

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A PLANNED DEVELOPMENT PERMIT, SUBJECT TO CONDITIONS, TO ALLOW THE DEMOLITION OF THE EXISTING 26,850 SQUARE FOOT, TWO-STORY COMMERCIAL BUILDING, TO REMOVE FOUR ORDINANCE-SIZED TREES, TO ALLOW THE CONSTRUCTION OF AN 18-STORY (MAXIMUM 185 FEET BUILDING, 15 FEET OF ARCHITECTURAL PROJECTIONS, FOR A MAXIMUM TOTAL OF 200 FEET) MIXED-USE BUILDING, WITH UP TO 307 RESIDENTIAL UNITS, 10 COMMERCIAL CONDOMINIUM UNITS, 52,167 SQUARE FEET OF COMMERCIAL AND OFFICE USES, AND FOUR LEVELS OF BELOW GRADE PARKING LOCATED ON A 0.89 GROSS ACRE SITE ON THE EAST SIDE OF SOUTH WINCHESTER BOULEVARD, APPROXIMATELY 590 FEET SOUTH OF STEVENS CREEK BOULEVARD (350 SOUTH WINCHESTER BOULEVARD)

FILE NO. PD15-059

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 9, 2015, an application (File No. PD15-059) was filed by Salvatore Caruso, of Salvatore Caruso Design Corporation, with the City of San José for a Planned Development Permit to allow the demolition of an existing building for the construction of an 18-story (maximum 185 feet building, 15 feet of architectural projections, for a maximum total of 200 feet) mixed-use building, with up to 307 residential units, up to 10 commercial condominium units, 52,167 square feet of commercial and office uses, four levels of below grade parking, and the removal of four ordinance-sized trees on a 0.89 gross acre site, on that certain real property situated in the CG(PD) Planned Development Zoning District and located on the east side of South Winchester Boulevard, approximately 590 feet south of Stevens Creek Boulevard (350 South Winchester Boulevard, San José, California, which real property is sometimes referred to herein as the ~~%subject property+~~); and

//

//

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 24, 2017, notice of which was duly given; and

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

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

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

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Planning Commission, and 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 %olar @350 S. Winchester Boulevard,+dated received on February 14, 2017, said development plan is on file in the Department of Planning,

Building and Code Enforcement and is available for inspection by anyone interested herein, and said development 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.

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 0.89 gross acre site is approximately 590 feet south of the Stevens Creek/Winchester intersection on the south side of Winchester Boulevard. The project site is one parcel with an existing 26,850 square foot, two story commercial building. The existing building is currently occupied with various commercial tenants. Santana Row surrounds the project on three sides. One of the Santana Row parking garages is located north of the project site; a mixed use building is located east of the site, and a commercial building and Tatum Lane are located to the south of the project site. The project fronts South Winchester Boulevard to the west. There are commercial uses across on the west side of South Winchester Boulevard.
2. **Project Description.** On December 9, 2015, a Planned Development Zoning, a Planned Development Permit, and a Vesting Tentative Map applications were filed for the property located at 350 S. Winchester Boulevard (APN: 277-33-003) to be evaluated as a Signature Project under the General Plan (see General Plan discussion below). The proposed project would allow the demolition of an existing building for the construction of an 18-story (maximum 185 feet tall with 15 feet of architectural projections for a total of 200 feet) mixed-use building, with up to 307 residential units, up to 10 commercial condominium units, a minimum of 52,167 square feet of commercial and office uses, four levels of below grade parking, and the removal of four ordinance-sized trees on a 0.89 gross acre site. The commercial condominium unit sizes have not been determined as the official square feet of each space will be dependent upon the individual tenants, but each condominium unit size will not be less than seven hundred ten feet as required by Title 20 of the Municipal code.
3. **General Plan Conformance.** The subject site has a land use designation of Regional Commercial on the General Plan Land Use/Transportation Diagram.

The site is also within the proposed Santana Row/Valley Fair Urban Village boundary. The Santana Row/Valley Fair Urban Village Plan (hereafter Urban Village Plan) has not been adopted yet. The Urban Village Plan was heard before Planning Commission On May 10, 2017 and will be heard by City Council on June 27, 2017. At this point, the Urban Village Plan is just a proposed plan, rather than an adopted plan. Generally, Regional Commercial land use designation is applied primarily to existing regional shopping centers, though sometimes it may reflect the cumulative attraction of a regional center and one or more nearby community or specialty commercial centers whose combined drawing power is of a regional scale. Since the project parcel is surrounded by Santana Row, and benefits from the Santana Row draw, this site was given this land use designation. Regional Commercial supports a very wide range of commercial uses with a development intensity of an FAR of 12.0 (which is illustratively 1 to 25 stories). Although residential uses are prohibited under the Regional Commercial land use designation, the General Plan allows certain mixed-use %Signature Project+ to move forward as further described in detail below.

4. Furthermore, the proposed project is consistent with and promotes the following General Plan goals and policies:
 - a. Implementation Policy IP-5.10: Allow non-residential development to proceed within Urban Village areas in advance of the preparation of any Urban Village Plan. In addition, a residential, mixed-use %Signature+ project may also proceed ahead of preparation of a Village Plan. A Signature project clearly advances and can serve as a catalyst for the full implementation of the Envision General Plan Urban Village strategy. A Signature project may be developed within an Urban Village designated as part of the current Plan Horizon, or in a future Horizon Urban Village area by making use of the residential Pool capacity. A residential, mixed-use Signature project may proceed within Urban Village areas in advance of the preparation of an Urban Village Plan if it fully meets the following requirements:
 - i. Conforms to the Land Use / Transportation Diagram. Within the Urban Village areas, Signature projects are appropriate on sites with an Urban Village, residential, or commercial Land Use/Transportation Diagram designation.

Analysis: The proposed project has a Land Use/Transportation Diagram designation of Regional Commercial, and is located within the proposed Santana Row/Valley Fair Urban Village boundary. This designation allows up to 25 floors and up to a 12.0 FAR. The proposed project is 18 floors with an FAR of 11.39, meeting the requirements of this land use designation. Therefore, a Signature

Project with mixed-use of both residential and commercial uses is permitted on this land use designation pursuant to the General Plan.

- ii. Incorporates job growth capacity above the average density of jobs/acre planned for the developable portions of the entire Village Planning area and, for portions of a Signature project that include housing, those portions incorporate housing density at or above the average density of dwelling units per acre planned for the entire Village Planning area.

Analysis: In order to achieve the average jobs per acre capacity planned for the proposed Santana Row/Valley Fair Urban Village, each commercial site is required to provide a certain amount of commercial square footage which translates into a specific number of jobs produced as determined under the General Plan. For the proposed Santana Row/Valley Fair Urban Village, 1 job equals approximately 300 square feet of commercial space. This number becomes the site's average jobs per acre requirement. At the time the project applicant applied for the proposed project, based on the size of the proposed project parcel, a Signature Project was required to provide a minimum of 47,850 square feet of commercial space, which equates to 160 jobs. These 160 jobs are the site's average jobs per acre obligation to achieve the Village's overall planned job growth capacity. Since 47,850 square feet is the minimum square footage required to achieve the site's job growth capacity obligation, any commercial square footage provided on site that is over the 47,850 square feet minimum would automatically increase the site's job capacity above the average density of jobs per acre in the Village. The project proposes to develop 52,131 square feet of commercial space. Specifically, the project includes 26,999 square feet of retail space, 16,516 square feet of office space, and 8,616 square feet of restaurant use. This amount of commercial space equates to 174 jobs. Therefore, this project meets and exceeds the required average number of jobs for its required size for the developable commercial sites in the proposed Santana Row/Valley Fair Urban Village boundary.

- iii. Is located at a visible, prominent location within the Village so that it can be an example for, but not impose obstacles to, subsequent other development within the Village area.

Analysis: The project is bounded by Santana Row on three sides, placing the project in a visible and prominent location in the proposed Santana Row/Valley Fair Urban Village area. The

development of this site will encourage the redevelopment of parcels in this proposed Urban Village to better align with the vision of this proposed Urban Village area. The project will be a catalyst for the entire Village area to redevelop consistent with the future Urban Village plan for the area.

- b. Additionally, a proposed Signature project will be reviewed for substantial conformance with the following objectives:

- i. Includes public parklands and/or privately maintained, publicly-accessible plazas or open space areas.

Analysis: The proposed project provides an 11,543 square foot roof top plaza which will be the first privately owned, publicly accessible roof top open space in San José. This plaza will offer a 360 degree view of San José for the community to enjoy. The hours of the roof top will operate like a standard City park, from sunup to sundown, and will offer park like amenities to the public ranging from chess tables, to rentable fire pit areas. The public will be directed to the rooftop plaza via signage on the building and within the project itself. There will be an elevator with direct access to the roof which will make it convenient for the public to access this space.

- ii. Achieves the pedestrian friendly design guideline objectives identified within this General Plan.

Analysis: The proposed project site will have a 15-foot sidewalk along South Winchester Boulevard, per the proposed Urban Village Plan design guidelines, which creates easy access to the pedestrian-scale ground-floor retail in the building. This retail entrance will be a break in a streetscape that is mostly reserved for back-of house use for Santana Row and Santana Row's parking garage. There will also be an area on the side of the building, adjacent to Tatum Lane that will have street furniture, trees, and other plantings that will improve this delivery-truck oriented street to provide an urban and pedestrian feel.

- iii. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.

Analysis: The project has been the subject of two City-sponsored meetings, and the applicant attended four additional community group meetings where the project was discussed. Additional presentations of the project occurred at community meetings on May 15 and May 17, 2017. So, there have been a total of six

meetings where the public can provide input on the proposed project. The community's input was responsible for lowering the tower from 25 stories to 18 stories.

- iv. Demonstrates high-quality architectural, landscape and site design features.

Analysis: The project has a unique architectural design and offers a rare rooftop plaza that will be open to the public during normal City park hours. The design incorporates high quality materials and uses metal and glass to create a sleek overall look. As a pioneer of high rise development in this area of the City, the project provides a distinct building crown, which is an important goal of the Commercial Design Guidelines, and the General Plan. The refined design provides better site utilization and better addresses the street than the first iteration of the project. The project has been conditioned to refine the landscaping at the ground floor via a Planned Development Permit Adjustment.

- v. Is consistent with the recommendations of the City's Architectural Review Committee or equivalent recommending body if the project is subject to review by such body.

Analysis: The proposed project was reviewed by the Urban Design Review consultants on January 28, 2016. At the suggestion of this review, the project applicant simplified the project in architectural form and expression, creating a more balanced, elegant volume. The height and unit count was reduced to create a more balanced site design. The second iteration of the project provides an improved pedestrian expression on South Winchester, and adheres to appropriate setback and street walls of the adjacent buildings. The movement of the balconies has been balanced so that they are not only expressed in an out-broad movements. Finally, the crown element has been simplified to be a more elegant finish to the building. The staff report includes the before and after designs of the building demonstrating how the design changed over time based on input from the consultant.

- c. Community Design Policy CD-7.1: Support intensive development and uses within Urban Villages, while ensuring an appropriate interface with lower-intensity development in surrounding areas and the protection of historical resources.

Analysis: The proposed Santana Row/Valley Fair Urban Village Plan anticipates building heights of up to 150 feet with potential for more growth with additional project amenities. Currently, the Santana Row property is

zoned to allow buildings up to 120 feet. The Santana West projects are zoned to allow heights of 120 feet. The area around the proposed project anticipates future increased height. While the proposed project is 200 feet tall including the architectural features, it will likely be the first of future buildings in the area that will include additional height. There are no single-family residences or historic structures directly adjacent to the project site, eliminating the common concerns related to taller structures adjacent to smaller, less intense residential uses. The proposed project has appropriate design and interface with the current surrounding uses and more importantly, will be consistent with the future development as proposed in the Santana Row/Valley Fair Urban Village.

- d. Community Design Policy CD-7.2: Designated Urban Villages should not proceed with residential development until an Urban Village Plan has been completed. Signature projects and other types of development expressly allowed in accordance with the General Plan policies may proceed prior to acceptance or approval of the Urban Village Plan.

Analysis: As noted above, the proposed project meets the City's criteria for a Signature Project, and is thus eligible to move forward with a residential component prior to the adoption of the Santana Row/Valley Fair Urban Village. Policy 3-11 of the proposed Urban Village Plan states that for a period of up to 12 months following the adoption date of the proposed Urban Village Plan, Planned Development Zoning and discretionary development permits that are applying as a "Signature Project" may continue to move forward as such, and will not be required to be in conformance with the proposed Urban Village Plan.

- e. Community Design Policy CD-1.13: Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play that lead to competitive advantages over other regions.

Analysis: The proposed design for this project is unique and a departure from the common square, boxy high rise development that is typical of construction in San José. The project will offer the opportunity for people to live, work, socialize, and shop within one building. The rooftop deck offers the public the first privately owned, publicly accessible roof top open space in the City, offering a unique urban experience for the public.

- f. Land Use Policy LU-1.1: Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

Analysis: The development of more mixed-use residential uses in this proposed Santana Row/Valley Fair Urban Village area will foster a complete community with respect to placing people and amenities in an area where job growth is anticipated. As an identified Growth Area, this proposed Urban Village is intended to be a place for people to live, work, and visit. In order to accomplish this goal, there needs to be more opportunities for people to physically live and work in this area. Specifically, given the recent approval of the office square footage at Santana West and the completion of the Splunk office building at Santana Row, there is a demand to locate residents near these job-intensive uses. The proposed project is the type of development that will create a complete community by providing housing options for residents in the area, and supporting those residents with amenities and services.

- g. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

Analysis: In order to mature into the great place envisioned by the General Plan, development in Urban Villages need to have strong amenities to offer residents as the area becomes denser. The proposed project's ground floor commercial condos will be of the size necessary to support retail and restaurant uses, and the infrastructure being provided in these spaces will make it easy for these types of tenants to move into the project to provide these very important amenities to the residents and workers in the area.

- h. Community Design Policy CD-2.9: Encourage adaptable space that can be used for multiple employment or public/quasi-public purposes.

Analysis: The proposed commercial condominium units will comply with Section 20.175.042 of the Zoning Ordinance, which requires the minimum unit size for nonresidential condominium units to be seven hundred fifty square feet. This minimum size provides the flexibility for a variety of employment uses to move into the commercial tenant spaces in the project building.

5. Zoning Ordinance Compliance. The Project is consistent with the regulations of the Zoning Ordinance in the following manner:

- a. **Land Uses/Height/Setbacks.** The proposed residential mixed-use tower is a permitted use and is consistent with the project's Development Standards related to use, setbacks, height, and open space requirements. Pursuant to the project's development standards, the setback along Winchester Boulevard (west side) is 0 feet, north side is 6 feet, 2.5 inches,

east side is 6 feet, 3 inches, and the south side is 6 feet, 0.5 inch. Building heights would be a maximum 185 feet with architectural projections up to 200 feet.

- b. **Concurrent Review.** Per Section 20.100.140 of the Zoning Ordinance, whenever applications for the same site have been filed for one or more development permits, such development permits may be reviewed and acted on in a unified process.
 - c. **Parking Requirements.** The project provides parking based on the requirements in the Development Standards. The total number of parking provided is 439 spaces.
6. **Design Guidelines Conformance.** The Residential Design Guidelines discuss the development of mixed-use projects, but given the height and Signature Project status of this project, the review of this project's design was subject to the Urban Design Review Process, the Residential Design Guidelines. In addition, the Downtown Design Guidelines were referenced for urban form and massing.

Generally, a project's mass and form should correspond to the geographical conditions and patterns of the urban form of the immediate context of the project site. The project's overall mass and form is larger than the surrounding neighborhood. However, the modified design is more streamlined and simple, allowing such a large building to blend with existing and future development in the area. The reduced height brings it to scale similar to other taller buildings in the area, such as Santana West and the National University Building. The massing views in the plan set show that the overall mass of the structure will not overwhelm the street-level pedestrian scale and the surrounding building context.

The Residential Design Guidelines encourage that the ground floor of mixed-use building be restricted to retail uses and that other uses be relegated to upper floors. The proposed project has retail uses on the ground floor, office uses on the second floor, and residential above. The Guidelines encourage active connections between buildings and the street through retail entries, as exhibited by this project. Further, the Guidelines state that the building frontage should appear safe, welcoming, and open to the general public.

The project's frontage has achieved the intent of the Guidelines by providing a large, glass street frontage with ample lighting, and outdoor space to create a feeling of visibility and activity which translates to safety. The 13 foot height of the ground floor also creates an inviting pedestrian experience by reducing the mass of the building closer to eye level.

The Guidelines encourage projects to consider the predominant attributes of the immediate neighborhood and reinforce desirable siting patterns, massing arrangements, and streetscape characteristics of nearby development. The architecture should integrate a top, middle, and base of buildings into one architectural statement.

The unique design of this project would not be as iconic as it is if designed in the current form of the surrounding neighborhood. The sleeker approach to the building minimizes the contrast between the proposed building and the existing neighborhood. This approach to design was taken with the Splunk Building. The project fronts South Winchester Boulevard and provides a street presence that the surrounding Santana Row project lacks on this street. The entrance to the retail space faces Winchester and provides an active street frontage that the current building lacks since it is located behind a parking lot.

The building has a distinct top, middle, and base as identified by the prominent buttresses on the ground floor that then transition up into the middle of the building, and end at the larger domed restaurant space that creates a distinct top to the project.

The Design Guidelines encourage the design of the tops of buildings to add to the City skyline for views to and views from each building roof. Equipment should be enclosed and integrated into the building form.

The building dome is a defining element of the proposed project and it will be a unique addition to the San José skyline. The height of the top floor is 15 feet lower than the top of the restaurant dome, giving it a more significant presence in the design. The building mechanical equipment has been incorporated into lower levels, leaving the roof top plaza free of mechanical clutter.

7. **Environmental Review.** An Environmental Impact Report (EIR) was prepared by the Director of Planning, Building and Code Enforcement for the proposed project, which analyzed environmental impacts and discussed alternatives to the proposed project. The Draft EIR (DEIR) was circulated for a 45-day public review and comment period from January 6 to February 21, 2017. The City received 42 written comment letters from agencies, organizations, and the public during the public comment period and included concerns with aesthetics, traffic, land use, and biological resources. A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project.

The DEIR found that the project would result in significant and unavoidable impacts resulting from construction noise and cumulative construction noise. This impact was identified because noise generating construction activities are anticipated to exceed one year in proximity to existing sensitive receptors,

residences in Santana Row and to the west of the site across Winchester Boulevard. Furthermore, a cumulative construction impact was identified because construction of the project is anticipated to occur at the same time as several other major projects in the vicinity, such as Santana West and expansion of Santana Row. A Statement of Overriding Considerations will be adopted for this project relating to noise to demonstrate that the benefits of the project outweigh its significant adverse environmental impact.

As part of the certification of the FEIR, a related Mitigation Monitoring and Reporting Program (MMRP) was adopted for the proposed project. The comments received did not identify substantive inadequacies in the DEIR or new previously unidentified significant impacts that require recirculation.

Prior to taking action on this Resolution, the City Council adopted a separate resolution certifying the FEIR, making certain findings concerning significant impacts, mitigation measures, and alternatives, and adopting a statement of overriding consideration for construction noise and adopting a mitigation monitoring and reporting program, all in accordance with the California Environmental Quality Act of 1970, as amended. The City Council FEIR resolution is fully incorporated herein by this reference.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. **Planned Development Permit Findings.** In order to make the Planned Development Permit findings pursuant to Section 20.100.940 of the San José Municipal Code, the City Council must determine that:

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and

Analysis: As noted above, the proposed Planned Development Permit, which will effectuate the proposed Planned Development Zoning District, complies with the goals and policies of the General Plan.

- b. The Planned Development Permit, as issued, conforms in all respects to the planned development zoning of the property; and

Analysis: The attached Development Standards provide the parameters that the Planned Development Permit must adhere to, and as evidenced by the attached plan set, this Planned Development Permit conforms to the proposed Planned Development Zoning District.

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

Analysis: The project is consistent with the City's Affordable Housing requirements, as the permittee has an approved Affordable Housing Compliance Plan and has paid all applicable fees. There are no additional City Council policies applicable to the proposed project other than what has been discussed above.

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

Analysis: The proposed project is the only use on this parcel, given the size of the project site. The building is oriented toward the street, putting the back of house adjacent to the back of house of the Santana Row back of house to the east. The architecture of the proposed project is unique and does not directly relate to the surrounding Santana Row architecture. However, the sleek design of the project, with the glass curtain wall system is similar to the more modern Splunk office building and the newest office building approved along Hatton Street and Olsen Drive.

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

Analysis: An Environmental Impact Report was completed for this project. See discussion above.

- 2. **Additional Findings.** Section 20.175.050 of the San José Municipal Code requires that the following findings be made for common interest developments, and the City Council must determine that:

- a. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development or in the city as a whole.

Analysis: The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the proposed commercial units adequately accommodates a variety of potential uses, and the anticipated uses such as restaurant or retail uses will add to the economic viability of the area.

- b. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

Analysis: A Declaration of Covenants and Restrictions will include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development.

- c. The proposed common interest development includes sufficient provisions of the retention of such common areas for the use of all owners of separate interest therein.

Analysis: The Declaration of Covenants and Restriction will state that each owner shall have, as appurtenant to its unit, and undivided interest in the common area. This will ensure that each common interest development has sufficient retention of common areas for use by all owners

- 3. **Evaluation Criteria for Demolition.** Prior to the issuance of the development permit, the City Council shall determine pursuant to San José Municipal Code Section 20.80.460 whether the benefits of permitting the demolition outweigh the impacts of the demolition. In making such a determination, the following shall be considered:

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

Analysis: The demolition of the existing commercial building would facilitate the construction of the overall project that is compatible with the surrounding neighborhood and the reason for demolition is allowed under Criteria c. Criteria a, b, d and f, are not applicable to the reason for demolition of the existing structure. Criteria g is not applicable because there is a proposed replacement building on file.

4. **Tree Removal Permit Findings.** Fourteen non-ordinance sized trees on the project site were approved for removal under a previous adjustment, File No. AD15-1260 and are not under review with the development permits currently proposed. The remaining four trees are ordinance-size trees and will be removed with the Planned Development Permit currently on file. Per San José Municipal Code Section 13.32.100(A), the City Council shall issue a permit for the removal of any tree, other than an unsuitable tree, on any private parcel of land in the city unless the City Council makes at least one of following findings:

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

Analysis: The four ordinance-sized trees are located in areas that would restrict construction of the proposed development. As described in Findings No. 2a, above, the economic benefit of the project in providing employment and housing near transit within Urban Villages outweighs the removal of these four trees. Additionally, these four trees will be replaced on site with at a 5:1 ratio, limiting the effect of the loss of these trees.

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

CONDITIONS

1. **Acceptance of Planned Development Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
- a. Acceptance of the Planned Development 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 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire two years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of this site or construction has not commenced, pursuant to and in accordance with the provision of this Planned Development Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. 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 Planned Development Permit shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the ~~%Building Code+~~ shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval 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. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Volar @ 350 S. Winchester Boulevard+ dated February 14, 2017 on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City approval, and to the San José Building Code (San José Municipal Code, Title 24). The approved plans are referred to in this Permit as the ~~%approved plans+~~ or ~~%Approved Plan Set+~~.

6. **Major Permit Adjustment.** Prior to the issuance of any building permit, a major permit adjustment shall first be approved to finalize the open space amenities on the roof top.
7. **Demolition Authorization.** A foundation permit must be approved prior to any demolition on the project site.
8. **Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be screened from the public view.
9. **Affordable Housing.** The project may be subject to the City's Inclusionary Housing Ordinance (Ordinance) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced Ordinance or AHIF, the permittee must, as part of the application for First Approval, as defined in the Ordinance or AHIF, shall submit an Affordable Housing Compliance Plan Application to the Housing Department, which Plan must be approved as part of the First Approval. Additionally, prior to the issuance of any building permits, or any final approval of any final map, the permittee must execute and record their Affordable Housing Agreement with the City.
 - a. The Inclusionary Housing Ordinance and AHIF Resolution each exempt certain developments from affordable housing obligations, if the development meets certain criteria. However, whether an exemption is claimed or not, the permittee must submit an Affordable Housing Compliance Plan Application, and the application processing fee to the Housing Department as part of the application for First Approval.
 - b. The Housing Department has reviewed and approved the Affordable Housing Compliance Plan for this project. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this project and any other applicable requirements of the Ordinance or AHIF.
 - c. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the Inclusionary Housing Ordinance, and/or the AHIF Resolution are met.
10. **Outdoor Use.** No outdoor uses other than the roof top deck are permitted with this approval.
11. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
12. **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.
13. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws and regulations.

14. **Discretionary Review.** The Director of Planning, Building and Code Enforcement and/or City Council 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.
15. **FAA Determination of No Hazard.** The permittee has obtained from the Federal Aviation Administration a ~~%Determination of No Hazard to Air Navigation+~~ for each building high point that is valid until September 9, 2017. The conditions of this Determination of No Hazard Require:
 - a. The installation of roof-top obstruction lighting as prescribed by the FAA, and which shall be incorporated into the building permit application plans.
 - b. The permittee shall file a ~~%Notice of Actual Construction or Alteration+~~ (FAA Form 7460-2) within five days of completing high-point construction. Confirmation of this filing is required prior to City issuance of a certificate of occupancy.
 - c. If the FAA Determination of No Hazard clearances expire prior to building permit issuance, the permittee must obtain an extension from the FAA, or re-file new Notification of Proposed Construction of Alterations forms (7460-1) with the FAA and obtain new determinations of no hazard.
16. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
18. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
19. **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.
20. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
21. **Compliance with Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
22. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

23. Building Clearance for Building 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, PD15-059, shall be printed on all plans submitted to the Building Division.
- b. *Conformance Review.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to plan check approval and building permit issuance by the Building Division, the permittee shall obtain confirmation from the Planning Division that the project conforms to all applicable requirements of the subject Permit, including the plan sets.
- c. *ADA Compliance.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).

24. Fire Safety. The permittee shall meet all requirements of the Fire Department at the Building Permit stage, including but not limited to the maximum occupancy of the facility.

25. High Rise Building Requirements. The following requirements shall apply to high rise development:

- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with California Fire Code (CFC) 903.2 and San José Fire Code (SJFC) 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
- b. *Fire Pump and Fire Control Rooms.* The location and access to the fire pump and fire control rooms shall be pre-planned with the Fire Department. In accordance with CFC 509.2; Approved access shall be provided and maintained for all fire protection equipment to permit immediate safe operation and maintenance of such equipment. Each building shall be equipped with its own separate fire pump and fire control rooms.

- c. *Multiple Water Mains Required.* The required fire pumps shall be supplied by connections to a minimum of two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Secondary water supplies shall be provided for both buildings in accordance with CFC 903.3.5.2.
- d. *Testing of Smoke Control Systems.* The San José Fire Department does not provide testing and inspection of Smoke Control systems. System must be tested and approved by a qualified 3rd party contractor.
- e. *Emergency Power System.* An emergency power system shall be pre-planned with the Fire Department.
- f. *Fire Breathing Air Replenishment Systems.* Fire breathing air replenishment systems shall be required per SJFC 901.4.3.1.

26. General Fire Prevention Requirements. The permittee shall provide the following improvements:

- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
- b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
- c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
- d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
- e. *Complex Map.* A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area so as to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
- f. *Public Safety Radio Coverage.* Public Safety Radio Coverage is to be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.

- g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
 - h. *Management Association Responsibilities for Life & Safety Systems.* Permittee shall create and maintain a Management Association which will be responsible for the fire/life safety systems inspections per Title 19 and access to the systems if applicable.
 - i. *Hazardous Materials.* Permittee must contact the Hazardous Materials Division at (408) 535-7750 as soon as possible to initiate the process to determine if the type and quantity of hazardous material is acceptable per code and whether a Hazardous Materials Plan Review is required.
 - j. *Construction Fire Protection Plan.* A %Construction Fire Protection Plan+ for approval by San José Building and Fire Departments is required prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.
27. **Generators.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
28. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
29. **Permittee Responsibility.** The permittee shall ensure that the uses authorized by this Planned Development Permit are implemented in conformance with all of the provisions of this Permit.
30. **Public Works.** Prior to the issuance of any Building permits, the permittee shall be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:
<http://www.sanjoseca.gov/index.aspx?nid=2246>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

b. Transportation:

- i. A Traffic Impact Analysis has been performed for this project based on 168 AM and 268 PM peak hour trips. The analysis finds that the subject project will be in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts. See separate Traffic memo dated 05/15/17 for additional information.
- ii. This project is subject to the City's I-280/Winchester Boulevard Transportation Development Policy (TDP). The I-280/Winchester TDP requires the development to contribute towards the I-280 Northbound/Winchester Boulevard off-ramp in lieu of mitigation of Winchester Boulevard/I-280 NB on-ramp/Tisch Way. The current fee is set at \$25,641 per PM peak hour trip and the project is proposing to add 25 PM peak hour trips to the proposed off-ramp. Permittee shall pay the fee in effect at time of building permit issuance.
- iii. As identified within the projects Traffic Impact Analysis report, the project impacts the intersections of Winchester Boulevard and Stevens Creek Boulevard and Stevens Creek Boulevard and Monroe Street. Per Council Policy 5-3, these intersections have been designated as "Protected". As these intersections have been built to maximum capacity, the project shall construct specific improvements to other segments of the Citywide Transportation system in order to improve system capacity and/or enhance non-auto travel modes.
 - 1) The project shall be required to construct off-setting improvements equal to \$4,380 per net project trip plus 3.5% annual escalation which takes affect every July 1st. Based on 330 residential units and 49,250 square feet of commercial and office, the project is projected to generate approximately 268 net trips. Based on the 2016-2017 rate, the offsetting improvements will total \$1,173,840.00, provided permittee shall pay or construct based on the rate in effect at building permit issuance. The off-setting improvements, listed in priority order, that will be constructed as part of this project will include:
 - (a) Stevens Creek/Monroe, North Leg Median/Pedestrian Refuge
 - (b) Moorpark/17 undercrossing Improvements
 - (c) Moorpark/Cypress Intersection Improvements
 - (d) New Eastbound Stevens Creek VTA Bus Stop
 - (e) Bike detection loops and symbols at signalized intersections along existing bikeways
 - (f) Cypress/280 overcrossing Improvements

- 2) At the implementation stage, if the cost estimates based on designed construction plans, total less than the required offsetting improvement costs, a contribution of the net difference will be collected from the permittee. This contribution will be used toward the Protected Intersection Offsetting Improvements as set forth in Council Policy 5-3. If the cost is greater than the obligation of the Development, removal of any of the above improvements from the priority list will be at the discretion of the Director of Public Works.
- 3) **Transportation Demand Management (TDM) Plan.** A Transportation Demand Management plan (TDM Plan) has been submitted and approved for this project. The TDM Plan dated March 29, 2017 entitled 350 S. Winchester Boulevard Mixed Use Project prepared by Hexagon Transportation Consultants, Inc. is on file with the Department of Public Works and is incorporated fully herein by this reference. Based on the TDM measures included in the approved TDM Plan, the project shall meet the 18 percent parking reduction requirement. The project is required to submit an annual monitoring report, which measures the effectiveness of the approved TDM plan, in a form approved by the Director of Public Works. The report shall be provided to the City on or before each June 30th for the reporting period of the prior calendar year. Additional TDM measures, or changes to existing TDM measures, may be required at the discretion of the Director of Public Works if the TDM measures are not effective in reducing the parking demand by a minimum of 18 percent.

The project shall also implement control measures to prohibit any parking in the adjacent and surrounding neighborhoods, businesses, and areas. Permittee shall ensure no person living, working, visiting or using the project site in any manner shall create any parking impact to the surrounding neighborhoods, businesses, and areas.

Permittee shall also implement the following TDM measures for the life of the project:

- (a) Free Eco Pass or Clipper Card: two (2) per residential unit and one (1) per employee for the retail use.
- (b) Free Cargo Bicycle for the tenants to share at a rate of 1 Cargo Bicycle for each 200 residential units.
- (c) Provide 100% unbundled parking for all residential spaces.
- (d) Employee Clipper Card incentive program for retail employees.
- (e) Provide onsite TDM Coordinator (minimum 8 hours per day) to monitor and implement the TDM measures, including providing information packets on transportation options, implementing a car share/ride share

program, monitoring parking demand, and scheduling the cargo bicycle. The TDM Coordinator shall have comprehensive knowledge of local transit, trip planning services, car share services, private shuttles, as well as local contact for car sharing service

- (f) Establish an up-to-date TDM services and membership management website. The site should give Information on local transit, car sharing services and how residence can get and manage their memberships. The TDM Coordinator shall manage and continuously update the website.
- c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grand Boulevard:** This project fronts Winchester 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 alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
- f. **Shoring:**
 - i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by

the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000.

- g. **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 preliminary Stormwater Control Plan and numeric sizing calculations have been reviewed. At PD stage, submit the final Stormwater Control Plan and numeric sizing calculations.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be included on the final Stormwater Control Plan.
- h. **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).
- 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 Public Works clearance.
- j. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- k. **Street Improvements:**
 - i. Reconstruct curb, gutter, and 15-foot attached sidewalk to align with adjacent southerly parcel and construct City standard transition to existing sidewalk width at northerly parcel and include required street easement dedication.
 - ii. Construct driveways along Winchester Boulevard to current City and ADA standards.
 - iii. Close unused driveway cut.
 - iv. Extend the northbound left-turn pockets by 75 feet per lane at the Winchester Boulevard and Stevens Creek Boulevard intersection.

- v. Extend the southbound left-turn pockets by 100 feet per lane at the Winchester Boulevard and Olin Avenue intersection.
 - vi. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - viii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- l. **Easements:** Provide an approximate 5-foot wide street easement dedication for the widened sidewalk on Winchester Boulevard.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of the operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way 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. This would also provide a discussion as to the reasons why covered pedestrian walkways will not be provided (ex. swinging loads over sidewalk not safe for pedestrians).
 - 2) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.

- ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in Condition 30.m.i.), above.
- n. **Sanitary:** The existing sanitary sewer system serving this development has been identified as deficient per the General Plan 2040 anticipated build-out flow. Based on the development's projected sanitary sewer flow rate, as a percentage of a City provided master plan level estimated flow rate at the deficiency, the permittee shall provide a 0.6% fair share cost contribution towards a future sanitary sewer project which has been planned to mitigate this deficiency.
- o. **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.
- p. **Street Trees:**
 - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current %Guidelines for Planning, Design, and Construction of City Streetscape Projects+. Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

//
//
//

31. Environmental Conditions.

a. Transportation

i. Offsetting Improvements:

- 1) Winchester Boulevard and Stevens Creek Boulevard: This intersection has been identified by the City of San José as a protected intersection. Pursuant to the City's Transportation Impact Policy (Council Policy 5-3), in lieu of physical improvements to the intersection, the permittee shall construct offsetting improvements to other parts of the citywide transportation system in the vicinity of the project site. The final improvements required will be identified by the City of San José based on the number of peak hour trips generated by the project. The specific offsetting improvements shall be identified in the subsequent planning permits and shall be implemented by the permittee with all required public improvement plans, bonding, and security prior to the issuance of Public Works clearance. Pursuant to the City's policy, the implementation of offsetting improvements would provide project benefits that outweigh the project's significant impact.
- 2) Monroe Street and Stevens Creek Boulevard: This intersection has been identified by the City of San José as a protected intersection. Pursuant to the City's Transportation Impact Policy (Council Policy 5-3), in lieu of physical improvements to the intersection, the permittee shall construct offsetting improvements to other parts of the citywide transportation system in the vicinity of the project site. The final improvements required will be identified by the City of San José based on the number of peak hour trips generated by the project. The specific offsetting improvements shall be identified in the subsequent planning permits and shall be implemented by the developer with all required public improvement plans, bonding, and security prior to the issuance of Public Works clearance. Pursuant to the City's policy, the implementation of offsetting improvements would provide project benefits that outweigh the project's impact on a Protected Intersection.

b. Air Quality

- i. *Dust Control:* Consistent with City policies and best management practices recommended by the Bay Area Air Quality Management District (BAAQMD), the project shall implement the following measures during all phases of construction on the project site to reduce dustfall and locally-elevated particulate matter emissions:
 - 1) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

- 2) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 3) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- 4) All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 5) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible and feasible. Building pads shall be laid as soon as possible and feasible, as well, after grading unless seeding or soil binders are used.
- 6) Idling times shall be minimized either by shutting equipment off 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 [CCR]). Clear signage shall be provided for construction workers at all access points.
- 7) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- 8) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

c. Noise

- i. *Interior Noise:* All residential units shall be equipped with forced-air mechanical ventilation to allow windows to be kept closed to control noise. A qualified acoustical consultant shall review the final building plan, building elevations, and floor plans and recommend building treatments to reduce interior noise levels to 45 dBA DNL. Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window construction, acoustical caulking, protected ventilation openings, etc. Based on preliminary calculations, windows and doors of stucco sided building facades would need to range from 35 to 38 STC to reduce noise levels indoors at units having the highest noise exposure. The specific determination of what noise insulation treatments are necessary shall be assessed on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be

submitted to the City, along with the building plans and approved design, prior to issuance of building permits.

d. Hydrology/Water Quality

i. *Stormwater*: Consistent with the General Plan FPEIR and General Plan policies, standard permit conditions that would be implemented to prevent stormwater pollution and minimize potential sedimentation during construction include, but are not limited to the following:

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be covered.
- 6) All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily with water sweepers.
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) 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.

e. Removal of Trees On-Site: Development of the proposed project would result in the loss of trees on the project site. In accordance with City policy, tree replacement would be implemented as prescribed in the Staff Report.

i. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- 1) In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures would be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
 - (a) The size of a 15-gallon replacement tree may be increased to a 24-inch box and count as two replacement trees.

- (b) An alternative site(s) would be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement.
- (c) A donation of \$300 per mitigation tree on Our City Forest for in-lieu off-site tree planting in the community. These funds would be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

f. Biology

- i. *Habitat Conservation Plan:* The project would be subject to all applicable Santa Clara Valley Habitat Conservation Plan fees, including cumulative nitrogen deposition impact fees based on a net increase in project trips.

g. Hazardous Materials

- i. *Asbestos Containing Materials:* The project is required to conform to the following regulatory programs and to implement the following Standard Permit Conditions, consistent with OSHA requirements, to reduce impacts due to the presence of ACMs and/or lead-based paint:
 - 1) In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.
 - 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
 - 3) All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
 - 4) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- 5) Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

h. Cultural Resources

- i. *Subsurface Cultural Resources*: Consistent with General Plan policies ER-10.2 and ER-10.3, the following Standard Permit Conditions are included in the project to reduce or avoid impacts to subsurface cultural resources.
 - 1) In the event that 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 shall be notified, and the archaeologist will examine the find and make appropriate recommendations prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning, Building and Code Enforcement.
 - 2) In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified and make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once the NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.
32. **Privately Owned Publicly Accessible Open Space (POPO)**. Permittee shall submit a Permit Adjustment subject to review and approval by the Director of Planning and it shall include the following:
- a. **Open Space** - A final landscaping plan that provides open space and shall include:
 - i. Square footage consistent with this Permit;
 - ii. Be situated in such locations and provide such ingress and egress as will make the area easily accessible to the general public;
 - iii. Be well-designed, and where appropriate, be landscaped;
 - iv. Provide protection from the prevailing wind direction;

- v. Incorporate various features, including ample seating and, if appropriate, access to food service, which will enhance public use of the area;
 - vi. Have adequate access to sunlight if sunlight access is appropriate to the type of area;
 - vii. Be well-lighted if the area is of the type requiring artificial;
 - viii. Be open to the public at all times during normal City park hours;
 - ix. Be designed to enhance user safety and security;
 - x. Provide toilet facilities open to the public;
 - xi. Have at least 75 percent of the total open space approved be open to the public during all daylight hours.
- b. **Open Space Provider** – Permittee (including property owners) providing this publicly accessible open space will to the fullest extent permitted by law hold harmless the City of San José, its officers, agents and employees, from any and all damage or injury caused by the design, construction, use, or maintenance of open space. Permittee (including property owners) are solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
- c. **Maintenance** - Open spaces shall be maintained at no public expense. Permittee (including property owners) on which the open space is located shall maintain it by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the POPO and subject building.
- d. **Informational Plaque/Sing** - Prior to issuance of a certificate of occupancy (temporary or final), one or more plaques/signs shall be designed and placed in publicly conspicuous locations as described in the following:
- 1. State the right of the public to use the space; and
 - 2. State the hours of use; and
 - 3. Describe its principal required features (e.g., number of seats, uses and/or other defining features); and
 - 4. State the current name, telephone number, and postal address of the owner or owner's agent responsible for public access and maintenance; and
 - 5. Describe the type of open space; and,
 - 6. State the location of the open space, and, in cases where that space is not visible from a major sidewalk, include directions to the open space.

7. In terms of design and appearance, the plaque shall:
 - a. Include the standard Privately-owned public open space logo developed by the Planning Department; and
 - b. Be made of opaque, non-reflective material, and provide a clear contrast between the lettering and the background; and
8. The plaque shall be located in various conspicuous places easily accessible and readable for the public to provide clear notice and guidance to the public of the publicly accessible open space, as determined by the Planning Director.

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

- a. A violation of any conditions of the Conditional Use 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 Planned Development Permit to use the subject property for said purpose specified above is hereby **approved**.

EFFECTIVE DATE

The effective date of this Permit shall be the effective date of the Planned Development Zoning Ordinance for File No. PDC15-065 adopted on [REDACTED], 2017 (the "Planned Development Zoning Ordinance") and shall be no earlier than the effective date of said Planned Development Zoning Ordinance.

//
//
//
//
//
//

ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

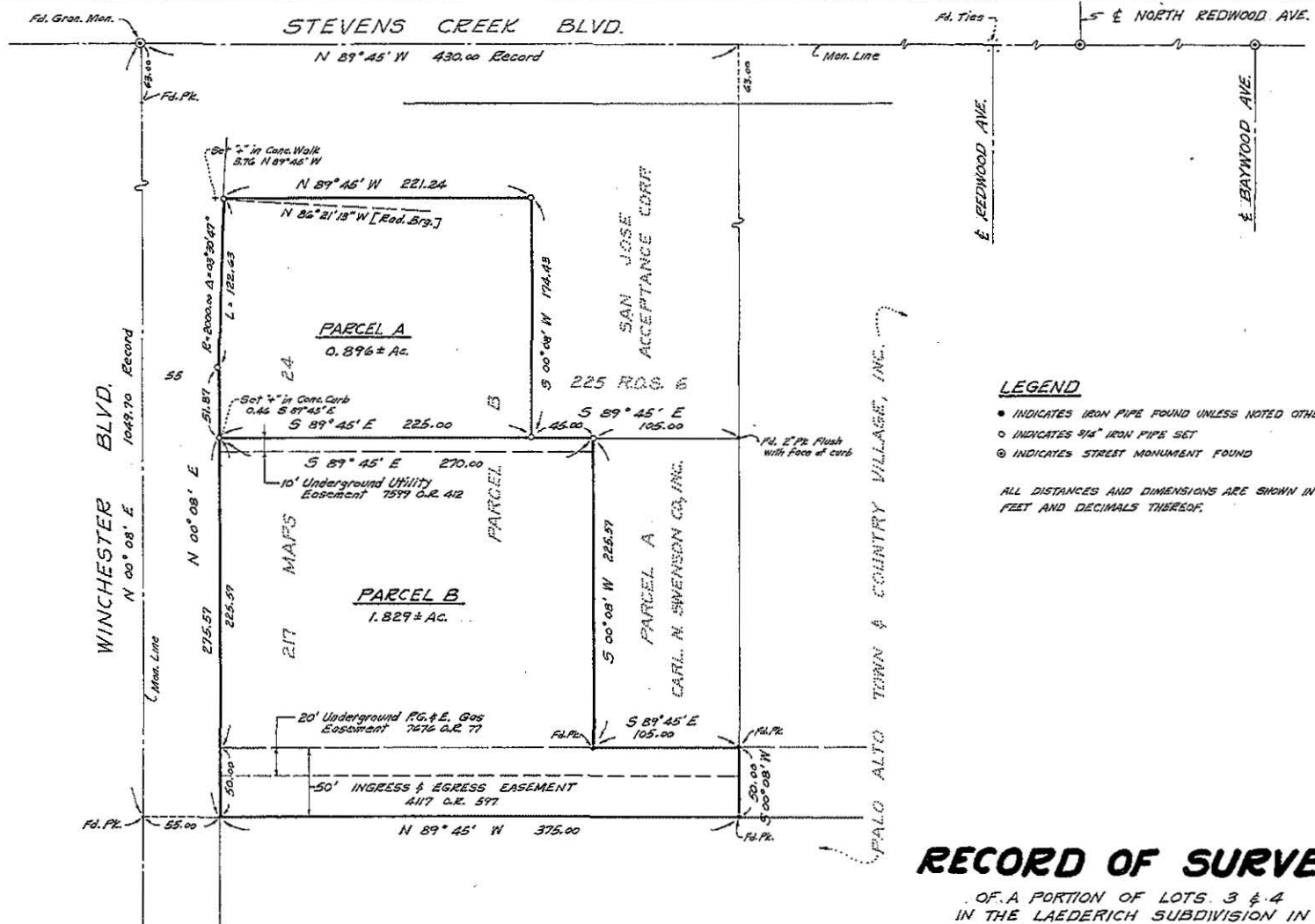
LEGAL DESCRIPTION

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

PARCEL A, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 24, 1969, IN BOOK 250 OF MAPS, PAGE(S) 54.

APN: 277-33-003

First American Title Insurance Company



LEGEND

- INDICATES IRON PIPE FOUND UNLESS NOTED OTHERWISE
- INDICATES 9/16" IRON PIPE SET
- ⊙ INDICATES STREET MONUMENT FOUND

ALL DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

RECORD OF SURVEY

OF A PORTION OF LOTS 3 & 4
IN THE LAEDERICH SUBDIVISION IN THE
CITY OF SAN JOSE, CALIFORNIA
COUNTY OF SANTA CLARA

ROBERT L. KENEFICK

CIVIL ENGINEER

SANTA CLARA CALIFORNIA

SCALE 1" = 50' JANUARY, 1969

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in accordance with the requirements of the Land Surveyor's Act as the request of FIRST SAVINGS AND LOAN ASSOCIATION.

JANUARY 1969
Robert L. Kenefick
R.C.E. No. 12540

COUNTY SURVEYOR'S CERTIFICATE

This map has been examined for conformance with the requirements of the Land Surveyor's Act this 21st day of March 1969.

JAMES T. POTT
County Surveyor
By Deputy: [Signature]
SAMUEL X. RIVAS

RECORDER'S CERTIFICATE

Filed 18th day of March 1969.
at the request of ROBERT L. KENEFICK

#500 GEORGE E. FOWLES
County Recorder
By Deputy: [Signature]

BASIS OF BEARING

The bearing N 89° 45' W of the Monument Line of Stevens Creek Blvd. as shown on that Record of Survey Map recorded in Book 226 of Maps of page 6, Santa Clara County Records, was used as the basis of bearings shown hereon.