

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE OFF-SALE ALCOHOL AND ON-SALE OF ALCOHOL FOR INSTRUCTIONAL TESTING AND SAMPLES (TOTAL WINE & MORE) IN AN EXISTING 25,668-SQUARE FOOT COMMERCIAL TENANT SPACE AND GRANTING THE DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR OFF-SALE OF ALCOHOL FOR A PROPOSED RETAIL USE ON AN APPROXIMATELY 10.5-GROSS ACRE SITE, LOCATED ON THE SOUTH SIDE OF STEVENS CREEK BOULEVARD, APPROXIMATELY 210 FEET EASTERLY OF LAWRENCE EXPRESSWAY (5170 STEVENS CREEK BOULEVARD)

FILE NOS. CP17-025 and ABC17-005

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 9, 2016, an application (File Nos. CP17-025 and ABC17-005) was filed by the applicant, Phil Armstrong of California Fine Wine & Spirits, LLC, on behalf of Total Wine and More, with the City of San José for a Conditional Use Permit to allow the off-sale of alcohol and on-sale of alcohol for instructional testing and samples in an existing 25,688-square foot commercial tenant space (Total Wine & More) and granting the Determination of Public Convenience or Necessity for off-sale of alcohol for a proposed retail use, on an approximately 10.5-gross acre site, on that certain real property situated in the CG Commercial General Zoning District and located on the south side of Stevens Creek Boulevard, approximately 210 feet easterly of Lawrence Expressway (5170 Stevens Creek Boulevard, 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 and depicted 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 January 24, 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, "Total Wine & More," dated June 27, 2017, last updated October 16, 2017, 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 and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The project site is located on the south side of Stevens Creek Boulevard, approximately 210 feet easterly of Lawrence Expressway. The project site is located within the approximately 10.5-gross acre Villa Shopping Center. Current tenants in the Villa Shopping Center include a full-service Safeway grocery store, banking, small retail and eating establishments, and a vacant 42,453 square foot retail tenant space formerly occupied by a sporting goods store (Sports Authority). The tenant space can be accessed from two locations along Stevens Creek Boulevard and two locations from Loma Linda Drive. The tenant spaces within the Villa Shopping Center are situated along the property line and the majority of the 891 parking spaces are provided within the middle of the parcel. Land uses surrounding the site include a neighborhood shopping center with various retail and restaurants and multi-family residences on the second story of a Bed, Bath & Beyond retail store to the north, a vacant commercial space and single-family residences to the east, financial and technology commercial services to the west, and Interstate 280 to the south.
- 2. Project Description.** This project is a Conditional Use Permit to allow off-sale alcohol and on-sale of alcohol for instructional testing and samples (Total Wine & More) in an existing 25,668-square foot commercial tenant space and a Determination of Public Convenience or Necessity for off-sale of alcohol for a proposed retail use, on 10.5-gross acre site. No expansion of the building will occur. As described above, the tenant space can be accessed from two locations along Stevens Creek Boulevard and two locations from Loma Linda Drive. As noted in the Operations Management Plan, store hours of operations are from 8:00 a.m to 11:00 p.m. on Monday to Saturday and 8:00 a.m. to 9:00

p.m. on Sundays. Average number of employees per shift is typically from 10 to 15 employees.

The proposed project would occupy approximately half of the previous Sports Authority tenant space within the existing shopping center. For the other half of the existing tenant space, a Cost Plus retail store has recently filed a Conditional Use Permit (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space and which is currently under review.

3. **General Plan Conformance.** The proposed project site is located within the Stevens Creek Urban Village that was approved on August 8, 2017 and has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village, which is intended for a wide range of commercial uses, including retail and sales of services, professional and general offices, and institutional uses.

The project conforms to the following key General Plan policies:

- a. 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.
- b. Neighborhood Serving Commercial LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.
- c. Promote Fiscally Beneficial Land Use Policy FS-4.4: Identify, designate and maintain an adequate number of suitable sites for a full range of commercial opportunities, including large-scale commercial centers and neighborhood-scale shopping opportunities, to serve the resident and visitor consumer population fully and to increase sales tax revenue in San José.
- d. Stevens Creek Urban Village Circulation and Streetscape Policy CS-3.4: Encourage local businesses and developers to provide amenities such as bicycle parking, water bottle refilling stations, showers, and repair stations at developments within the Stevens Creek Urban Village.

Analysis: Total Wine and More is a unique, commercial retailer which provides a wide selection of local beer and wines, liquor, and distinctive specialty spirits. Total Wine and More offers instructional tasting and classes to its patrons, enhancing the overall consumer experience. The promotion of this new commercial use would contribute to the revitalization of this area by eliminating vacant tenant space and increasing the range of goods and services to the community. Existing uses within the neighborhood shopping center include a grocery store, bank, variety of

retail clothing and electronic stores, dental office, and a cluster of public eating establishments. The proposed use will complement and enhance these existing uses.

The proposed location is within the growth area of the Stevens Creek Urban Village and is expected to concentrate higher densities of commercial and residential development. This growth area requires a full range of retail and commercial services that are easily accessible by pedestrian, bicycle, and transit services. In addition to being within close proximity to the on-and-off ramps of I-280, the building entrance is within 700 feet of Valley Transportation Authority (VTA) bus lines 23 and 323. The existing shopping center does not have any bicycle parking onsite; however, the new proposed use would adhere to Urban Village policies by installing the first bicycle parking spaces along the building frontage next to the front entrance of the tenant space.

The proposed use differentiates itself from neighborhood-serving retail, such as a pharmacy or big-box retailer, in that it provides unique products and educational opportunities not available at other retailers.

4. **Zoning Ordinance Compliance.** This site is zoned CG Commercial General for a neighborhood shopping center which conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village. Under Section 20.40.100 of the San José Municipal Code, retail uses are permitted. The sale of alcoholic beverages, including both off-sale and on-sale, requires a Conditional Use Permit.
 - a. **Setbacks and Height.** The proposed project will occupy an existing building within the Villa Shopping Center. The CG Commercial General Zoning District has a front setback of 15 feet, side setback of 12.5 feet, and a rear setback of zero feet. The maximum height allowed in this district is 50 feet. The existing building conforms to the setback and heights of the CG Commercial General Zoning District.
 - b. **Parking.** Per Section 20.90.060 of the Zoning Ordinance, the required parking ratio for a Neighborhood Shopping Center is one parking space per 225 square feet of floor area. Bicycle parking has a ratio of 1 space per 3,000 square feet of floor area at publicly accessible entrances and motorcycle parking is required at one motorcycle space per 20 code required automobile parking spaces. For the Villa Shopping Center, which is approximately 199,061 square feet, this equates to a total of 881 vehicle parking spaces, eight bicycle parking spaces, and five motorcycle parking spaces. As the entire site currently provides 891 parking spaces (10 excess spaces), and the proposed project would occupy an existing tenant space within the larger shopping center, no additional vehicle parking is

required. The proposed project will provide five motorcycle spaces and eight bicycle parking spaces to accommodate the requirement for the subject project.

- c. **Noise.** Per 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 700 feet from the front entrance. The loading dock for the tenant space is located on the opposite side of the building from the residential properties and is only utilized during normal hours of operations (8:00 a.m. to 11:00 p.m. on Monday to Saturday and 8:00 a.m. to 9:00 p.m. on Sundays). Therefore, the proposed 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 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 Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 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 proposed project would occupy a vacant tenant space (approximately 25,668 square feet) in an existing neighborhood shopping center with over 100,000-square feet designated for typical commercial uses. The proposed project includes interior modifications to the structure and only minor exterior alterations to the site, such as installing bicycle and motorcycle parking; there would be no expansion of the building footprint or use. The proposed retail use of a specialty beverage store meets the vehicle parking requirements, the existing structure is consistent with the height, setback, and loading requirements of the CG Commercial General Zoning District, and will be conducted wholly inside the building during regular business hours. Proposed business hours are from 8:00 a.m. to 11:00 p.m. from Monday to Saturday and 8:00 a.m. to 9:00 p.m. on Sundays. Therefore, a CEQA exemption can be issued under Section 15301.

6. **Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.** In making recommendations on projects that include the service of alcoholic beverages, each proposal is evaluated on the basis of the City Council's adopted Guidelines for Evaluation of Nightclubs and Bars. These Guidelines identify project characteristics that are needed for approval and are intended to ensure that bars and nightclubs

conform to City requirements and are compatible with their surrounding neighborhoods. These guidelines are primarily applicable to bars and nightclubs that are larger in scale and serve alcohol as the primary use of the site, but they are also used in evaluating other projects that include the service of alcoholic beverages. With regard to Total Wine and More, the classroom is approximately 1,000-square feet, which equals approximately 4% of the floor area, and is therefore incidental to the primary use. The two tasting areas on the main sales floor are approximately 200 square feet each and can only accommodate four to five patrons at one time. These areas will be sectioned-off from the main store, and no one under the age of 21 will be allowed to enter these areas.

This project is a specialty retail establishment for alcoholic beverages, and the tasting area and classroom are incidental to this use. The hours that patrons can come and taste and purchase alcohol are restricted to standard hours of operation under the Council Policy. More specifically, the applicant is proposing Monday through Saturday 8:00 a.m. to 11:00 p.m. and Sunday from 8:00 a.m. to 9:00 p.m. The Council Policy allows hours of operation from 6:00 a.m. to midnight. Issues such as land use compatibility, noise, and parking have all been analyzed via the zoning and general plan conformance review above, and the Conditional Use Permit findings, the Off-Sale findings, and the Determination of Public Convenience or Necessity findings described below. The analysis involved in making these findings confirms that this project meets the intent of this Council Policy and can be considered in conformance to the policy.

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

- a. 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;
 - ii. Or 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 stated in the Police Department Memorandum dated September 12, 2017, the proposed use is located within an area of low crime. Therefore, the Police are neutral on this proposal. Proposed daily hours of operation from 8:00 a.m. to 11:00 p.m. on Monday through Saturday and 8:00 a.m to 9:00 p.m. on Sundays are within the hours specified in the Municipal Code that do not require any additional approvals or findings. The use will operate as a retail business and is not considered a bar even though alcohol will be consumed on-site in limited quantities per specific ABC license types. On-site alcohol consumption will be limited to tasting and instructional classes.

The project conforms to the intent of the City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars in that the applicant has submitted a detailed Operations Management Plan, which describes in-store security, extensive employee training to prevent under-age drinking or inappropriate behavior, and management of tasting areas and classrooms. The use is also located approximately 700 feet from the nearest residential uses. As stated below in the findings for Off-Sale of Alcohol, the standard for the distance from the nearest residential property is a minimum 150 feet. Based on the above analysis, the proposed use at the location will not adversely affect public health, safety, and general welfare, or impair the value of the property or properties within the vicinity of the site.

- b. 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 proposed project would occupy an existing building within the Villa Shopping Center, and does not include any exterior modifications. All development features, including setbacks, loading facilities, landscaping, and vehicle parking, etc., are sufficient for the proposed use. The proposed project will provide five motorcycle spaces and eight bicycle parking spaces as required by Chapter 20.90 of the Zoning Ordinance. As the existing development conforms to the required development standards of the CG Commercial General Zoning District, and proposes minimum exterior modifications, the subject site is adequate to accommodate the proposed project.

- c. The proposed site is adequately served: 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 by other public or private service facilities as are required.

Analysis: Access to the subject site is provided from a major public street, Stevens Creek Boulevard, and Loma Linda Drive. In addition, the Villa Shopping Center is located adjacent to I-280. The site is also located approximately 700 feet from VTA bus routes No. 23 and 323.

8. **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:

- a. 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, 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 one-thousand 1,000-foot radius from the proposed location.

Analysis: Within the Villa Shopping Center, one full-service grocery store (Safeway) has a license for off-sale of alcoholic beverages. There are no other uses with alcohol sales within a 1,000-foot radius of the site, and this site will be the second off-sale of alcoholic beverages location within 1,000 feet. As mentioned above, a Cost Plus retail store has recently filed a Conditional Use Permit (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space and which is currently under review. Since the Cost Plus application is still under review, it is not considered in this finding; however, the proposed Total Wine & More would be considered when Cost Plus is brought forward for approvals. Therefore, this finding can be made.

- b. 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: This use is a specialty retail store which does not function like a bar or nightclub, but rather a retail store with hours of operation between 8:00 a.m. to 11:00 p.m from Monday through Saturday and 8:00 a.m. to 9:00 p.m. on Sundays. As discussed previously, the Police Department memorandum states that the use is located within an area of low crime, and the Police are neutral to this proposal. The project conforms to the intent of City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars as discussed previously. Based upon these facts, the project conforms to this requirement and this finding can be made.

- c. 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, and is more than 700 feet from the nearest residentially zoned property. Therefore, this finding can be made.

9. **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:

- a. 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
- b. 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.

Analysis: The project site is located within Census Tract 5062.03, which has less than 20 percent of reported crimes and is considered lower than the average number of reported crimes for the City as a whole. However, the ratio of existing retail off-sale licenses to 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 of the proposal is based on the required findings identified in Title 6 of the San José Municipal Code, and is described below.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a Determination of Public Convenience or Necessity may 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 project site is not within a SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. The Police Department determined this proposed project would not be detrimental to public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area. Therefore, this finding **can** 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 less than four off-sale establishments in a 1,000-foot radius. Currently, the Safeway grocery store has an off-sale license and is located in the Villa Shopping Center. As noted above, the Cost Plus (File No. CP17-033) application for off-sale of alcohol to occupy the remaining half of the tenant space is still under review and is not considered for this project. However, Total Wine & More will be considered when Cost Plus is ready for public hearing. This would be the second off-sale establishment; therefore, this finding **can** 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, and is more than 700 feet from the nearest residence. Therefore, this finding **can** be made.*

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

*Analysis: Alcoholic beverage sales would represent a majority of the proposed use; therefore, this finding **cannot** 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

*Analysis: The census tract is not unusually configured and the location of an off-sale of alcohol retail establishment is not considered to be in an underserved portion of the local community. Therefore, 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

*Analysis: This is a specialty store which provides a unique and large selection of wine, beer, and spirits to the area. This is differentiated from a corner liquor store or bar in that the price point and patrons it attracts do not loiter or become intoxicated at the site. This use differentiates itself from retail, such as a pharmacy or large big box retailer, in that it provides unique products and educational opportunities not available at other establishments. Condition of Approval No. 5 limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More and Beverages and More. The Type 21 license authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. The Type 42 license authorizes the sale of beer and wine for consumption on or off the premises where sold. The Type 86 license authorizes the tasting of alcoholic beverages as authorized to be sold from the off-sale premises, on a limited basis. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not provide additional amenities such as instructional tasting and on-site consumption in conjunction with their general Type 21 license. 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 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
- 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 proposed location is not in a low population density in relation to other census tracts in the city and does contribute to an over-concentration for off-sale alcoholic beverages that is not incidental to a larger retail use. Therefore, this finding **cannot** be made.*

Given the above-stated analysis, the fourth finding for the PCN cannot be made for the proposed off-sale of alcohol because alcoholic beverage sales represent a majority of the proposed use. The primary function of the project is a retail store specializing in alcohol sales, but this specialty store provides a unique shopping experience to the residents in the newly established Stevens Creek Urban Village and the greater

San José region. This is differentiated from a corner liquor store or bar in that the price point and patrons it attracts do not loiter or become intoxicated at the site, and the hours of operation within by right allowances and the security plan provide for a retail establishment appropriate for the shopping center. Condition of Approval No. 5 described below limits the operations allowed under this Permit to retail operations of a specialty off-sale of alcohol retailers like Total Wine and More. This Condition precludes other off-sale retailers like convenience stores since their business plans typically do not provide additional amenities such as instructional tasting and on-site consumption in conjunction with their general Type 21 license, in conjunction with a Type 42 or 86 in a 25,668-square foot tenant space.

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 Conditional Use 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 Conditional Use 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 Conditional Use Permit 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. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
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 Conditional Use Permit plans entitled, "Total Wine & More," dated June 27, 2017, last updated October 16, 2017, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Use Authorization.** This Conditional Use Permit and Determination of Public Convenience or Necessity authorizes the off-sale of a full-range of alcoholic beverages and an incidental public drinking establishment (tasting of beer, wine, and spirits) in a 25,668-square foot commercial tenant space. Specifically, the retail establishment allowed under this permit can sell alcohol for off-site consumption and operate an incidental drinking establishment only in conjunction with a retailer holding a Type 42 or 86 Alcoholic Beverages Control license. The hours of operation allowed are between 6:00 a.m. and midnight, daily.
6. **Alcohol Service and Sale.** Alcohol service and sale shall be conducted in full compliance with the issued ABC licenses.
7. **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.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state 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 Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
9. **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 the San José Municipal Code.
10. **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.

11. **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.
12. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Outdoor Uses.** There shall be no outdoor uses approved through issuance of this Permit.
15. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect 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.
16. **Anti-Graffiti.** The operator shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The operator of the proposed use shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
19. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping. Any phasing of the project resulting in undeveloped areas for more than six months shall be temporarily landscaped in order to provide dust and erosion

control. This temporary landscaping shall consist of mulch and drought-resistant plants and ground cover.

20. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that shall conform to the Zonal Irrigation Plan in the Approved Plan Set. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
21. **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.
22. **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 number, CP17-025 and ABC17-005 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 project developer 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.
23. **Revocation, Suspension, Modification.** This Conditional Use Permit 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 Conditional Use Permit 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.

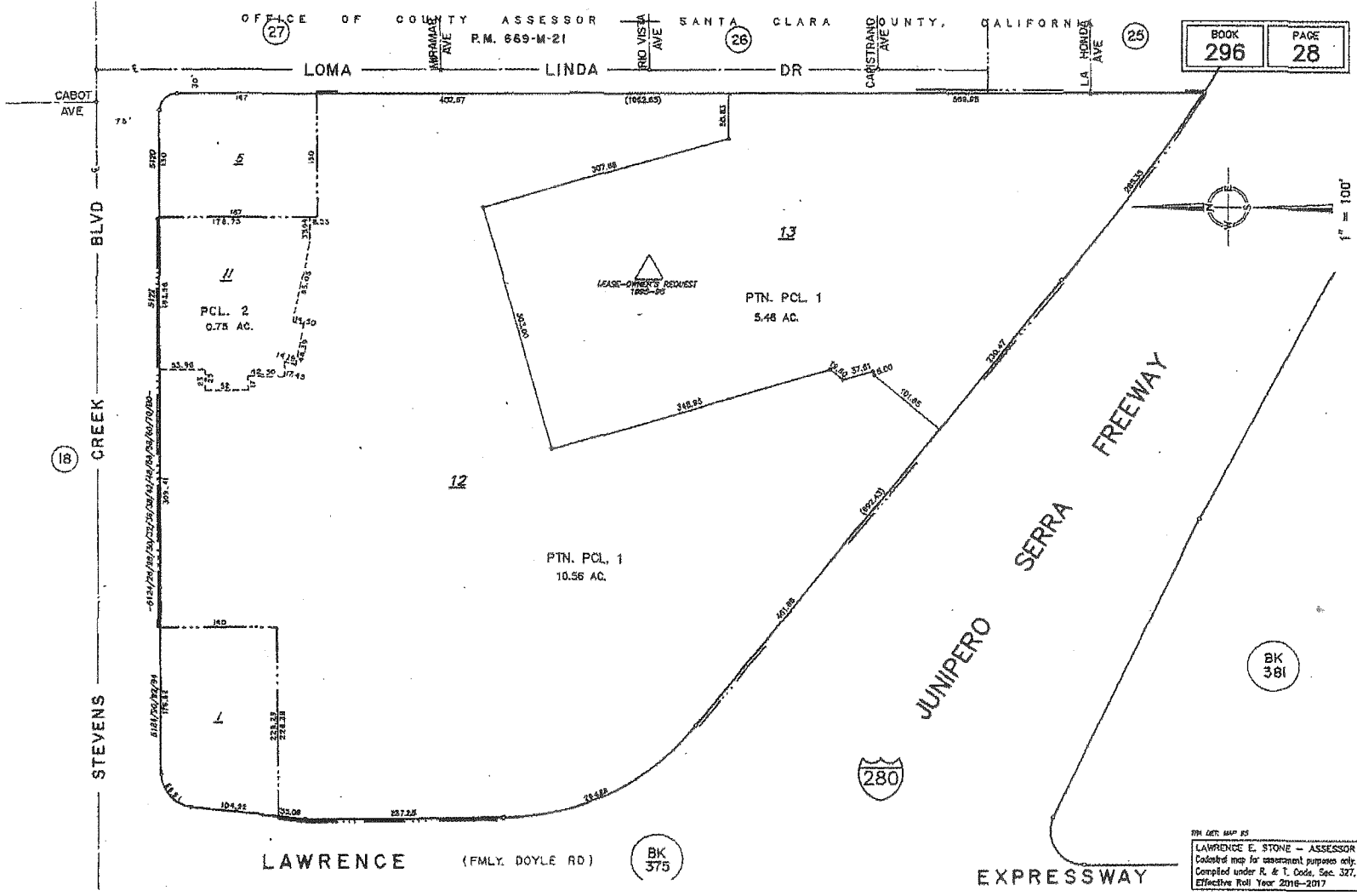
EXHIBIT A -
LEGAL DESCRIPTION OF THE LAND

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

PARCELS 1 AND 2 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON AUGUST 18, 1995, IN BOOK 669 OF MAPS, PAGE 21.

APN: 296-28-011 and 296-28-012 and 296-28-013

EXHIBIT "A"
 (File Nos. CP17-025; ABC17-005)



BOOK 296	PAGE 28
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BK
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BK
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7/14/2017 MAP #5
 LAWRENCE E. STONE - ASSESSOR
 Cadastral map for assessment purposes only.
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2016-2017