RESOLUTION NO. _______

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A PLANNED DEVELOPMENT PERMIT, SUBJECT TO CONDITIONS, TO ALLOW CONSTRUCTION OF A TEN-STORY MIXED-USE BUILDING THAT INCLUDES APPROXIMATELY 1,856 SQUARE FEET OF GROUND FLOOR COMMERCIAL SPACE AND UP TO 54 RESIDENTIAL UNITS WITH NO ONSITE PARKING ON AN APPROXIMATELY 0.103 GROSS ACRE SITE, LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH MONTGOMERY STREET AND LORRAINE AVENUE (565 LORRAINE AVENUE)

FILE NO. PD15-042

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 27, 2014, the application from Montgomery 7 LLC (File No. PD15-042) was filed with the City of San José for a Planned Development Permit to allow the demolition of the single-family resident, and allow the construction of a ten-story mixed-use building that includes approximately 1,856 square feet of ground floor commercial space and up to 54 residential units with no on-site parking on an approximately 0.103 gross acre site, on that certain real property situated in the DC(PD) Planned Development Zoning District and located on the northeast corner of the intersection of South Montgomery Street and Lorraine Avenue (565 Lorraine Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and
WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 11, 2016, notice of which was duly given; and

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

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

WHEREAS, at said hearing this City Council received in evidence a development plan for the subject property entitled “Montgomery 7 Proposed Residential Apartments and Retail,” last revised March 22, 2016, 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 AS 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. The subject site has a land use designation of Downtown on the Envision San José 2040 General Plan Land Use/Transportation Diagram.

2. The project site is located in the DC(PD) Planned Development Zoning District (File No. PDC15-042).

3. The Montgomery 7 Planned Development Rezoning (File No. PDC15-042 (Ordinance No.____) was approved for publication on June 14, 2016 authorizing up to 54 residential units and approximately 1,856 square feet of ground floor commercial space with no on-site parking.

4. The approximately 0.103 gross acre project site currently has a single-family residence.

5. No ordinance size trees shall be removed as part of this permit.

6. The site is bounded by a vacant lot to the east, an office building across Park Avenue to the north, San José Fire Department Bureau of Field Operations across South Montgomery to the west, and retail commercial uses across Lorraine Avenue to the south.

7. This Planned Development Permit would allow development of up to 54 residential units and approximately 1,856 square feet of ground floor commercial space with no on-site parking.

8. The Downtown General Plan Land Use/Transportation Diagram designation typically allows a mixed of commercial and residential development with a floor-area ratio (FAR) of up to 30 and 800 dwelling units per acre (DU/AC).

9. The project proposes a FAR of 10.67 and 529 DU/AC.

10. No parking is proposed for the subject use.
11. 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).

12. 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.

13. Pursuant to Section 15164 of the CEQA Guidelines, the City of San José has prepared an Addendum to the Final Program Environmental Impact Report (EIR) Diridon Station Area Plan (Resolution No. 77096), the Final Program EIR for the Envision San José 2040 General Plan (Resolution No. 76041) and the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution 77617). The City Council adopted a separate resolution on June 14, 2016 approving the Addendum and Mitigation Monitoring and Reporting Program for this Project, which resolution and Mitigation Monitoring and Reporting Program are incorporated by reference as fully set forth herein.

14. On May 11, 2016, the Planning Commission conducted a public hearing on the Planned Development Permit and the accompanying Planned Development Zoning and recommended City Council approval.

**PD PERMIT FINDINGS**

The City Council concludes and finds, based on analysis of the above facts with respect to the Planned Development Permit findings, as set forth in San José Municipal Code Section 20.100.940, that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:

   a. As discussed in detail above and in the staff report, the project is consistent with the site’s General Plan Land Use/Transportation Diagram designation of Downtown in that residential uses and density are consistent with this designation.

      i. **Community Design Policy CD-1.17**: Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
ii. **Community Design Policy CD-3.5:** Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

iii. **Land Use Policy LU-3.5:** Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.

iv. **Land Use Policy LU-10-3:** Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

v. **Transportation Policy TR-1.1:** Accommodate and encourage use of non-automobile transportation modes to achieve San José’s mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).

vi. **Transportation Policy TR-3.3:** As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

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

viii. **Transportation Policy TR-8.12:** As part of the entitlement process, consider opportunities to reduce the number of parking spaces through shared parking, TDM actions, parking pricing or other measures which can reduce parking demand. Consider the use of reserve landscaped open space or recreational areas that can be used on a short-term basis to provide parking or converted to formal parking in the future if necessary.

*Analysis:* The subject project is fully capitalizing on the site’s proximity (within 2,000 feet) to the transit hub of Diridon Station, and the site’s urban location within the Downtown and greater Diridon Area. The project is a pedestrian oriented development with a transportation management plan to promote the use of alternative modes of transportation. Both the Diridon Station Area Plan and the Downtown General Plan policies emphasize building more dense and
livable urban development in the Downtown. The proposal for zero parking embodies the goals and policies to transition from a car-centric approach towards development that fully utilizes the site for non-vehicle uses and provides a diverse array of housing. Further promoting a higher density in the Downtown encourages commercial/retail development in the Downtown and Diridon Area to provide amenities to existing and future residents and visitors.

Per section 20.70.370B of the Municipal Code, “new structures on parcels that are 10,000 square feet or less with up to 30,000 square feet of building area do not need to provide parking”. The subject parcel is 4,446 square feet which is less than 10,000 square feet. However the approximately 47,451 gross square feet of building area exceeds the maximum 30,000 square feet as set forth in Section 20.70.370B. Therefore, a rezoning to a DC(PD) Planned Development Zoning District is required and the proposed Planned Development Standard will allow zero-parking for development up to 50,000 square feet.

Considering that the project is proposing zero parking, it meets the General Plan policies to reduce the visual impact of on-site parking and is proposing the highest level of reduction in parking requirements. The project is located in the Downtown Growth Area and within the Diridon Station Area Plan Urban Village. The site is approximately 1,750 feet away from the Diridon Station, which is developing into one of the most connected transit hubs in California, with connections to the Santa Clara Valley Transportation Authority (VTA) light rail, Caltrain, Altamont Corridor Express (ACE), Amtrak California, and eventual connection to Bay Area Rapid Transit (BART) and California High Speed rail. The subject project will also implement Transportation Management measure which includes up to two free VTA EcoPasses per unit, two free car share memberships per unit, installation of 54 secured bike parking spaces, and alternative transportation marketing materials provided to prospective tenants. The project is geared towards residents who will not own cars and encourages the use of alternative means of transportation.

Finally, the development furthers the vision of the Envision San José 2040 General Plan by developing a type of residential development that will accommodate the expected population growth in San José and providing an alternative form of housing that fully utilizes the finite amount of infill land available in the City.

ix. Community Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.
x. **Community Design Policy CD-7.9:** Build new residential development within Urban Village areas at a minimum of four stories in height with the exception that a single row of 2-3 story development, such as townhouses, should be used when building new residential development immediately adjacent to single-family residential sites that have a Residential Neighborhood designation.

xi. **Housing Policy-4.3:** Encourage the development of higher residential densities in complete, mixed-use, walkable and bikeable communities to reduce energy use and greenhouse gas emissions.

xii. **Land Use Policy LU-2.1:** Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

xiii. **Land Use Policy LU-10.4:** Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street type development.

**Analysis:** The subject project is located in the Downtown and Diridon Station Area Plan Urban Village Plan planning areas, where it is the most suitable for high density residential development. Given the site’s location and ideal location near transit options, the potential redevelopment is ideal for high-density development. The site is not adjacent to single-family residential and is located at the corner of a City connector street; as the area develops, the project will help frame the block and promote the redevelopment of the neighborhood. Further densification of the area will encourage the development of mixed use and commercial uses to support the residential density. The pedestrian orientation of the development emphasizes the urban and walkable nature of vibrant and diverse downtown streets.

xiv. **Community Design Policy CD-2.4:** Incorporate public spaces (squares, plazas, etc.) into private developments to encourage social interaction, particularly where such spaces promote symbiotic relationships between businesses, residents, and visitors.

**Analysis:** The proposed project would develop a publically accessible plaza at the corner of the development accessible by two public right-of-ways. The proposed plaza will facilitate the activation of the corner of the parcel and
provide a natural traffic calming measure to reduce vehicle speeds on the adjacent streets.

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
   a. As discussed in detail above and in the staff report, the proposed project conforms to the approved General Development Plan, in that the General Development Plan allows the 54 residential uses and ground floor commercial uses with the issuance of a Planned Development Permit.
   b. The allowed height in the General Development Plan allows a maximum building height of 110.0 feet; the building is 109’8”. The front, rear, side has a zero setback. The project is only required to provide parking if the building exceeds 50,000 square feet of building area. The project is approximately 47,451 square feet and therefore does not need to provide on-site parking. Additionally, the rezoning requires the permittee to offer two free VTA Eco passes and two free car share memberships to all existing tenants unless the project provides on-site parking in accordance to Chapter 20.90 of the San José Municipal Code.

3. 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, in that:
   a. The proposed project is at the corner of an intersection with three street frontages; and
   b. The site is in an urban setting near public transit; and
   c. There are no adjacent single-family residential units; and
   d. Is directly across the street from a Fire Training Station and a commercial center.

4. Environmental Review. Pursuant to Section 15164 of the CEQA Guidelines, the City of San José has prepared an Addendum to the Diridon Station Area Plan Final Environmental Impact Report (DSAP FEIR) and the Envision San Jose 2040 General Plan Environmental Impact Report, as supplemented (Envision 2040 FEIR) because minor changes made to the project, as described in Addendum and below, do not raise important new issues about the significant impacts on the environment.
   a. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
   b. The environmental impacts of this project were addressed by the Diridon Station Area Plan Final Environmental Impact Report, adopted by City Council Resolution No. 77096 on June 17, 2014; the Envision San Jose 2040 General Plan Environmental Impact Report, adopted by City Council Resolution No.
76041 on November 1, 2011; and the Envision San Jose 2040 General Plan Supplemental Environmental Impact Report, adopted by City Council Resolution 77617 on December 15, 2015. The proposed project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that “A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred.” Circumstances which would warrant a subsequent EIR include substantial changes in the project or new information of substantial importance which would require major revisions of the previous EIR due to the occurrence of new significant impacts and/or a substantial increase in the severity of previously identified significant effects.

c. The project is consistent with the development capacity evaluated in both the DSAP FEIR and the Envision 2040 FEIR, as supplemented. In 2014, the City adopted the Diridon Station Area Plan (DSAP) and certified the DSAP FEIR. The DSAP refined the development capacities evaluated in the 2005 Downtown Strategy 2000 EIR within the DSAP Plan Area by establishing urban design guidelines and specifying maximum development capacities in three Plan sub-areas: the Northern Zone (Innovation District), the Central Zone (Destination Diridon), and the Southern Zone (Diridon Neighborhoods). The project site is located within the Southern Zone, which has a maximum development capacity of 805,000 square feet of office/research & development/light industrial uses, 203,000 square feet of retail and restaurant uses, up to 2,365 residential units, and 650 hotel rooms.

d. The project proposes up to 54 residential units and about 1,856 square feet of ground floor commercial space (which could be used for future retail, restaurant, or office uses). This development capacity is within the development capacities for the Southern Zone analyzed in the DSAP FEIR.

e. The project is also consistent with the development capacity evaluated in the 2011 Envision 2040 EIR for the downtown area. In December 2015, the City Council re-adopted the City’s Greenhouse Gas Reduction Strategy and certified the Envision San Jose 2040 General Plan Supplemental EIR (SEIR). The SEIR analyzed the City’s greenhouse gas emissions under the Envision San Jose 2040 General Plan. The project is consistent with the City’s Greenhouse Gas Reduction Strategy as it is located within an identified growth area (Downtown), is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, and supports General Plan Policies to encourage public transit use, biking, and walking.

f. The Initial Study evaluates the project-specific environmental impacts that were not addressed in the three previously certified EIRs. The Initial Study concluded that the proposed project would not result in any new impacts not previously identified significant effects.
disclosed in the DSAP FEIR and the Envision 2040 FEIR, as supplemented. The project will not result in a substantial increase in the magnitude of any significant environmental impact previously identified in these EIRs. Therefore, a supplemental or subsequent EIR is not required and an addendum to the DSAP FEIR and Envision 2040 FEIR, as supplemented, has been prepared for the proposed project.

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

a. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.

b. The proposed project is in conformance with the California Environmental Quality Act of 1970, as amended.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby approved. This City Council expressly declares that it would not have granted this Planned Development 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 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 four 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 Planned Development 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 Plant 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.** Development of the site shall conform to approved Planned Development plans entitled, “Montgomery 7 Proposed Residential Apartments and Retail,” last revised March 22, 2016 on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “Approved Plan Set” or “approved plans.”

6. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the Permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.

7. **Use Authorization.** This Planned Development Permit allows the construction of a building with 54 residential units and approximately 1,856 ground floor commercial space.
8. **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.

9. **Parkland Dedication Ordinance.** This development is subject to the requirements of 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 the parkland dedication ordinance and the associated Fees and Credit Resolutions.

10. **Transportation Demand Management and Green Trip Certification.** The permittee has voluntarily agreed that prior to the issuance of any building permit on the Project, the permittee shall submit evidence to the satisfaction of the Director of Planning, Building and Code Enforcement that the Project has received Green Trip Platinum Certification. In the event the permittee does not receive Green Trip Certification or the Green Trip Certification program is discontinued, a Planned Development Amendment that identifies a suitable alternative program to implement the TDM strategies shall be approved by the Director of Planning, Building and Code Enforcement prior to issuance of any building permit.

11. **Affordable Housing.** This project may be subject to the City’s Inclusionary Housing Ordinance, Policy, or Affordable Housing Impact Fee (AHIF), as may be amended, or other applicable ordinances, policies, or regulations. If the development is subject to the referenced Ordinance, Policy or AHIF, as may be amended, or other applicable ordinances, polices or regulations, the Permittee shall, prior to the issuance of building permits:

   a. Submit an Affordable Housing Compliance Plan Application to the Housing Department, subject to Housing Department review and approval; and

   b. Execute and record against the Project an Affordable Housing Agreement, subject to Housing Department review and approval, prior to the approval of any final or parcel map, or issuance of any building permits, whichever occurs first for the Project; and

   c. No Temporary Certificate of Occupancy, or Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the Inclusionary Housing Ordinance, Inclusionary Housing Policy and/or the AHIF Resolution, or other applicable ordinances or policies, have been completely satisfied to the satisfaction of the Housing Department.

12. **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. __________ on June 14, 2016.
13. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map 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.

   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. This project is located in the expanded Downtown Core and is covered under the San José Downtown Strategy 2000 EIR, including the traffic analysis; therefore, no further traffic analysis is required. 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.

      ii. A Traffic Operational Analysis for this project was approved by the City on September 5, 2013.

      iii. The project is not in a Residential Permit Parking (RPP) Zone. The RPP program is no longer funded to accept new addresses or to modify existing zones; therefore the project will not be granted RPP parking permits.

   c. **Grading/Geology:**
      i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

      ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 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.
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 investigation shall 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 shall be explored and evaluated in the investigation.

d. **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 and source controls to minimize stormwater pollutant discharges.

e. **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 to the Department of Public Works prior to Public Works clearance.

f. **Parks:** This residential project is subject to the requirements of the City’s Parkland Dedication Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) for the payment of fees in-lieu of dedication of land for a public park and/or recreational purposes under the formula contained within the Subject Chapter and the Associated Fees and Credit Resolutions.

g. **Street Improvements:**
   i. Square-up of the northeast corner of Lorraine Avenue and Montgomery Street. This will include the removal of the median and street light, and include the installation of an American with Disabilities Act (ADA) compliant R-11 Handicap Ramp with cross-walk.
   
   ii. Construct a 12.0-foot attached sidewalk with tree wells along the entire Montgomery Street frontage. A street easement dedication of approximately 2 feet will be required.

   iii. Construct a 10-foot wide sidewalk section (4.0-foot park strip and 6.0-foot detached sidewalk) along the Lorraine Avenue frontage.

   iv. Remove and replace the handicap ramp at the corner of Lorraine Avenue and Montgomery Street to current City Standard Detail R-11.

   v. Remove and replace curb and gutter along project frontages.

   vi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
vii. 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.

h. **Street Vacation:** The project is proposing to vacate the excess right-of-way created by squaring up the corner of Lorraine Avenue and Montgomery Street. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. A preliminary title report must be submitted prior to any decisions regarding the possible vacation of this street. If the City owns the underlying fee and the permittee no longer wishes to pursue the vacation, the permittee shall be required to submit a Planning Permit Adjustment in order to eliminate the proposed courtyard paving as well as other building elements (i.e. planter boxes, roof overhangs, etc.) from the City right-of-way. This adjustment would be required prior to Public Works Clearance.

i. **Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee shall apply for a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.

i. The following shall be included with the Revocable Permit application, but are not limited to:

1) **Letter of Intent:** The permittee shall provide a detailed description of the reasons for the sidewalk/lane closures and why they are absolutely necessary (man lifts, baker tanks, staging area, concrete pumping activities, etc.) and reasons why covered pedestrian walkways will not be provided (e.g., swinging loads over sidewalk not safe for pedestrians).

2) **Multi-Phased Site Specific Sketches:** The permittee shall show in sketches the phased closures during the course of construction with a timeframe estimate of when each phase would be implemented. These sketches shall include the type and location of the work to be accomplished within the right-of-way, and show in detail the vehicular and/or pedestrian diversion route and the appropriate safety equipment used for such routes, 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 i.2., above.
iii. If proposed lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: http://www.sanjoseca.gov/index.aspx?NID=3713. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

j. **Revocable Encroachment Permit (Awnings):** At the Implementation stage, Permittee shall apply for a Revocable Encroachment Permit for any awnings that encroach into the Public right-of-way. These awnings must be temporary, removable and non-structural and must conform to City of San José Municipal Code 13.36.020 and 13.36.080. This will also include appropriate insurance to be maintained for the life of the awnings as determined by the City of San José Risk Manager.

k. **Strong Neighborhoods Initiative (SNI):** This project is located within the Delmas Park SNI area. Public improvements shall conform to the Certified EIR and Delmas Park Neighborhood Improvement Plan.

l. **Sanitary:*** The Permittee is required to submit plans and profiles of the private sewer mains with lateral locations to the Director of Public Works for final review and comment prior to construction.

m. **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.

n. **Electrical:** Existing electroliers along the project frontage shall be evaluated at the public improvement stage and any street lighting requirements shall be included on the public improvement plans.

o. **Street Trees:** The locations of the street trees shall 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 a park strip along Lorraine Avenue and in cut-outs at the back of curb along Montgomery Street. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

14. **Building 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, PD15-042, shall be printed on all construction plans submitted to the Building Division.

b. **Emergency Address Card.** The project permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

c. **Construction Conformance.** 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 any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

15. **Demolition.** This Permit allows the demolition of structures as noted on the approved plans.

16. **Construction and Demolition Hours.** Construction, demolition, and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.

17. **FAA Clearance.** Prior to the submittal of a building permit application, the permittee shall obtain from the Federal Aviation Administration (FAA) a “Determination of No Hazard” for the highest point of the building (top of elevator overrun). The permittee shall initiate this federal regulatory review via filing of FAA Form 7460-1 (Notice of Proposed Construction or Alteration), the data for which should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.

18. **FAA Clearance Permit Adjustment.** Prior to the submittal of a building permit application, the permittee shall obtain a Permit Adjustment to incorporate all FAA conditions identified in the certificate of no-hazard determination (e.g., obstruction lights or construction-related notifications) into the Planned Development Permit conditions of approval.

19. **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.

20. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
21. **Lighting.** Lighting shall conform to the Zoning Code and City Council Policy 4-3 Outdoor Lighting on Private Developments.

22. **Permit Adjustment Lighting.** A Permit Adjustment to allow for exterior lighting shall be approved prior to the submittal of the application for any building permits.

23. **Permit Adjustment Mural.** The permittee will be required to put a mural and/or additional design element on the southwest elevation (rear) of the building and a Permit Adjustment will be required for a mural and/or additional design element.

24. **Bike Parking.** Each unit will be provided a permanent bike parking within or near each unit.

25. **Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be located as shown on the approved plans and shall be screened from view.

26. **Sign Approval.** No signage is approved with this Planned Development Permit. All proposed signage is subject to the approval of a Sign Permit Adjustment.

27. **Colors and Materials.** All building colors and materials shall be those specified on the Approved Plan Set.

28. **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.

29. **Green Building.** The project must receive a minimum green building certification of LEED Certified. The permittee shall pay a Green Building Refundable Deposit at the building permit stage. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above 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. In the event that building permits are issued for individual units and not a more than one “model” unit, the permittee will need to submit a green building checklist prior to the issuance of a building permit.

30. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.

31. **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 Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
32. **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.

33. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

34. **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.

35. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.

36. **Storm Water Stenciling.** All drain inlets shall be labeled “No Dumping-Flows to Bay.” Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

37. **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 shall be removed and replaced. Permanent irrigation shall 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.

38. **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.

39. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Director of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

40. **Fire Flow and Hydrants.** Required fire flow and fire hydrants for the site shall be provided to the satisfaction of the Fire Chief.

41. **Visible Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.

42. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission 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 Planned 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 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. PDC14-047 approved by the City Council for publication of title on June 14, 2016 (the “Planned Development Zoning Ordinance”) and shall be no earlier than the effective date of said Planned Development Zoning Ordinance.

ADOPTED this ______ day of _______ 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

________________________________________
SAM LICCARDO
Mayor

ATTEST:

________________________________________
TONI J. TABER, CMC
City Clerk
LEGAL DESCRIPTION

EXHIBIT "A"

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

Lots 10 and 11, Block 2, as said Lot and Block are shown upon that certain Map entitled, "Map of Keiser Tract being a Subdivision of Lots 7 and 12 of Sunol Partition", which map was filed for record on May 7, 1914 in Book "O" of Maps, Page 49, Santa Clara County Records.

Except that portion described as follows:

Beginning at the intersection of the Northwesterly line of Lorraine Avenue with a line drawn parallel with and 20 feet Southwesterly from the Northeasternly line of Lot 12 of said Block 2 of Keiser Tract the same point being the most Southerly corner of the land conveyed to Attilio Solari et ux by Deed dated October 31, 1962 and recorded November 2, 1962 in Book 5779 of Official Records, Page 179, Santa Clara County Records; thence along said parallel line North 35° 58' 13" West 51.34 feet to the Northwesterly line of said Lot 12; thence along the Northwesterly line of said Lots 10, 11 and 12, North 29° 32' 48" East 83.45 feet; thence South 1° 00' 15" West 58.81 feet to the beginning of a tangent curve concave Northeasterly; thence along the arc of said curve with a radius of 24.32 feet, through a central angle of 126° 68' 28", a distance of 53.89 feet to a point of tangency with said Northwesterly line of Lorraine Avenue, said point being at the Southerly common corner of said Lots 10 and 11; thence along said Northwesterly line of Lorraine Avenue South 54° 01' 47" West 60.00 feet to the point of beginning.

As set out in Grant Deed to the City of San Jose and recorded April 1, 1969 as Instrument No. 3592069, in Book 8481, Page 598, Official Records.

APN: 259-47-068