

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AMENDMENT TO ALLOW THE OFF-SALE OF ALCOHOL (BEER AND WINE) AND EXTERIOR MODIFICATIONS (OUTDOOR SEATING) FOR AN EXISTING 30,130-SQUARE FOOT COMMERCIAL TENANT SPACE AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR OFF-SALE OF ALCOHOL FOR A PROPOSED RETAIL USE (SPROUTS FARMERS MARKET) IN AN EXISTING SHOPPING CENTER, ON AN APPROXIMATELY 17.4-GROSS ACRE SITE LOCATED ON THE NORTH SIDE OF EAST CAPITOL EXPRESSWAY APPROXIMATELY 280 FEET EASTERLY OF SILVER CREEK ROAD (1771 EAST CAPITOL EXPRESSWAY)

FILE NOS. PDA79-094-02 and ABC18-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 10, 2018, an application (File Nos. PDA79-094-02 and ABC18-001) was filed by the applicant, Sprouts Farmers Market, with the City of San José for a Planned Development Permit Amendment to allow the off-sale of alcohol (beer and wine) and exterior modifications (outdoor seating) for an existing 30,130-square foot commercial tenant space and granting a Determination of Public Convenience or Necessity to allow the off-sale of alcohol for a proposed retail use on an approximately 17.4-gross acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the north side of East Capitol Expressway approximately 280 feet easterly of Silver Creek Road (1771 East Capitol Expressway, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 23, 2018, notice of which was duly given; and

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

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

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Sprouts Famers Market, Silver Creek Plaza," dated February 28, 2018, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The 17.4-gross acre project site is located on the north side of East Capitol Expressway approximately 280 feet easterly of Silver Creek Road, at 1771 East Capitol Expressway. The project site is a 30,130-square foot vacant tenant space located within the existing 197,500 square foot Silver Creek Plaza Shopping Center. The tenant space was previously occupied by a Safeway grocery store with an ABC Type 21 liquor license. The shopping center is a mix of existing retail, restaurants, and commercial tenants, and includes a paved parking lot with 857 spaces. Access to the shopping center is from one drive driveway on Capitol Expressway, two driveways on Aborn Road, and three driveways on Silver Creek Road. Land uses surrounding the site include single-family detached residences and a commercial shopping center to the north, commercial uses and single-family detached residences to the south and east, and commercial uses to the west. The proposed project is located 146 feet from the nearest residential lot and is adjacent to commercial uses.
2. **Project Description.** This project is a Planned Development Permit Amendment to allow the off-sale of beer and wine and exterior modifications (outdoor seating including twelve fixed seats and three fixed tables located east of the grocery store's entrance) for 30,130-square foot commercial tenant space and a Determination of Public Convenience or Necessity for off-sale of alcohol for a proposed Sprouts Farmers Market. Sprouts Farmers Market is a full-service grocery store specializing in offering local, farm-fresh produce and other specialty items. The proposed open outdoor seating area would provide a location for visitors of the grocery store and commercial plaza to rest; no food or drink service would be provided. The grocery store would operate from 7 am to 10 pm daily and it is anticipated to employ up to 100 people

The off-sale of alcohol would consist of an approximately 220-square foot portion of the store's 17,670-square foot proposed sales area, which is approximately 1.2% of the total sales area. A State Alcoholic Beverage Control (ABC) Type 20 License is required for the sale of beer and wine for consumption off the premises where items are sold.

The project site's Zoning District was established through Planned Development Zoning File No. PDC77-152 on November 29, 1977 to allow for the development of an

approximately 260,00-square foot commercial center. Planned Development Permit No. PD79-094 effectuated the Planned Development Zoning District and allowed the construction of "Silver Creek Plaza", including 197,5000 square feet of commercial building area. This Planned Development Permit Amendment is requested to allow the off-sale of alcohol and the exterior modifications (outdoor seating area) to an existing building within the Silver Creek Plaza.

3. **General Plan Conformance.** The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation is intended for neighborhood serving retail, services, and commercial developments. Commercial uses in this designation should provide services and amenities for the nearby community. Additionally, the subject project is located in the East Capitol Express/Silver Creek Road Urban Village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. The General Plan policies allow commercial projects to develop ahead of an adopted Urban Village Plan. The policies encourage commercial uses that are consistent with the existing commercial land use designation and designs that incorporate pedestrian-focused elements into the project.

The proposed project conforms to the following key General Plan policies:

- Commercial Lands Goal LU-4: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.
- Commercial Policy LU-4.2: In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.
- Commercial Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services

Analysis: Sprouts Farmers Market is a full-service grocery store that specializes in farm-fresh produce purchased from local growers. The store would offer a wide variety of grocery products including bakery goods, a full-service meat counter, deli, produce, and dairy products. While this is a full-service grocery store, Sprouts has a unique business model that specializes in farm-fresh produce and an extensive mix of natural and organic foods. The proposed Sprouts Farmers Market would revitalize the existing shopping center by filling a commercial tenant vacancy and maintaining an employment use on the site. The proposed project is anticipated to provide up to 100 jobs. Additionally, the proposed project would enhance the pedestrian area with the addition of an outdoor seating area. The proposed Sprouts Farmers Market would complement the existing commercial uses in the shopping

center, such as the Orchard Supply Hardware Store and Walgreens Drug Store, by providing another neighborhood-serving retail business. The proposed location is easily accessible from Highway 101 and Capitol Expressway. The building entrance is also within 300 feet of the Valley Transportation Authority bus line 31 and 70.

- Commercial Policy LU-5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The full-service grocery store would provide a wide range of groceries that serve the daily necessities of the nearby community. The grocery store would occupy a tenant space recently vacated by another grocery store. The proposed off-sale of alcohol would allow the grocery store to increase its convenience for the community and would economically benefit the shopping center. The off-sale of alcohol use would offer patrons of the store to a wide variety of beer and wine options. The percentage of the floor area dedicated to the off-sale of alcohol would be 1.2% (220-square foot portion of the store's 17,670-square foot sales area) of the total sales area and therefore, reasonably balanced with the grocery goods provided.

4. **Zoning Ordinance Compliance.** This Project complies with all applicable provisions of the Zoning Ordinance in that the proposed project is located in the A(PD) Planned Development Zoning District (File No. PDC77-152). The proposed project requires a Planned Development Permit Amendment to allow the proposed exterior modifications and use and a Determination of Public Convenience or Necessity for a the off-sale of alcohol.

- **Development Standards.** The proposed project would occupy an existing tenant space within the Silver Creek Plaza shopping center. Development requirements for buildings on this site, such as landscaping and building location, were previously approved under Planned Development Permit (File No. PD79-094) and were found to be in conformance with the existing approved General Development Plan of the Planned Development Zoning District (File No. PDC77-152).
- **Parking.** The Development Standards for this Planned Development Zoning require a parking ratio per Section 9106 of the 1977 Zoning Ordinance; one parking space per 200 square feet of retail and commercial floor area. The shopping center has a total of 857 parking spaces of which 170 parking spaces are allocated to the proposed project's tenant space. The project, which as a full-service grocery store is similar to the previous tenant's use, would occupy an existing tenant space within the larger shopping center. As the prior approval met the required parking, no additional parking is required as no new square footage or change of use is proposed.
- **Noise.** Pursuant to Section 20.40.600 of the Zoning Ordinance, the maximum noise level at the property line of a residential use is 55 decibels. The maximum noise level at the property line of a commercial use and other non-residential uses

is 60 decibels. The proposed project would occupy an existing tenant space in a developed shopping center. The nearest residential property is approximately 450 feet from the front entrance. The loading dock for the tenant space is located behind the building and out of site from the residential properties. It is only utilized during normal hours of operations (7am to 10pm daily). Given the operations of the business located inside the existing building, the proposed project would not operate during late night hours, is located more than 450 feet away from the nearest residential property line, the project would not exceed the maximum noise levels at a residential and non-residential property line.

5. **Environmental Review.** Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended (CEQA). The Section 15301(a) (Existing Facilities) exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Examples include but are not limited to: a) interior or exterior alteration involving such things as interior partitions, plumbing, and electrical conveyance. The proposed off-sale of alcohol would be incidental to a future grocery store located in an existing structure. The proposed use would not require expansion of the building and the proposed exterior seating would be a minor addition to the existing structure.

6. **Conditional Use Permit Findings.** The City Council concludes and finds, based on the analysis of the above facts in regards to the Planned Development Permit and Determination of Public Convenience or Necessity, that:

- The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety or general welfare; and

Analysis: As indicated in a Police Department Memorandum, dated January 23, 2018, the proposed use is located in the San José Beat P4 area and census tract 5033.05. The reported crime statistics for Beat P3 are not over the 20% crime index and therefore the census tract is not considered unduly concentrated. The Police are neutral to this proposal. The proposed daily hours of operation for the Sprouts Farmers Market are from 7:00 a.m. to 10:00 p.m. daily (as stated in their operations plan); these hours are within the by-right allowances under the Municipal Code. The use would operate as a retail business and would not be

considered a bar as no on-site consumption of alcohol is allowed. Therefore, this finding can be made.

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

Analysis: The project will occupy an existing building within the Silver Creek Plaza shopping center. The tenant space's loading space is located at the rear of the building. It is shielded as it is on the backside of two commercial building. The exterior seating will be located east of the grocery store's entrance and will conform to development standards set forth in the General Development Plan of the Planned Development Zoning and approved Planned Development Permit. All other existing development features, including setbacks, loading facilities, landscaping, and parking, etc., are sufficient for the proposed use and comply with the requirements of the previously approved Planned Development Permit for this site (PD79-094). This finding can be made.

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

Analysis: Access to the subject site is provided by Capitol Expressway, Silver Creek Road, and Aborn Road, which are major public streets. The Silver Creek Plaza shopping center is located near Highway 101. The site is also within 300 feet of Valley Transportation Authority bus routes Nos. 31 and 70. This finding can be made.

7. Required Findings for Off-Sale of Alcohol. A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

- For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

Analysis: There is one use involving off-sale of alcoholic beverages within a 500-foot radius of the proposed project (see Figure 5) and in total there are four uses involving the off-sale of alcoholic beverages within a 1,000-foot radius of this site.

*These include a liquor store (Maxim Market) within 500-feet of the site, a major retail store (Target), a convenience store (Stop n' Save), and another liquor store (Aborn Liquor) within the 1,000-foot buffer. This use would be the fifth off-sale of alcoholic beverages location within 1,000 feet. Therefore, this finding **cannot** be made, and the sue can only be approved if the Council can make the positive findings in Section 2 and 3 below (See Municipal Code section 20.80.900.A.2 and A.3).*

- For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - iii. Be detrimental to public health, safety or general welfare.

Analysis: The proposed location of the off-sale of alcoholic beverages would result in a total of five establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. However, this buffer is measured from the project lot boundaries rather than the tenant space for the proposed use. Therefore, the 1,000-foot buffer area is in addition to the approximate 325-foot distance between the entrance of the tenant space and to the closest property line. Thus, the tenant space is located more than 1,300 feet from the furthest off-sale alcohol use, the Stop n' Save liquor store.

*Additionally, the proposed off-sale would enhance the convenience of the proposed Sprouts Farmers Market for the surrounding community, and is intended to be incidental and ancillary to the full-service grocery store. As such this use would not be detrimental to the health, safety morals, or welfare of persons residing or working in the surrounding area. Based upon these facts, the project conforms to this requirement and this finding **can** be made.*

- For such a use at a location closer than 500 feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150 feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. Although the closest residential lot is approximately 146 feet from the shopping center property line, the front door of the tenant space is located approximately 300 feet from the shopping center property line and approximately 450 feet from the nearest residential zoned property east of Capitol Expressway. Additionally, the residential property is separated from the proposed site by a block wall without pedestrian openings and Capitol Expressway, an eight-lane expressway with a median. Therefore, this finding can be made.

8. Requirements for Determination of Public Convenience or Necessity. Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” is defined as follows:

- The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
- The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The project site is located within a census tract where the ratio of the existing retail off-sale licenses to the population in the census tract exceeds the ratio in the County as a whole. Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis for the determination of public convenience or necessity is based on the required findings identified in Title 6 of the San José Municipal Code.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN can be issued only after first making all of the findings specified below (see San José Municipal Code section 6.84.030):

- a. The proposed use is not located within a Strong Neighborhood Initiative (SNI) or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:
 - i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or

- ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The propose project is located in the West Evergreen SNI. Therefore, this finding **cannot** be made.*

- b. The proposed use would not lead to more than four uses with off-premises sale of alcoholic beverage within a one thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis: The proposed use would result in more than four off-sale establishments in a 1,000-foot radius. This would be the fifth off-sale establishment; therefore, this finding **cannot** be made.*

- c. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The proposed use is not within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. Although the entrance of the tenant space is approximately 450 feet from the nearest residentially zoned property, the project site is within 150 feet of a residence. Therefore, this finding **cannot** be made.*

- d. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Alcoholic beverage sales would not represent a majority of the proposed use. The proposed off-sale would only occupy approximately 1.2% of the total sales area (220-square foot portion of the store's 17,670-square foot sales area). Therefore, this finding **can** be made.*

- e. At least one of the following additional findings:

- i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*The census tract is not unusually configured. This finding **cannot** be made.*

- ii. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

*The off-premises sale of alcoholic beverages would enhance the service of the proposed grocery store and contribute to the vitality of the existing shopping center. The grocery store would operate within normal hours and would not significantly impact public health or safety. This finding **can** be made.*

- iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over- concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

*The census tract has a population comparable to the surrounding census tracts and allows three off-sale license. The proposed project and beer and wine off-sale (Type 21) license would be the sixth off-sale license in the over-concentrated census tract. This finding **cannot** be made.*

- iv. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*The proposed project is a full-service grocery store which would provide a unique and large selection of fresh produce, groceries, wine and beer. The off-site sale of beer and wine would enhance the shopping convenience for patrons and residents. This finding **can** be made.*

Given the above-stated analysis, all but one of the findings for PCN cannot be made for the proposed off-sale of alcohol:

- The project site is located within the West Evergreen SNI (Finding 9a);
- The project would result in more than four off-sale establishments within a 1,000-foot radius of the project site (Finding 9b);
- The project is within 150 feet of a residence (Finding 9c);
- Over-concentration within the census tract.

Based on all of the foregoing, the City Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The off-sale of alcohol meets the General Plan goals and policies of (i) providing a walkable location for grocery stores that offer a broad array of goods to the community; (ii) jobs, employment, and economic development by activating a vacant tenant space within an existing shopping center; (iii) giving preference to off-sale of alcohol to stores that also provide fruits, vegetables, and healthy products; and (iv) implementation of conditions to ensure the off-sale of alcohol will not be detrimental to the community or to public health and safety.

In accordance with the findings set forth above, this Planned Development Permit Amendment and Determination of Public Convenience or Necessity 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**. The 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Planned Development Permit Amendment and Determination of Public Convenience or Necessity 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 Amendment by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit Amendment or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit Amendment.
2. **Permit Expiration.** This Planned Development Permit Amendment shall automatically expire two 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 Amendment. The date of issuance is the date this Permit Amendment is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit Amendment in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit Amendment.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit Amendment plans entitled, "Sprouts Farmers Market, Silver Creek Plaza," dated February 28, 2018, 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 plans" or the "Approved Plan Set."

5. **Use Authorization.** This Planned Development Permit Amendment and Determination of Public Convenience or Necessity authorizes the off-sale of alcohol (beer and wine, Type 20 ABC license) and exterior modifications (outdoor seating area) in an existing approximately 30,130-square foot commercial tenant space.
6. **Off-sale of Alcohol.** This Planned Development Permit Amendment authorizes the off-sale of alcohol (beer and wine) at the proposed grocery store and successors of said tenant space whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
7. **Hours.** This facility shall be limited to operation between the hours of 6:00 a.m. to 12:00 midnight, unless a Conditional Use Permit or Planned Development Permit, as applicable, is approved by the City for other hours of operation
8. **Certificate of Occupancy.** The permittee shall obtain a Certificate of Occupancy. Procurement of a Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described 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.
9. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages shall only be allowed in strict conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The permittee shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
10. **Limitations on Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Permit shall be limited and incidental to the primary use of a full-service grocery store. "Full service grocery store" as used herein means a retail establishment that provides a full and wide complement of fresh produce, grains, dairy goods, and baked products, together with other food and household merchandise for general public consumption. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 1.2% percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.
11. **Disturbance Coordinator.** The permittee shall implement the following:
 - a. Provide an on-site disturbance coordinator during all hours of operation;
 - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;
 - c. Maintain a complaint log including the time and content of all complaints and a

- summary of the time and nature of the establishment's response to each complaint;
- d. Ensure that the log is kept current and is available on the project site for inspection by City staff.
12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Planned Development Permit Amendment shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
13. **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 Amendment incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Building and Property Maintenance.** The property owner or operator shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
15. **Loading Activity Hours.** All loading activities shall be limited to the hours of 7:00 a.m. to 10:00 p.m.
16. **Generators.** This Planned Development Permit Amendment does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
17. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
18. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
19. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance shall be abated immediately upon notice by the City.
20. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

21. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. All publicly used areas shall be maintained free of litter, trash, cigarette butts and garbage.
22. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
23. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping
24. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
25. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file numbers PDA79-094-02 and ABC18-002 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.
26. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment and Determination of Public Convenience or Necessity 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, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Planned Development Permit Amendment and Determination of Public Convenience or Necessity 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.

APPROVED and issued this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

Legal Description
Silver Creek Plaza

All of parcels 1, 2, 7, 8, 9, 10, 11 and 12, as shown upon that certain Map entitled, "Amended Parcel Map Silver Creek Plaza" being a resubdivision of Parcels 1, 2 and 3 as shown on Parcel Map recorded September 15, 1978, in Book 426 of Maps, at Page 43, which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1980, in Book 469 of Maps, at Page 48.