

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF BEER AND WINE (TYPE 20 ABC LICENSE) AT AN EXISTING APPROXIMATELY 14,000-SQUARE-FOOT GROCERY STORE ON AN APPROXIMATELY 0.87-GROSS-ACRE SITE, LOCATED AT THE NORTHWESTERLY CORNER OF WEST SAN CARLOS STREET AND BROOKLYN AVENUE (1915 WEST SAN CARLOS STREET) (APN: 274-17-087)

FILE NO. CP24-027

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 24, 2024, Juvenal Chavez on behalf of the applicant, JE&E Chavez, LLC DBA La Plaza Market, filed an application (File No. CP24-027) with the City of San José for a Conditional Use Permit and Determination of Public Convenience or Necessity for Type 20 - Off-Sale of beer and wine within an existing retail use on an approximately 0.87-gross-acre site (the “project”) situated in the CP Commercial Pedestrian Zoning District and located on the northwesterly corner of West San Carlos Street and Brooklyn Avenue (1915 West San Carlos Street; APN 274-17-087) (the “subject property”); and

WHEREAS, a legal description of the subject property is attached as Exhibit "A" and incorporated by reference; and

WHEREAS, at a duly noticed public hearing on January 22, 2025, the Planning Commission considered public comments and all evidence and testimony received at the public hearing regarding the Project and recommended that the City Council approve the Project; and

WHEREAS, this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building, and Code Enforcement and conducted a duly noticed public hearing on the Project, giving all persons full opportunity to be heard and to present evidence and testimony; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "CP24-027 Conditional Use Permit, CP24-027, La Plaza Market, 1915 West San Carlos Street, San Jose, CA 95128" dated revised January 7, 2025; said plan is on file in the Department of Planning, Building and Code Enforcement, available for inspection, and incorporated by reference; and

WHEREAS, this City Council has heard and considered the testimony presented 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:

The foregoing recitals are hereby incorporated by reference, and, after considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed Project:

- 1. Site Description and Surrounding Uses.** The subject property is located on the northwesterly corner of West San Carlos Street and Brooklyn Avenue. The site is developed with an approximately 14,000-square-foot grocery store (La Plaza Market) along West San Carlos Street and surface parking lots to the east and north of the building. The site is accessed through one driveway on West San Carlos Street and one driveway on Brooklyn Avenue. The site is surrounded by single-family residences to the north and the northwest, commercial buildings to the west, south across West San Carlos Street, and east across Brooklyn Avenue. The commercial site to the east of the subject site across Brooklyn Avenue (on the northeast corner of West Carlos Street and Brooklyn Avenue) is entitled to construct a mixed-use residential and commercial building (Planning File No. CP20-020), including ground floor commercial space along West San Carlos Street, multi-family residential on the upper floors, and a senior living facility at the rear of the building. The commercial site to the west of the

subject site is currently outside of the City Limits with a development proposal (Planning File Nos. Burbank 45, C21-034, GP23-001, and H23-005) to construct a seven-story mixed-use residential and commercial building, including commercial space along West San Carlos Street and multi-family residential on the upper floors.

- 2. Project Description.** The Project consists of a Conditional Use Permit and a Determination of Public Convenience or Necessity to allow for the off-sale of beer and wine in conjunction with a California Department of Alcoholic Beverage Control (“ABC”) Type 20 License within the existing approximately 14,000-square-foot grocery store (La Plaza Market).

Off-sale alcohol sales will be incidental to the full-service grocery store, with approximately 70 square feet of floor area dedicated to the sale of beer and wine (0.67% of the sales floor area of 10,451 square feet). The off-sale of alcohol also requires a Type 20 license from ABC. The proposed alcohol sale hours are from 7:00 am to 9:00 pm daily, the same as the grocery store hours.

The subject site is located in an over-concentrated Census Tract (Census Tract 5020.01). ABC records indicate that under BPC Section 23958.4(a)(3), the ratio of off-sale retail licenses to the population in this census tract exceeds the ratio of off-sale licenses to the population in the County. Based on this ratio, the census tract allows two off-sale licenses; currently, there are five businesses with off-sale licenses within this census tract. Therefore, a Determination of Public Convenience or Necessity (PCN) is required to be issued to process the application.

As stated in the Police Department Memorandum dated August 15, 2024, the site is not located in an area of high crime. The Police Department is neutral to the off-sale of beer and wine at the subject site.

- 3. General Plan Conformance.** The site is designated Combined Industrial/Commercial on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses. This designation occurs in areas where the existing development pattern exhibits a mix of commercial and industrial land uses or in areas on the boundary between commercial and industrial uses.

Analysis: A grocery store with off-sale of alcohol is a commercial use and therefore is consistent with this General Plan land use designation.

The Project is consistent with the following General Plan Goals and Policies:

Land Use and Employment Policy IE-2.6: Promote retail development to the maximum extent feasible, consistent with other General Plan goals and policies, in order to generate City revenue, create jobs, improve customer convenience, and enhance neighborhood livability.

Neighborhood Serving 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.

Neighborhood Serving 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 of IE-2.6, LU-5.1, LU-5.10: The project is consistent with the Mixed-Use Commercial General Plan land use designation and will allow the off-sale of beer and wine at an existing grocery store. La Plaza Market is a retail establishment that includes a full range of groceries, produce, and meat, as well as the proposed alcohol. The grocery store is in a location that provides safe and convenient multi-modal access, as it is within walking distance of residential uses, on a frequent bus line (VTA Routes 23 and Rapid 523) and can also be accessed by car. Alcohol sales will be incidental to the larger grocery store and will occupy only approximately 70 square feet (0.67%) of the 10,451-square-foot sales floor area. The store will provide an additional retail option for neighborhood residents in addition to employing approximately 35 employees.

4. Zoning Ordinance Compliance.

Use Regulations

The subject site is located within the MUC Mixed-Use Commercial Zoning District. Pursuant to Section 20.55.203 of the Zoning Code, the off-sale of alcoholic beverages requires a Conditional Use Permit in this zoning district.

Development Standards

The project does not include any site changes or building exterior changes. The building setbacks and height will not be altered with this Conditional Use Permit.

Parking

A grocery store is defined as a Visit-End Use per Table 20-190 of Section 20.90.060. Visit-End Uses under 100,000 square feet are exempt from the requirement for a Transportation Demand Management (“TDM”) plan per Section 20.90.900.B.2.d. Because there is no expansion of this grocery store, the project is exempt from the TDM requirement. No new bicycle parking is required per Section 20.90.020, as the project does not include new square footage or more than 5,000 square feet of outdoor use.

Performance Standards

Pursuant to Section 20.55.202 of the Municipal Code, the proposed use may not be conducted or permitted in a manner that results in discharge of waste materials, in a manner that constitutes a menace to persons or property by reason of the creation of a fire, explosion, or other physical hazard (such as air pollution, odor, smoke, noise, dust, vibration, radiation, or fumes), or in a manner that creates a public or private nuisance.

Analysis: The sale of beer and wine for off-site consumption will not result in solid waste discharge into the ground, air, or waterways and will not generate any physical hazards. The off-sale of alcohol will be required to comply with the submitted Operations Plans, which provide provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. No consumption or open alcoholic beverages will be allowed on the premises. The site is surrounded by commercial use, two public streets, and single-family residential to the north and northwest. The grocery store is located along West San Carlos Street with a primary entry near the corner of West San Carlos Street and Brooklyn Ave, away from the single-family residences to the north. The project consists only of interior improvements and operations (sale of alcohol), with no additional exterior activities that could potentially increase noise. Therefore, the project will comply with these performance standards.

5. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions. Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the Project. On-site signs have been posted on the Project frontages since September 20, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the Project site and posted on the City website. Staff has also been available to respond to questions from the public.

6. Environmental Review. Under the provisions of Section 15301(a) for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this Project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Zoning Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 Categorical Exemption consists of 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. The key consideration is whether the Project involves negligible or no expansion of an existing use. The Project does not involve any structural modifications or expansion to the footprint of the existing retail building.

The project will allow the off-sale of beer and wine within an existing grocery store and will include interior modifications to allow for the display of those products. Off-sale beer and wine retail will be conducted wholly inside the building. Based on the discussion and findings in the sections below, the project will not significantly affect the environment. Therefore, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

7. Conditional Use Permit Findings: The following findings must be made for the issuance of a Conditional Use Permit pursuant to Section 20.100.720 of the San José Municipal Code:

- a. The conditional use permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans, and area development policies; and

Analysis: As explained in the General Plan Conformance section above, the project is consistent with the General Plan land use designation of Mixed-Use Commercial, which allows for retail uses, including off-sale alcohol at retail stores. The project is consistent with General Plan policies for promoting retail development, which provides a full range of goods and services to residents.

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

Analysis: As analyzed in the Zoning Ordinance Conformance section, the proposed project is consistent with the MUC Mixed-Use Commercial Zoning District performance standards. The project will not alter the height and setbacks of the existing building. The project is exempt from providing a TDM plan, and no additional vehicle or bicycle parking is required. Additionally, the project is consistent with the San José Municipal Code sections for the off-sale of alcohol and the determination of public convenience or necessity, as analyzed in the Required Findings for the Off-Sale of Alcohol and Required Findings for the Public Convenience and Necessity sections below.

- c. The conditional use 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 for Pending Land Use and Development Proposals to inform the public of the proposed project. Onsite signs have been posted on the two site frontages since September 20, 2024. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Staff has been available to answer questions from the public and to date, no comments have been received.

- d. 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 described in the Project Description section above, the subject site is located in an over-concentrated Census Tract (Census Tract 5020.01). This census tract allows two off-sale licenses; currently, there are five businesses with off-sale licenses within this census tract. The proposed off-sale of alcohol will occur within a grocery market in an existing commercial area along West San Carlos

Street. The San José Police Department Memorandum dated August 15, 2024, states that the site is not within a high crime area, and the Police Department is neutral to off-sale alcohol at this location. With regard to the proximity of the residential use to the north, the existing building and operations are oriented away from the residential use to the north and are separated from the residences by a surface parking lot and existing fences. No late-night operation is proposed with this project.

All staff must complete the State Alcoholic Beverage Control's mandated training and must comply with State law requiring all staff selling alcohol to be over 21 years of age. According to the Operations Plan, there are security cameras throughout the sales area and on the exterior of the store, and the store and parking lot will be monitored by staff and management. This surveillance system keeps recorded data for about 30-45 days. The grocery store also has an on-call Security Service 24/7 to help with any matters that require additional support. The presence of surveillance cameras and active monitoring of the premises provides a deterrent to crime and other anti-social behaviors, which prevents adverse effects on the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area, as well as the general welfare by discouraging crime and other anti-social behaviors at the site and the surrounding area.

Finally, this Resolution includes conditions to address issues related to site security, employee training, trash, litter, graffiti, and site maintenance. Therefore, the project will not adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the vicinity of the project, it will not impair the value of property located nearby, and will not be detrimental to public health, safety, or general welfare.

- e. 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: No physical changes are proposed to the subject site or the building exterior, therefore, it would not affect the size and shape of the site or its ability to accommodate yards, walls, fences, parking and loading facilities, or landscaping.

- f. 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 will generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use will generate; and
 - ii. By other public or private service facilities as are required.

Analysis: Access to the subject site is provided by West San Carlos Street and Brooklyn Avenue. The site is also within 600 feet of a bus stop for Valley

Transportation Authority bus route no. 23. All required public utilities are available to the site.

- g. 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 will allow the off-sale of alcohol at an existing retail store. The project will not include any exterior modifications. The alcohol sales will be conducted wholly inside the building. Based on these facts and the discussion and findings above, the activity is not anticipated to significantly affect the environment concerning noise, vibration, dust, drainage, erosion, stormwater runoff, or odor.

- 8. Off-Sale Alcohol Findings:** A Conditional Use Permit may be issued pursuant to the applicable provisions of Chapter 20.80, Part 11 for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:

- a. For such use at a location closer than five hundred feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the city, that the proposed location of the off-sale alcohol use will not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the proposed location.

Analysis: The subject retail store is located within 500 feet of one existing off-sale establishment and within 1,000 feet of two existing off-sale establishments, listed below:

- *San Carlos Liquors (Type 21), located approximately 420 feet to the east at 1875 West San Carlos Street;*
- *7 Eleven (Type 20), located approximately 830 feet to the west at 2230 Stevens Creek Boulevard.*

*The project will result in three off-sale alcohol establishments within a 1,000-foot radius of the project site. Therefore, this finding **can** be made.*

- b. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use will result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-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: This finding is not applicable because there is only one existing off-sale establishment within 500 feet of the project site and only two within 1,000 feet of the project site.

- c. For such use at a location closer than five hundred 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 one hundred fifty 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 will 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 site is not currently within 500 feet from any existing child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college, or university. The nearest residential use is the single-family residence at 47 Brooklyn Avenue, located to the north of the site. This residence is separated from the retail store on the subject property by a surface parking lot and a fence. The walking distance from the entrance of this building to the grocery store entrance is approximately 260 feet. Therefore, this finding can be made.

Please note the following two proposed developments adjacent to the site include residential use and a residential care facility:

- *To the east of the project site across the street from Brooklyn Avenue, a mixed-use development project (File No. CP20-020), including ground floor commercial space, a residential care facility for the elderly (RCFE), and multi-family residential use, was approved in September 2023. The walking distance from the proposed residential lobby at Brooklyn Avenue to the grocery store entrance is approximately 156 feet. The walking distance from the RCFE to the grocery store entrance is approximately 468 feet. No building permit application has been filed for this project. Since this project has not been built, it will not affect the findings above.*
- *To the west of the site, a mixed-use development project (File No. H23-005), including ground floor commercial space and multi-family residential units on upper floors, is being proposed and has not been approved. The walking distance from the proposed residential lobby to the grocery store entrance is approximately 410 feet. The project will not affect the findings above.*

9. Determination of Public Convenience or Necessity Findings: Chapter 6.84 of the San José Municipal Code identifies the process and findings related specifically to the off-sale of alcohol; the findings are discussed below:

- a. The proposed use is not located within a Strong Neighborhoods Initiative 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. Will be detrimental to the public health, safety, or welfare of persons located in the area; or
- ii. Will increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The proposed use is located within the Burbank/Del Monte Strong Neighborhood Initiative area. Therefore, this finding **cannot** be made.*

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

*Analysis: The project will result in three off-sale establishments within a 1,000-foot radius from the site. Therefore, this finding **can** be made.*

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

*Analysis: The subject site is not located within 500 feet of a school, daycare center, public park, social services agency, or residential care or service facility. The walking distance from the entrance of the nearest residence to the grocery store entrance is approximately 260 feet. Therefore, this finding **can** be made.*

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

*Analysis: The floor area dedicated to alcohol sales is approximately 70 square feet or 0.67% of the sales floor within this grocery store. 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 will act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*Analysis: The census tract is not unusually configured in shape. Therefore, this finding **cannot** be made.*

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

Analysis: Per the Police Memorandum dated August 15, 2024, the site is not within a high-crime area. The Police Department is neutral to the off-sale of

*alcohol at this location. Although the census tract is over-concentrated with off-sale of alcohol establishments, there is only one existing off-sale establishment within 500 feet of the project site and only two within 1,000 feet of the project site. Adding one more off-sale establishment within a grocery store in this area will provide convenience to residents. With the implementation of the measures described in the Operations Plan and as discussed in the Conditional Use Permit Findings and Findings for Off-sale of Alcohol above, the off-sale of beer and wine will not be detrimental to public health, safety, or welfare of persons in the area. Therefore, 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 will not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

*Analysis: The project will result in an overconcentration in the number of outlets for the off-premises sale of alcoholic beverages, as explained in the Project Description section above. Therefore, 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.

*Analysis: The off-sale of beer and wine makes up approximately 0.67% of the sales floor area and is incidental and appurtenant to the larger retail use of a grocery store. The sale of alcohol allows for a more complete and convenient shopping experience by providing alcohol at a full-service grocery store. Therefore, this finding **can** be made.*

Given the above-stated analysis, the finding for 9.a., a determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol because the Project site is located within a Strong Neighborhoods Initiative area. Therefore, City Council approval is required for the proposed use. The City Council may issue a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where the City Council does all of the following:

- a. Makes a determination that not all of the required findings set forth in Subsection B. (findings a-d and e.i-iv listed above) can be made; and

Analysis: Finding (a) for the issuance of a Determination of Public Convenience or Necessity cannot be made because the Project site is located within a Strong Neighborhoods Initiative area. Findings b, c, d, e.ii and e.iv can be made.

- b. Identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

Analysis: While the Planning Commission cannot make all of the required findings for the Determination of Public Convenience or Necessity, there are significant and

overriding benefits by the proposed use. Off-sale alcohol will be appurtenant to a larger grocery store that provides a complete shopping experience, including a full range of groceries, produce, meat, and alcohol. Approximately 0.67% of the sales floor area will be dedicated to the off-sale of alcohol. The remainder of the approximately 10,381-square foot sales floor area will be dedicated to sales of items typical of a grocery store. As discussed in finding e.ii above, while there is an overconcentration of ABC off-sale licenses within the subject census tract, there is currently only one off-sale alcohol establishment within 500 feet of the project site and only two within 1,000 feet of the site. Adding one more off-sale of beer and wine establishments in this area will provide additional convenience for nearby residents.

The store is oriented in a manner that will not be a detriment to the adjacent uses, including the residences to the north, as discussed previously. Additionally, the submitted Operations Plan provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. Video surveillance will be utilized throughout the store and the exterior of the building. Hours of alcohol sales will coincide with hours of operation of the store (7:00 am to 9:00 pm daily). These mitigating factors will be included in the permit as conditions of approval and will be monitored and enforced by the City. Finally, the proposed off-sale alcohol use will further activate an existing commercial area and provide additional retail options to the existing and future residents in the surrounding area.

In accordance with the findings set forth above, a Conditional Use Permit 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 **granted**. This City Council expressly declares that it will 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 ("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 Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a 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. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this 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 in 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 San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action 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. **Use Authorization.** This Permit authorizes the off-sale of beer and wine at the subject grocery store and successors of said tenant spaces whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning:
 - a. If the use authorized by this permit is discontinued for a period of 12 months, this permit will expire and will no longer be in effect.

- b. All cashiers shall be trained on Department of Alcohol Beverage Control (ABC) rules and regulations.
 - c. The interior and exterior of the store shall be monitored at all times by a surveillance system. All security camera video footage shall be retained for 30 to 45 days in the event that an incident needs review by security personnel or the police.
 - d. Loitering and panhandling shall not be tolerated, and the Permittee shall maintain a zero-tolerance policy. No loitering signs will be posted in conspicuous places containing wording (Spanish and English) that aligns with state and local law (business owner to work with San José Police to obtain proper language). All loitering and panhandling issues will be dealt with in a swift and consistent manner by notifying local police. No consumption or open alcoholic beverages will be permitted on the premises. Signs specifically prohibiting this activity will also be placed in conspicuous places in both Spanish and English.
 - e. All lighting issues, such as inadequate lighting or burned-out lights, shall be addressed promptly by the Permittee's maintenance provider.
 - f. The operation shall conform to all local performance standards as required by the Municipal Code.
6. **Conformance with ABC Requirements.** The off-sale of alcohol (Type 20 – beer and wine) is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The Permittee shall obtain and maintain full compliance with its ABC license and remain in good standing with the Department of Alcoholic Beverage Control.
7. **Limitations on the 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 retail store. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 70 square feet (approximately 0.67%) of the gross floor area (approximately 10,451 square feet) of the retail space. Alcohol product displays shall not be placed outside the retail tenant space.
8. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit Amendment plans entitled, "CP24-027 Conditional Use Permit, CP24-027, La Plaza Market, 1915 West San Carlos Street, San José, CA 95128" dated revised on January 07, 2025, 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."
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.

10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **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.
12. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for Projects under construction, within 48 hours of defacement.
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. **No Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The property shall be maintained 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.
18. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
19. **Store Operator Point of Contact.** Store operator shall post in a visible location on the Store premises a phone number, and other applicable contact information for the public to address questions and comments regarding management and maintenance of the subject store and frontage.
20. **Outdoor Lighting.** No new outdoor lighting is approved at this time. 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 fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
21. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators will require a separate administrative Backup/Standby Generator Facility Permit and shall conform to the regulations of Title 20 of the Municipal Code.

22. Building Division Clearance for Issuing Permits: Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit File No. CP24-027 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. *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.
- d. *Other.* Such other requirements as may be specified by the Chief Building Official.

23. Bureau of Fire Department Clearance for Issuing Permits: Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted by the City.

24. Revocation, Suspension, Modification. This Conditional Use 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, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

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

ADOPTED this _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
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

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

Parcel 1, as shown on Parcel Map filed for record on December 18, 2009, in Book 834 of Maps, at Pages 50 and 51, Santa Clara County Records.

APN: 274-17-087