

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE ALCOHOL (TYPE 21 ABC LICENSE) AT AN EXISTING APPROXIMATELY 1,265-SQUARE FOOT RETAIL STORE ON AN APPROXIMATELY 0.8-GROSS ACRE SITE, LOCATED AT THE SOUTHEAST CORNER OF BARACK OBAMA BOULEVARD AND WEST SAN CARLOS STREET (350 BARACK OBAMA BOULEVARD, SUITE 10)**

**FILE NO. PD22-011**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on February 18, 2022, an application (File No. PD22-011) was filed by the applicant, Cuong (Chris) Hoang, as a representative of For You Mini-Market, a lessee of the project retail space from the building owner EHC Delmas Park, LLC, with the City of San José for a Planned Development Permit and Determination of Public Convenience or Necessity for off-sale of alcohol (full range of alcoholic beverages) within an existing retail use, on an approximately 0.8-gross acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the southeast corner of Barack Obama Boulevard and West San Carlos Street (350 Barack Obama Boulevard, Suite 10, 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 Public Hearing on said concurrent applications on May 25, 2022, 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, "CUP Application for Off-Sale of Alcohol, 350 Barack Obama Boulevard, Suite 10" dated April 11, 2022, 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 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 southeast corner of Barack Obama Boulevard and West San Carlos Street (350 Barack Obama Boulevard). The site is developed with an existing mixed-use building with 123 residential units and approximately 5,530-square feet of ground-floor retail. The retail space is accessed by a driveway from West San Carlos Street. The subject site is surrounded by commercial uses to the north across West San Carlos Street, east across Barack Obama Boulevard, and west, and a single-room occupancy (SRO) hotel to the south across Columbia Avenue.
- 2. Project Description.** The project consists of a Planned Development Permit and Determination of Public Convenience or Necessity (PCN) to allow off-sale alcohol (Type 21 ABC license) at an existing approximately 1,265-square foot retail/convenience store located in a tenant space within the aforementioned 5,530-square foot ground-floor retail space on an approximately 0.8-gross acre site, located at the southeast corner of Barack Obama Boulevard and West San Carlos street (350 Barack Obama Boulevard, Suite 10). The retail space is accessed by a driveway from West San Carlos Street. Podium parking is provided with two dedicated parking spaces and 13 common use parking spaces for the use.

The residential/commercial mixed-use building in which the subject retail store is located was approved through a Planned Development Permit (File No. PD03-069) in 2003. The site is not located in an area of high crime. As stated in the attached Police Department Memorandum, dated March 30, 2022, the Police Department is neutral to the off-sale of alcohol at the subject site. However, the subject site is in an overconcentrated census tract (5008) and within the Delmas Park Strong Neighborhoods Initiative (SNI) area. Therefore, a Planned Development Permit and Determination of Public Convenience or Necessity for the off-sale of alcohol requires approval by the City Council.

In conjunction with the Planned Development Permit and Determination of Public Convenience or Necessity, the off-sale alcohol use requires issuance of a State Alcoholic Beverage Control (ABC) License Type 21. A Type 21 license allows for the

sale of a full range of alcoholic beverages for consumption off the premises where items are sold. Off-sale alcohol sales would be incidental to the retail store, which is a permitted use in the A(PD) Planned Development Zoning District per File No. PDC03-016.

Approximately 72 square feet of the 1,265 square foot sales floor area would be dedicated to beer and wine sales (5.7% of the total sales floor area). Alcohol sales hours would coincide with the convenience store hours (10:00 am to 10:00 pm seven days a week).

- 3. General Plan Conformance.** The subject site has an Envision San Jose 2040 General Plan designation of Downtown. This designation is intended for a wide variety of uses such as office, retail, service, residential, and entertainment, either in a stand-alone or mixed-use format.

The subject site is located within the Diridon Station Area Plan (DSAP) boundary, which is considered an Urban Village area. Creation of Urban Villages is Major Strategy #5 in the General Plan, and the Urban Village concept is to create a policy framework to direct most new job and housing growth to occur within walkable and bike-friendly Urban Villages that have good access to transit and other existing infrastructure and facilities. Urban Villages are to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the General Plan's environmental goals. The project includes the off-sale of alcohol at an existing convenience store, which provides retail amenities to the surrounding area.

*Analysis: The off-sale of alcohol is a commercial retail use and is consistent with the use requirements. The project is therefore consistent with the 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.

Land Use 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 for Policies IE-2.6 and LU-5.1: The project would add a new type of product to the existing retail convenience store. A bus stop for Route 23 and Rapid 523 is located directly in front of the site, and the existing sidewalks in front of the site are 15 feet wide, which encourages walking and transit ridership. The project is consistent with this policy.*

Land Use Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees,

locate neighborhood-serving commercial uses throughout the city, including identified growth areas and areas where there is existing or future demand for such uses.

*Analysis: The current and future demand for off-sale alcohol use is expected to increase as the area is located in Downtown and within the Diridon Station Area Plan. According to Appendix 5 of the General Plan, there have already been 10,705 dwelling units entitled, with 17,074 additional dwelling units planned. The project's use would add to the variety of retail products available to the growing community. The store is within convenient transit, walking, and biking distance of the surrounding neighborhood. The project is consistent with this policy.*

#### **4. Zoning Ordinance Compliance.**

##### Land Use

The existing building is within the A(PD) Planned Development Zoning District per File No. PDC03-016. The existing mixed-use building conforms to the development standards set forth in the Planned Development Zone. The Planned Development District allows the uses of the CG Commercial General Zone. Per Table 20-90 of the Zoning Code, off-sale of alcohol with a full range of alcoholic beverages is allowed in the CG Zoning District with a Conditional Use Permit. However, in conformance with Zoning Ordinance Section 20.100.910.B and C, a Planned Development Permit is the appropriate permit since the property is within a PD Planned Development Zoning District.

##### Development Regulations

The project is subject to the development regulations of the A(PD) Planned Development Zoning District per File No. PDC03-016. The project does not include any physical expansions or exterior changes to the existing mixed-use building with ground-floor retail, which was entitled through a Planned Development Permit (File No. PD03-069). The project was deemed consistent with the development standards on December 19, 2003 with the approval of PD03-069. The project is therefore consistent with the development regulations.

##### Parking

There are no land use changes to the existing mixed-use building. The existing building was entitled by a Planned Development Permit (File No. PD03-069) and is required to provide one vehicle parking space per 400 square feet of commercial space. This results in four required parking spaces for the 1,265 square foot retail space. The project site currently provides two dedicated parking spaces and 13 common use parking spaces for the use, which is consistent with the requirement. The additional off-sale alcohol use would not require additional vehicle parking spaces.

## Noise

The project is required to be consistent with the performance standards per Section 20.40.600 of the Zoning Ordinance, which states that the sound pressure level generated by any use or combination of uses on a property shall not exceed 55 decibels adjacent to residential uses or 60 decibels where adjacent to commercial or other non-residential uses. The project does not include a generator or any other noise-producing mechanical equipment. Therefore, the project is not expected to generate any noise beyond existing ambient levels and is consistent with the requirement.

### **5. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals**

Staff followed Council Policy 6-30 : Public Outreach Policy in order to inform the public of the proposed project. The on-site sign has been posted at the site since April 4, 2022 to inform the neighborhood of the project. 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. The staff report is also posted on the City's website. Staff has 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 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 modifications or expansion to the footprint of the existing retail building.

The project would allow off-sale alcohol in an existing retail store. The project would include interior modifications to allow for the display of alcoholic beverages. The retail use of off-sale alcoholic beverages will be conducted wholly inside the building. Based on the discussion and findings in the above sections, the activity is not anticipated to have a significant effect on the environment. Therefore, a CEQA exemption can be issued under Section 15301(a) for Existing Facilities.

### **7. Planned Development Permit Findings:** Section 20.100.940 of the Zoning Ordinance specifies the required findings for approval of a Planned Development

Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit. In order to make the Planned Development Permit findings and recommend approval to the Planning Commission, staff must determine that:

- a. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

*Analysis: As explained in detail above, the project use would be consistent with and further the policies of the General Plan. The convenience store currently provides retail products in a safe and convenient multimodal neighborhood. The use would add to the variety of retail products available to the surrounding community and would further facilitate pedestrian, transit and bicycle use to the subject site.*

- b. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

*Analysis: As discussed above, the project does not include any modifications to the existing building. The existing setbacks, height, and number of parking spaces are not being altered by this permit. The existing retail use is allowed in the Planned Development Zoning District, and off-sale alcohol use would also be permitted with a Conditional Use Permit pursuant to Table 20-90 of the Municipal Zoning Code. However, as discussed above, a Planned Development Permit is the appropriate permit type within a PD Planned Development Zoning District. Therefore, the project would be in compliance with the requirements of the Planned Development Zoning District.*

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

*Analysis: As discussed above, Council Policy 6-30: Public Outreach Policy was followed in order to inform the public of the project. The on-site sign has been posted at the site since April 4, 2022 to inform the neighborhood of the project. 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. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

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

*Analysis: The existing retail building conforms to the development regulations, including setbacks, height, and parking for a building in the Planned Development Zoning District. There are no modifications to the existing building.*

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

*Analysis: The project does not involve any modifications to the existing mixed-use building. There would not be any construction on-site except for minor interior tenant improvement. The retail store in which the off-sale alcohol would be sold is already existing. Therefore, there would be no unacceptable negative environmental impacts related to noise, vibration, dust, drainage, storm water runoff, or odor, and would not have an unacceptable negative affect on adjacent properties.*

**8. Off-Sale Alcohol Findings.** Per Section 20.80.900 of the Zoning Code, a conditional use permit may be issued pursuant to the applicable provisions of this title for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable. As discussed earlier, the Planned Development Permit serves as the Conditional Use Permit in Planned Development zoning districts.

- 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 would 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 closest location with off-sale alcohol is the Shop and Save Market at 365 Bird Avenue, which is approximately 350 feet away from the project site. Within 1,000 feet of the site is only one other location with off-sale alcohol at Mi Rancho Market, 494 Auzerais Avenue, approximately 800 feet from 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 would 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 in 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: As discussed above, there are two existing establishments within one-thousand feet of the project site that provide alcoholic beverages for off-site*



*consumption. Therefore, the use would not result in a total of more than four establishments that provide alcoholic beverages within a one-thousand-foot radius from the project site. As indicated in the San José Police Department Memorandum dated March 30, 2022, the Police Department is neutral regarding the project use. Additionally, the Operations Plan, prepared by the applicant and dated April 11, 2022, provides provisions for trash and graffiti removal, security, and safety, loitering and panhandling, and employee training. Security cameras will be strategically placed throughout the space, including facing the public right-of-way. All security camera video footage will be retained for 30 days in the event that an incident needs review by security personnel or the police. Hours of operation will be 10 a.m. to 10 p.m. seven days a week. Therefore, this finding **can** be made.*

- 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 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 nearest child care center is the YWCA Davidson Child Care Center at 350 South 2nd Street, which is approximately 5,000 feet from the site. The nearest public parks are the Del Monte Dog Park, approximately 2,000 feet from the site, and Discovery Meadow, approximately 2,200 feet away and across Highway 87 from the project site. The nearest school is Gardener Elementary School at 502 Illinois Avenue, which is 1,250 feet from the project site.*

*The project site is located within a mixed-use building with residences above and retail spaces on the ground-floor and is otherwise located over 300 feet away from the nearest residentially zoned property. The project is situated and oriented such that the use would not adversely affect the residential use above. The residential units have a separate parking entrance and will not be affected by light or glare from the retail convenience store. Further, as discussed above, there are no noise-generating activities or mechanical equipment included with the project. Therefore, this finding **can** be made.*

- 9. Determination of Public Convenience or Necessity Findings.** 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, or PCN). 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 5008. According to the Police Memorandum dated March 30, 2022, the census tract does not have a 20 percent greater number of reported crimes 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. Per the Alcohol Radius Map (Exhibit D), there are two existing locations within 1,000 feet of the project site with off-sale of alcohol, including the Shop and Save Market at 365 Bird Avenue, which is approximately 350 feet away from the project site, and Mi Rancho Market, 494 Auzerai Avenue, approximately 800 feet from the project site.*

*Therefore, for the California Department of Alcoholic Beverage Control 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 project 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 PCN may be issued only after first making all of the findings specified below (see San Jose Municipal Code section 6.84.030):

- a. The proposed use would not be 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: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
  - 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 is located within the Delmas Park SNI. Therefore, this finding **cannot** be made. However, as indicated in the San José Police Department Memorandum dated March 30, 2022, the Police Department is neutral regarding the project use.*

*The Operations Plan, prepared by the applicant and dated April 11, 2022, provides provisions for trash and graffiti removal, security, and safety, loitering and*

*panhandling, and employee training. Therefore, the 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.*

- b. The proposed use would 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 use would result in less than four off-sale establishments in a 1,000-foot radius. There are currently two off-sale establishments within a 1,000-foot radius. Therefore, this finding **can** be made.*

- c. The proposed use would not be located within five hundred 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 nearest child care center is the YWCA Davidson Child Care Center at 350 South 2nd Street, which is approximately 5,000 feet from the site. The nearest public park is the Del Monte Dog Park, approximately 2,000 feet from the site, and Discovery Meadow, approximately 2,200 feet away and across Highway 87 from the project site. The nearest school is Gardener Elementary School at 502 Illinois Avenue, which is 1,250 feet from the project site.*

*However, the project site is located within a mixed-use building with residences above and retail spaces on the ground-floor. Since the project is located within 150 feet of a residence, this finding **cannot** be made.*

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

*Analysis: The existing convenience store is 1,265 square feet. The area dedicated to alcohol sales is 72 square feet or 5.7% of the total sales floor area. Therefore, the percentage of alcohol sales would be 5.7% of the 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

*Analysis: The census tract is not unusually configured in shape, and there are two existing off-sale locations within 1,000 feet of the site. While the project will not affect public health or safety, the area is not considered to be underserved. 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: The project is located in an area that has experienced significant population growth. With the update to the Diridon Station Area Plan, the neighborhood is expected to increase in population and jobs through the development of an urban multi-modal, transit-oriented neighborhood. The additional off-sale alcohol use would provide a more convenient shopping experience and would further enhance pedestrian, transit, and bicycle usage. Finally, based on the Police Memorandum dated March 30, 2022, the subject site is not located in a high crime area, and the Police are neutral to the addition of off-sale alcohol use at the subject site. Therefore, the additional off-sale alcohol use at the existing convenience store would not present a significant adverse impact on public health or safety. 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

*Analysis: Census Tract 5008 has a population density of 7,015 residents per square mile. The City of San José has an average population density of 5,642 residents per square mile. Therefore, the location of the project is in a higher population density area in relation to other census tracts in the city and is located in an already over-concentrated area. 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: Approximately 5.7% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the sales floor area would be dedicated to sales of items typical of a convenience store, such as chips, candy, groceries, household goods, ice cream, soda, and juice. The subject site serves a census tract that has a higher than average population density for the City of San José. Furthermore, the off-sale of alcohol at this location would provide a more complete and convenient shopping experience in a neighborhood with transit, bicycle, and pedestrian connections. Therefore, this finding **can** be made.*

Notwithstanding the foregoing provisions and requirements, 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 makes the findings and determinations listed below.

- a. Makes a determination that not all of the required findings set forth in Subsection B of Section 6.84.030 of the Municipal Code can be made; and

*Analysis: Given the above-stated analysis, the first and third findings for the Determination of Public Convenience or Necessity (PCN) cannot be made for the off-sale of alcohol because the subject site is located within the Delmas Park Strong Neighborhoods Initiative (SNI) area, and because the project is located within a mixed-use building with residential units above and retail uses on the ground floor, within 150 feet of the project location. However, two of the four findings can be made. Moreover, findings for two of the four additional findings per Section 6.84.030.B.5 of the San Jose Municipal Code can be made for a PCN determination.*

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

*Analysis: The surrounding neighborhood has experienced significant residential development in recent years. Furthermore, the immediate area around the subject site is expected to experience further population and job growth with the Google Downtown West project. As stated above, the alcohol sales area would represent approximately 5.7% of the total sales area of the store and would not be a primary use of the building.*

*Furthermore, although there are two off-sale of alcohol retail establishments within 1,000 feet from this proposed location, the Shop and Save Market at 365 Bird Avenue and Mi Rancho at 494 Auzerais Avenue only offer the off-sale of beer and wine, not a full range of alcoholic beverages.*

*While not all of the required findings can be made for the Determination of Public Convenience or Necessity, there are significant and overriding benefits by the project use, as it would further activate an existing commercial area and provide a more complete and convenient shopping experience to the existing and future residents in the surrounding area.*

In accordance with the findings set forth above, a Planned Development 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 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 and Determination of Public Convenience or Necessity (collectively "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 four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions 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 by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary

sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Use Authorization.** Subject to all conditions herein, this Permit allows a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 ABC License – Full Range of Alcoholic Beverages) at an existing 1,265-square foot retail store on an approximately 0.8-gross acre site.
  - a. The use shall be limited to 72 square feet of sales floor area within the existing 1,265 square foot retail space.
  - b. 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 of San José.
  - c. 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.
  - d. All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
  - e. 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.
  - f. Security cameras will be strategically throughout the space, including facing the public right-of-way. All security camera video footage will be retained for 30 days in the event that an incident needs review by security personnel or the police.
  - g. Loitering and panhandling will not be tolerated, and the business operator will 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 Jose 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.
  - h. The permittee/business operator will engage the community organization/ neighborhood leaders/etc. to address neighborhood concerns with any aspect of the business. The project applicant/business operator will be available to meet with

- concerned parties and create a mutually beneficial mitigation plan in accordance with any and all relevant laws and regulations.
- i. The proposed project is located in a well-lit area that contains ample street light/parking lot lighting/exterior lighting (detailed on the site plan). All lighting issues, such as inadequate lighting or burned out lights, will be addressed promptly by our maintenance provider. The business is designed with full height glass windows to provide a clear and unobstructed view from inside and out. All signage affixed to the windows will not obstruct these views.
6. **Conformance with ABC Requirements.** The off-sale of alcohol (full range of alcoholic beverages) 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 convenience store. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 72 square feet (5.7 percent) of the total floor area (1,265 square feet) of the retail space 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.
  8. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "350 Barack Obama Boulevard, Suite 10, PD Application for Off-Sale of Alcohol" dated April 11, 2022, 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."
  9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
  10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
  11. **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.
  12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.



13. **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.
14. **Lighting.** No new lighting is approved at this time. All on-site exterior, unroofed lighting shall conform to the Outdoor Lighting Policy (Council Policy 4-3), as amended. All proposed lighting shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
15. **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 shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
16. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.
19. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This Permit file number, PD22-011 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.
35. **Revocation, Suspension, Modification.** This Planned Development 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 Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

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

ADOPTED this \_\_\_ day of \_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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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**

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:

All of Parcel 1, as said Parcel is shown upon that certain Parcel Map recorded April 8, 2005 in [Book 783 of Maps, at Pages 31](#) and 32.

[APN: 264-20-132](#)

Description: Santa Clara, CA Maps - Book: Page 783.31 Page: 1 of 2  
Order: 98204771 Comment:

**OWNER'S STATEMENT**

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN ON THE MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE MAKING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

AS OWNER: EHC DELMAS PARK, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: EMERGENCY HOUSING CONSORTIUM,  
A CALIFORNIA PUBLIC BENEFIT CORPORATION,  
ITS MANAGER AND SOLE MEMBER

*Cristina L. Hamley*

BY: CRISTINA L. HAMLEY, DIRECTOR

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA }  
COUNTY OF Santa Clara } SS.

ON THIS 2nd DAY OF February 2005, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED CRISTINA L. HAMLEY

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/they EXECUTED THE SAME IN HIS/HER/their AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/their SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY'S SIGNATURE: *Cindy Ann Thomas*

PRINTED NOTARY'S NAME: CINDY ANN THOMAS

NOTARY'S PRINCIPAL PLACE OF BUSINESS: The Love Companies

EXPIRATION OF NOTARY'S COMMISSION: April 30, 2006

NOTARY'S COMMISSION # 1353139

**PARCEL MAP**

CONSISTING OF 2 SHEETS

BEING ALL OF LOTS 17, 18, 19 AND PORTIONS OF LOTS 12, 13, 14, 15, 16 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE FRANKLIN TRACT", WHICH WAS FILED FOR RECORD IN BOOK "G" OF MAPS AT PAGE 55, SANTA CLARA COUNTY RECORDS, AND LYING ENTIRELY WITHIN THE

CITY OF SAN JOSE, CALIFORNIA

FEBRUARY, 2005



**RECORDER'S STATEMENT**

FILE NO. 18311304 FEE \$ 10.00 PAID. ACCEPTED FOR RECORD AND FILED IN BOOK 982 OF MAPS AT PAGES 81 THRU 82, SANTA CLARA COUNTY RECORDS, THIS 24th DAY OF April 2005, AT 2:15 P. M. AT THE REQUEST OF DAVID NEALE.

BRENDA DAVIS, COUNTY RECORDER  
SANTA CLARA COUNTY, CALIFORNIA

BY: *Brenda Davis*  
DEPUTY

**CITY ENGINEER'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON PARCEL MAP; THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

DATED: 4/5/05

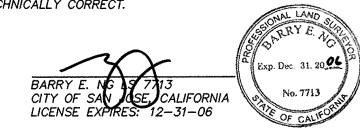


*Mark A. Helton*  
MARK A. HELTON, RCE# 45512  
CITY OF SAN JOSE, CALIFORNIA  
LICENSE EXPIRES: 12-31-06

**CITY LAND SURVEYOR'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON SUBDIVISION MAP AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: 2-28-05



*Barry E. Noe*  
BARRY E. NOE, License No. 7713  
CITY OF SAN JOSE, CALIFORNIA  
LICENSE EXPIRES: 12-31-06

**SURVEYOR'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF GEORGE RAMSTED ON MAY 6, 2004. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. DATED: 2-1-2005



*Mark A. Helton*  
MARK A. HELTON, L.L.S. 7078  
LICENSE EXPIRES: 12-31-2006

**NOTE: SOILS AND GEOLOGICAL REPORT**

A SOILS REPORT AND/OR GEOLOGICAL REPORT ON THIS PROPERTY HAS BEEN PREPARED BY LOWNEY ASSOCIATES DATED NOVEMBER 22, 2002, A COPY OF WHICH HAS BEEN FILED WITH THE CITY CLERK OF THE CITY OF SAN JOSE.

# 183 11304

EXHIBIT "B" (File No. PD22-011)

783  
31 of 32

Description: Santa Clara, CA Maps - Book Page 783.31 Page: 2 of 2  
 Order: 98204771 Comment:

# PARCEL MAP

CONSISTING OF 2 SHEETS

BEING ALL OF LOTS 17, 18, 19 AND PORTIONS OF LOTS 12, 13, 14, 15, 16 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE FRANKLIN TRACT", WHICH WAS FILED FOR RECORD IN BOOK "G" OF MAPS AT PAGE 55, SANTA CLARA COUNTY RECORDS, AND LYING ENTIRELY WITHIN THE

CITY OF SAN JOSE, CALIFORNIA

FEBRUARY, 2005 SCALE: 1"=30'



### REFERENCES:

- ( ) 1 MAP OF THE FRANKLIN TRACT (G M 55)
- ( ) 2 MAP OF THE KEISER TRACT (O M 49)

### BASIS OF BEARINGS

THE BEARING NORTH 53°50'00" EAST, BEING THE CENTERLINE OF SAN CARLOS STREET, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE KEISER TRACT", WHICH WAS FILED FOR RECORD IN BOOK "O" OF MAPS AT PAGE 49, IN SANTA CLARA COUNTY RECORDS, AND AS FOUND MONUMENTED, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

### NOTES AND LEGEND

1. ALL DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
2. THE DISTINCTIVE BORDER LINE INDICATES THE BOUNDARY OF THE LAND BEING SUBDIVIDED BY THIS MAP, AND CONTAINS 0.80± ACRES, MORE OR LESS.

- ( ) RECORD INFORMATION
- [ ] RECORD INFORMATION IN CONFLICT WITH MEASURED DATA.
- ⊙ FOUND CITY STD. MONUMENT, BRASS PIN W/ PUNCH IN CONCRETE, OR AS NOTED. ORIGIN UNKNOWN, UNLESS SHOWN
- FOUND MONUMENTATION, AS NOTED ORIGIN UNKNOWN, UNLESS SHOWN
- SET 3/4" IRON PIPE TAGGED L.S. 7078
- ⊗ SET NAIL WITH BRASS TAG - LS 7078

- DISTINCTIVE BORDER
- PROPERTY LINE
- - - CENTERLINE

SHEET 2 OF 2

483  
32 of  
32

