consistent with the Design Guidelines, the development incorporates strong harmonious architecture throughout the development and along all the project's frontages consistent with this chapter's sections and standards. The building massing and volumes are articulated to reduce the perception of one building and to read as several thinner volumes, which contribute to the compatibility of the variation of lower scale and high-rises in the immediate area. The top of the building is differentiated from the remainder of the building through the use of tiered height maximums and the use of sky gardens. The ground floor includes a revealed corner design of horizontal panels to accentuate the storefronts by framing the transparent glass of each tenant space

In terms of historic agency, the building design of the project does not include a stepped podium mass but is articulated with exterior elements that relate visually in dimension to the height, width, and massing scale of the historic buildings nearby. The "veil" elements of the window panel system provide depth in the façade as well as emphasizing the lower floors of the building at datum lines that relate to the historic surrounding context. The curving elements are made up of planar and orthogonal elements which are compatible in size, materials, and scale with the historic context. While the building does not have applied cornices, there is a change of materials between the retail and lobby display level and a recessed revealing corner area that transitions in transparency. The materials correspond with the ground-level cornice lines of the adjacent historic buildings and the proposed ground floor design also includes detailing, such as awnings, that supports the continuity of streetscape scale and transom heights.

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

Analysis: Consistent with the Design Guidelines, the façade incorporates a complex vision window wall system that allows for subtle curves in both the horizontal and vertical dimension to soften the look and feel of the building. The window wall system contributes to reducing the perception of one building and complements the surrounding buildings with a new typology that provides excellent visibility to and from the park. This design continues to the ground floor, where the curved windows open up to reveal textured precast horizontal panels, metal canopies, and glazed aluminum storefronts, which bring down the scale of the building to the street level.

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

Analysis: Consistent with Section 4.4.1, the façade incorporates a complex vision window wall system that allows for subtle curves in both the horizontal and vertical dimension to soften the look and feel of the building. The window wall system contributes to reducing the perception of one building and complements the surrounding buildings with a new typology provides a variation in heights along each corner of the site. Two roof top gardens are also featured on top of the building and overlook the Plaza de César Chávez.

The project does not include through-window and through-wall air conditioning or heater units nor mirrored glass, consistent with this chapter. The building would be required to comply with bird-safe design measures, and due to its distance away from the Guadalupe River (approximately 0.3 mile), possible collisions with new buildings would not result in substantial impacts on regional bird populations.

The development's ground floor materials include painted metal panels, painted metal canopies, glazed aluminum storefronts, and textured precast horizontal panels and were selected to reflect existing materials and color palettes in the project's neighborhood context. Parking garage driveways are designed to reduce off-site queueing and conflicts with pedestrians and bicyclists. The location and design of the vehicular driveways have been coordinated with the City's Departments of Public Works and Transportation. Garage exhaust would be vented out from the window wall system on each parking level floor and the venting design has been integrated into the building design. Roof top mechanical equipment would also be screened within a

steel structure screening system, using low intensity non reflective colors and organized as a component of the overall building architecture.

The development complies with pedestrian and building lighting design standards. The development's pedestrian lighting includes illumination to accentuate architectural features such as lobby entryways, to provide a safe pedestrian experience. Additionally, the pedestrian walkways are lit with a variety of lighting features. The development includes simple exterior façade lighting along the top of the building to add to the city skyline but not detract from the Gateway sites designated in the Downtown Design Guidelines. This permit does not include commercial signage; however, future signage would be reviewed for compliance with the Municipal Code and Downtown Design Standards.

Exception: *The project includes exception requests to Standard 4.4.6a (Parking Garages) which is explained below, along with an explanation of how the findings to approve the exceptions in accordance with Section 1.4 of the San José Downtown Design Guidelines are met: a) There is a physical constraint or unique situation that 1) is not created by the project applicant or property owner; and 2) is not caused by financial or economic constraints and considerations. B) Approving the waiver will not impair the integrity and character of the neighborhood in which the subject property is located or create a safety hazard. C) The proposed project meets the design standard at issue to the extent physically feasible. D) the proposed project meets all other guidelines and standards in the Design Guidelines. Details are summarized as follows:*

Primary Addressing Streets and Urban Park/Plaza Frontage require occupied space of at least 20 feet in depth on the same level as a parking garage. The site is bordered by West San Carlos and South First streets, which are Primary Addressing Streets, and by South Market Street, which is an Urban Park/Plaza Frontage. Therefore, all three sides of the project would require 20 feet in depth of Occupied Space on every parking level. The project has street frontages of less than 200 feet on both South Market Street and South First Streets, while the West San Carlos Street frontage is less than 300 feet, making it difficult to provide parking with enough circulation on each level in addition to Occupied Space along each frontage. The physical constraints of the project site make it infeasible to comply with the standard because with Occupied Space along three out of the four building facades, the space available for parking itself would be significantly reduced, and the programming on each floor for Occupied Space would not be desirable due to the fact that it would be difficult to access, as Elevators are situated in the middle of the building in order to accommodate for the maximized use of active ground floor space. These physical constraints are unique circumstances for which the project seeks an exception to the Occupied Space required along South Market Street, West San Carlos, and South First Street consistent with the first exception finding that there is a physical constraint or unique situation not caused by the applicant or financial reason. In accordance with the second and third exception finding, the street walls along all three

frontages are intended to respond to its urban environment to enhance the neighborhood's public space character, so approving the waiver will not impair the integrity and character of the neighborhood or create a safety hazard and the project meets the design standard at issue to the extent physically feasible. Additionally, the overall exterior design aesthetic is a window panel system that is not altered, diminished, or reduced on the parking levels, making the office parking levels nearly indistinguishable from the occupied office levels. Consistent with the third exception finding that the project meets the design standards to the extent feasible, the project maximizes active use on the ground level by internalizing all utility services and loading areas, with vehicular ingress and egress accommodated by a driveway off South Market Street and thereby shielded from view from the street. Finally, this is the only exception requested, so the final exception finding for this project can be made because the project meets all other standards and guidelines to the maximum extent possible.

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

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

Analysis: Consistent with the Active frontage requirements, every street frontage for the project site would exceed the minimum 80% active frontage requirements. South First Street has approximately 88 percent active street frontage. West San Carlos has approximately 100 percent active street frontage. Lastly, South Market Street has approximately 85 percent active street frontage. In terms of design, utility and mechanical or other service spaces have been located within the interior part of the

building where only an access door way is provided to each such type of use. Each retail space is flexible to accommodate a variety of entry door locations, and all entries have direct access to public space.

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

Analysis: Consistent with the Design Guidelines, individual lobbies are identifiable with extra framing, and distinctive entry portals with recessed doorway areas. These pedestrian entries are scattered throughout the site for the ground floor retail and tenant spaces. Bicycle lobbies are identifiable with distinctive architectural entrances with extra framing and are internally connected to the building lobby consistent with the design standards. Lobby entrances are located along South Market Street and West San Carlos Street. South Market Street includes a loading area where pedestrians can use this location as a drop-off/pick-up area to avoid blocking traffic or the sidewalk.

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

Under City Council Policy 6-30, the project is a large development proposal. Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. A community meeting was held to discuss the project on March 5, 2020 at the Martin Luther King Library. The community meeting was coordinated with Council District 3, and Council District staff attended the community meeting. Comments from the public were received during the community meeting and addressed by staff.

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

- 7. Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (Draft EIR). The Notice of Preparation (NOP) was circulated from February 19, 2020 to March 20, 2020. The Draft EIR itself was circulated for public review and comment from November 23, 2020 through January 11, 2021. The Draft EIR analyzed more than what the current project description is noted above by including analysis for the demolition of the existing surface parking lot and the construction of a mixed-use office building up to 295 feet tall totaling approximately 1,049,845 square feet, including up to 16,375 square feet of ground floor commercial, 627,210 square feet of office space, and up to eight floors of below and above-grade parking all on an approximately 1.5-gross acre site.

The City received three (3) written comment letters during the public comment period. Comments were submitted by three agencies and organizations which were Santa Clara Valley Transportation Authority (VTA), Valley Water, and Pacific Gas & Electric Company (PG&E). Most of the issues raised relate to improving existing pedestrian and bus stop improvements and recommending dewatering system design parameters for construction. None of the comments received address an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address dewatering suggestions and updated PG&E information.

Additionally, the City responded to all comments received on the Draft EIR and incorporated them into the First Amendment to the Draft EIR. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The Draft EIR and First Amendment to the Draft EIR are available for review on the project page on the City's Active EIRs website at: www.sanjoseca.gov/activeeirs.

The following discussion outlines additional environmental impacts and detailed as discussed in the Final EIR.

Identified Significant Unavoidable Impacts

The Draft EIR found that the project would result in a significant and unavoidable shade and shadow impact on Plaza de Cesar Chavez due to shading more than 10 percent. Due to the size and placement of the proposed project, there are no suggested feasible mitigation measures to reduce the shade and shadow impact. Therefore, a Statement of Overriding Considerations is required. The Draft EIR identified potential environmental impacts to air quality, cultural resources, hazardous materials, and noise. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project, these impacts are reduced to less than significant levels.

Environmental Impacts and Mitigation Measures

As part of the certification of the Final EIR, the City Council would need to approve a related Mitigation Monitoring and Reporting Program (MMRP) for the project. The mitigation measures for the project includes construction air quality reduction by using higher tiered equipment, subsurface exploration to identify potential archeological finds, soil testing and Site Management Plan prior to construction, and vibration and noise monitoring.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an

Draft EIR is not “significant” unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

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

8. FINDINGS

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

1. Site Development Permit Findings

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

Analysis: As discussed above, the project is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial office and retail at high densities. The project is also consistent with the various General Plan policies listed 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: As discussed in detail herein, the project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District requires no minimum setbacks, and the project proposes zero setbacks on all three project frontages facing South Market Street, South First Street, and West San Carlos Street. The building would be set back approximately 26 feet from the northern property line, which is shared with the hotel and the apartment building. The project applicant has applied for a Determination of No Hazard with the FAA, indicating that the highest part of tower is 295 feet. The Site Development Permit contains conditions stating that this No Hazard Determination must be issued by the FAA prior to the issuance of Building Permits. Further, and requires that any permit conditions that come as a result of the No Hazard Determination will be incorporated into the project through a permit adjustment.

The project provides vehicle and bicycle parking at the appropriate ratios defined in Chapter 20.90 of the Municipal Code. Table 20-140 of the Municipal Code, which requires 2.5 parking space per 1,000 square feet of net floor area of office space and does not require parking for general retail uses. The project thus requires 1,206 parking spaces. The project provides 1,206 vehicle parking spaces. The project provides these spaces by utilizing an alternative parking arrangement that includes tandem and stacker vehicle parking spaces. An alternative parking arrangement is a permitted use in Downtown. Approximately 22 parking spaces are tandem and approximately half or 660 vehicle spaces are utilized by the stacking system. Parking attendants would manage the parking of the garage and parking management would be a condition of approval for the site.

Additionally, the alternative parking spaces are required to be maintained throughout the life of the project. Therefore, the parking facility would continue to be provided and maintained for the life and use of the building.

Table 20-140 requires that bicycle parking be provided at 1 space per 4,000 square feet for a total of 136 bicycle parking spaces. The project is providing 139 bicycle parking spaces.

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

Analysis: The project was duly noticed per Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on March 5, 2020. The Draft SEIR and hearing documents posted online and Staff has been available to answer questions from the public.

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

Analysis: As described in the Downtown Design Guidelines Section above, the high rise tower is the only structure to be built on the site. The different heights that arise out of the central base of the building and the base, middle, and top maintain complementary design in both materials and massing. The building is a mixed-use commercial development that is logically separated by locating lobbies and retail on the ground level, parking above, and office towards the top of the building, with a unifying and consistent façade treatment. Therefore, the interrelationship between uses is mutually compatible and aesthetically harmonious. Additional analysis is provided in the Downtown Design Guidelines conformance section above.

- 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 be approximately 26 feet away from Four Seasons Hotel (historically known as the Montgomery Hotel, a City Landmark) and the Casa del Pueblo Apartment building. The project is near the Westin San José/St. Claire Hotel, the St. Claire Apartments/St. Clair Building, the Dohrman Building/Trinkler-Dohrman Building, the Valley Title Building/Hale's Department Store, the Twohy Building, or and the Four Points by Sheraton/Montgomery Hotel. The Four Seasons Hotel is four stories and the location was previously approved for a 24-story tower that would add 274 hotel rooms to the area. Casa del Pueblo Apartments features 10 stories. The project is also located adjacent to the San José Marriot that consists of a 26-story tower. The overall Downtown area has a mixture of low, medium, and high rise buildings in the immediate vicinity of the site, and this 18-story tower compatibly adds to the mixture of height by exhibiting a mixture of height on site as well. The building was also evaluated as it relates to the Montgomery Hotel, a City Landmark. The base of the project reveals horizontal panels at each corner of the building to not only provide more of a grounded pedestrian experience but also to relate to the nearby historic buildings in terms of massing, materials, and height. The horizontal panels along with similar ground floor window planes are made of compatible materials that are aesthetically harmonious.

- 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 development occurs in an urbanized area on a parcel that is currently fully developed with a surface parking lot. A Supplemental Environmental Impact Report (SEIR) was prepared for the Block 8 Mixed Use Project in compliance with CEQA. The temporary construction of the proposed project will not have an unacceptable negative effect on an adjacent property or properties because of City limitations on construction hours and the required mitigation measures and permit conditions. The operation of the project is primarily commercial office and therefore would not be a generating source for excessive noise or odor. The project has been evaluated to be in compliance with the City's stormwater requirements.

- 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: As shown on the plan set, the landscaping, irrigation systems, all walls and fences, exterior heating, ventilating, plumbing, utility, and trash facilities are

sufficient to maintain and upgrade the appearance of the neighborhood. All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.

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

Analysis: As described above, the project contains parking consistent with the Zoning Ordinance and alternative parking arrangement, and has adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can easily access the building from the lobby or retail spaces off street frontages. The building would have controlled access for residents and employees. The project was reviewed in combination by the Department of Public Works, the Department of Transportation and Fire Department and was found to be consistent with the City policies.

- i. **Exception Findings.** Chapter 1.4 of the Downtown Design Guidelines establish the findings the decision-maker would need to make in order to grant an exception to Standards in the San José Downtown Design Guidelines.

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

Analysis: Except for the following exception, the project meets all other standards within the Downtown Design Guidelines, as discussed above and consistent with the fourth finding for the design standard exception requests. The project includes exception requests to Standard 4.4.6a (Parking Garages) which is explained above along with the findings and is summarized below.

The site is bordered by West San Carlos and South First Streets, which are Primary Addressing Streets, and by South Market Street, which is an Urban Park/Plaza Frontage. Therefore, all three sides of the project would require 20 feet in depth of Occupied Space on every parking level. The project has street frontages of less than 200 feet on both South Market Street and South First Streets, while the West San Carlos Street frontage is less than 300 feet, making it difficult to provide parking with enough circulation on each

level in addition to Occupied Space along each frontage. The physical constraints of the project site make it infeasible to comply with the standard because with Occupied Space along three out of the four building facades, the space available for parking itself would be significantly reduced, and the programming on each floor for Occupied Space would not be desirable due to the fact that it would be difficult to access, as Elevators are situated in the middle of the building in order to accommodate for the maximized use of active ground floor space. These physical constraints are unique circumstances for which the project seeks an exception to the Occupied Space required along South Market Street, West San Carlos, and South First Street consistent with the first exception finding. In accordance with the second and third exception finding, the street walls along all three frontages are intended to respond to its urban environment to enhance the neighborhood's public space character. Additionally, the overall exterior design aesthetic is a window panel system that is not altered, diminished, or reduced on the parking levels, making the office parking levels nearly indistinguishable from the occupied office levels. Consistent with the third exception finding, the project maximizes active use on the ground level by internalizing all utility services and loading areas, with vehicular ingress and egress accommodated by a driveway off South Market Street and thereby shielded from view from the street. Finally, this is the only exception requested, as the project meets all other standards and guidelines to the maximum extent possible.

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

CONDITIONS

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site Development Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
 - a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and

conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Site Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. n.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development plans entitled, "Block 8 282 S. Market Street San José, California" dated December

8, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".

6. **Scope and Use Authorization of the Site Development Permit.** Site Development Permit to allow the construction of an 18-story commercial building with approximately 12,771 square feet of commercial retail and approximately 482,026 square feet of commercial office, an alternative parking arrangement, and a Downtown Design Guideline exception on an approximately 1.49-gross acre site
7. **Active Area Overlay Requirement:** The project shall comply with the "Active Area Overlay" requirements of Sections 20.70.100 and 20.70.520 of the Municipal Code, as amended. As such, the project shall provide ground floor, street frontage building space with storefront-style façade design and window transparency. Permitted uses within the active area overlay of the site include general retail, education and training, entertainment and recreation, food service, personal service but not financial service, medical and veterinary services, other general services, public, quasi-public and assembly except as permitted by the Municipal Code Table 20-140, as amended.
8. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. The permittee shall prepare and implement a parking operations plan consistent with parking narrative including operational features such as parking attendants to facilitate tandem parking and parking lifts. Any changes to the minimum required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
9. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
10. **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.
11. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
12. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
13. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.

14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
15. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.
16. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
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. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
19. **Bicycle Parking Provisions.** This permittee shall provide a combination of short-term uncovered bike parking as well as long term covered parking consistent with the requirements noted in the Zoning Ordinance.
20. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
21. **FAA Clearance.** Prior to filing an application for a Building Permit, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each roof-top corner and any additional highest point(s) of the proposed structure. The data on the forms should be prepared by a licensed civil engineer or surveyor at a "1-A" accuracy standard using NAD83 latitude/longitude coordinates out to hundredths of seconds, and NAVD88 elevations rounded off to next highest whole foot.
22. **FAA Clearance Permit Adjustment.** Prior to filing an application for a Building Permit for vertical construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications, into the H19-033 conditions of approval.
23. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical, the property owner shall grant an Avigation Easement to the City of San José. Contact Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the easement dedication process.
24. **Construction Cranes.** Prior to issuance of a Building Permit for vertical construction, and prior to the required filing with the FAA for airspace obstruction review of temporary construction cranes for vertical construction, the permittee shall

coordinate with the San José Airport Department to formulate an agreement on crane elevation and operational parameters. Compliance with an Airport-approved construction crane agreement shall become a condition of Building Permit issuance for vertical construction. Contact Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the construction crane agreement coordination.

25. **Subsequent Permit Adjustments.** Any Permit Adjustment application filed by the permittee that proposes a change to maximum structure elevations or location of the structure's highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval. Permit Adjustment approval may include new conditions or the requirement to revise or redo compliance with other conditions included in this Permit.
26. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
27. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
28. **Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
29. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
30. **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.
31. **Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash

at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

32. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
33. **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.
34. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping. The Permittee may request an exception/variance per Section 15.10.380, as amended, if needed in the future.
35. **Downtown Financing Plans.** The San José City Council ("City") approved the (i) Envision San José General Plan 2040 ("General Plan") in 2011, (ii) Diridon Station Area Plan ("Diridon Plan") in 2014, and (iii) Downtown Strategy 2040 ("Downtown Strategy") in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San José.

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

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

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be

subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.

36. **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.
37. **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.
38. **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.
39. **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.
40. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. **Construction Plans.** This permit file number, H19-033, shall be printed on all construction plans submitted to the Building Division.
 - b. **Americans with Disabilities Act.** The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. **Emergency Address Card.** The project permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- d. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
 - e. **Project Addressing Plan.** Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - f. **Other.** Such other state or city adopted requirements as may be specified by the Chief Building Official.
41. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code.
42. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions subject to modification by the Director of Public Works based on project phasing and adjacent public improvements. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:** This project meets the screening criteria of (list screening criteria that this project meets) for Vehicle Miles Traveled under Council Policy 5-1 which results in less-than-significant impacts for transportation. A Local Transportation Analysis (LTA) has been performed for this project to evaluate the project's effect on transportation, access and related safety elements in the proximate area of the project. See separate Local Transportation Analysis Memo dated 01/14/2021 for additional information.

- c. **Grand Boulevard:** This project fronts South First Street which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
 - i. A minimum 16-foot wide sidewalk
 - ii. Installation of audible and visual warning signs at entrance/exit.
 - iii. Accommodation for emergency moving, garage, and commercial vehicles on site
- d. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 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. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City

Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

e. **Shoring**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties (259-42-079, 081, & 082), agreements between the Applicant and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

f. **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.

g. **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).

- h. **Flood: Zone D** 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.
- i. **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.
- j. **Assessments:** This project is located within the Premium Zone of the Downtown San José Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for the services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2020-21, commercial properties pay \$0.130274193 and residential properties pay \$0.104996758 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the County property tax bills listed under Tax Code 0916 "DOWNTOWN PBID".
- k. **Street Improvements-General:**
 - i. Remove curb, gutter, and sidewalk and construct a 25-foot wide attached sidewalk with tree well along South Market Street.
 - ii. Remove curb, gutter, and sidewalk and construct 12-foot wide attached sidewalk with tree wells along West San Carlos Street. Sidewalk Easement Dedication of approximately 2 feet is required
 - iii. Construct a half bulb-out and new ADA directional ramps at the corner of South Market Street and West San Carlos Street project corner. A signal modification may be required.
 - iv. Reconstruct receiving ADA ramps from project site. Ramps shall comply with City Standards R-11.
- l. **Street Improvements – Transit Mall.** This project is located along the Downtown San José Transit Mall and any public improvements necessary of this project along South First Street (i.e. new driveways, driveway closures, trenching, etc.), shall conform to the following:
 - i. Improvements and trench within the sidewalk will require preservation of the existing granite pavers and granite curb. If the existing granite pavers become damaged, the Develop shall be responsible to replace these paves and should contact the Department of Transportation (DOT) at (408) 277-3689.

- ii. The street traveled way is comprised of concrete panels and any regrading of the curb, gutter and any other intrusion or damage to existing panels due to construction will require the removal and replacement of the entire concrete panel(s). Improvements to the roadway will be required to conform to the "Special Provisions for Roadway Repair within the San José Transit Mall".
 - iii. Remove and replace broken or uplifted curb, gutter and sidewalk along South First Street.
 - iv. Proposed driveway width along South Market Street project frontage shall be 26 feet per City of San José standard details R-6
 - v. Proposed driveway width along South First Street project frontage shall be a maximum of 34 feet per City of San José standard details R-6.
 - vi. Replace the existing Valley Transportation Authority (VTA) bus bench that is located on the West San Carlos Street project frontage with a standard metal bench. Coordination with VTA will be required.
 - vii. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - viii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - ix. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- m. **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: www.sanjoseca.gov/home/showdocument?id=56303.
- n. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:

1. **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (e.g., swinging loads over the sidewalk are not safe for pedestrians).
 2. **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
 1. Implementing the closures at the time the onsite activities dictate the need for the closure.
 2. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 42.n.i above.
 - iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
 - o. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
 - p. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San José Downtown Streetscape and Street and Pedestrian Lighting Master Plans.

- q. **Electrical:**
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
 - r. **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 cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - s. **Referrals:** This project should be referred to Santa Clara Valley Transportation Authority (VTA).
43. **Mechanical Equipment:** Prior to the issuance of building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise sensitive land uses. The permittee shall retain a qualified acoustical consultant to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any building permits.
44. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. _____.
45. **Standard Environmental Permit 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 measure Title 13, Section 2485 of California Code of Regulations). 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.
 - xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.
- b. Biological Resources
- i. ***Migratory Birds***: Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31, inclusive (typically February 15 to August 30 for small bird species, January 15 to September 15 for owls, and February 15 to September 15 for other raptors).
 - ii. If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active bird nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1 through April 30, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31, inclusive), unless a shorter pre-construction survey is

determined to be appropriate based on the presence of a species with a shorter nesting period. A final survey shall be conducted within 48 hours prior to construction. During the surveys, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate a construction-free buffer zone to be established around the nest, in consultation with CDFW. The buffer would ensure that raptor or migratory bird nests would not be disturbed during project construction.

- iii. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of PBCE, or Director's designee, prior to the issuance of any grading or building permit.

- c. **Tree Replacement:** Replace all trees to be removed at the following ratios:

Table 4.4-1: Tree Replacement Ratios				
Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
¹ As measured 4.5 feet above ground level ² X:X = tree replacement to tree loss ratio ³ Ordinance-sized tree Notes: Trees greater than or equal to 38 inches in 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 Tree Removal Permit is required for removal of trees of any size. One 24-inch box tree = two 15-gallon trees				

- d. **Tree Protection Measures:** Implement the following measures during demolition and construction activities:

- e. Pre-construction Treatments

- i. Retain a consulting arborist to discuss work procedures and tree protection with the construction superintendent before beginning work.
- ii. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing, or grading. Fences shall be six feet tall and chain link, or equivalent, as approved by the consulting arborist. Fences are to remain until all grading and construction is completed.
- iii. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

f. During Construction

- i. Prohibit grading, construction, demolition or other work within the TREE PROTECTION ZONE. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
 - ii. Any root pruning required during construction shall receive the prior approval of, and be supervised by, the consulting arborist.
 - iii. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
- g. Apply supplemental irrigation to trees as determined by the consulting arborist.
- h. If injury should occur to any tree during construction, the consulting arborist shall evaluate the trees as soon as possible so that appropriate treatments can be applied.
- i. **SCVHP:** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of PBCE or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The SCVHP and supporting materials can be viewed at www.scv-habitatplan.org.

j. Cultural Resources

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 Section 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 PBCE or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC shall then designate a Most Likely Descendant (MLD). The MLD shall 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:

- i. 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;

- ii. The MLD identified fails to make a recommendation; or
 - iii. 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.
- k. 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 (including expansion potential) 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 will be weatherized.
 - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - iv. Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
- l. Paleontological Resource: The City shall ensure all construction personnel receive paleontological awareness training that includes information on the possibility of encountering fossils during construction, the types of fossils likely to be seen, based on past finds in the project area and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.

If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of PBCE or Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The 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 PBCE or Director's designee.

m. Hazards

- i. **FAA Clearance Required.** The permittee shall obtain from the FAA 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. Proof of obtained clearance shall be submitted to the City of San José prior to issuance of a construction or development permit.

n. Hydrology

- i. **Construction General Permit Requirements.** Prior to initiating grading activities, the project applicant shall file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project’s SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project’s SWPPP and printed on all construction documents, contracts, and project plans.
- ii. **Erosion:** Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- iii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds. 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 would be required to 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 may also be installed at the request of the City.
- ix. As the project is regulated by the Statewide Construction General Permit, it shall be subject to the requirements of that permit related to construction-period pumped groundwater discharges.

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

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

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

ADOPTED this _____ day of _____, 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.

LEGAL DESCRIPTION

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

BEING ADJUSTED PARCEL C OF THAT CERTAIN LOT LINE ADJUSTMENT PERMIT RECORDED JUNE 2, 2000 AS INSTRUMENT NO. [15269483](#), OF OFFICIAL RECORDS AND AS DESCRIBED BELOW:

REAL PROPERTY IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF BLOCK 2, RANGE 1 SOUTH, AS SHOWN UPON THAT CERTAIN MAP OF THE CITY OF SAN JOSE, RECORDED IN [BOOK "A" OF MAPS, PAGES 72 AND 73](#).

BEING A PORTION OF THAT CERTAIN PARCEL TWO CONVEYED TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE BY DOCUMENT RECORDED ON AUGUST 31, 1984 IN [BOOK I 847 AT PAGE 32](#), OFFICIAL RECORDS.

TOGETHER WITH ALL OF PARCELS ONE, TWO, THREE, FOUR AND FIVE, CONVEYED TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE BY DOCUMENT NO. [13591246](#) RECORDED ON JANUARY 28, 1997, OFFICIAL RECORDS.

SAID REAL PROPERTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF SAN CARLOS STREET AND THE NORTHEASTERLY LINE OF MARKET STREET AS SAID STREETS ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD JULY 7, 1970 IN [BOOK 270 OF MAPS AT PAGE 18](#); THENCE NORTH 30°40'54" WEST ALONG SAID NORTHEASTERLY LINE OF MARKET STREET 223.01 FEET TO THE SOUTHERLY CORNER OF THE PARCEL OF LAND CONVEYED TO RETAIL STORE EMPLOYEES BUILDING CORPORATION, BY DEED RECORDED NOVEMBER 12, 1975 IN [BOOK B714 OF OFFICIAL RECORDS, PAGE 739](#); THENCE NORTH 59°21'03" EAST ALONG THE SOUTHEASTERLY LINE OF SAID RETAIL STORE PARCEL 147.00 FEET; THENCE SOUTH 30°39'32" EAST 10.77 FEET; THENCE NORTH 59°17'45" EAST 150.05 FEET TO THE SOUTHWESTERLY LINE OF FIRST STREET AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH 30°42'15" EAST ALONG SAID SOUTHWESTERLY LINE OF FIRST STREET 212.59 FEET TO THE NORTHWESTERLY LINE OF SAN CARLOS STREET AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH 59°23'26" WEST ALONG SAID NORTHWESTERLY LINE OF SAN CARLOS STREET 297.13 FEET TO THE POINT OF BEGINNING.

APN: 259-42-080