

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF FOUR RESIDENTIAL UNITS, A WATER TANK BUILDING (TANKHOUSE), THREE COMMERCIAL BUILDINGS, REMOVAL OF SEVEN TREES (TWO ORDINANCE-SIZE AND FIVE NON-ORDINANCE-SIZE), AND TWO SHEDS, AND ALLOW THE CONSTRUCTION OF A BUILDING WITH AN UP TO 175-ROOM HOTEL ON AN APPROXIMATELY 0.60-GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF WEST SAN CARLOS STREET AND JOSEFA STREET (495 WEST SAN CARLOS STREET)

FILE NO. H19-053

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 17, 2019 an application (File No. H19-053) was filed by the applicant, Paul Ring of the UC Keystone Owner, LLC, for a Site Development Permit to allow the demolition of four residential units, a water tank building (“tankhouse”), three commercial buildings, removal of seven trees (two ordinance-size and five non-ordinance-size), and two sheds for the construction of a building with an up to 175-room hotel on an approximately 0.60-gross acre site, on that certain real property situated in the DC Downtown Commercial Zoning District and located at the northeast corner of West San Carlos Street and Josefa Street (495 West San Carlos Street, San José, which real property is sometimes referred to herein as the “subject property”); and

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

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WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a public hearing on said application on August 11, 2021, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons a 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 Public Hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons a 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 Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Marriott Hotel 495 West San Carlos Street, San José, California," dated on April 30, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement, was available for review prior to the Planning Commission and Council Hearing upon request, and is available on the City's website for inspection by anyone interested therein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before 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 located on the northeast corner of West San Carlos Street and Josefa Street. The subject site is currently comprised of four residential units, a tankhouse, three commercial buildings, seven trees (two ordinance-size and five non-ordinance-size) and is located on the northeast corner of West San Carlos Street and Josefa Street. The site is bordered by a commercial building and West San Carlos Street to the south, a restaurant and Josefa Street to the west, and apartments to the north and east (495 West San Carlos Street).
2. **Project Description.** On December 17, 2019, the applicant Paul Ring with UC Keystone Owner, LLC, submitted the following applications to be reviewed concurrently: A Tentative Map to merge four parcels into one parcel and a Site Development Permit to allow the demolition of four residential units, the tankhouse, three commercial buildings, removal of seven trees (two ordinance-size and five non-ordinance-size), and two sheds for the construction of a building with up to 175-room hotel on an approximately 0.60-gross acre site. The Marriott Hotel project is within the Diridon Station Area Plan, along the West San Carlos corridor. The total lot size is 26,233 SF (0.60 AC) and the floor-area ratio (FAR) is 4.55. The applicant is proposing an eight-story building – with three levels of podium parking (all above grade) and five stories of wood frame construction. Hotel amenities and common areas will be primarily located at the ground floor and second story and are oriented towards West San Carlos Street so that street frontage is activated. Amenities include exercise facilities, small meeting rooms, and a breakfast area (note that the property will not include a full-service kitchen). There will also be an outdoor common space on the top floor, located at the corner of West San Carlos Street and Josefa Street. This space will be an indoor/outdoor lounge for hotel guests, which may also serve as an area to take in views or conduct work or informal meetings.

3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Downtown. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. The Downtown land use designation is located throughout the Diridon Station Area to create a mixed-use urban neighborhood. Downtown has a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

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

General Plan Strategies and Policies

Land Use Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the city, including identified growth areas and areas where there is existing or future demand for such uses.

Land Use Policy LU-5.4: Require new commercial development to facilitate pedestrian and bicycle access through techniques such as minimizing building separation from public sidewalks; providing safe, accessible, convenient, and pleasant pedestrian connections; and including secure and convenient bike storage.

Community Design Policy 1.11: To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent façades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.

Vibrant Neighborhoods Policy VN-1.6: Design new development to contribute to the positive identity of a neighborhood and to encourage pedestrian activity.

Vibrant Neighborhoods Policy VN-1.7: Use new development within neighborhoods to enhance the public realm, provide for direct and convenient pedestrian access, and visually connect to the surrounding neighborhood. As opportunities arise, improve existing development to meet these objectives as well.

Analysis: As envisioned by the General Plan, Downtown projects need to facilitate the growth of Downtown as a regional job center. 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 hotel uses. The project would serve Downtown residents, employees, and visitors, while the hotel space would support existing and future Downtown businesses and entertainment venues. The project would develop a

hotel with up to 175 rooms by allowing the demolition of four residential units, tankhouse, three commercial buildings, removal of seven trees (two ordinance-size and five non-ordinance-size), and two sheds. The subject site is within the Diridon Station Area. The hotel would provide future demand and neighborhood service within driving, biking, and walking distance to the Downtown Core and Diridon Station. The newly constructed hotel would replace aging stores and would provide a more pleasing pedestrian-oriented environment with substantial variation in new building frontages that are human scale with varied and articulated facades. Variation in materials and colors would also be provided at the ground level, corners, and entrance of the building. Minor architectural details such as stone veneer and trellis features are included as additional design features. The project would also include transparent facades at most of the ground level to attract customers by revealing active uses and creating a sense of security on the streets. The hotel amenities and common areas will be primarily located at the ground floor and second stories and are oriented towards West San Carlos Street so that street frontage is activated. Amenities include exercise facilities, small meeting rooms, and a breakfast area (note that the property will not include a full-service kitchen) and these spaces would be accessible from the sidewalk of West San Carlos Street and enhance the public realm to encourage pedestrian activity.

4. **Diridon Station Area Plan.** The subject site is located within the Diridon Station Area Plan, which was amended by City Council on May 25, 2021. The subject site has a Downtown land use designation. The land use designations in the Diridon Station Area Plan define the uses and urban form of future development in the Diridon Station Area. These land use designations are not specific to this Master Plan but are existing designations within the Envision San José 2040 General Plan and are applied elsewhere in the city. The Downtown land use designation supports residential uses, as well as non-residential uses including office, retail, service, hotel, medical, and entertainment uses. This designation also supports residential and commercial uses in a mixed-use format.

As described in the Envision San José 2040 General Plan, the Downtown designation allows floor-area ratios (FAR's) up to 30.0. While residential densities approaching 800 dwelling units to the acre may be achievable under the Diridon Station Area Plan through the development of housing projects that include very small units, new commercial development could not achieve the FAR's allowed under the General Plan given the height guidelines of this Plan and the need for new development to be compatible with the surrounding neighborhood. New development should, however, be built as relatively high densities/intensities consistent with the Plan's height guidelines (Figure 3-2-1 in the Diridon Station Area Plan) and compatible with the surrounding residential neighborhood.

All development within this designation should support pedestrian and bicycle circulation and encourage transit ridership. Uses that are automobile oriented are discouraged and drive-through uses are not supported. To help activate the corridor,

new residential development along West San Carlos Street should incorporate ground floor commercial uses along this street.

Analysis: Pedestrian activity and bike access is key to the development of the Diridon Station Area as a vibrant, urban destination that takes advantage of the proximity to one of the most important transit hubs in the San José area. Approximately 500 feet northwest from the intersection of West San Carlos Street and Josefa Street, Park Avenue has been identified as a bicycle pathway in the plan, and the Project includes amenities like bicycle storage that celebrate and encourage bicycle ridership. Additionally, sidewalks are a critical element in the creation of good pedestrian environments. Wide sidewalks in good condition facilitate convenient and comfortable pedestrian access, and also provide space for seating and socializing as well as for landscaping amenities like planters and street trees. The project includes street trees along West San Carlos and Josefa Street and planting at the building corner of West San Carlos Street and Josefa Street. Pedestrian access would be provided with the construction of an approximate 15-foot-wide sidewalk along West San Carlos Street and secured bicycle parking is also available within the ground level garage.

5. **Zoning Conformance.** The project conforms with Table 20-270 in Section 20.120.110 of the San José Municipal Code, which identifies the DC Downtown Primary Commercial Zoning District as a conforming district to the General Plan Land Use/Transportation Diagram land use designation Downtown.

The existing four residential units, the tankhouse, and three commercial buildings will be removed. A hotel is a permitted use within the DC Downtown Primary Commercial Zoning District. Therefore, a Site Development Permit is required for the construction of a hotel use.

Development Standards

The project would conform with all required height and setback requirements of the DC Downtown Primary Commercial Zoning District. Pursuant to Section 20.70.210, properties located in the Downtown Commercial Zoning District shall not be subject to any minimum setback requirements.

Height and Setbacks

Section 20.70.210 of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Commercial Zoning District. However, the height of development in the Zoning District refers to the Diridon Station Area Plan and is limited to 110 feet. The project would be approximately 95 feet in height.

Parking

Hotels require 0.35 vehicle space per room, one space plus one per ten guest rooms for bicycle parking, and one motorcycle space per twenty code required vehicle spaces. Based on the 175-room hotel, the project requires 62 vehicle parking spaces,

19 bicycle parking spaces, and 4 motorcycle spaces. Within the building, the project provides 103 vehicle parking spaces, provides 19 bicycle parking spaces, and 8 motorcycle parking spaces all above ground. The project's conformance to these development regulations are further discussed below in the findings.

Noise

Pursuant to Section 20.40.600 of the Municipal Zoning Code, the maximum noise level for commercial uses adjacent to a commercial property line is 60 decibels (dBA), and adjacent to a property used or zoned for residential uses is 55 dBA. A Noise Study, titled "Marriott Townplace Suites Noise and Vibration Assessment", was prepared by Illingworth & Rodkin, on June 16, 2020, updated on November 2, 2020. The noise study evaluated noise related to the construction and operations of the project, from various noise sensitive receptors surrounding the project site. Noise-sensitive uses surrounding the site include adjacent multi-family residences approximately 90 feet from the center of construction to the northeast, residences approximately 100 feet to the northwest, commercial uses approximately 100 feet to the east, commercial uses approximately 140 feet to the southwest across Josefa Street, residences approximately 180 feet to the northwest across Josefa Street, and commercial uses approximately 180 feet to the southeast across West San Carlos. Noise impacts analyzed in the SEIR found that construction noise would exceed ambient levels by five dBA for a period of more than one year in the vicinity of residential and commercial uses, and construction activity associated with the project could impact adjacent structures within 12 feet from the project site. Implementation of standard conditions, best management practices, and Mitigation Measures NOI-1.1 and NOI-2.1 identified in the Supplemental Environmental Impact Report would reduce impacts to below the City's noise thresholds. The noise study concludes that the project may not exceed the City's noise standards (i.e., 55 dBA at the nearest residence) with placement and selection of equipment. Any future equipment would need to demonstrate conformance to the standards based on the location and equipment selected. Any proposed mechanical equipment and future upgrades would need to ensure the noise is below 55 dBA at the residential property line and 60 dBA at the commercial property line.

Tree Removal

Chapter 13.32 of the Municipal Code regulates the removal of trees on private property. An ordinance-size tree is any tree that is 38 inches in circumference or greater measured from 4.5 feet above the ground. A tree survey of the site was prepared by Kimley Horn, dated April 28, 2021. The tree survey identified seven trees located on the project site. Of the seven trees, two are ordinance size and five are non-ordinance size.

6. **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 adopted April 23, 2019, 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 Carlos Street is designated as a “Secondary Addressing Street,” which is a street with a commercial or residential focus that may provide some active ground floor uses, but retail is not the street’s primary focus.

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.

Consistency with the Design Guidelines is 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 one acre and less than 200 feet wide in all sides of the development. The building mass extends throughout the entire site. For a portion of the façade to be a street wall, it must lie within 10 feet of the property line for at least 60% of the distance from the ground level to the top of the portion of the building, to a maximum of 70 feet. The project is consistent with the 50% street wall requirement for a Secondary Addressing Street on each street frontage, due to the zero setback lot line and the building would be located within a maximum of 10 feet or less of each street facing property line. All 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 West San Carlos Street and parts of Josefa Street, and public frontages are provided through a combination of lobby and active uses for the hotel amenities. 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 through the lobby entrance 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 vehicle parking and access, loading/services, pedestrian entrances, and bicycle entrances.

Analysis: Consistent with the Vehicle and Bicycle Parking Location standards, long-term bicycle parking would be located in secured ground floor bicycle spaces within the building that are easily accessible and identifiable from the project's frontages. Bicycle storage would include signed entrances indicating that bicycle parking is available, and the bicycle rooms would have access to the building lobby. The pedestrian entrance is along West San Carlos Street and is approximately 100 feet from the corner of West San Carlos Street and Josefa Street. Vehicle parking and service is accessed along Josefa Street and the existing freight loading zone is from 7 am to 6 pm except for Sundays and holidays along Josefa street.

- 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 development is designed to locate pedestrian access along West San Carlos Street. Vehicular access and the service entrance are accessed from Josefa Street. Bicycle entrance are accessible from West San Carlos Street.

- 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 color changes. The ground floor includes a revealed corner design of vertical columns to accentuate the storefronts by framing the transparent glazing.

- 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 street wall (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 variety of materials, setbacks, framing, and color that allows both the horizontal and vertical dimension to soften the look and feel of the building. The different architectural components contribute to reducing the perception of one building and complements the surrounding buildings with a new typology that provides excellent visibility from the public right of way. This design continues to the ground floor, where the building massing opens up to reveal textured masonry finishes, 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, and a reduction of blank walls.

Analysis: Consistent with Section 4.4.1 of the Design Guidelines, the façade incorporates a variety of materials, setbacks, framing, and color that allows both the horizontal and vertical dimension to soften the look and feel of the building. The different architectural components contribute to reducing the perception of one building and complements the surrounding buildings with a new typology that provides excellent visibility from the public right of way. One roof top deck is also featured on top of the building and overlooks the area.

The project does not include through-window and through-wall air conditioning or heater units nor mirrored glass, consistent with this chapter.

The development's ground floor materials include painted stucco, painted wood/metal canopies, glazed aluminum storefronts, brick veneer, vertical wood siding, and precast concrete columns. 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 garage fiber cement board panels/roof 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.

- 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 Secondary Addressing

Streets (West San Carlos Street). 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: The project proposes Type 1 and is consistent with the Active frontage requirements, West San Carlos Street frontage for the project site would meet the minimum 80% active frontage requirements, since the project has provided amenities spaces along 80% of West San Carlos Street. 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 doorway is provided to each such use.

- 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. Bicycle lobbies are identifiable, with distinctive architectural entrances with extra framing and are internally connected to the building lobby, consistent with the design standards. The lobby entrance is located along West San Carlos Street. Josefa 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.

7. 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 virtual community meeting was held to discuss the project on September 24, 2020, in accordance with State and County public health orders. 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. The questions and comments from community members included concerns related to building, historic adjacencies, traffic, parking, lack of amenities for the neighborhood, and sustainability.

8. **Environmental Review.** The City of San José, as the lead agency for the project, prepared a Supplemental Environmental Impact Report to the Downtown Strategy 2040 Environmental Impact Report for the Marriott Townplace Suites project.

The Draft SEIR identified potentially significant impacts during construction to air quality, biological resources, hazardous materials, and noise. Mitigation measures were developed to reduce these potentially significant impacts to less than significant levels. In addition, Standard Permit Conditions were also included to ensure that significant impacts do not occur.

A significant and unavoidable impact would result with demolition of two historic structures on the project site—a mixed-use building and a tankhouse. Mitigation measures to lessen the impact were identified and included in the SEIR. However, even with these mitigation measures, demolition or even relocation would still result in a significant and unavoidable impact if this project is implemented.

All mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP), and the MMRP and Standard Permit Conditions are made a part of this permit. *CEQA Alternatives*

The following alternatives were considered and rejected:

- Location Alternative—This alternative was not considered further because no suitable site was identified that could meet the basic objectives of the project and that would reduce all significant impacts of the project.
- Preservation Alternative 1—Relocation of All Historic Structures Off-Site—This alternative was not considered further because a viable receiver site was not identified for either of the historic structures within the Downtown Strategy Plan Area boundary.
- Preservation Alternative 2 – Relocation of house—This alternative was not considered further because no viable receiver site for the tankhouse was identified within the downtown core boundary.
- Preservation Alternative 3 – Relocation of Mixed-Use Building—This alternative was not considered further because no viable receiver site for the mixed-use building was identified within the downtown core boundary.

The following are evaluated as alternatives to the Project:

1. No Project – No Development Alternative
2. No Project – Redevelopment with No Rezoning Alternative

3. Preservation Alternative 4 – Preservation of All Historic Structures On-site
4. Preservation Alternative 5 – Preservation of Tankhouse On-Site
5. Preservation Alternative 6 – Preservation of Mixed-Use Building On-Site

1. No Project – No Development Alternative

- A. **Description of Alternative:** This alternative would retain the existing land uses on-site as is and the project would not be built.
- B. **Comparison of Environmental Impacts:** Under the No Project Alternative, the project would not be constructed and the project site would remain as is. None of the impacts of the project would occur. However, this alternative would not meet any of the project objectives.
- C. **Finding:** Although this alternative would avoid all of the impacts that would occur with the project, this alternative would not meet any of the project objectives. The City would lose the opportunity to maximize the development of an underutilized site Downtown and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density hotel development on a Downtown site near transit. Therefore, this alternative is rejected.

2. No Project – Redevelopment with No Rezoning Alternative

- A. **Description of Alternative:** The No Project – Redevelopment with No Rezoning Alternative proposes redevelopment under the current zoning for the project site, LI Light Industrial. The Light Industrial zoning district is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. Examples of typical uses include warehousing, wholesaling, and light manufacturing.
- B. **Comparison of Environmental Impacts:** The site is developed with two single-story commercial buildings, a tankhouse, a residential duplex, a mixed-use building and one single-family residence. Assuming that any proposal would try to maximize development on-site (within the parameters of the Downtown Strategy Area Plan), such an alternative would have a floor-area ratio (FAR) of up to 15. Given the maximum allowable development, construction air quality and noise impacts would be comparable or greater compared to the project because the length of construction and amount of grading would likely be similar. Other identified impacts to biological resources, loss of historic structures, and soil contamination impacts would remain the same as the project because this alternative assumes full demolition of existing structures, removal of all landscaping trees on-site, and grading of the site.
- C. **Finding:** The No Project – Redevelopment with No Rezoning Alternative would have similar environmental impacts to the project and would not avoid the significant impacts of the project. The City would lose the opportunity to

maximize development of an underutilized Downtown site, and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density hotel development on a Downtown site near transit. Therefore, this alternative is rejected.

3. Preservation Alternative 4 – Preservation of All Historic Structures On Site

- A. Description of Alternative:** The mixed-use property with a single-family residence, a corner store, and a combination garage and tankhouse (a rare remaining building type), all constructed during the period of horticultural expansion (1870-1918) are eligible for consideration as Candidate San José City Landmarks under Criteria 1, 4 and 6. Under this alternative, the two identified historic structures would be retained on-site, all other structures on-site would be demolished, and a new hotel, similar to the project but with reduced square footage and few number of rooms, would be constructed on the remaining site area.
- B. Comparison of Environmental Impacts:** Under Preservation Alternative 4, the hotel would be the same height as the project, but the total square footage and number of rooms would be reduced because the available space for new construction would be reduced. Construction air quality and noise impacts would be reduced compared to the project as it would be a smaller project and preservation of both the existing historic structures would result in less demolition on the site. The biological resource impacts would remain the same as the project. The timeframe and magnitude of demolition and construction activities would be slightly less than the project, but would have the same impact on nesting birds on or in the vicinity of the site. The significant unavoidable impacts to historic resources would be avoided under Preservation Alternative 4. Furthermore, this alternative would be required to implement all other mitigation measures (MM AIR-1.1 and 1.2, BIO-1.1 and 1.2, HAZ-1.1 and 1.2, and MM NOI-1.1 and 2.1), standard measures, and conditions of approval identified for the project. As a result, the impacts to noise, air quality, hazardous waste and biological resources would be reduced to a less than significant level. Preservation Alternative 4 would meet almost all the project objectives except objective 3, complete removal of contaminated soils on the site, because soil contamination beneath the historic buildings would remain in place since the structures would not be demolished. This alternative would avoid the significant and unavoidable historic impacts; however, the historic structures that would be preserved on-site would be required to be maintained and adaptively reused.
- C. Finding:** Preservation Alternative 4 would meet almost all the project objectives except objective 3 because soil contamination beneath the historic buildings would remain in place since the structures would not be demolished. The alternative would avoid the significant and unavoidable historic impacts;

however, the historic structures that would be preserved on-site would be required to be maintained and adaptively reused. The tankhouse could be adaptively reused as a café, concession stand, parking kiosk, small gift shop, restrooms or storage shed, but reuse options may be limited due to the design of the structure which is relatively small with limited natural light within the building. The mixed-use corner building with its large expanse of windows could be converted to housing, commercial/office, or mixed-use space. In addition, any redesign of the project to incorporate these historic buildings would be required to comply with the City's Historic Design Guidelines and the Secretary of the Interior Standards to ensure compatibility of design. In addition, because the hotel building under the alternative would include reductions in the square footage and number of rooms compared to the project, the City would lose the opportunity to maximize development of an underutilized Downtown site, and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density hotel development on a Downtown site near transit. Therefore, this alternative is rejected.

4. Preservation Alternative 5 – Preservation of Tankhouse On-Site

- A. Description of Alternative:** Preservation Alternative 5 would retain only the tankhouse and the attached garage at 280 Josefa Street. This alternative would open up more of the site for new construction as the building at 280 Josefa Street is the smaller of the two structures (less than 500 square foot footprint). It could be adaptively reused as a café, concession stand, parking kiosk, small gift shop, restrooms or storage shed, but reuse options may be limited due to the design of the structure which is relatively small with limited natural light within the building.
- B. Comparison of Environmental Impacts:** The overall impact from construction noise/vibration and emissions would be comparable to the project. The biological resource impacts would remain the same as the project. The timeframe and magnitude of demolition and construction activities would be slightly less than the project but would have the same impact on nesting birds on or in the vicinity of the site. Under this alternative, one of the existing structures would be retained (tankhouse) and would remain eligible for listing as a Candidate City Landmark. However, the project would still result in a significant and unavoidable impact resulting from the demolition of the other historic resource (mixed-use building at 497-499 W. San Carlos Street). The alternative would still be required to implement all mitigation measures (MM AIR-1.1 and 1.2, BIO-1.1 and 1.2, HAZ-1.1 and 1.2, and MM NOI-1.1 and 2.1), standard measures, and conditions of approval identified for the project. As a result, implementation of the mitigation measures would reduce the impacts to noise, air quality, hazardous waste and biological resources to a less than significant level, the same as the project.

- C. **Finding:** Preservation Alternative 5 would meet almost all the project objectives except objective 3, complete removal of contaminated soils on the site, because soil contamination beneath the tankhouse would remain and not allow for soils remediation of the whole site. The alternative would reduce the project's impacts resulting from the demolition of the historic structure at 280 Josefa Street and construction and occupancy of a new hotel building. In addition, the hotel building under this alternative would include reductions in the square footage and number of rooms compared to the project in order to accommodate the retained historic buildings, the City would lose the opportunity to maximize development of an underutilized Downtown site, and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density hotel development on a Downtown site near transit. Therefore, this alternative is rejected.

5. Preservation Alternative 6 – Preservation of Mixed-Use Building On-Site

- A. **Description of Alternative:** Preservation Alternative 6 would retain the corner mixed-use building in its current location on-site. This building is more conducive to reuse than the tankhouse structure with its large expanse of windows and could be converted to housing, commercial/office, or mixed-use space. Due to its size and specific orientation as a corner building, relocation of the building within the project site was not considered.
- B. **Comparison of Environmental Impacts:** Under Alternative 6, construction air quality and noise impacts would be reduced compared to the project due to the fact that preservation of one of the existing historic structures would result in less demolition on the site. The biological resource impacts would remain the same as the project. The timeframe and magnitude of demolition and construction activities would be slightly less than the project, but would have the same impact on nesting birds on or in the vicinity of the site. Under this alternative, the mixed-use corner building would be retained and would remain eligible for listing as a Candidate City Landmark. However, the project would still result in a significant and unavoidable historic impact resulting from the demolition of the tankhouse at 280 Josefa Street. The alternative would still be required to implement all mitigation measures (MM AIR-1.1 and 1.2, BIO-1.1 and 1.2, HAZ-1.1 and 1.2, and MM NOI-1.1 and 2.1), standard measures, and conditions of approval identified for the project. Implementation of the mitigation measures would reduce impacts to noise, air quality, hazardous waste and biological resources to a less than significant level. Final design of the project to incorporate the corner building would be required to comply with the City's Historic Design Guidelines and the Secretary of the Interior Standards to ensure compatibility of design.
- C. **Finding:** Preservation Alternative 6 would meet almost all the project objectives except for objective 3, complete removal of contaminated soils on

the site, because soil contamination beneath the corner building would remain and not allow for soils remediation of the whole site. In addition, given the area available for new construction under this alternative, it is estimated that preservation of the corner mixed-use building would reduce the total square footage of new development by approximately 30,154 square feet and reduce total hotel rooms by 38 hotel rooms and parking by 41 parking spaces. This would equate to approximately 146,930 square feet of total new development square footage on-site. Preservation of the corner building would not alter the site access and operations compared to the project. But by retaining the corner building, the hotel would lose a corner frontage in downtown area. The alternative would reduce the project's impacts resulting from the demolition of the historic structure at 497-499 W. San Carlos Street and construction and occupancy of a new hotel building on the site. In addition, Because the total square footage and number of rooms in the hotel building under this alternative would be reduced in size from that of the project in order to accommodate the retained historic building, the City would lose the opportunity to maximize development of an underutilized Downtown site, and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density hotel development on a Downtown site near transit. Therefore, this alternative is rejected.

Environmentally Superior Project

The No Project – No Development Alternative would avoid all project impacts. However, CEQA requires that when the no-project alternative is the environmentally superior alternative, another alternative shall be identified as the environmentally superior alternative.

Preservation Alternative 4 would result in reduced noise and air quality impacts compared to the project, and preservation of both the historic structures would reduce demolition on the site. Preservation Alternative 4 would meet almost all the project objectives except objective 3 because if the historic buildings remain on-site in their current location, it would not allow for soil remediation of the whole site. The alternative would avoid the significant and unavoidable historic impacts; however, the historic structures that would be preserved on-site would be required to be maintained and adaptively reused. In addition, any redesign of the project to incorporate these historic buildings would be required to comply with the City's Historic Design Guidelines and the Secretary of the Interior Standards to ensure compatibility of design.

Circulation and Public Comments

The Draft SEIR was circulated for a 45-day public review period from April 5, 2021 through May 20, 2021. A total of four comment letters were received from the following:

- Santa Clara Valley Transportation Authority

- Kanyon Konsulting LLC, on behalf of the Indian Canyon Band of Costanoan Ohlone People
- Lozeau Drury LLP, on behalf of Laborers International Union of North America Local Union 270
- Preservation Action Council of San José

Issues raised in these comment letters include the following:

Corrections to the bus routes, monitoring during construction activities, indoor air quality, and the salvage and documentation of the buildings that would be demolished under the project.

Response to Public Comments addressed in First Amendment

In accordance with CEQA Guidelines Section 15088, a First Amendment was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft EIR. As contained within the First Amendment, comments received either did not address the adequacy of the Draft EIR or the comment did not identify new or more significant impact, or a new feasible project alternative or mitigation measure considerably different than identified in the Draft EIR. For these reasons, no further CEQA analysis is required and the Draft EIR does not require recirculation. The Draft EIR taken together with the First Amendment 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.

EIR Recirculation Unnecessary

The comments received did not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that would 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 a 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).

Statement of Overriding Considerations

The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant and unavoidable impact of the Project is acceptable in light of the economic and social considerations noted below, because the benefits of the Project outweigh the significant and unavoidable impact of the Project. The City Council finds that the overriding

considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant and unavoidable environmental impact and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, Zoning Ordinance and Downtown Strategy 2040:

- **Develop jobs that are accessible to transit, activities, services, and housing in the Downtown.** The Project would add jobs in the hotel service industry in proximity to transit in the Downtown. The Project would increase the number of employees that would support existing and new commercial and retail spaces in the area and will increase transit ridership in the Downtown.
- **Provides Upgraded Public Facilities.** The project includes new sidewalks and infrastructure to be consistent with City policies and planning documents.
- **Increases Economic Development.** The Project will advance the goals of the Envision San José 2040 General Plan by adding commercial (hotel) space in an area with a mix of office, commercial/retail development in Downtown.
- **Furthers Envision San José 2040 General Plan Strategies, Goals, and Policies.**
 - Major Strategy #3 Focused Growth: The Project site is located within an identified Growth Area (Downtown), as specified in the Envision San José 2040 General Plan. The Project proposes a hotel locating commercial and hotel development on a Downtown site that would complement the office development underway in Downtown San José and meet the significant anticipated future demand from adjacent tech campus development. The Project is also located in proximity to a variety of services, employment centers, educational institutions, and transit. The Project would contribute to the “complete community” consistent with development strategies in the Envision San José 2040 General Plan.
 - Major Strategy #9 Destination Downtown: The Project would add to the number of jobs in Downtown. Employees will partake in the activities and contribute to business growth in the Downtown area by increasing the customer base for downtown businesses. The Project also introduces active commercial uses at the ground floor, consistent with the rhythm and activities of Downtown Core.
 - Land Use Goal LU-3 and Transportation Policy TR-4.1: The Project encourages the use of alternative transportation options through its proximity to public transit, the inclusion of bicycle parking for employees and commercial uses

Each of the above benefits of the Project were weighed against its significant unavoidable impact identified in the EIR. The City Council determined that these benefits outweigh the adverse environmental effect of the Project and, therefore, further determined that the adverse environmental effect is acceptable, and issued a statement of overriding considerations for the project.

9. Site Development Findings

Pursuant to San José Municipal Code Section 20.100.630, the City Council concludes and finds, based on the analysis of the above facts, that:

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

Analysis: As previously analyzed above, the construction of the hotel would be consistent with the General Plan Land Use Designation of Downtown. The hotel would provide service to the public. The project would also provide additional employment. The project is consistent with applicable General Plan policies related to Vibrant Neighborhoods, Community Design, Land Use, and Implementation.

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

Analysis: As discussed in the Zoning Section above, hotel is a permitted use within the DC Downtown Commercial Zoning District. The project would conform with all applicable height and setback requirements of the DC Downtown Commercial Zoning District. The project would also meet all parking requirements for vehicle and bicycle parking.

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

Analysis: As described above, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. An on-site sign was also posted on the project frontage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

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

Analysis: The project's orientation, location, and elevations are mutually compatible and aesthetically harmonious. The project is within the growth area and the Diridon Station Area and the hotel project would provide future demand for anticipated commercial office developments. The Hotel provides amenities and common areas that will be primarily located at the ground floor and second story

and are oriented towards West San Carlos Street so that the street frontage is activated. Amenities include exercise facilities, small meeting rooms, and a breakfast area (the property will not include a full-service kitchen). The hotel provides an outdoor common space on the top floor, located at the corner of West San Carlos Street and Josefa Street. This space will be an indoor/outdoor lounge for hotel guests, which may also serve as an area to take in views or conduct work or informal meetings. Vehicular access is provided along Josefa Street, with entry to the parking garage. The garage consists of 103 spaces on the three podium levels behind the amenity space. Motorcycle and bicycle parking is also found within or adjacent to the parking garage. Upper levels of hotel rooms cantilever over this setback to the front property line (at approximately 30 feet above the sidewalk level). A front landscaped area separates the building from the sidewalk and a passenger drop-off zone is located at the front of the project along West San Carlos Street. The overall building height is approximately 84 feet, 6 inches to the rooftop, approximately 74 feet, 6 inches to the eighth-floor level with some architectural features, and stair/elevator towers that exceed this height up to a maximum height of 95 feet. This project also contains a large, landscaped podium courtyard on the fourth level. The project would also include transparent facades at most of the ground level to attract customers by revealing active uses and creating a sense of security on the streets.

- 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: As described above, the project has zero lot lines, consistent with its location within the DC Downtown Primary Commercial Zoning District. The hotel also provides active uses along the edges of the public space at the pedestrian level; architectural forms and massing are clear and coherent with three distinct horizontal layers, pedestrian, podium level, and skyline level with vertical links between the three layers to break the overall massing of the building to create a building that does not overarch adjacent development and to help support a human-scale Streetscape. The hotel is located within the Diridon Station Area, where significant growth is planned, and aligns with the growth strategy of the Diridon Station Area Plan.

- 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 not significant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: Construction hours would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. Any impacts related to noise, vibration, dust, draining, erosion, stormwater runoff, and odor, would be temporary and would only occur during construction. This project also includes mitigation measures and

standard permit conditions to reduce impacts during construction. The project also includes the addition of pervious surface to improve and treat stormwater runoff. Lastly, flow-thru planters are integrated within the courtyard and the podium, to employ storm water management (bio-filtration). Therefore, the project would not result in any unacceptable negative effects on adjacent property or properties.

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

Analysis: The entire perimeter of the site would be a hotel building with planters at the corner of West San Carlos Street and Josefa Street on the pedestrian level, courtyard landscaping on the fourth level, and a roof top deck on the eighth level. The project would require the placement of four trees (24-inch box trees) on site but includes the planting of seven (7) trees in addition to ground cover, shrubs, and areas dedicated to stormwater treatment. The project would include the construction of a trash enclosure, utility enclosure, and parking is all within the building, hidden from public view.

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

Analysis: As discussed above, traffic access would be provided from Josefa Street. Pedestrian access would be provided by the construction of an approximate 15-foot-wide sidewalk along West San Carlos Street. As previously discussed, all required vehicle and bicycle parking would be provided.

10. Tree Removal Permit Findings.

In order to make the Tree Removal findings pursuant to Section 13.32.100 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

Analysis: The project includes the removal of two (2) ordinance-size and five (5) non-ordinance-size trees. The trees to be removed are located either within the building footprint and within the newly dedicated sidewalks. The trees to be removed could not be preserved because due to conflict with civil or architectural improvements, or due to assumed unavoidable conflict with construction practices, due to zero lot line. The trees to be removed include ordinance-size Leyland Cypress (50-inch circumference), ordinance-size London Plane (39-inch circumference), London Plane (30-inch circumference), Leyland Cypress (29-inch circumference), Leyland Cypress (25-inch circumference), Tree of Heaven (22-inch circumference), and Tree of Heaven (19-

inch circumference). Pursuant to Table 3.2-2: Tree Replacement Ratios, two non-native trees, requires eight (8) replacement trees if the circumference is 38 inches or more. Pursuant to the table, one 24-inch box tree equals two 15-gallon trees. The project proposes four (4) trees (24-inch box trees) on site.

11. Demolition Permit Findings. Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition.

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

Analysis: The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. The approval of the permit would include the demolition of four residential units; there are two single family homes and a duplex on the site for a total of four residential units. Two of the residential units are vacant and two are vacating the property by August 31, 2021. There are three commercial spaces on the site. Only one of the commercial spaces is occupied by paying tenants (Hub Cap City) who will vacate the property by August 31, 2021. One of the commercial spaces is occupied by Local Color (an art non-profit). The project sponsor allowed Urban Color to move into the space on August 30, 2019, and use the space rent free until they are provided with notice to vacate. This site is located in the Diridon Station Area Plan that was recently updated to densify sites within the plan to allow higher residential density to enable dense commercial projects, while expanding future residential development in the area and contributing to an all increase in the housing stock. The demolition of the existing buildings would facilitate the construction of up to a 175-room hotel that would offer public services to the surrounding neighborhood and provide urban growth to the neighborhood. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible due to the project being developed on the entire lot.

Based on the historic resources assessment prepared by Treanor HL, dated September 14, 2020, the SEIR evaluated all structures on-site for potential historical significance. The property at 497-499 W. San Carlos Street (APN 259-47-015) appears eligible for listing as a City Landmark due to age. In general, buildings less than 50 years old can be considered historic resources only if they constitute an exceptional achievement in architecture or engineering or are of otherwise exceptional importance. Constructed in 1981, the commercial structure at 491 W. San Carlos Street (APN 259-47-013) does not appear eligible for the national, state, or local registers since it does not represent exceptional importance at this time. Upon completion of the survey and archival work, the property at 493-495 and 495 ½ W. San Carlos Street (APN 259-47-014) does not appear individually eligible for listing on the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR) or as a San José City Landmark as the property was not found to possess sufficient historical significance. The property at 497-499 W. San Carlos Street (APN 259-47-015) does not appear individually eligible for listing on the NRHP or CRHR (Criterion C/3) as the property was not found to possess sufficient integrity for its period of significance. The property does appear eligible as a City Landmark under Criteria 1, 4, and 6, of the Secretary of the Interior's Standards for evaluating historic buildings, as a good example of an early 20th century mixed-use development on W. San Carlos Street in San José with its Mission Revival-inspired corner store and the attached Neoclassical house, and, as a rare architectural type, the extant tankhouse on Josefa Street.

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 ("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, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee'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.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development plans entitled, "Mariott Hotel 495 West San Carlos Street, San José, California" dated April 30, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José

Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the “Approved Plan Set”.

6. **Scope and Use Authorization of the Site Development Permit.** Site Development Permit to allow the demolition of four residential units, a water tank building (tankhouse), three commercial buildings, removal of seven trees (two ordinance-size and five non-ordinance-size), and two sheds for the construction of an up to 175-room hotel on an approximately 0.60-gross acre site.
7. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the 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.
8. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
9. **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.
10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
12. **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.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.
15. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
16. **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.

17. **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.
18. **Bicycle Parking Provisions.** The Permittee shall provide long-term covered parking consistent with the requirements noted in the Zoning Ordinance.
19. **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.
20. **FAA Clearance.** Prior to issuance of a Building Permit for construction, 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 project 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.
21. **FAA Clearance Permit Adjustment.** Prior to issuance of a Building Permit for 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.
22. **Subsequent Permit Adjustments/Amendments.** Any Permit Adjustment/Amendment application filed by the Permittee that proposes to increase the 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.
23. **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.
24. **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.
25. **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.

26. **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.
27. **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.
28. **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.
29. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
30. **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, Building and Code Enforcement.
31. **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.
32. **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 has adopted a (i) Commercial Linkage Fee Ordinance (San José Municipal Code Chapter 5.10) and resolution; and (ii) Diridon Basic Infrastructure Impact Fee (San José Municipal Code Chapter 14.35) and resolution, which both may apply to this project. The City is in the process of developing new or updating existing 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.

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.

33. **Affordable Housing Financing Plans.** The San José City Council (“City”) approved the Envision San José General Plan 2040 (“General Plan”) in 2011. The General Plan provides the framework for development located in San José.

The City has adopted a Commercial Linkage Fee Ordinance (San José Municipal Code Chapter 5.10) and Resolution, which may apply to this project. The City is also in the process of developing financing plans to help fund affordable housing and related amenities and services. Other 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); and/or (v) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing. 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 related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

34. **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.

35. **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.
36. **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.
37. **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.
38. **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, H19-053, 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 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 Permittee shall submit an addressing plan for approval for the subject

development (one hotel). 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.
39. **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.
40. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at <http://www.sanjoseca.gov/devresources>.
- a. **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 (see separate Traffic memo dated 3/12/2021):** This project does not require a detailed CEQA transportation analysis because the project is located in the expanded Downtown Core and is covered under the San José Downtown Strategy 2040 EIR. With the inclusion of the following conditions, the subject project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts.
 - i. Construct an ADA compliant ramp at the northeast corner of Josefa Street and San Carlos Street.
 - ii. Provide a fair-share contribution towards future improvements at the Josefa Street and San Carlos Street intersection. Permittee has agreed to provide a voluntary fair-share contribution of \$55,000 towards multi-modal area improvements; addressing pedestrian connectivity crossing West San Carlos Street.
 - c. **Diridon Station Area Infrastructure Impact Fee:**
 - i. Associated with the implementation of the Diridon Station Area Plan (Chapter 14.35 of Title 14 of the San José Municipal Code) this project is subject to the City's Diridon Station Area Basic Infrastructure Impact Fee. Projects located within the Diridon Station Area are required to pay an

impact fee in categories of Transportation, Plaza, Sanitary Sewer and Storm Drainage.

- ii. The 2021 Infrastructure Impact Fee, that includes all infrastructure categories, is \$6.37 per square foot of Office/R&D, \$4.25 per square foot of Retail, \$3,068 per Hotel room and \$2,863 per residential unit. This fee is subject to an annual escalation on January 1st per the Engineering News-Record (ENR) Construction Cost Index for San Francisco. This fee must be paid prior to issuance of Public Works Clearance. Credits will be applied for any infrastructure built as identified in the Diridon Nexus Study by the developer.
- d. **Grand Boulevard:** This project fronts San Carlos Street/Stevens Creek Boulevard, 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.
- e. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. 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.

- 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.
 - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at www.sanjoseca.gov/home/showdocument?id=27405.
- 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:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- 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. **Undergrounding:**
 - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Josefa Street prior to issuance of a Public Works Clearance. One hundred percent of the base fee in place at the time of payment will be due. Currently, the 2021 base fee is \$532 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance.
 - ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Josefa Street. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.

- k. **Assessments:** This project proposes a hotel use. The City of San José, on September 30, 2008 implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties were expected to participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The base special tax is 4% of gross rents, and may be subject to an additional special tax up to 1% of gross rents. Please contact Public Works Department – Development Assistance at (408) 535-6831 to coordinate the annexation process.
- l. **Street Improvements:**
- i. Provide a 15-foot attached sidewalk with tree wells along W San Carlos Street.
 - ii. Provide a 10-foot attached sidewalk with tree wells along Josefa Street.
 - iii. Construct City standard wheelchair ramp at the northeast corner of Josefa Street and San Carlos Street.
 - iv. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
 - v. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
 - vi. Remove and replace curb, gutter, and sidewalk along project frontage.
- 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 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:

- **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 within the Public right-of-way cannot occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The Letter of Intent must also provide a detailed discussion if covered pedestrian walkways are infeasible (e.g., swinging loads over the sidewalk are not safe for pedestrians).
 - **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:
- Implementing the closures at the time the onsite activities dictate the need for the closure.
 - Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 40.n.i above.
- iii. If the vehicle 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: www.sanjoseca.gov/?navid=1629. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- o. **Strong Neighborhoods Initiative (SNI):** This project is located within the Delmas Park SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- 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.
- iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
- iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.

- 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 street tree plantings. Street trees shown on this permit are conceptual only.

41. **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. _____.

42. **Standard Environmental Permit Conditions**

a. Air Quality

The Permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site:

- 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 5 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

Replacement. Replace all trees to be removed at the following ratios:

Table 3.2-1: 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 trees 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				

- i. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee would be required to submit the Santa Clara Valley Habitat Plan

Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitagency.org.

c. Cultural Resources

- i. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall: (1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to the issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Permittee shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following condition occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

1. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
2. The MLD identified fails to make a recommendation; or
3. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. Geology and Soils

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
- v. The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vii. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the 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 Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

e. Hydrology and Water Quality

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks 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. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

f. Hazards and Hazardous Materials

- i. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8,

California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

- iii. All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one-percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 1. Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 2. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 3. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.
- vii. Prior to the issuance of a development permit for any project structures that would exceed the FAA imaginary surface applicable to the project site, the following actions shall be accomplished (2040 General Plan Policies TR-14.2 and CD-5.8):
 1. The permittee shall comply with the notification requirements of Federal Aviation Regulations, Part 77, and receive a "Determination of No Hazard" from the FAA.
 2. Conditions set forth in the required FAA determination of No Hazard regarding roof-top lighting or marking shall be incorporated into the final design of the structure.

g. Noise

- i. 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. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning or Director's designee for review and approval prior to the issuance of any building permits.

43. **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**.

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ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT A
LEGAL DESCRIPTION

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

Lots 13 and 14, as shown on that certain Map entitled "Map of Lots in the Sunol Partition in Rancho Los Coches, as subdivided by Jas. A. Clayton & Co.", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 8, 1900, in Book F2 of Maps, Page 2.

APN: 259-47-014, 259-47-015

EXHIBIT A
LEGAL DESCRIPTION

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

TRACT ONE:

Lots 15 and 16, as shown on that certain Map entitled, "Map of Lot 6 of the Sunol Partition of the Los Coches Rancho as subdivided by James A. Clayton & Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 8, 1900, in Book of Maps Lettered F2, Page 2.

APN: 259-47-013

TRACT TWO:

Lot 12, as shown on that certain Map entitled, "Map of Lot 6 of the Sunol Partition of the Los Coches Rancho as subdivided by James A. Clayton & Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 8, 1900, in Book of Maps Lettered F2, Page 2.

APN: 259-47-016

APN: 259-47-013, 259-47-016

Your Reference:

Chicago Title Company

EXHIBIT A LEGAL DESCRIPTION

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

Lots 13 and 14, as shown on that certain Map entitled "Map of Lots in the Sunol Partition in Rancho Los Coches, as subdivided by Jas. A. Clayton & Co.", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 8, 1900, in [Book F2 of Maps, Page 2](#).

[APN: 259-47-014, 259-47-015](#)

EXHIBIT "A"

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

LEGAL DESCRIPTION

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

TRACT ONE:

Lots 15 and 16, as shown on that certain Map entitled, "Map of Lot 6 of the Sunol Partition of the Los Coches Rancho as subdivided by James A. Clayton & Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 8, 1900, in Book of Maps [Lettered F2, Page 2](#).

[APN: 259-47-013](#)

TRACT TWO:

Lot 12, as shown on that certain Map entitled, "Map of Lot 6 of the Sunol Partition of the Los Coches Rancho as subdivided by James A. Clayton & Co.", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 8, 1900, in Book of Maps [Lettered F2, Page 2](#).

[APN: 259-47-016](#)

[APN: 259-47-013, 259-47-016](#)

EXHIBIT "A"

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.