

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW THE DEMOLITION OF EXISTING ON-SITE BUILDINGS THE REMOVAL OF ONE (1) NON-ORDINANCE SIZE TREE, AND THE CONSTRUCTION OF A 27-STORY, HIGH-RISE TOWER COMPRISED OF EITHER OF THE FOLLOWING OPTIONS: OPTION 1 A MIXED-USE DEVELOPMENT OF NO MORE THAN TO 295 CONDOMINIUM UNITS INCLUDING A MAXIMUM OF 290 RESIDENTIAL CONDOMINIUM UNITS A MAXIMUM OF FIVE (5) COMMERCIAL CONDOMINIUM UNITS; OR OPTION 2 A CO-LIVING FACILITY OF NO MORE THAN SIX (6) CONDOMINIUM UNITS INCLUDING ONE (1) RESIDENTIAL CONDOMINIUM UNIT WITH UP TO A MAXIMUM OF 793 BEDROOMS AND A MAXIMUM OF FIVE (5) COMMERCIAL CONDOMINIUM UNITS ON AN APPROXIMATELY 0.4-GROSS ACRE SITE LOCATED ON THE SOUTHEAST CORNER OF SOUTH 1ST STREET AND EAST REED STREET (600 SOUTH 1ST STREET)

FILE NO. SP18-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 9, 2018 an application (File No. SP18-001) was filed by the applicant, Mark Tersini, on behalf of KT Urban, with the City of San José for a Special Use Permit, subject to conditions, to allow the demolition of the existing buildings on-site the removal of one (1) non-ordinance size tree, and the construction of a 27-story, high-rise tower on an approximately 0.4-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located on the southeast corner of South 1st Street and East Reed Street (600 South 1st Street, San José, which real property is sometimes referred to herein as the "subject property") to be developed in one of the of the following options:

Option 1 – A mixed use facility of no more than 295 condominium units including a maximum of 290 residential condominium units and approximately 4,840 square

feet of commercial uses within a maximum of five (5) commercial condominium units; or

Option 2 – A Co-Living Facility of no more than six (6) condominium units including one (1) residential condominium units with a maximum of 793 bedrooms and approximately 5,422 square feet of commercial uses within a maximum of five (5) commercial condominium units; 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 October 23, 2019, notice of which was duly given; and

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

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

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Garden Gate Tower," dated revised on June 4, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

- 1. Site Description and Surrounding Uses.** The project site, is located on the southeast corner of South First Street and East Reed Street in Downtown San José. The project site has a DC Downtown Primary Commercial Zoning District designation and a Downtown General Plan Land Use/Transportation Diagram land use designation. The property is bounded by South 1st Street to the west, East Reed Street to the north, and an unnamed alley on the east.

The project site is currently developed with two buildings and surface parking. Three driveways provide access to the site. An ingress and egress driveway from East Reed Street provides access to a parking lot serving the Pallesen Apartment building. An ingress only driveway from South 1st Street provides access to a parking lot serving the

Pallesen Building. The egress only driveway is located on an unnamed alley connected to East Reed Street. The two existing buildings on the project site are listed in the City's Historic Inventory. The single-story brick office building (Pallesen Building) is identified as a City Structure of Merit, and the two-story residential building (Pallesen Apartments) is identified as eligible for the National Register, California Register, and local listing. Additionally, a neon road sign, located on the corner of East Reed Street and South 1st Street on the property, is also eligible for the National and California Historic Registers.

Commercial and residential uses surround the project site. A mixed-use building (SparQ), which is currently under construction, and hotel are located north of the site. West of the site is developed with a mixed-use building (The Pierce) and commercial building. South of the project site are commercial buildings and Highway 280. A vacant property and multifamily residences are located to the east.

2. **Project Description.** The project applicant, Mark Tersini representing KT Urban, submitted the Special Use Permit and Tentative Map applications on January 9, 2018. If approved, the Special Use Permit and Tentative Map would allow the demolition of the existing on-site buildings, the removal of one (1) non-ordinance size tree, and the construction of a 27-story, high-rise residential tower.

Design

The project would be an approximately 283-foot-tall modern tower; the building's design would include a variety of textures and materials including brick, metal panels, perforated metal, concrete, and curtain wall glass. The building's floor plans would slightly taper long all sides and the floor plates would recess above the 22nd floor, helping to create a distinctive, not rectangular silhouette. The project's rooftop would be defined with a butterfly painted metal panel along the roof, a roof deck, and the relocation of the neon motel sign on the roof deck.

The ground floor retail space would be double height, single-story spaces built to the edge of sidewalk. The project proposes to incorporate the existing Pallesen Building's brick façade into a portion of the building ground floor design along South First Street to provide visual continuity of the existing building on the project site.

The project applicant is requesting the review and approval of two site use options; referred to as Option 1 and Option 2. The exterior of the building would not substantially change between the two options and both options are included in the project review and plan sets. The building design under Option 2 would look similar to Option 1 however, some of the balcony sizes and locations would change.

Option 1

Option 1 proposes a mixed-use project with a total of no more than 295 condominium units including a maximum of 290 residential condominium units and approximately 4,840 square feet total of commercial space subdivided into a maximum of five (5) commercial condominium units. The ground floor would include approximately 4,840

square feet of retail accessible along both East Reed Street and South 1st Street, a residential lobby accessible from East Reed Street, and a loading area accessible along the alley. The project would provide a total of 232 residential parking spaces with five accessible spaces, and eight electric vehicle charging stations. The parking garage would be located in four underground levels accessible from a right turn in on South 1st Street and three above-grade levels (levels 2-4) accessible through the alley off East Reed Street. Additionally, a bike room would be located on the first floor with 76 bicycle racks.

The project would consist of a mix of studio, one-bedroom, and two-bedroom units. The residential units would be located on floors five through 27. The project would provide 13,912 square feet of residential private open space on balconies. Of the 290 residential units, 230 units would have a balcony. Additionally, the project would provide 7,171 square feet of residential common open space on the 27th floor including an amenity room and roof deck with a pool.

Option 2

Option 2 proposes a mixed-use project including a co-living facility with a total of no more than six (6) condominium units including one (1) residential condominium unit for a co-living facility use with a maximum of 793 bedrooms and approximately 5,422 square feet of commercial space subdivided into a maximum of five (5) commercial condominium units. The ground floor would include approximately 5,422 square feet of retail accessible from East Reed Street and South 1st Street, the Co-Living lobby accessible from East Reed Street, and a loading area accessible along the alley. The project would provide a total of 124 unbundled residential parking spaces with three accessible spaces, and eight electric vehicle charging stations. The parking garage would be located in four underground levels accessible from the alley. Option 2 would not include any above grade parking. Additionally, a bike room would be located on the first floor with 183 bicycle racks.

The Co-Living Facility would consist of 793 bedrooms located on floors 2 through 26. The bedrooms would be an average size of 202 square feet. The maximum bedroom size, excluding the closet and bathroom area, would be 388 square feet and the minimum bedroom size, excluding the bathroom and closet would be 142 square feet. Some of the co-living facility's bedrooms would have their own restroom facility while others would utilize a shared restroom facility on the individual floor. Each unit would have a storage closet. Floors 2-26 would also include a laundry room, janitorial closet, common kitchen, and interior common space (including relaxing lounge areas and a media room). Additionally, the project would provide 10,738 square feet of common open space amenities with balconies along the shared common interior spaces and amenities on the 27th floor for the Co-Living Facility including a gym, lounge and roof deck with a pool.

3. General Plan Conformance. General Plan Strategies and Policies

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

Analysis: The development of mixed-use residential uses in the Downtown area would foster a complete community with respect to putting people and amenities in an area where job growth is anticipated. As an identified Growth Area, Downtown 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 in Downtown, as well as for these residents and visitors to "live" in the sense that there are services and amenities within close proximity to make daily life convenient and enjoyable. Specifically, there are several large Downtown office projects proposed near Plaza de Cesar Chavez, which is within a half mile of the project site, creating a need to locate more housing in the Downtown area. The project site is also approximately 1.4 miles from Diridon station, near VTA light rail stations and along several bus routes, making it a convenient location for residents who want to live near transit. Both Options 1 and 2 would create a complete community by providing housing options for residents in the area, and supporting those residents with amenities and services once they are in the area.

- B. Land Use Goal LU-3: Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José.
- C. Land Use Policy LU-3.4: Facilitate development of retail and service establishments in Downtown, and support regional- and local-serving businesses to further primary objectives of the General Plan.
- D. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

Analysis: In order to mature into the great place envisioned by the General Plan, Downtown projects need to facilitate the growth of Downtown as a regional job center, as well as a place for residents to live. High-rise development is anticipated as a way to create this synergy between residents, workers, and visitors. As larger residential projects are built in Downtown, more people would be in the area, which would foster pedestrian activity, transit ridership, and increased social activity in the Downtown. With more residents in the Downtown area, the survivability of retail would increase, encouraging new retail services and amenities to locate in the area, which not only provides a benefit to the residents, but also the commercial and office uses in the area. With more amenities available to their employees, more businesses would want to move into the area, creating an environment that is an attractive place to live as well as work. The project's ground floor commercial

condos, requested in Option 1 and Option 2, would be of the size necessary to support retail and restaurant uses, and the infrastructure being provided in these spaces would 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.

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

Analysis: The project applicant is requesting review of two alternative use options. Option 1 would allow up to 295 condominium units including a maximum 290 multifamily residential condominium units and approximately 4,840 square feet of commercial space subdivided into a maximum of five (5) commercial condominiums. The commercial space would be designed to be usable by a variety of commercial and retail uses. The multifamily residential units would range between studio to two-bedroom apartments providing multiple apartment living options. Option 2 would allow up to six (6) condominium units including one (1) residential condominium unit for a Co-Living Facility with a maximum of 793 bedrooms and approximately 5,422 square feet of commercial space subdivided into a maximum of five (5) commercial condominiums. The Co-Living Facility would have a combination of single-occupant and double-occupant bedrooms. The Co-Living Facility would provide a unique Downtown living opportunity for singles and pairs hoping to experience the Downtown and compact living lifestyle. Both options would support a variety of tenant uses and residential opportunities, adding to the Downtown amenities for residents, workers, and visitors.

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

Analysis: The project site is in close proximity to several transit options. VTA Bus Service San José downtown is served by many local bus routes. Within 1/3 mile of the project site, VTA Bus Routes 66, 68, 82, and 304 provides local and regional bus service for commuters between San José downtown and major transit destinations in Santa Clara County. Bus stops with benches, shelters, and bus pullout amenities are provided within 1/3 mile from the project site and in the downtown area. The free Downtown Area Shuttle (DASH) service provided by VTA also runs within the downtown area. This shuttle provides service from the San José Diridon Caltrain Station to San José State University, Convention Center, and LRT stations in the area. The pickup locations for DASH are located on San Carlos Street between First and Second Street and between Market and First Street, approximately 1/3 mile from the site.

VTA Light Rail Transit (LRT) Service operates the 42.2-mile light rail line system from south San José, downtown, and through the northern areas of San José, Santa Clara, Milpitas, Mountain View, and Sunnyvale. Within 1/3-mile walking distance from the project site, the closest VTA Light Rail station is at the San José Convention Center. The Mountain View-Winchester and Santa Teresa-Alum Rock light rail lines at this station. The Caltrain Service Commuter rail service between San Francisco and Gilroy is provided by Caltrain. The San José Diridon Station in downtown is approximately 1.4 miles from the project site which can be accessed by either biking or riding the free DASH shuttle. The Altamont Corridor Express (ACE) provides commuter passenger train service across the Altamont between Stockton and San José which terminates at the San José Diridon Station. The Amtrak Capitol Corridor trains stop at the San José Diridon station and provides access between Sacramento and the Bay Area.

Having either 290 residential units or 793 Co-Living bedrooms close to a variety of public transportation options encourages the use of transit and creates more opportunity for people to be car-free in the downtown area. Additionally, both project options would have unbundled parking requiring future residents to rent a parking space within building. Unbundled parking would encourage future residents to consider their need to have a car in Downtown.

Furthermore, the ground floor commercial space would provide residents and workers in the Downtown area with more amenities in proximity to where they live and work which encourage walking and bicycling rather than driving.

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

Analysis: The commercial condominium units, which are part of each option, would be conditioned to 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 (750) 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.

- H. Downtown Urban Design Policy CD-6.6: Recognize Downtown's unique character as the oldest part, the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.

Analysis: A historic resources analysis was completed for the on-site structures, which include the Pallesen Apartments, Pallesen Building, and the City Center Motel Sign, as part of the preparation of the Supplemental Environmental Impact Report (SEIR). As further described in the SEIR, the two-story Pallesen Apartments building located at 8 East Reed would be eligible for Candidate City Landmark Listing, and listing in the National Register of Historic Places (NRHP),

California Register of Historical Resources (CRHR), and City of San José local register. The Pallesen Building is listed on the City's Historic Resources Inventory as a Structure of Merit but would not be eligible for the state or national registers. The City Center Motel Sign would be eligible for the state and national registers, as an excellent example of roadside vernacular design.

Both options of the project would retain the City Center Motel Sign on-site, but the sign would be relocated to the building's roof top. The relocation of the sign would remove it from the roadside but would ensure the Motel signage would not confuse visitors of the site. The project would also retain the façade of the Pallesen Building keeping in place its character-defining features, stabilizing the complete brick, tile, glass, parapet, and metal storefront assembly, and shifting it a few feet to the north and four feet further away from the street to accommodate the tower development including the driveway for the on-site parking.

Although the existing buildings and sign on-site have been identified as historic resources through the SEIR, the full retention of the two buildings and ground floor placement of the sign do not support commercial and retail uses at the ground floor without significant modification to the project design. Support of the project would thus be inconsistent with this land use policy for historic preservation. The demolition of the buildings and relocation of the sign have been identified as a significant impact in the SEIR. Mitigation for these impact include a HABS survey for the Pallesen Apartments which would document the historic structure. Additionally, the mitigation measure requires the project applicant to advertise the relocation of the structure for a minimum of sixty (60) days and would require a preservation plan for the Pallesen Building façade and a relocation plan for the relocated sign to be prepared by the project applicant and submitted to the City's Historic Preservation Officer for review and approval. Further discussion has been provided in the SEIR on the historical resources.

As explained above, the project is consistent with the General Plan in balancing a "complete community", maximizing commercial use on the ground floor, pedestrian and transit friendly project, and higher residential density.

- I. Downtown Urban Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.
- J. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
- K. Downtown Urban Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown Skyline.

Analysis: The project has a Floor Area Ratio (FAR) of 24.0. Option 1 has a density of 693 units per acre and Option 2 provides 793 Co-Living bedrooms. Both options would be very dense mixed-use projects. This amount of density would contribute to Downtown's growth as a vibrant urban area, and help the City actualize its vision for the Downtown core. The project has undergone extensive design review so that its scale, quality, and character strengthen Downtown's status as an urban center, as discussed in the Design Guidelines conformance section. The development would be a recognizable development from the sky and from below as it has a strong design presence, with an outdoor roof deck amenity area, and nighttime lighting features.

- 4. Zoning Conformance.** The project site is located in the DC Downtown Primary Commercial zoning district.

Height and Setbacks

Section 20.70.210 of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is only limited to the height limitations necessary for the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. The project would be 283 feet in height. Conditions approval would require the project applicant to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the building's height prior to construction.

Use

The project site is in the DC Downtown Primary Commercial zoning district. This Zoning District permits mixed-use residential projects with the issuance of a Site Development Permit. Additionally, the creation of commercial condominiums requires a Special Use Permit pursuant to Section 20.175.040 of the San José Municipal Code. The Co-Living Facility use in Option 2 would also require a Special Use Permit to also consider the Co-Living Facility use pursuant to Section 20.80.290. This section outlines the co-living facility requirements. Option 2 meets the requirements of the Co-Living Facility as described below:

- A. Size (Section 20.80.290.b.1):** Excluding the closet and the bathroom area, the bedroom size must be at least one hundred (100) square feet in floor area if occupied by one (1) person, and one hundred fifty (150) square feet in floor area if occupied by two (2) persons. The average size of all of the bedrooms within a Co-Living Community shall be no greater than two hundred seventy-five (275) square feet and no bedroom may exceed four hundred (400) square feet.

Analysis: The project's bedroom sizes range from 142 square feet to 388 square feet in size, excluding the bathroom and closet. The average bedroom size is approximately 202 square feet. The project complies with this code section.

- B. Occupancy (Section 20.80.290.b.2):** Each bedroom shall be designed to accommodate a maximum of up to two (2) persons, along a lateral or loft configuration.

Analysis: The project has been designed with bedrooms to accommodate single and double occupancy rooms. The design and occupancy limitations are reflected in a project's condition of approval #7.

- C. Kitchens (Section 20.80.290.b.3):** A bedroom may contain partial kitchen facilities. If individual partial or complete bath facilities are not provided in a bedroom, common bath facilities must be provided in accordance with Subsection B of Section 17.20.290 of Title 17 of the San José Municipal Code.

- D. Layout (Section 20.80.290.b.4):** Common full kitchen facilities must be provided to adequately serve the residents of the Co-Living Community and must serve six (6) or more bedrooms.

Analysis: Common bath facilities are provided on every floor to accommodate bedrooms without private bathrooms. The project has a common full kitchen on every floor. These kitchens would each serve 27 to 32 bedrooms.

- E. External Entryway (Section 20.80.290.b.5):** No bedroom shall have a separate external entryway.

Analysis: All of the co-living units are accessed from internal corridors.

- F. Interior Common Open Space (Section 20.80.290.b.6):** A Co-Living Community shall provide a minimum of 20 square feet of interior common space per bedroom, excluding janitorial storage, laundry facilities and common hallways. The interior common space may be located on different floors than the corresponding bedrooms.

Analysis: Option 2 has a total of 64,320 square feet of common space which averages to 81 square feet of common interior space per unit. Above and beyond the requirements, the project also provides 9,456 square feet of residential open space through the provision of an amenity lounge and the roof deck with a pool.

- G. Closet (Section 20.80.290.B.7):** A closet or designated storage space, which could consist of furniture that provides storage, is required in every bedroom.

Analysis: Every co-living bedroom has a closet.

- H. Cleaning Supply Storeroom/Utility Closet (Section 20.80.290.B.8):** A cleaning supply storeroom and/or utility closet with at least one (1) laundry tub with hot and cold running water must be provided on each floor of the facility.

Analysis: Each floor has a janitor room that includes a laundry tub.

- I. Laundry Facilities (Section 20.80.290.b.9):** Laundry facilities must be provided in a separate room at the ratio of one (1) washer and one (1) dryer for every twenty (20) bedrooms or fractional number thereof.

Analysis: The project provides laundry rooms on every floor. The floors have a maximum of 32 bedrooms and provide a minimum of three washers and dryers per floor.

- J. Housing (Section 20.80.290.b.10):** A Co-Living Community is subject to regulatory programs and requirements administered by the Department of Housing.

Analysis: With respect to those programs and requirements and the implementing regulations, each bedroom shall be considered a co-living dwelling unit, and the heated common areas associated with the bedrooms would not be excluded from the determination of square footage.

- K. Operations Management Plan (Section 20.80.290.b.11):** A Co-Living Community shall have an operations management plan. The operations management plan is subject to the approval of both the Director of Planning and the Director of Housing. The operations and management plan shall be adhered to during the operation of the Co-Living Community.

Analysis: The project applicant has submitted their Garden Gate Housing Compliance Plan for review by the Housing Department. As a Condition of Approval, Option 2 would be required to provide and comply with the Operations Management Plan approved by the Housing and Planning Department. The project would therefore comply with this code section.

- L. Design Guidelines (Section 20.80.290.b.12):** A Co-Living Community shall conform to the design guidelines in Section 20.70.500. The project is subject to Downtown Design Guidelines and Residential Design Guidelines.

Analysis: Per the analysis in the Design Guidelines Section below, the project complies with this Code Section.

- M. Transportation Demand Management Program (Section 20.80.290.b.13):** A Transportation Demand Management Program (TDM), in conformance with Section 20.90.220, shall be required for a Co-Living Community, regardless of whether a reduction in parking is requested.

Analysis: As discussed below, the project complies with this Code Section and Option 2 would be required to comply with the Transportation Demand Management Program for the life of the project. The TDM Plan includes the provision of transit passes to all residents and employees of the project, unbundled parking, and a TDM project coordinator.

Parking Requirements

In Option 1, residential units require one parking space per unit, and retail and commercial uses have no minimum parking requirement. Bicycle parking is required at one space per four units. Per the requirements, Option 1 requires 290 residential parking spaces and 73 bicycle parking space. The required parking for Option 2, the Co-Living Facility, is 0.6 parking space per bedroom pursuant to Table 20-140, Note 10 and 25 long-term bicycle parking spaces for the first 100 Co-Living bedrooms plus 0.20 parking spaces for every bedroom over 100. Additionally, two short-term parking spaces are required for every 100 bedrooms. Per the zoning requirements, the project would need to provide 476 vehicle parking spaces and 239 long term bicycle parking spaces and 16 short term bicycle parking spaces. Additionally, one long term and two short term bicycle parking spaces would be required for the commercial retail space.

Pursuant to Section 20.90.220 of the San José Municipal Code, a parking reduction of up to 20% may be authorized for a development which provides all the required bicycle parking and is located in a growth area. Additionally, the DC Zoning District permits further parking reductions. Section 20.70.330.B authorizes further parking reductions, up to 50%, for mixed-use projects in the Downtown Zoning Districts where the reduction would not adversely affect surrounding projects, the reduction would not be dependent upon public parking, and the project can demonstrate it can maintain its TDM for the life of the project and maintain the provided parking.

Option 1 provides a 20% parking reduction to allow 232 parking spaces in lieu of 290 parking spaces. The project would provide the required bicycle parking. The closest Light Rail station is at the San José Convention Center within 1/3 mile (1,790 feet) of the site and existing buses have routes within 1/4 mile of the project site. The project would utilize the 20% parking reduction and would provide 232 vehicle parking spaces and 76 bicycle parking spaces in compliance with the Municipal Code.

Option 2 would utilize the 50% parking reduction as well as the additional 50% parking reduction permitted in Section 20.70.330.B. The Co-Living development (Option 2) would provide 124 vehicle parking spaces and 183 bicycle parking spaces comprised of 18 short term spaces and 180 long term spaces. The project would implement a TDM program with a transit pass program for all the retail employees and Co-Living facility tenants. Additionally, the project would designate an on-site TDM manager and develop a campaign to improve tenant awareness and participate in alternative transportation options. Finally, the project would unbundle the parking for the Co-Living Facility, which would require future tenants to rent a parking space. The project would not rely on public parking and would be conditioned to maintain the minimum code required parking (with reductions) and implementation of the TDM plan for the life of the project. The project's TDM includes analysis on the cost of the VTA SmartPass program, which has been factored into the project's annual budget. Therefore, the parking reduction for Option 2 would comply with the Municipal Code.

- 5. Design Guidelines.** Downtown Design Guidelines Conformance Section 20.70.500 of the Zoning Ordinance requires that any project in the DC Downtown Primary Commercial Zoning District be subject to the design guidelines adopted by the City Council. The new Downtown Design Guidelines and Standards were adopted on April 23, 2019 and amended on May 21, 2019; these guidelines are applicable to any Planning application submitted after the Effective Date. The project was submitted on January 9, 2018, and is subject to the 2004 Downtown Design Guidelines. The project complies with the 2004 Downtown Design Guidelines, specifically in the following areas:

Urban Form and Massing

The Downtown Design Guidelines state that a project's massing should consider the larger physical context and urban form. The project site is located at an entry point into Downtown along South First Street. Plaza de César Chavez and the greater downtown are located north of the site and south of the site is Interstate 280 and residential neighborhoods. In response to the location, the project's tower massing lightly steps down on the southern elevation. The building is carefully angled on the northwest corner meant to mimic the street angle north of the site where South 1st Street splits in to South Market Street and South First Street. The project considered its design on all views to and from the site, including the elevated freeway, the planes overhead, and the pedestrian experience. Horizontal and vertical reliefs were incorporated into the designs through façade treatments to further break down the building's massing.

Project Base/Street Wall

The Downtown Design Guidelines encourage the design of the base of buildings to allow for lasting social interaction at the ground through transparency and durable materials. Further, the Guidelines state that building frontage should appear safe, welcoming, and open to the general public.

The project's two street frontages have achieved the intent of the Guidelines by providing large, glass street frontages with building entrances along both East Reed Street and South 1st Street. The project's ground floor exterior has been designed to have a clear height to 20 feet from the ground plane at the corner of East Reed and South 1st Streets. The project reuses the Pallesen Building's storefront along South 1st Street as a unique ground floor space which breaks up the 140-foot South 1st Street's building frontage. Additionally, the project incorporates canopies and pedestrian lighting along the retail and residential lobby entrances to provide a protected covered entrance and well-lit night time experience as pedestrians and residents move in and out of the building. The building's ground floor would include materials such as retail storefront vision glass, a brick façade, a dark ground floor brick base along East Reed Street, and a painted metal louvers and panels. The mix of materials on the ground floor creates a warm feeling, inviting pedestrians and bicyclists into the space.

Architecture and Materials

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 base of the building is defined by the varied height massing blocks on Levels 1 through 4. The middle is defined by the horizontal insets that occur at levels 11, 14, 17, and 21 on both options. The top is defined by the setback at the pool terrace and inset corner around the pool. The roof is distinctive through the use of the butterfly, roofline canopy of the outdoor pool space.

Glazed spandrel glass panels are used to create a vertical pattern on the tower. Darker glazing is combined with inset balconies to enhance the visual look of the project site. The pattern created by the spandrel glass is similar to the vertical patterns on the multi-family Pierce building across First Street while the inset balconies would reflect the inset balconies on the upcoming multifamily "SparQ" building across East Reed Street. The building's ground floor dark bricks and the red painted metal panels woven through the building's base and top reflect the red roof attributes and ground floor designs of the nearby neighborhood including the commercial building located across South First Street from the project site and the City Center Motel, located on South Second and East Reed.

Building Crown

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. For buildings taller than 75 feet, the average floor plate (floor area for a level) for all stories above 75% of the building's total height shall not exceed 85% of the average size of the floor plates. This allows the tower to have a distinctive silhouette as the building increases in height.

The tower steps its mass down on the top south side of the building which adds some variation to the typical roof structure seen in high rises throughout the City. Consistent with the Design Guidelines, the roof level and levels 23-27 have an average floor plate of 81%. The building's roofline is defined by its outdoor residential amenity space for both options.

Option 1-Residential Design Guidelines

The Residential Design Guidelines state private open space should be provided at a minimum of 60 square feet per unit and common open space should be provided at a minimum of 100 square feet per unit. Residential open space requirements are intended to provide space for recreation and social activities. Projects in close proximity to parks can reduce their provided open space. The project is approximately

250 feet from Parque de los Pobladores and is also approximately ½ mile from the Guadalupe River Trail and Plaza de César Chávez. Option 1 is proposing to provide an average of 48.8 square feet of private open space residential space and an average of 24.7 square feet of common residential open space. Given the project's proximity to public open space and the urban nature of the project, the open space meets the intent of the residential guidelines.

- 6. Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), which was circulated for public review and comment from July 15, 2019 through August 29, 2019. A First Amendment to the Draft SEIR was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. The First Amendment together with the DEIR constitute the Final Supplemental Environmental Impact Report (Final SEIR) for the project.

The following discussion outlines the environmental impacts discussed in the Draft SEIR.

Identified Significant Unavoidable Impacts

The Draft SEIR found that the project would result in significant unavoidable impacts to the on-site cultural resources including the City Center Motel Sign and Pallesen Apartment Building and the project would result in significant adverse changes to the adjacent South First Street Arts District (SOFA). Therefore, a Statement of Overriding Considerations is required. The Draft SEIR identified impacts resulting from the project to Biological Resources, Hazards and Hazardous Materials, and Noise. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program prepared for the project, impacts to these resources are reduced to less than significant levels.

Environmental Impacts and Mitigation Measures

As part of the certification of the Final SEIR, the City Council approved a related Mitigation Monitoring and Reporting Program (MMRP) for the project. The following mitigation measures apply to the project as further explained in the Draft SEIR and MMRP:

- Biological Resources – If construction activities start during the migratory bird breeding season (February 1st through August 31st, inclusive), pre-construction surveys for nesting raptors or other migratory birds are required to reduce the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment impacts to less than significant levels.
- Cultural Resources—Prior to the issuance of any grading, demolition or building permits, the Pallesen Apartment building shall be documented in accordance with the Level III Historic American Building Survey (HABS).

Additionally, the project applicant shall be required to advertise the availability of the Pallesen Apartment Building for relocation for a minimum period of 60 days. If the building is relocated, the City must determine the receiver site is suitable and a structural engineer shall be engaged to determine the appropriate reinforcement needed during the building's move. The relocated building would then be repaired and restored. If the Building cannot be relocated, the structure shall be made available for salvage for the reuse of historic building materials. A Preservation Plan shall be submitted to the City for the Pallesen Building's façade reuse in the project and a Relocation Plan shall be prepared and submitted for the City Center Sign. A qualified archeologist shall conduct a field inventory of the project site and submit a report outlining the results and recommendations; the project shall be required to implement the recommendations of the report. If prehistoric or historic resources are encountered, all activity shall cease, and the archaeologist shall evaluate the find(s) and provide appropriate recommendations regarding the disposition of the finds.

- **Hazardous Materials** – After demolition of the existing buildings, but prior to the issuance of grading permits, the project applicant shall conduct soil sampling and prepare a Site Groundwater Management Plan. If contaminated soils are found on site above established thresholds, the project applicant must enter into the Santa Clara County Department of Environmental Health's Voluntary Cleanup Program for remediation of contaminated soil. Prior to the start of construction, the project applicant shall obtain a discharge permit to dispose of the water collected during the dewatering process.
- **Noise** – Prior to the issuance of any grading permits, the project applicant shall submit a construction plan, vibration monitoring plan, and schedule that will identify potential construction hours, equipment, and activities. The Construction Vibration Monitoring Plan ("Monitoring Plan") shall document existing conditions, conditions during construction and after construction. The Plan shall identify the sensitivity of on- and off-site structures, perform a survey for each structure within 50 feet of the constructions activities and development a monitoring and construction contingency plan. A report summarizing the result of the vibration monitoring process shall be submitted after the completion of each substantial phase of construction, as identified in the Monitoring Plan.

CEQA Alternatives

As required under CEQA, the Draft SEIR evaluated the No-Project alternative, a Pallesen Apartments Building Relocation alternative, and a Historic Structure Preservation alternative. Most of the environmental impacts of the project involved cultural resources (historic buildings); therefore, the alternatives were focused on

exploring alternatives that would reduce these impacts. These alternatives are summarized as follows:

- No Project – No Development Alternative: The No Project – No Development Alternative assumes no redevelopment of the project site and would result in the retention of the existing buildings. There would be no construction with the No Project – No Development Alternative and therefore, would not result in any environmental impacts or mitigation measures.
- Pallesen Apartments Building Relocation Alternative – This alternative would be the same as the project with the exception that the Pallesen Apartments Building would be relocated off-site to another location within Downtown San José and the building would be preserved and used as an apartment building, similar to its current use. The Pallesen Building would continue to be demolished (with façade preservation) and the City Center Motel sign would continue to be relocated to the roof. This alternative would be the same for both options. Under this alternative, the project would avoid the significant and unavoidable impact to the Pallesen Apartments Building but the impacts to the Pallesen Building and City Center Sign would remain the same. This alternative would meet all the project objectives for both options.
- Historic Structure Preservation – This alternative would maintain all three historic structures on-site in their current locations. The project would be a residential development designed around these structures. Under this alternative, the project would have approximately 5,000 square feet of development area and the site would be able to support a narrow building with a north-south orientation. The building would be three stories in height and would have approximately 1,500 square feet of retail with a total of three residential units and eight parking spaces. By preserving the onsite historic structures, this alternative would avoid potential impacts on historic resources, because the existing buildings would continue in their current use in their original location. The project would also have an incrementally reduced impact on the increased urbanization and removal of historic structures in the SoFA and First Street Commercial historic core areas. Under this alternative the impacts on historical resources would be less than significant. The alternative would not fully meet the project's objectives to provide high-density development and maximize the use of an infill site.

Circulation and Public Comments

The Draft SEIR was circulated for a 45-day period from July 15 through August 29, 2019. The City received six written comment letters during the public comment period. Comments were submitted by one individual and five agencies and organizations, as shown below:

- Bay Area Quality Management District
- Santa Clara Water District
- Kitty Moore, Community Member
- Aurelia Sanchez, Community Member
- Develin Creighton, Community Member

Issues raised in these comment letters include the following:

- Clarification on the Cortese List and Hazards and Hazardous Materials Section
- Air Quality: Consistency with the 2017 State Scoping Plan and Green Building Code Standards
- Parking and Circulation
- Request for one project rather than two options
- Construction Hours and Practices

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR are available for review on the project page on the City's Active EIRs website at: <http://www.sanjoseca.gov/index.aspx?nid=6073>.

SEIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft SEIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft SEIR is not "significant" unless the Draft SEIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR.

No significant new information has been added to the EIR since publication of the Draft SEIR; therefore, recirculation is not required.

7. FINDINGS

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

A. Site Development Permit Findings

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

Analysis: As discussed in detail above, the project (both Options 1 and 2) is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial, retail, and residential uses at high densities. Both project options are also consistent with the various General Plan policies listed above including urban design policies, transportation policies, and community design policies.

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

Analysis: As discussed in detail above, both options for the project are consistent with the DC Downtown Primary Commercial Zoning District. Option 1 includes uses which are permitted in the Zoning District. Option 2 is a Co-Living mixed-use project which requires the approval of a Special Use Permit and compliance with Municipal Code Section 20.80.290. As described above, Option 2 would comply with the Co-Living Facility requirements.

Both Options are consistent with the required height and setbacks of the DC Downtown Primary Commercial Zoning District. The DC Zoning District requires no minimum setbacks. The project applicant has applied for and received a Determination of No Hazard with the Federal Aviation Administration (FAA), indicating that the project does not pose a hazard to air navigation. The project applicant must file a Notice of Actual Construction within 5 days of completing each building's highest corner point and requires the installation of roof-stop obstruction lights as prescribed by the FAA.

The required parking for Option 1 would be one parking space per unit and one bicycle space per 4 units which would be 290 vehicle parking spaces and 73 bicycle parking spaces. Additionally, one long term and two short term bicycle parking spaces would be required for the commercial retail space. Section 20.90.220 of the San José Municipal Code allows projects that are within growth areas and within 2,000 feet of a light rail station and which provide all the required bicycle parking to receive a 20% reduction in parking. As

described above, the closest Light Rail station is at the San José Convention Center within 1/3 mile (1,790 feet) of the site and existing buses have routes within 1/4 mile of the project site. Option 1 proposes to utilize the 20% parking reduction and would provide 232 vehicle parking spaces and 76 bicycle parking spaces in compliance with the Municipal Code.

The required parking for Option 2 would be 0.6 parking space per bedroom pursuant to Table 20-140, Note 10 and 25 long term bicycle parking spaces for the first 100 Co-Living bedrooms plus 0.2 bicycle parking space for every bedroom over 100. Additionally, two short-term bicycle parking spaces would be required for every 100 bedrooms. Per the zoning requirements, the project requires 476 vehicle parking spaces and 239 long-term bicycle parking spaces and 16 short-term bicycle parking spaces. Additionally, one long-term and two-short term bicycle parking spaces would be required for the commercial retail space. Section 20.90.220 of the San José Municipal Code allows projects that are within growth areas and within 2,000 feet of a light rail station and which provide all the required bicycle parking, and a TDM Program to receive a 50% reduction in parking. Additionally, Section 20.70.330.B permits further parking reductions, up to 50% for mixed-use projects where the reduction would not adversely affect surrounding projects, the reduction would not be dependent upon public parking, and the project can demonstrate it can maintain its TDM for the life of the project and maintain the provided parking. Option 2 proposes to utilize both parking reductions and would provide 124 vehicle parking spaces and 183 bicycle parking spaces. The project provides a TDM program which includes a transit pass program for all of the retail employees and Co-Living facility tenants. Additionally, the project would designate an on-site TDM manager and develop a campaign to improve tenant awareness and participate in alternative transportation options. Finally, the project would unbundle the parking for the Co-Living Facility which would require future tenants to rent a parking space. The project would not rely on public parking and would be conditioned to maintain the minimum code required parking (with reductions) and implement the TDM plan for the life of the project. The project's TDM program includes analysis on the cost of the SmartPass program, which has been factored into the project's annual budget. Therefore, the project's parking reduction would comply with the Municipal Code.

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

Analysis: The project is consistent with the City's Preservation of Historic Landmarks Policy for the following reasons: 1) There was public notification of a proposal to alter or demolish the existing historic structures on-site, and two scoping and community meetings were held on April 30, 2018 and April 8, 2019, wherein the project was presented and the demolition of the buildings were discussed. Additionally, the project was presented at the Historic

Landmarks Commission Meeting on May 2, 2018, and the public was informed that the project would involve the demolition of the structures on-site; 2) The project was heard at the Planning Commission Meeting on October 23, 2019; 3) The First Amendment to the SEIR discusses and analyzes the historic structures on-site and provides mitigation to facilitate relocation of the Pallesen Apartment Building. The preservation of all of the structures were carefully reviewed and strong consideration was given when evaluating this option; and 4) The findings justifying the demolition of the historic structures are discussed in the SEIR.

The project is also consistent with the City's Affordable Housing requirements and would be conditioned to comply with the City's Ellis Act Ordinance and the City's Inclusionary Housing Ordinance.

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

Analysis: There are no other uses on site of the project parcels other than the project tower. The tower is oriented towards the street with pedestrian entries along East Reed Street and South 1st Street. The project's design incorporates canopies and lighting over the entries to enhance the pedestrian experience. The project is conditioned to provide a 15-foot wide sidewalk along South 1st Street and to install audible and visual warning signs along the garage entry to protect the pedestrians and bicyclists from vehicle circulation into and out of the site. Additional design analysis is provided in the 2004 Downtown Design Guidelines conformance section.

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

Analysis: The project site is located at an entry point into Downtown along South 1st Street. Plaza de César Chavez and the greater downtown are located north of the site and south of the site is Interstate 280 and residential neighborhoods. In response to the location, the project tower's massing lightly steps down on the southern elevation. The building is carefully angled on the northwest corner meant to mimic the street angle north of the site where 1st Street splits in to South Market Street and South 1st Street. The project considered its design on all views to and from the site, including the elevated freeway, the planes overhead, and the pedestrian experience. Horizontal and vertical reliefs were incorporated into the designs through façade treatments to further break down the building's massing.

- vi. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if

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

Analysis: As discussed above, a SEIR to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942) was prepared for the Garden Gate Tower Project in compliance with CEQA and the CEQA Guidelines. The project's impacts are discussed in the Environmental Review section above. Based on the findings of the SEIR and as discussed above, the project was found to have no unacceptable negative effects in terms of noise, vibration, dust, drainage, erosion, stormwater runoff or odor on adjacent properties. Based on review of the project by all of the various departments, there are no non-CEQA related impacts anticipated for this project. For example, there is no late-night use for this project, eliminating any noise concerns for adjacent properties. There is no outdoor storage of hazardous materials, and given the site's use, no odors are anticipated

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

Analysis: The landscaping, irrigation systems, all walls and fences, exterior heating, ventilating, plumbing, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. All mechanical equipment is located within the building and in the mechanical penthouse on the roof; not visible from the street or surrounding buildings. No outdoor activities would occur on the ground floor of this project. The project would be conditioned to provide street trees along the ground floor of the project. The trash facilities would be located on the ground floor of both options.

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

Analysis: Both project options would have ample pedestrian access and bicyclist access along East Reed Street and South 1st Street. The residential/co-living lobby would be located along East Reed Street and commercial/retail space entrances would be on East Reed Street and South 1st Street. Option 1 would provide 232 vehicle parking spaces accessible through two driveways, one located on South 1st Street and one located along the alley. Option 2 would provide 124 vehicle parking spaces through one driveway from the alley. As analyzed in the SEIR, these driveways are adequate for the project options. As described above, the parking for both project options meets the criteria for a reduction in the number of parking spaces. Furthermore, Option 2 would implement a Transportation Demand Management Program to further support the project's parking reduction for the Co-Living facility.

B. Special Use Permit Findings.

- i. The special use permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies; and

Analysis: In addition to the discussion above, the five commercial condominiums are consistent with the General Plan land use designation of Downtown as commercial uses are permitted in these districts. The Co-Living Facility Special Use Permit in Option 2 is also consistent with the Downtown General Plan land use designation and goals and policies of the General Plan.

- ii. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: In addition to the zoning discussion above, Section 20.175.042 of the Municipal Code requires the minimum unit size for nonresidential condominium units to be 750 square feet. The five commercial condominium units would range in size and none would be less than 750 square feet. Option 2 is a Co-Living mixed-use project which requires the approval of a Special Use Permit and compliance with Municipal Code Section 20.80.290. As described above, Option 2 would comply with the Co-Living Facility requirements. Option 2 would not exceed the bedroom size limitations, would provide laundry facilities, closets, kitchens, common open space, and utility closets in compliance with the Co-Living Facility requirements. Additionally, the Co-Living facility would be required to implement the Operation Management Plan and TDM plan.

- iii. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: See discussion above. There are no applicable City Council policies other than those discussed above.

- iv. The proposed use at the location requested will not:

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety, or general welfare; and

Analysis: As described above, the project, including the commercial condominiums and Option 2's Co-Living Facility use, would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area as these uses are wholly contained within the project, and all activity in the commercial condominium spaces would not impact the area outside of the building. The commercial condominium units would not impair

the utility or value of property or persons in the immediate area as any use in these commercial units would be fully contained in the building. The commercial/retail condominiums could include a restaurant which may have a sidewalk café, but the café would be located along the project's frontage and would not impact any other property. The Co-Living Facility would not impair the utility or value of property or persons in the immediate area, the project would implement a TDM plan to reduce the use's parking needs and provide other transit options.

- v. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: As noted above, the five condominium units would meet the minimum square footage requirements for commercial condominiums. All necessary components of any future tenant would be contained within the individual unit spaces. The Co-Living Facility (option 2) would meet the bedroom unit size requirements and would provide the amenities and facilities as required for Co-Living Facilities pursuant to the San José Municipal Code Section 20.80.290.

- vi. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Analysis: The overall project is adequately accessible by the downtown street network and said streets have the capacity to handle the traffic generated by the project, as analyzed in the SEIR. The subdivision of the commercial spaces would not create any additional need for access. The other public and private service facilities would adequately support the project.

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

Analysis: As discussed above, an SEIR was prepared for the Garden Gate Tower Project in compliance with CEQA and the CEQA Guidelines. The project's impacts are discussed in the CEQA section above. Based on the findings of the SEIR and as discussed above, the project was found to have no

unacceptable negative effects in terms of noise, vibration, dust, drainage, erosion, stormwater runoff or odor on adjacent properties.

- viii. 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: As discussed above, the project's common interest development would not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the commercial units adequately accommodates a variety of potential uses, and the anticipated uses such as restaurant or retail uses would add to the economic viability of the area.

- ix. 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, Conditions, and Restrictions (CC&Rs) is required and when approved by the City in accordance with the Zoning Ordinance prior to final map approval would 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.

- x. 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 CC&Rs, required when the Final Map is approved by the City in accordance with the Zoning Ordinance would state that each residential owner shall have, as appurtenant to their unit, and undivided interest in the common residential areas. This would ensure that each common interest development has sufficient retention of common areas for use by all owners as noted in the conditions of approval. The CC&Rs would also include provisions for ingress, egress, parking, emergency access, utilities, landscaping, and the like.

C. Demolition Findings: Pursuant to Section 20.80.460 of the San José Municipal Code, the following criteria have been considered to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:

- i. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- ii. The failure to approve the permit would jeopardize public health, safety or welfare;

- iii. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- iv. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- v. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- vi. Rehabilitation or reuse of the existing building would not be feasible; and
- vii. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: As discussed in detail above, the demolition of the Pallesen Building and Pallesen Apartment Building would facilitate the construction of the overall project that is compatible with the surrounding neighborhood. Although the project would result in the loss of four residential units within the Pallesen Apartments Building, Option 1 would replace the lost units with a total of 290 residential units and Option 2 would replace the units with a Co-Living facility which would provide 793 bedrooms in a co-living facility. Additionally, the project would be conditioned to comply with all Housing requirements including compliance with the Ellis Act Ordinance and Inclusionary Housing Ordinance. Criteria 1 and 2 are not applicable to the reason for demolition of the existing structure. While the demolition is not preserving the historic structure, and finding 5 and 6 cannot be met, the project is satisfying other goals and policies of the General Plan as noted above. Criteria 7 is not applicable because there is an application for a replacement building on file.

D. Tree Removal Findings: Chapter 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit for ordinance-size trees measuring 56 inches or more in circumference. Findings are made for the project based on the above-stated findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- 1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- 2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
- 3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility

services, is such that preservation of the public health or safety requires its removal.

Analysis: The project would remove one (1) non-ordinance size tree, which is five inches in circumference. The trees to be removed is located within the building's footprint. Preservation of the tree would create a building footprint that would not be conducive to the growth envisioned for the project site and Downtown.

A total of one (1) 15-gallon replacement tree would be required for the project. Pursuant to the project's landscaping plan, six street trees will be planted along the project's frontage. Street trees can count towards mitigation trees in accordance with the City's tree replacement policy.

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 **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS

1. **Acceptance of Permit.** Per 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; 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.** The Special Use Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning 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 Planned Development 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.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said 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; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Garden Gate Tower," dated revised on June 4, 2019 on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set."
6. **Scope and Use Authorization of the Special Use Permit.** This Special Use Permit allows the demolition of the existing buildings on-site, removal of one (1) non-ordinance size tree, and the construction of a 27-story, high-rise tower comprised of either (Option 1) up to 290 residential units and approximately 4,840 square feet of commercial uses comprised of up to five (5) commercial condominium units or (Option 2) a Co-Living Facility with up to 793 Bedrooms, and approximately 5,422 square feet of commercial uses comprised of up to (5) commercial condominium units on an approximately 0.4-gross acre site.
7. **Co-Living (Option 2) Requirements.**
 - a. Each co-living unit shall be designed to accommodate a maximum of up to two (2) persons.

- b. Excluding the closet and the bathroom area, the bedroom size must be at least one hundred (100) square feet in floor area if occupied by one (1) person, and one hundred fifty (150) square feet in floor area if occupied by two (2) persons. The average size of all of the bedrooms within a Co-Living Community shall be no greater than two hundred seventy five (275) square feet and no bedroom may exceed four hundred (400) square feet.
 - c. The project shall provide a minimum of 64,000 square feet of common interior space.
 - d. Prior to the issuance of building permits for the co-living facility, the permittee shall obtain Permit Adjustment for the review and approval of an Operations Management Plan for the Co-Living Facility. The co-living project (Option 2) would be required to implement the Operations Management Plan, as amended for the life of the project.
8. **Implement Transportation Demand Management (TDM) Plan.** The project is required to implement the TDM measures included in the TDM Plan prepared by Kimley-Horn, dated June 10, 2019, as amended for the life of the project. The TDM Plan for the Co-Living Facility (Option 2) shall include:
- i. Secured bicycle parking for residents
 - ii. Transit Use Incentive Program for all tenants and employees (such as VTA SmartPass transit passes)
 - iii. On-Site TDM manager
 - iv. Unbundled Parking
 - v. Electric vehicle charging stations for 8 parking spaces
9. **Downtown Financing Plans.** The San José City Council ("City") approved the (i) Envision San José General Plan 2040 ("General Plan") in 2011, (ii) Diridon Station Area Plan ("Diridon Plan") in 2014, and (iii) Downtown Strategy 2040 ("Downtown Strategy") in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San José.

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

The City is in the process of amending the Diridon Plan and updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee

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

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.

10. **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 conditioned.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
12. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
13. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise levels from such equipment will not exceed 55 dBA at the residential property line. All roof mounted mechanical equipment shall be screened from view.
14. **Window Glazing.** Unless otherwise indicated on the approved plan, all ground floor windows shall consist of a transparent glass.
15. **Lighting Plan.** A lighting plan shall be submitted for lighting features to illuminate all structures and public and private open spaces. Lighting features shall conform to all City and FAA requirements and policies. Photometric measurements shall be provided with the lighting plan.

16. **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.
17. **Bicycle Parking Provisions.** This project shall provide a combination of short-term uncovered bike parking as well as long term covered parking consistent with the requirements noted in the Zoning Ordinance.
18. **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.
19. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
20. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
21. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
22. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
23. **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.
24. **Building and Property Maintenance.** The permittee or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
25. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.
26. **Affordable Housing.**
 - a. The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.

- b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
 - c. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
 - d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.
27. **Ellis Act Ordinance.** This project is subject to the requirements of the City's Ellis Act Ordinance. Prior to the issuance of a demolition permit, Planning staff should confirm with Housing Department, the Owner's completion of all relocation obligations, including the obligations under the Ellis Act Ordinance.
28. **FAA Clearance.** Prior to filing an application for a Building Permit, the Permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The Permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each building corner and any additional highest point(s) of the proposed structure. The data on the forms should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
29. **FAA Clearance Permit Adjustment.** Prior to filing an application for a Building Permit, the Permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications, into the SP18-001 conditions of approval.
30. **Avigation Easement.** Prior to the issuance of a Building Permit, the property owner shall grant an Avigation Easement to the City of San José. Contact either Cary Greene, cgreene@sjc.org (408-392-3623), or Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the easement dedication process.
31. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. Construction Plans. The permit file number, SP18-001, shall be printed on all construction plans submitted to the Building Division.

- b. Americans with Disabilities Act. The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA), including paths of travel connecting all buildings on the site.
 - c. Emergency Address Card. The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. Street Number Visibility. Street numbers of the buildings shall be easily visible at all times, day and night.
 - e. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
32. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
33. **Demolition of Structures.** No demolition permits may be issued prior to the submittal of foundation or structural building permits. Demolition Permits may be issued prior to the Final Map approval.
34. **Timing of Tree Removals.** Trees that are to be removed to accommodate new development shall not be removed until the related Public Works Grading Permit has been issued.
35. **Tree Replacement.** The removed trees shall be replaced according to tree replacement ratios required by the City, as provided in the table shown below, as amended.

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| Table: Tree Replacement Ratios | | | | |
|--|----------------------------|------------|---------|---------------------------------------|
| Circumference of Tree to be Removed | Type of Tree to be Removed | | | Minimum Size of Each Replacement Tree |
| | Native | Non-Native | Orchard | |
| 38 inches or more | 5:1 | 4:1 | 3:1 | 15-gallon |
| 19 up to 38 inches | 3:1 | 2:1 | none | 15-gallon |
| Less than 19 inches | 1:1 | 1:1 | none | 15-gallon |
| <p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p> <p>Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.</p> | | | | |

- i. Since one (1) non-ordinance size trees would be removed, a total of one (1) 15-gallon replacement trees required to be planted.
 - ii. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
 - iii. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
36. **Final Map or Lot Line Adjustment Required.** Prior to the issuance of a Building Permit, the permittee shall secure approval and provide recordation of the final map or a Lot Line Adjustment to consolidate the existing lots.
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 is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

38. **Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
39. **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.
40. **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 Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
41. **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.
42. **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.
43. **Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
44. **Green Building Requirements for Mixed Use New Construction Projects.** The development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this permit, the permittee shall pay a Green Building Refundable Deposit. 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
45. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.

46. Public Works Clearance for Building Permit(s): Prior to the issuance of Building permits the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at 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. This project is located in the expanded Downtown Core and is covered under the San José Downtown Strategy 2000 EIR; therefore, no CEQA traffic analysis is required. The project, however, performed a Traffic Operations Analysis to identify any operational issues.
 - ii. The project's Traffic Operations Analysis has been approved. See separate Traffic memo dated 12/07/2018 for additional information.
 - iii. Contribute a fair-share contribution of \$100,000 towards the signal improvements at South 1st Street and East Reed Street.
- c. **Grand Boulevard:** This project fronts South 1st Street which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles. The project is conditioned to provide the following:
 - i. Provide a minimum 15-foot wide sidewalk.
 - ii. Installation of audible and visual warning signs at garage entrance/exit.
- d. **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.

- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- e. **Shoring:**
- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the permittee or contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches with the public right-of-way (i.e. soldier beams).
 - iii. If tie-backs are proposed for use along the adjacent properties (472-26-013,027,070) agreements between the permittee and the adjacent property owners(s) will need to be secured, executed, and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- f. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's preliminary Stormwater Control Plan and numeric sizing calculations have been review and this project will be in conformance with City Policy 6-29.

- ii. The final Stormwater Control Plan must include access and safety designs and features for operation, maintenance, and City inspection when approaching, entering, and within the Flow-Through Planter Box per San José Municipal Code 15.14.690.
- iii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- g. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- h. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to 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. **Private Improvements within Public Property:** The encroachment for balconies, windows and architectural features shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for balconies, windows and/or architectural features that comply with the San José Building Code. The Permittee's additional encroachments of roof overhangs, basements, and walls are subject to discretionary approval of the City Council. If the City Council does not approve or modifies all or a portion of any additional encroachment(s), the permittee shall apply for a Planning Permit Adjustment or Amendment, as applicable, to remove the encroachment(s) not approved or modify the encroachment(s) to conform to the approved encroachment(s). Encroachment permits are authorized and issued in accordance with Chapter 13.37 of the Municipal Code. The property owners shall execute an Encroachment Agreement as part of Public Works Clearance requirements and prior to Building Permit issuance. The Encroachment Agreement shall be recorded against title to the property.

- l. Undergrounding:** The project is located within an Undergrounding District established after 1988 and is therefore required to pay the In Lieu Undergrounding Fee. It shall be paid to the City for all frontage adjacent to East Reed Street prior to issuance of a Public Works Clearance. One hundred percent of the base fee in place at the time of payment will be due. Currently, the 2019 base fee is \$489 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- m. Assessments:** This project is located adjacent to the Downtown San José Property-Based Business Improvement District (PBID), which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for the services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The 2017-18 assessment is calculated based on the land use and its building and lot square footages. Commercial properties pay \$0.114720906 and residential properties pay \$0.092461315 per building and lot square footages. Future year assessments will be collected through the County property tax bills listed under Tax Code 916 "SJ DOWNTOWN PBID". This project may be required to annex into the district. Please contact Thomas Borden at (408) 535-6831 for additional information.
- n. Street Improvements:**

 - i. Provide a 15-foot wide attached sidewalk with tree wells along South 1st Street. A sidewalk easement of approximately 5 feet is required. The relocated historic façade is allowed to encroach 1 foot into the 15-foot wide sidewalk.
 - ii. Remove and replace curb, gutter and 20-foot wide attached sidewalk with tree wells located at cutout at the back of curb along East Reed Street
 - iii. Close unused driveway cut along East Reed Street.
 - iv. The driveway width along South 1st Street and East Reed Street to be 26 feet per City of San José Standard Detail R-6.
 - v. Remove and replace the PCC pavement within the alleyway with new PCC pavement across the entire project frontage. Removal of the storm catch basin in the alleyway southwest of the property may be required if this is not connected to the storm main on East Reed Street.
 - vi. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.

- 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.
- o. **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 operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. This would also provide a discussion as to the reasons why covered pedestrian walkways will not be provided (ex. swinging loads over sidewalk is 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 o.i above.

- iii. If 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.
 - p. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
 - q. **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.
 - r. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - s. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
 - t. **Median Island Improvements:** Permittee will be required to extend the 18-inch wide portion of the median island on South 1st Street per City standards to restrict left-turns into and out of the site; refer to the current "Guidelines for the Planning, Design and Construction of City Streetscape Projects".
47. **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. _____.
48. **Standard Environmental Permit Conditions**
- a. **AIR QUALITY.**
 - i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - iii. 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.

- iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- vi. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vii. 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 the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- viii. 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.
- ix. Post a publicly visible sign with the telephone number and person to contact 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.

b. BIOLOGICAL RESOURCES.

- i. **Habitat Conservation Plan.** The project is subject to applicable Santa Clara Valley Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit a Santa Clara Valley Habitat Plan Coverage Screening Form to the Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement for review and will complete subsequent forms, reports, and/or studies as needed.

c. CULTURAL RESOURCES.

- i. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within

24 hours. The NAHC will Cultural Resources Garden Gate Tower Draft SEIR City of San José 3.2-16 July 2019 then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reenter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

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

d. GEOLOGY AND SOIL.

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

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

e. HAZARDS AND HAZARDOUS MATERIALS

- i. In conformance with State and local laws, a visual inspection/pre-demolition survey and sampling shall be required of the existing buildings on-site to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint.
- ii. 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 shall be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with USEPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines prior to any 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 exposure to asbestos.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.

- 1) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead based paint.
 - 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 - 3) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.
- vii. Prior to the issuance of a building permit, the permittee shall comply with the notification requirements of the FAR Part 77 and obtain a "Determination of No Hazard to Air Navigation" for the building's high point from the Federal Aviation Administration (FAA).
- viii. Prior to the issuance of a building permit, the permittee shall obtain a Permit Adjustment to incorporate all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., obstruction lights or construction-related notifications, as conditions of approval.
- ix. Avigation easements shall be dedicated to the City of San José.
- f. **HYDROLOGY AND WATER QUALITY.**
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities would be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces would be watered at least twice daily to control dust as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind would be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas would be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.

ix. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

g. **NOISE.** Install sound-rated windows and entry doors with a minimum Sound Transmission Class (STC) rating of 37 or equivalent at all residential dwelling units or co-living units on the project site.

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

- a. A violation of any conditions of the 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.

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

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

LEGAL DESCRIPTION

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

PARCEL 1:

PARCEL A AS SHOWN ON LOT LINE ADJUSTMENT NO. AT 94-08-050, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 01, 1994 AS DOCUMENT NO. [12736242](#) OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF LOT 2 AND A PORTION OF LOT 3 IN BLOCK 62 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE PART OF THE REED ADDITION TO THE CITY OF SAN JOSE" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, CALIFORNIA ON MARCH 18, 1869 IN [BOOK C OF MISCELLANEOUS RECORDS AT PAGE 322](#) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF REED STREET WITH THE NORTHEASTERLY LINE OF FIRST STREET, AS SAID STREETS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING SOUTHEASTERLY AND ALONG THE NORTHEASTERLY LINE OF FIRST STREET 115.24 FEET TO THE NORTHEASTERLY CORNER OF THE CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM LILLIE M. PALLSEN TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION, DATED MAY 7, 1938, RECORDED MAY 9, 1938, IN [BOOK 876 OF OFFICIAL RECORDS, AT PAGE 219](#), SANTA CLARA COUNTY RECORDS; THENCE RUNNING NORTHEASTERLY AND ALONG THE NORTHWESTERLY LINE OF THE PARCEL OF LAND SO DESCRIBED IN THE DEED TO THE CITY OF SAN JOSE, 125.34 FEET TO THE SOUTHWESTERLY LINE OF AN ALLEY, AS SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING NORTHWESTERLY AND ALONG THE SOUTHWESTERLY LINE OF SAID ALLEY 115.24 FEET TO THE SOUTHEASTERLY LINE OF REED STREET; THENCE RUNNING SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF REED STREET 125.34 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM PORTIONS OF LOTS 3 AND 6 IN BLOCK 62 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE PART OF THE REED ADDITION TO THE CITY OF SAN JOSE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, CALIFORNIA ON MARCH 18, 1869 IN [BOOK C OF MISCELLANEOUS RECORDS AT PAGE 322](#) ANY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF FIRST STREET DISTANT THEREON 75.41 FEET SOUTHEASTERLY FROM THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF REED STREET WITH THE NORTHEASTERLY LINE OF FIRST STREET AS SAID STREETS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING SOUTHEASTERLY AND ALONG THE NORTHEASTERLY LINE OF FIRST STREET 39.83 FEET; THENCE RUNNING NORTHEASTERLY AND PARALLEL WITH SAID LINE OF REED STREET 125.34 FEET TO THE SOUTHWESTERLY LINE OF AN ALLEY AS SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING NORTHWESTERLY AND ALONG THE SOUTHWESTERLY LINE OF SAID ALLEY 39.83 FEET; THENCE NORTHWESTERLY AND PARALLEL WITH SAID LINE OF REED STREET 125.34 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PARCEL B AS SHOWN ON LOT LINE ADJUSTMENT NO. AT 94-08-050, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 01, 1994 AS DOCUMENT NO. [12736242](#) OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PORTIONS OF LOTS 3 AND 6 IN BLOCK 62 AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF THE PART OF THE REED ADDITION TO THE CITY OF SAN JOSE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA COUNTY, CALIFORNIA ON MARCH 18, 1869 IN [BOOK C OF MISCELLANEOUS RECORDS AT PAGE 322](#) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF FIRST STREET DISTANT THEREON 115.24 SOUTHERLY FROM THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF REED STREET WITH THE NORTHEASTERLY LINE OF FIRST STREET AS SAID STREETS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING SOUTHEASTERLY AND ALONG THE NORTHEASTERLY LINE OF FIRST STREET 29.60 FEET; THENCE RUNNING NORTHEASTERLY AND PARALLEL WITH SAID LINE OF REED STREET 125.34 FEET TO THE SOUTHWESTERLY LINE OF AN ALLEY AS SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING NORTHWESTERLY AND ALONG THE SOUTHWESTERLY LINE OF SAID ALLEY 29.60 FEET; THENCE NORTHWESTERLY AND PARALLEL WITH SAID LINE OF REED STREET 125.34 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH PORTIONS OF LOTS 3 AND 6 IN BLOCK 62 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE PART OF THE REED ADDITION TO THE CITY OF SAN JOSE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, CALIFORNIA ON MARCH 18, 1869 IN [BOOK C OF MISCELLANEOUS RECORDS AT PAGE 322](#) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF FIRST STREET DISTANT THEREON 75.41 FEET SOUTHEASTERLY FROM THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF REED STREET WITH THE NORTHEASTERLY LINE OF FIRST STREET AS SAID STREETS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING SOUTHEASTERLY AND ALONG THE NORTHEASTERLY LINE OF FIRST STREET 39.83 FEET; THENCE RUNNING NORTHEASTERLY AND PARALLEL WITH SAID LINE OF REED STREET 125.34 FEET TO THE SOUTHWESTERLY LINE OF AN ALLEY AS SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE RUNNING NORTHWESTERLY AND ALONG THE SOUTHWESTERLY LINE OF SAID ALLEY 39.83 FEET; THENCE NORTHWESTERLY AND PARALLEL WITH SAID LINE OF REED STREET 125.34 FEET TO THE POINT OF BEGINNING.

APN: 472-26-089 (Affects: PARCEL 2) and 472-26-090 (Affects: PARCEL 1)