

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SEVEN-UNIT, MULTI-FAMILY RESIDENTIAL BUILDING AND THREE COMMERCIAL BUILDINGS TOTALING APPROXIMATELY 5,500 SQUARE FEET, AND CONSTRUCTION OF A SIX-STORY, MIXED-USE BUILDING CONSISTING OF APPROXIMATELY 13,650 SQUARE FEET OF GROUND FLOOR RETAIL AND 123 RESIDENTIAL UNITS, AND TWO LEVELS OF UNDERGROUND PARKING, THE REMOVAL OF 38 ON-SITE TREES, SIX OF WHICH ARE ORDINANCE-SIZE TREES, ON AN APPROXIMATELY 0.9-GROSS ACRE SITE LOCATED ON THE NORTH SIDE OF ALUM ROCK AVENUE APPROXIMATELY 300 FEET WEST OF KING ROAD (1661, 1663, AND 1665 ALUM ROCK AVENUE)

FILE NO. PD18-016

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 29, 2018, a concurrent application (File No. PD18-016) was filed by the applicant, Shaivali Desai of Silicon Sage Builders, LLC., on behalf of Jaswal Properties, LLC., with the City of San José for a Planned Development Permit to allow the demolition of an existing seven-unit multi-family apartment/residential building and three commercial structures totaling approximately 5,500 square feet and construction of a six-story, mixed-use building consisting of approximately 13,650 square feet of ground-floor commercial space and 123 residential units, two levels of underground parking, and the removal of six ordinance-size trees, on an approximately 0.9-gross acre site, on that certain real property situated in the CP(PD) Planned Development Zoning District and located on the north side of Alum Rock Avenue, approximately 300 feet west of King Road (1661, 1663, and 1665 Alum Rock Avenue), San José, which real property is sometimes referred to herein as the "subject property"); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled "Legal Description," and depicted in Exhibit "B", entitled "Rezoning

Plat, Lands of Jaswal Properties, Et Al.," which are 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 28, 2020, 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 Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Little Portugal Gateway, 1661, 1663, 1665 Alum Rock Avenue", dated revised March 3, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if 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 north side of Alum Rock Avenue, approximately 300 feet west of the Alum Rock Avenue and King Road intersection, within the Little Portugal Urban Village. The approximately 0.9-gross acre site is developed with a single-story, seven-unit apartment building and ancillary structures and three commercial retail structures totaling 5,500 square feet. Of the seven apartments, one was vacant, two tenants have vacated the units with relocation assistance, one tenant will move in December 2020, and three other tenants are working with the City's Housing Department relocation specialists to transition into new housing; seven apartment units would be subject to re-control per the City's Apartment Rent Ordinance. The project site is adjacent to single-story commercial and residential buildings (west, east, north). Specifically, the project site is bordered by Alum Rock Avenue to the south, a church (Iglesia La Luz del Mundo) to the east, single and multi-family residences to the north, and a hair salon and Alcoholics Anonymous commercial buildings to the west. Across from the project site, on the south side of Alum Rock Avenue, are single- and two-story commercial structures and a four-level, 39-unit multi-family residential building. On the northwest corner of Alum Rock Avenue and King Road is the site of the previously approved, six-story Quetzal Gardens mixed-use affordable housing project, currently under construction. The Valley Transportation Authority (VTA) Bus Rapid Transit (BRT) line/station also begins at the intersection of Alum Rock Avenue and King Road. US Highway 101 is further west of the project site.
- 2. Project Description.** The project is a Planned Development Permit (PD18-016) to allow the demolition of an existing seven-unit multi-family residential building and ancillary structures, and three commercial retail structures totaling approximately 5,500 square feet. The project includes the construction of a six-story, mixed-use building consisting of approximately 13,650 square feet of ground floor retail and 123 residential units, two levels of underground parking for both commercial and residential uses, and the removal of 38 on-site trees, six of which are ordinance-size trees. A total of 170

vehicle parking spaces will be accommodated via two underground parking levels and 12 parking spaces of surface-level parking: 129 vehicle parking spaces dedicated to the residential use and 41 vehicle parking spaces dedicated for the commercial use. Through a shared parking program, an additional 11 vehicle parking spaces become available for the residential use between 6 p.m. and 8 a.m. and 25 additional vehicle parking spaces become available for the commercial use from 8 a.m. to 6 p.m. Vehicular access to the project site would be via a limited right-in/right-out driveway along Alum Rock Avenue. Regional access to the project site is provided via US 101, I-280, and I-680.

3. General Plan Conformance. The project site has an Envision San José 2040 General Plan designation of Urban Village.

The Urban Village designation supports a wide variety of commercial, residential, institutional, or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan, which specifies how each Urban Village will accommodate the planned housing and job growth capacity.

The project conforms to the following key General Plan policies:

- a) Major Strategy #3- Focused Growth: Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. A Major Strategy of the Envision General Plan is to focus new growth capacity in specifically identified "Growth Areas", while the majority of the City is not planned for additional growth or intensification.
- b) Major Strategy #5- Urban Villages: Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goals.

Analysis: The project is a mixed-use development within the Little Portugal Urban Village boundary. Urban Villages are considered growth areas in the General Plan, and Urban Villages are intended to create higher-density housing growth along with a significant amount of job growth. The project is furthering General Plan Major Strategy #3 and #5 by developing a higher-density residential and commercial project as envisioned in the Little Portugal Urban Village Plan.

Housing Policy H-1.1: Through the development of new housing and the rehabilitation of existing housing, facilitate the creation of economically, culturally, and demographically diverse and integrated communities.

Analysis: This project would result in 123 residential apartment units (an increase of 116 on-site), consisting of five studios, 87 one-bedroom apartment units and 31 two-

bedroom apartment units. The project would add to the existing diversity of housing in the area, which includes a mix of single-family homes, townhomes, and multi-family developments.

Land Use Policy LU-9.2. Facilitate the development of complete neighborhoods by allowing appropriate commercial uses within or adjacent to residential and mixed-use neighborhoods.

Fiscally Sustainable Beneficial Land Use Policy FS-4.7. Encourage transit-oriented development as a means to reduce costs for expansion and maintenance of our City's street system, in addition to other benefits and consistent with the General Plan Transportation goals and policies.

Fiscally Sustainable Beneficial Land Use Policy FS-4.8. Emphasize mixed-use development for most new development, to achieve service efficiencies from compact development and commercial opportunities near residential development.

Analysis: The mixed-use residential/commercial building project is in the Little Portugal Urban Village Plan boundary and is surrounded by other residential and commercial uses. Consistent with the General Plan policies, the project would include ground floor retail uses compatible with the adjacent neighborhood. The project is designed to facilitate pedestrian activity through the use of an active frontage and incorporation of design elements such as storefront windows and sidewalk amenities. The compact and dense mixed-use project would complement and support the Bus Rapid Transit System (BRT) along Alum Rock Avenue by intensifying the uses on-site. The increased number of residents, employees, and retail patrons near the BRT could increase transit ridership consistent with the General Plan Transportation Goals and Policies.

Attractive City Policy, CD-1.17. Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm.

Analysis: The development includes a subterranean parking garage so that all on-site parking activities will be shielded from the surrounding neighborhood consistent with this Attractive City Policy.

Land use and Employment Policy, IE-1.13. Achieve goals related to Quality Neighborhoods, including diverse housing options, a walkable/bikeable public street and trail network and compact, mixed-use development where infrastructure exists to distinguish San José as a livable and attractive city, to promote interaction among community members, and to attract talented workers to the City.

Analysis: The project includes a six-story, mixed-use development located in a growth area (i.e. Urban Village) where existing infrastructure will support diverse housing options and a walkable/bikeable public street.

4. Urban Village Conformance.

The subject project is located in the Little Portugal Urban Village Plan. The Little Portugal Urban Village straddles both sides of US Highway 101 with its western boundary roughly located at the intersection of East Santa Clara Street and 24th Street and its eastern boundary extending to King Road. The Little Portugal Urban Village Plan was taken forward to the City Council in 2016 to adopt the Implementation Chapter but was placed on hold for work on the Urban Village Implementation and Amenities Framework. The Urban Village Implementation and Amenities Framework was adopted by the City Council on May 22, 2018. This Framework was incorporated into an updated Implementation Chapter for the Little Portugal Urban Village Plan, which was approved by City Council on December 11, 2018.

Land Use

The subject site has an Urban Village Land Use designation and is within sub Area B of the Urban Village. Sub Area B of the Urban Village Land Use designation requires a minimum Commercial Floor Area Ratio (FAR) of 0.35. The Urban Village designation supports a wide range of commercial uses, including retail sales and services, professional and general offices, and institutional uses. The Little Portugal Urban Village Plan allows residential uses which are envisioned to be part of a mixed-use development. The Village Plan does not establish a maximum Floor Area Ratio (FAR) for commercial or mixed-use residential/commercial development for properties designated Urban Village, nor does it establish a maximum or minimum number of dwelling units per acre for the residential portion of the mixed-use projects. The intensity or density of new development is effectively limited by the maximum height limits established in the Village Plan and by the parking requirements established in the Zoning Code, as amended. The minimum FAR for the commercial portion of a mixed-use project in Area B (north side of Alum Rock Avenue) is 0.35.

Analysis: In conformance with the Urban Village General Plan Land Use designation, the project is a mixed-use building which includes 123 residential units and 13,650 square feet of ground floor commercial use. The mixed-use residential/commercial project includes 13,650 square feet of ground-floor retail which meets the minimum 0.35 commercial FAR in sub Area B ($38,918 \times 0.35 = 13,621$ square feet).

The project is consistent with the following Little Portugal Urban Village Plan policies:

Land Use Policy

Policy 2 – The minimum FAR for the commercial portion of a mixed-use residential/commercial project shall be 0.35 in Area B.

Analysis: With a net project site of 38,918 square feet, the minimum required commercial/retail square footage is 13,621. The project would include 13,650 square feet of ground-floor commercial retail space which meets the requirement.

Policy 5 – Types of uses in a mix and intensity that support ridership on Bus Rapid Transit (BRT) are strongly encouraged.

Analysis: The project includes a compact six-story, mixed-use residential/commercial project with parking reductions exceeding 20 percent and a Transportation Demand Management (TDM) program which would incentivize the use of public transit. The project location (within 2,000 feet of the BRT line) would further support ridership.

Policy 8 – Mixed-use residential/commercial projects are encouraged to build at densities of 55 dwelling units to the acre or greater in locations and with designs that are compatible with the surrounding neighborhoods and the policies contained in the Urban Design Chapter.

Analysis: The project includes a mixed-use residential/commercial project which would provide a residential density of 138 dwelling units per acre. The building design is compatible with the policies contained in the Urban Design Chapter in that it is designed in a Mediterranean architectural style and integrates Portuguese and Mexican themes including decorative motifs, talavera tiles, clay tile roof, and vibrant colors.

Height

Building Height Policy 1 – New development along the north side of Alum Rock Avenue shall not exceed a height limit of 70 feet.

Analysis: The project is located on the north side of Alum Rock Avenue and reaches a maximum height of 80 feet, which includes ten feet of non-habitable architectural projections, mechanical/equipment rooms/special treatments, as allowed in the Urban Village Plan.

Building Height Policy 4 – New development adjacent to property with an existing single-family home or with a General Plan land use designation of Residential Neighborhood with a density of 8 dwelling units to the acre or less, shall step down in height to 35 feet within 20 feet of such single-family properties, measured from the shared property line.

Analysis: The project shares a rear property line with properties zoned R-2 Two-Family Residence District; however, the building is set back from the rear property line by 25 feet and meets the policy.

Building Height Policy 5 – The height limit for any portion of a new development within 20 feet of a shared property line containing an existing duplex is 45 feet. For portions of a property within 50 feet of duplex or multi-family residential properties, building heights can then increase by one vertical foot for every one linear foot of additional setback from the shared property line.

Analysis: The project shares the back half of the western property line with properties zoned R-2. Because the building would be within 20 feet of this shared western property line, the maximum height for the western elevation would reach 45 feet with a gradual height increase as the building steps away from the residential units, consistent with the policy.

Architecture Policies

Policy 3 – To create a visually rich and interesting built environment, articulation of building facades (including incorporation of high-quality materials) and variations in building planes and roof lines are encouraged in new development. New buildings should avoid a monolithic appearance.

Analysis: The six-story, mixed-use building, as shown in the approved plan set, has a defined base, middle and top. The ground floor consists of pedestrian scaled entries with canopies and wall accent lighting, and a focal arched entryway for the larger commercial space. The building planes are varied and articulated with balconettes, recessed balconies, arched features, paneling, and parallel windows with talavera tiles interspersed on the façade. Part of the west elevation and massing is also scaled back and creates different roof lines. The project also features overhanging eaves with brackets and a vibrant color scheme.

Policy 4 – New development should include decorative elements on building facades and entryways, and are encouraged to integrate unique, artisan and artist-designed elements into facades and public spaces that contribute to a Mediterranean or other similar architectural style.

Analysis: As described above, the development would incorporate decorative elements on the building face including talavera tiles, wall accent lighting, decorative steel railing for the balconettes. The building design is inspired by a Mediterranean architectural style and includes typical features such as arches, tile roof, and large (ground-floor) windows.

Street Frontage

Policy 1 – New development should contribute towards a comfortable and visually engaging pedestrian environment by creating front facades that are pedestrian oriented and inviting.

Analysis: The project would include place-making elements such as bench seating, decorative planters, trees, and a ground-floor storefront with several entry points and feature varied textures and materials for architectural interest.

Street Trees

Policy 1 – Maintain and expand where possible and appropriate, the existing street canopy along Alum Rock Avenue by planting additional street trees.

Analysis: The project would include new street trees along the project frontage which would complement the expanded sidewalk (from the existing seven-foot wide sidewalk to a 16-foot wide sidewalk). The Little Portugal Urban Village Plan specifically identifies Cork Oak (Quercus suber) as an appropriate species because it is an evergreen that is native to Portugal, provides good shade canopy, can thrive in a Mediterranean climate, and could potentially become a signature tree of Little Portugal. As such, the project plans show three large oaks along Alum Rock Avenue. The final street tree planting scheme would be decided by the City's Department of Transportation (DOT) and the City Arborist as conditioned in the Planned Development Permit.

Project History and Community Outreach

Consistent with the Little Portugal Urban Village Plan and the Urban Village Implementation Finance Strategy requirements, the applicant submitted a Planned Development Rezoning and Planned Development Permit for the project in June 2018. Since the project's submittal, there have been new State housing laws that have impacted or changed the Planning review process requirements mixed-used residential projects in Urban Villages.

Community Meetings and Outreach

On May 5, 2019, a City-hosted community meeting was held for the subject project. Planning staff coordinated with the City Manager's Office to have a Spanish language interpreter present at the community meeting. The agenda for this community meeting included a discussion on the Amenities Framework and an opportunity for the community to provide input on desired amenities. The primary concerns were with respect to the building's proposed height, whether the project was providing adequate parking, installation of street trees, displacement of existing residents and commercial tenants, whether the project could include a grocery store, and the provision of on-site affordable housing. Since the meeting, staff coordinated with the Housing Department and confirmed that existing residential tenants received a Notice of Intention to Withdraw and that tenants will receive relocation assistance and a relocation specialist will work with them to find new housing.

On September 23, 2019, a second City-hosted community meeting was held to receive feedback from the public on community amenities proposed by the developer in response to the preferences expressed by the public at the May 20, 2019 community meeting – which included a plaza – and to gauge interest in the building color scheme. Due to site constraints (i.e., narrow frontage, minimum commercial square footage requirement), the project could not integrate an adequate (City requirement of 2,000 square feet or more) plaza; however, the applicant, after coordinating with Planning and Public Works, presented to the community the following possible amenities: historic placard, enhanced lighting, decorative planters and pavers, bench seating, community public information board/public transportation schedule and an on-site place making art installation (e.g., mural) viewable by the

public. Staff followed up with attendees via email on the proposed amenities and building color scheme. Staff received a couple of emails from attendees in response, regarding the facilitation of the community meeting given some interruptions. It was decided by City staff and management to host a third community meeting to ensure proper engagement with all attendees.

On November 18, 2019, a third City-hosted community was held to capture the community's preferences of the amenities the project would be providing and to take a final vote on the building color scheme. The applicant presented visuals showing the final public amenities: special decorative paving treatment for the front sidewalk along Alum Rock Avenue, benches, accent planters, tree grates, and wall accent lighting, and the ground-floor commercial space layout, including opportunities for smaller commercial tenants. The attendees were presented with three potential building color schemes: Option 1 included gray tones, Option 2 included bright colors (red, yellow, blue plaster), Option 3 included muted tones (muted red, yellow, blue plaster). Of the six people who voted, four voted for Option 2 (bright colors), which had also been the preferred color scheme in the first two meetings. As discussed below, the applicant integrated the preferred color scheme (bright red, yellow and blue) into the project.

5. Zoning and Planned Development Zoning Conformance.

The site is in the CP(PD) Planned Development Zoning District which conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation.

The CP(PD) Planned Development General Development Standards for the project site reference the allowed uses and development standards of the CP Commercial Pedestrian Zoning District, which defers to the approved Urban Village Plan (Little Portugal Urban Village Plan).

The CP Commercial Pedestrian Zoning District allows a maximum 10-foot front setback and does not have minimum standards for the side and rear setbacks. A 10-foot maximum front setback allows the buildings to be placed closer to the street, which is considered pedestrian-friendly and aligns with the Little Portugal Urban Village Plan.

The Planned Development Permit would adhere to the development standards enumerated in Section 20.40.200 and the General Development Standards as outlined in the table below.

//

//

//

//

//

Standard	CP(PD) Zoning District (Minimum Required)	Project
Front Setback		
Building	Zero front setback required	Zero feet
Side Setback		
Building	20 feet from existing residential use or zero to minimal feet from any other use	6 feet from west property line, and increased to 20 feet towards the back of the project adjacent to residential in conformance with the setback requirement; 10 feet from east property line
Rear Setback		
Building	25 feet	25 feet
Maximum Height		
Building	70 feet with an additional 10 feet for non-habitable architectural projections; and Building shall step down in height to 45 feet if development is within 20 feet of a shared property line containing an existing duplex (Building Height Policy 5).	80 feet with architectural projections; 45 feet on the western elevation in conformance with Building Height Policy 5.

Analysis: The building's frontage would be adjacent to a new 16-foot wide sidewalk along Alum Rock Avenue which meets the Little Portugal Urban Village Plan Setback Policy of building a new building adjacent to the sidewalk. The project's rear property line is adjacent to properties designated Residential Neighborhood and is bounded on the northwest by properties that are zoned R-2 Two-Family Residence Zoning District; therefore, the project is subject to the step-down policy in the Urban Village Plan. As such, the project would step down in height to 45 feet within 20 feet of the R-2 zoned properties on the west elevation (side) and gradually increase in height at a 45-degree plane. The project's rear setback would be 25 feet in conformance with the CP Commercial Pedestrian Zoning District development standards and would reach a maximum height of 80 feet.

Parking

The CP(PD) Zoning District would require vehicle, motorcycle, and bicycle parking pursuant to the parking standards and requirements of Chapter 20.90 (Parking and Loading), of the City of San José Municipal Code. Pursuant to Section 20.90.220 of

the San José Municipal Code, a parking reduction of up to 50% may be authorized for a development which implements a minimum of three transportation demand management measures, provides all the required bicycle parking, and is located in an Urban Village area.

In accordance with the Planned Development Zoning Standards, project parking would be provided using the following standards:

Use	Required Parking Spaces	Required Bicycle Parking Spaces
Commercial Retail 1 space per 200 square feet of floor area	59	5
Residential 0 bedroom (studio): 1.25 spaces per room (5) 1 bedroom: 1.25 spaces per room (87) 2 bedroom: 1.7 spaces per room (31)	168	31
Total required without reduction	227	36
Total required with 20% reduction	183	36
Total Provided (with 27% reduction)	170	36

Analysis: As shown in the parking table above, the project would require 59 vehicle parking spaces for its commercial retail use and 168 vehicle parking spaces for its residential use. Pursuant to Section 20.90.220 of the Municipal Code, the project is eligible for a 20 percent reduction in required vehicle parking because it is designated Urban Village and is located within 2,000 feet of a bus rapid transit station and meets the minimum bicycle parking requirement. With the application of a 20 percent reduction, the project would require 183 vehicle parking spaces (136 spaces for residential use, 48 spaces for commercial use); however, the project is requesting up to 27 percent reduction in required vehicle parking and would provide 170 vehicle parking spaces, including six tandem parking spaces and 12 surface-level parking spaces. The 170 vehicle parking spaces would be divided as follows: 41 vehicle parking spaces for the commercial use, 129 vehicle parking spaces for the residential use.

Pursuant to Section 20.90.220, the project would be eligible for a reduction of more than twenty percent with the implementation of a Transportation Demand Management (TDM) Plan. Consistent with the requirements outlined in Section 20.90.220, the project would incorporate the following TDM measures:

- A kiosk of trip planning resources updated by a Transit Coordinator
- Providing 100 percent unbundled parking for all residential spaces
- Providing VTA SmartPasses to residential tenants
- Providing adequate on-site bicycle storage.

Unbundled Parking

As conditioned, the project would also offer unbundled parking for the residential use. Unbundled parking typically means the vehicle parking space is not included with the rental unit and could incentivize more people to use alternate transportation methods.

The project meets the minimum bicycle parking requirement in that the project would require 36 bicycle parking spaces and 36 bicycle parking spaces would be provided (14 short-term, 22 long-term).

The project would also provide the minimum motorcycle parking required by Section 20.90.200, in that the project would require 34 motorcycle parking spaces and 34 spaces would be provided.

Shared Parking Program

Due to community concerns about parking, the project also has an on-site parking management program that would provide an additional 11 parking spaces for the residential use (between 6:00 PM and 8:00 AM) and an additional 25 parking spaces for the commercial use (between 8:00 AM and 6:00 PM) through a shared parking program. The shared parking program does not add to the 170 vehicle parking spaces; however, it shifts some parking spaces during peak hours when either use typically experiences lower parking demand. With the additional shared parking spaces, the residential use has a total of 140 parking spaces between 6:00 PM and 8:00 AM and the commercial use has a total of 66 parking spaces between 8:00 AM and 6:00 PM.

Therefore, with the implementation of a TDM Plan and the shared parking program, the parking requirement for the project is met under the Planned Development Zoning District.

6. City Council Policies.

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

Under City Council Policy 6-30, the project is a large development proposal project. Council Policy 6-30 specifies the public outreach and communication required regarding development projects including posting a notice of development application on the project site, hosting a community meeting which is appropriately advertised to the community, and providing Public Hearing Notices to the public in a timely manner to an appropriate project radius. Under City Council Policy 6-30, a large project

requires notification to property owners and tenants within 1,000 feet of the project site.

Analysis: In accordance with City Council Policy 6-30, the project applicant posted on-site signs to inform the surrounding neighborhood of the project on September 13, 2018. As detailed above, the City hosted three community meetings in conformance with the Public Outreach Policy 6-30. The hearing and community meeting notices were sent to all owners and tenants within 1,000 feet of the project site. Staff contact information was published on the posted Notice of Development sign located on the project frontage and available on the mailing notices. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

7. Residential Design Guidelines. The project was reviewed in conformance with the Residential Design Guidelines.

Common and Private Open Space. The Residential Guidelines recommend a minimum of 60 square feet of private open space at least six feet in width, and 100 square feet of usable common open space for every dwelling unit. Required common open space per unit may be reduced by an area equivalent to the amount of private open space in excess of 60 square feet.

Analysis: The project would include 123 dwelling units and therefore, would require 12,300 square feet of common open space and 7,380 square feet of private open space. The project would provide 11,144 square feet of common open space and 8,471 square feet of private open space. Common open space would be served in the form of a ground-floor plaza, a podium level (second floor) courtyard, gym and community room, shared terrace on the fifth floor and a rooftop garden. Private open space is provided via 6-foot by 10-foot, 60-square foot balconies. Because private open space is provided in excess of 60 square feet, the required common open space can be reduced. Therefore, the project would meet the common and private open space requirement consistent with the guidelines.

8. Environmental Review.

An Initial Study (IS) and Mitigated Negative Declaration (MND) with associated Mitigation Monitoring and Reporting Program (MMRP) were prepared by the City of San José's Director of Planning, Building and Code Enforcement for the subject Planned Development Rezoning and Planned Development Permit.

The documents were circulated for public review and comments from July 28, 2020 through August 17, 2020. Impacts to Air Quality, Biological Resources, Hazards and Hazardous Materials and Noise, were identified; however, impacts identified would be reduced to less than significant with the implementation of mitigation measures. In addition to agency letters from Pacific Gas and Electric (PGE), Santa Clara County Parks, and the California Department of Transportation acknowledging the project with no additional comment, one email was received from the public during the circulation period, and two other emails were received outside of the circulation period (after

August 17, 2020). Based on the comments received, demolition of existing residential structures was a concern due to displacement of existent residents, as was the status of the project review and whether the environmental document included cumulative project effects (e.g., neighboring Quetzal Gardens project). Adequate parking is another concern for the proposed project. The comments did not result in any substantial changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. Responses to comments can be found on the City's website as listed below.

The public comments on the IS/MND have been addressed by staff in a formal Errata document containing a Responses to Public Comments section published on the City website on October 16, 2020.

As stated in the IS/MND, the primary environmental issues that required mitigation measures are air quality, biological resources, hazards and hazardous materials, and noise. The IS/MND includes mitigation measures that would reduce the identified potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions with regards to construction dust controls and equipment of the site are included in the Planned Development Permit as standard permit conditions to ensure all potential impacts have been addressed.

The entire IS/MND and Responses to Comments, and other related environmental documents are available on the Planning website at: www.sanjoseca.gov/NegativeDeclarations.

9. Planned Development Permit Findings: Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit.

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

Analysis: As discussed above, the project is consistent with the General Plan designation and policies in that the project includes the construction of a six-story mixed-use building consisting of ground-floor retail and 123 residential units which is compatible and consistent with the mixed-use setting and density goals of urban villages and the Urban Village designation.

- b. The planned development permit, as approved, conforms in all respects to the Planned Development Zoning of the property; and

Analysis: As described above, the Planned Development Permit conforms in all respects to the CP(PD) Planned Development Zoning District of the property, including uses, design, setbacks, height, and parking. The building's frontage would be adjacent to a new 16-foot wide sidewalk along Alum Rock Avenue which

meets the Little Portugal Urban Village Plan Setback Policy of building a new building adjacent to the sidewalk. The project's rear property line is adjacent to a property designated Residential Neighborhood and is bounded on the northwest by properties that are zoned R-2 Two-Family Residence District and therefore, is subject to the step-down policy in the Urban Village Plan. As such, the project would step down in height to 45 feet within 20 feet of the R-2 zoned properties on the west elevation (side) and gradually increase in height at a 45-degree plane. The project's rear setback would be 25 feet in conformance with the CP Commercial Pedestrian Zoning District development standards and would reach a maximum height of 80 feet. The project would provide parking and implement a TDM Plan to support the parking reduction.

- c. The planned development permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the project. In accordance with City Council Policy 6-30, the project applicant posted on-site signs to inform the surrounding neighborhood of the project on September 13, 2018. As detailed above, the City hosted three community meetings in conformance with the Public Outreach Policy 6-30. The hearing and community meeting notices were sent to all owners and tenants within 1,000 feet of the project site. Staff contact information was published on the posted Notice of Development sign located on the project frontage and available on the mailing notices. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

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

Analysis: The project is consistent with the Little Portugal Urban Village Plan which has specific architecture policies informed by community input. Specifically, the policies speak to creating visually rich and interesting spaces in the built environment; articulation of building facades and variations in building planes and roof lines and incorporating decorative elements on building facades and entryways integrating unique, artisan, and artist-designed elements into facades and public spaces that contribute to a Mediterranean or similar architectural style. In alignment with the Urban Plan's vision, the project would include a Mediterranean style design with arches, semi-open spaces, tile roof, and inspiration from the Mexican and Portuguese cultures, including rich, vibrant colors, balconies, a plaza, an open floor plan commercial space, and decorative talavera tiles on the façade. The six-story building would have a defined base with ground-floor retail and large, identifiable entryways approximately 20 feet in height, and canopies to enhance the pedestrian experience. As described above, the

project is consistent with the height policies defined in the urban village plan and the elevation adjacent to residential properties would appropriately respond by stepping down. As discussed above, the selected building color scheme was decided by the community meeting participants and would be aesthetically harmonious with surrounding commercial and residential structures.

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

Analysis: The project would be developed in an urbanized area that is adequately serviced by all required utilities and public services. The Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Furthermore, the project would follow best management practices as outlined in the standard environmental permit conditions during the construction of the project to minimize or eliminate temporary vibration, dust, and odor. The project would therefore not have an unacceptable negative effect on adjacent properties.

10. Tree Removal Findings.

Chapter 13.32 of the San José Municipal Code establishes required findings for a Tree Removal, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

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

Analysis: There are currently 38 trees onsite. There are no Heritage Trees on or adjacent to the site that would be impacted by the project. The project will remove 38 on-site trees, six of which are ordinance-size trees. The trees that will be removed are located within or near the footprint of the project building. In conformance with the tree replacement policy, a total of 78 15-gallon replacement trees or 39 24-inch replacement trees would be required. The project would provide a total of 36 24-inch box or larger replacement trees. Therefore, the tree replacement minimum tree replacement requirement is met. If replacement trees cannot be accommodated onsite, the project would be subject to the tree replacement in-lieu fee as conditioned in the Planned Development Permit.

Evaluation Criteria for Demolition

Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the project based on the above-stated findings related to General Plan, Zoning and CEQA

conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

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

Analysis: The approval of the demolition would be associated with a Planned Development Permit and would result in a new development; therefore, the demolition would not have an adverse impact on the surrounding neighborhood by having the undesired outcome of creating a vacant/undeveloped lot. As discussed above, the approval of the permit would facilitate a project which is compatible with the surrounding neighborhood and would result in an increase in the housing stock supply. Rehabilitation or reuse of the existing buildings would not be feasible because they are located on separate parcels and do not achieve the density or FAR that the six-story project building would. Pursuant to Section 20.80.460 (8) of the Municipal Code, the applicant will comply with all relocation obligations under state and local law, including the approved Housing Compliance Plan, for the removal of multiple-dwelling housing units. None of the buildings proposed for demolition are listed on the National Register of Historic Places, California Register of Historic Resources, City of San José Historic Resources Inventory or Santa Clara County Heritage Resources Inventory. The buildings slated for demolition are, however, older than fifty years and therefore, required an historical evaluation as part of the project review. In the historic evaluation prepared by Archives and Architecture dated January 24, 2020 for the environmental document, the author concluded that the structures represented common architectural styles not meriting listing on the National or California registers. The historic evaluation did find, however, that one of the commercial structures (1661 Alum Rock Avenue) had local historic significance in that it was the site of the "original taqueria of Santa Clara Valley" which operated from 1955 to 2011. Given the potential local importance of the former use and ties to the Portuguese and Mexican communities, the author concluded that the property could be eligible as a Structure of Merit. For the purposes of CEQA,

however, structures of merit are not historical resources. Therefore, no historic structure or eligible historic structure would be demolished. The project would be conditioned to photo-document the structure of merit prior to demolition.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have granted this 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 Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit 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, Building and Code Enforcement 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 Facility will cause the total sewage treatment demand to meet or exceed the capacity of the 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; and (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. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of land covered by the Permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
6. **Scope and Use Authorization of the Planned Development Permit.** Subject to all conditions herein, this Planned Development Permit allows the demolition of a single-story, seven-unit apartment building and ancillary structures and approximately 5,500 square feet of commercial retail buildings (3 buildings, and the construction of a six-story, mixed-use building consisting of 13,650 square feet of ground-floor commercial space and 123 residential units, two levels of underground parking, and allows the removal of 38 on-site trees, six of which are ordinance-size trees on an approximately 0.9-gross acre site, in accordance with the approved development plans and uses consistent with the General Development Standards of the Planned Development Zoning District.
7. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "Little Portugal Gateway: 1161, 1663, 1665 Alum Rock Avenue" dated revised March 3, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set."
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

9. **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.
10. **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.
11. **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.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
13. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
14. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
15. **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.
16. **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 parking lot such as striping, paving, lighting and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium. Any changes to the on-site lighting will require a Permit Adjustment. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
19. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
20. **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.

21. **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.
22. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including, the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
23. **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.* This permit file number, PD18-016, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance 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.
 - e. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).
24. **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.
25. **Final Map or Lot Line Adjustment Required.** Prior to the issuance of any Building Permit, the permittee shall secure approval and provide recordation of the final map or a Lot Line Adjustment to merge the project lots.
26. **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.

27. **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.
28. **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.
29. **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.
30. **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.
31. **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.
32. **Parkland Dedication Ordinance.** This development is subject to the requirements of either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code,) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the permittee shall enter a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance.
33. **Transportation Demand Management (TDM) Plan.** The project is required to implement the TDM mitigation measures identified in the TDM Plan prepared by Hexagon Transportation Consultants, Inc., dated January 14, 2020. The TDM Plan shall include:

- a. Trip Planning Kiosk
- b. Unbundled Parking
- c. Transit Subsidies
- d. Minimum Code-required bicycle parking

34. Affordable Housing Compliance Plan.

- a. Demolition of Existing Multi-Family Housing: This project is subject to the requirements of the City's Ellis Act Ordinance, Part 11 of Chapter 17.23. Permittee shall comply with all noticing, relocation benefits, right to return and re-control requirements in the Ellis Act Ordinance. Additionally, a filing fee must be remitted to the City prior to the commencement of activities under the Ellis Act Ordinance. *No Demolition Permit shall be issued until the Ellis Act Ordinance requirements are met and payment of Ellis Act fees must be made prior to issuance of building permits.*
- b. New or Converted Housing: The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the before mentioned programs, the permittee must execute and record their Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.
- c. The IHO and AHIF Resolution each exempt certain developments from affordable housing obligations, if the development meets certain criteria. However, whether an exemption is claimed or not, the permittee must submit an Affordable Housing Compliance Plan Application, and the application processing fee to the Housing Department as part of the application for First Approval.
- d. The Housing Department has reviewed and approved the Affordable Housing Compliance Plan for this project. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this project and any other applicable requirements of the IHO or AHIF.
- e. If the project is subject to the AHIF, no building permit may be issued until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
- f. If the project is subject to the IHO, no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

- 35. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall be required to have satisfied all of the following Public Works conditions. The permittee

is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following link:
<http://www.sanjoseca.gov/devresources>.

36. **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.
37. **Transportation:** The project's Local Transportation Analysis (LTA) has been approved. See separate Traffic Memo dated 05/21/2020 for additional information.
38. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
39. **Grand Boulevard:** This project fronts Alum Rock Avenue 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.
40. **Private Improvements within Public Property:** The proposed minor encroachment in the right-of-way for planters, benches, and trash receptacle shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for these improvements. The property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirements and prior to any Building Permit issuance.
41. **Grading/Geology:**
 - a. A grading permit is required prior to the issuance of a Public Works Clearance.
 - b. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- c. 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.
- d. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- e. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- f. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - 1. If tie-backs are proposed in the right-of-way as part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e. soldier beams).
 - 2. If tie-backs are proposed for use along the adjacent properties (481-12-066, 002, 003, 004, 074, and 108) agreements between the Applicant and the adjacent property owners will need to be secured, executed, and provided to the Public Works Engineer prior to approval of the Grading Permit for this project.

42. 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.

- a. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.

- b. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
43. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management (HM) area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
44. **Flood Zones X:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
45. **Sewage Fees:** In accordance with City Ordinance, all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
46. **Street Improvements:**
- a. Remove curb, gutter, and sidewalk and construct a 16-foot wide sidewalk with tree wells along Alum Rock Avenue.
 - b. Provide a 30-foot width between the Bus Rapid Transit curb and the proposed face of curb to accommodate on-street parking. Street dedication of approximately 0 feet will be required along Alum Rock Avenue.
 - c. Close any unused driveway cut(s) along Alum Rock Avenue.
 - d. Construct a 26-foot wide driveway along Alum Rock Avenue per City of San José Standard Detail R-6.
 - e. Developer 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.
 - f. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - g. 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.
47. **Strong Neighborhoods Initiative (SNI):** This project is located within the Five Wound/Brookwood Terrace SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
48. **Sanitary:** The project is required to submit plan and profile of the sewer mains with lateral locations for final review and comment prior to construction.

49. **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.
50. **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.
51. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority.
52. **Conformance to MMRP:** 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. .
53. **Standard Environmental Permit Conditions.**

a. **AIR QUALITY.**

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

- 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. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vi. Replant of vegetation in disturbed areas as soon as possible after completion of construction.
- 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. Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

Table 4.4-2: Tree Replacement Ratios				
Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12 inches or more ³	5:1	4:1	3:1	15-gallon
6.0 to 12 inches	3:1	2:1	None	15-gallon
Less than 6.0 inches	1:1	1:1	None	15-gallon
¹ As measured 4.5 feet above ground level ² X:X = tree replacement to tree loss ratio ³ Ordinance-sized tree Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 19-inch tree equals 6.1 inches in diameter. One 24-inch box tree= two 15-gallon trees				

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.

- 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage. Replacement tree plantings may be accommodated at an alternative site(s).
- 2) 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.

- iii. Habitat Plan. The project is subject to applicable Santa Clara Valley Habitat Plan (SCVHP) conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. Prior to issuance of any grading permits, the permittee shall submit a SCVHP 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. In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement will be notified, and a qualified archaeologist will examine the find. The archaeologist will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery would be submitted to Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains 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 Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.
- iii. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.
- iv. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- 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 the mediation by the NAHC fails to provide measures acceptable to the landowner.
- v. If vertebrate fossils are discovered during construction, all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The project proponent will be responsible for implementing the recommendations of the paleontological monitor.

d. GEOLOGY AND SOILS.

- i. To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Planning, Building, and Code Enforcement as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code Chapter 16, Section 1613, 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 will be scheduled in dry weather months or construction sites will be weatherized.
- iii. Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.
- iv. Ditches will 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. In addition, the San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works clearance. These standard practices, including the measure outlined below, will ensure that the future building on the site is designed properly to account for soils-related

hazards on the site. The project shall conform to the recommendations of a project-specific geotechnical report, including design considerations for project foundations.

e. HAZARDS AND HAZARDOUS MATERIALS.

- i. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building to determine the presence of asbestos-containing materials 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 would 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 NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

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.

g. **NOISE.**

The following Conditions of Approval are required to reduce interior noise levels within residences to 45 dBA DNL or less and interior noise levels within commercial uses to 50 dBA Leq or less:

- i. Provide all residential units with a suitable form of forced-air mechanical ventilation (as determined by the local building official) so that windows can be kept closed at the occupant's discretion to control interior noise levels and achieve the interior noise level standards.

54. Structure of Merit (1661 Alum Rock Avenue). Prior to issuance of any demolition permit, the following shall be met to the satisfaction of the Director of Planning, Building and Code Enforcement:

- a. Permittee shall advertise the 1661 Alum Rock Avenue Building for relocation. A dollar amount equal to the estimated cost of demolition as certified by a licensed contractor and any associated Planning Permit fees for relocation shall be offered to the recipient of the building.
- b. Permittee shall provide evidence to the Historic Preservation Officer and Supervising Environmental Planner that an advertisement has been placed in a newspaper of general circulation, posted on an appropriate website, and posted at the site for a period of no less than 30 days.
- c. Preservation organizations and other interested parties shall be contacted at least 30 days prior to demolition activities and given the opportunity to examine the building and salvage surplus elements not being incorporated in the project for possible re-use in the rehabilitation of the buildings of similar age and style. Documentation of the salvage offers shall be submitted to the City's Historic Preservation Officer.
- d. Preparation of a full photo-documentation of the building is required using the Secretary of Interior's Standards and Guidelines for Architectural and Engineering Documentation:
 - i. Historic American Buildings Survey/ Historic American Engineering Record (HABS/HAER) Standards, and shall be submitted to the City's Historic Preservation Officer. The photo documentation shall be provided to the History Museum of San José.

55.Trash Pick-Up. Trash bins shall be wheeled out to a designated location on-site, adjacent to the entry drive aisle and accessible to garbage trucks for pick-up. The designated pick-up location shall not inhibit vehicular or pedestrian on-site circulation along the sidewalks, drive aisle or parking garage.

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

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

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

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

EFFECTIVE DATE

The effective date of this Permit (File No. PD18-016) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC18-021 approved for publication on _____, 2020 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

EXHIBIT "A"
Legal Description

Lot Line Adjustment

Lands of Jaswal Properties, LLC and Catina Investments, LLC

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

Being all of the lands granted to Jaswal Properties, LLC as recorded on June 30, 2014 in Document No. 22634325, Records of Santa Clara County, and the lands granted to Catina Investments, LLC as recorded on December 08, 2017 in Document No. 23823008, Records of Santa Clara County;

Being a portion of Lot 1, all of Lot 2, and all of Lot 3, Block 1, as shown on Map of Observatory View Tract, filed for record on August 12, 1892 in Book G of Maps at Pages 90 and 91, Records of Santa Clara County, more particularly described as follows:

BEGINNING at the most southerly corner of Lot 3, being a point on the northwesterly line of Alum Rock Avenue, formerly Santa Clara Street, said northwesterly line bears North 59°17'40" East as shown on a Record of Survey, filed for record on November 01, 1978 in Book 429 of Maps at Pages 45-47;

Thence along the southwesterly line of said Lot 3, North 30°42'20" West, 262.45 feet to the most westerly corner thereof;

Thence along the northwesterly line of Lot 3 and Lot 2, North 59°17'40" East, 150.00 feet to the most northerly corner of Lot 2;

Thence along the northeasterly line of Lot 2, South 30°42'20" East, 112.45 feet;

Thence leaving said northeasterly line, South 36°24'58" East, 150.75 feet to a point on the southeasterly line of Lot 1, from which the southerly most corner of Lot 2 bears along said northwesterly line of Alum Rock Avenue, South 59°17'40" West, 90 feet distant;

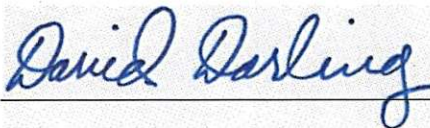
Thence along the southeasterly line of Lots 1, 2, and 3 and along said northwesterly line of Alum Rock Avenue South 59°17'40" West, 165.00 feet to the **POINT OF BEGINNING**.

Containing 40,493 square feet or 0.930 acres, more or less.

A plat of the herein described lands, labeled EXHIBIT "A", is attached hereto and made a part thereof.

This legal description was prepared by me or under my direct supervision in conformance with the requirements of the Professional Land Surveyors' Act.

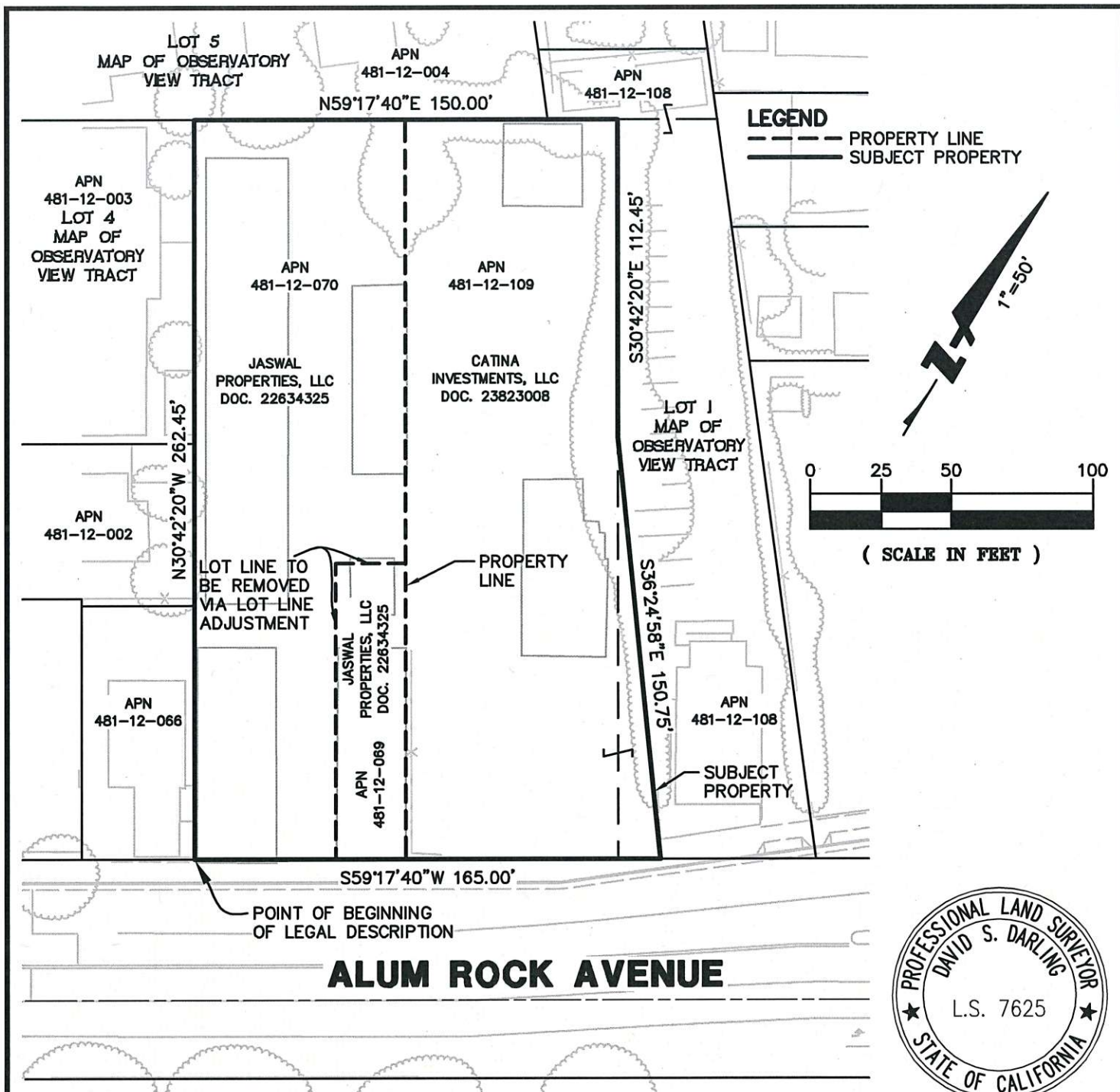
Signed



07/10/2018

Date





LOT LINE ADJUSTMENT DATA

LOT REF.	481-12-069	481-12-070	481-12-109	PARCEL A
EXIST. AREA	2,625 SF±	17,059 SF±	20,809 SF±	-----
ADJ. AREA	0 SF	0 SF	0 SF	40,493 SF±

ADDRESS: 1661, 1663, & 1665 ALUM ROCK AVENUE, SAN JOSE, CA 95116
 K:\2018\181075_1661_AlumRock\SUR\LLA\1665_PLAT.dwg



1730 N. FIRST STREET
 SUITE 600
 SAN JOSE, CA 95112
 408-467-9100
 408-467-9199 (FAX)

Subject **REZONING PLAT EXHIBIT**
LANDS OF JASWAL PROPERTIES, ET AL
 Job No. 20181075 SAN JOSE, CA
 By KAB Date 11-03-20 Chkd. DD
 SHEET 1 OF 1