

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AMENDMENT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (TYPE 20 ABC LICENSE) AT AN EXISTING APPROXIMATELY 3,814-SQUARE-FOOT RETAIL STORE ON AN APPROXIMATELY 0.69-GROSS-ACRE SITE, LOCATED AT THE NORTHWESTERLY CORNER OF OAKLAND ROAD AND HORNING STREET (657 HORNING STREET) (APN 235-18-022)**

**FILE NO. PDA16-027-03**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 22, 2023, an application (File No. PDA16-027-03) was filed by Armando Gomez, on behalf of the property owner, James Rubnitz, with the City of San José for a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (beer and wine only) at an existing approximately 3,814-square-foot tenant space (ExtraMile) on an approximately 0.69-gross-acre site, on that certain real property situated in the CIC(PD) Planned Development Zoning District and located at the northwesterly corner of Oakland Road and Horning Street (657 Horning Street, APN 235-18-022, 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 application on September 13, 2023, 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 recommendation 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, "Gas Station, Convenience Store, Carwash, QSR & Mini Storage – 645 Horning Street, San José, CA" dated March 22, 2018, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed Project:

- 1. Site Description and Surrounding Uses.** The subject 0.69-gross-acre site is located at the northwesterly corner of Oakland Road and Horning Street (657 Horning Street, APN 235-18-022). The site is currently developed with a fuel service station, an approximately 3,814-square-foot convenience store (ExtraMile), and a drive-through car wash. The site is bounded by a ministorage facility and Highway 101 to the north, a vacant lot to the south, multifamily residences to the east across Oakland Road, and a ministorage facility and public eating establishment to the west. The site is accessed by one driveway along Horning Street to the south. The driveway provides access to the fuel service station, convenience store, drive-through car wash, and the adjacent public eating establishment and ministorage facility.
- 2. Project Description.** The Project consists of a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (California Alcoholic Beverage Control Type 20 License) at an existing approximately 3,814-square-foot tenant space (ExtraMile) on an approximately 0.69-gross-acre site. Approximately 243 square feet (6.4% of the gross floor area) will be dedicated to the sale of beer and wine. Off-sale alcohol sales will be incidental to the ExtraMile convenience store, which is a permitted use within the Planned Development Zoning District. Alcohol sales will occur from 6:00 a.m. to 12:00 a.m. midnight, seven days a week, coinciding with ExtraMile's hours of operation.

A Determination of Public Convenience or Necessity is required for the Project as the Project site is located within an over-concentrated census tract (5001). The authorized number of allowed off-sale licenses in this census tract is four, and currently there are six active off-sale licenses. The site is not located within a police beat considered to be high-crime, defined as 20% above the city average. The Police Memorandum dated June 27, 2023 states that the Police Department is neutral to the off-sale of alcohol at this site. The addition of off-sale alcohol at this location will not create more than four off-sale establishments within a 1,000-foot radius of the Project site. Within 1,000 feet of the Project site, La Plaza Market is the only other off-sale establishment with an active license. In addition, the site is not located within 500 feet of a school, daycare center, public park, social services agency, or residential care or service

facility. The site is also not located within 150 feet of a residence. However, the site is located within the 13<sup>th</sup> Street Strong Neighborhoods Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. Therefore, pursuant to Chapter 6.84 of the Municipal Code, which governs Determinations of Public Convenience or Necessity for an Alcoholic Beverage Control License, the City Council shall be the final decision-maker for this off-sale alcohol proposal, considering a recommendation from the Planning Commission.

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

*Analysis: The proposed off-sale of alcohol will not alter the existing commercial retail use at the Project site. Therefore, the Project will be 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.

Neighborhood Serving Commercial Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

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

*Analysis of IE-2.6, LU-5.1, LU-5.10: The site currently operates as a convenience store adjacent to a fuel service station. The current convenience store tenant, ExtraMile, offers grocery items including beverages, pre-packaged sandwiches and burritos, pastries, fresh fruit, and snacks. The off-sale of alcohol will produce an additional revenue-generating opportunity associated with the existing products being sold and combined commercial retail uses. The interior and exterior of the convenience store will be monitored at all times by security personnel and video surveillance cameras, as specified in the Operations Plan and conditioned in this*

*Planned Development Permit Amendment. These security measures will ensure the safe operations and sales of beer and wine at the convenience store.*

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

##### Use Regulations

The Project site is located within the CIC(PD) Planned Development Zoning District (File No. PDC16-041). This Planned Development Zoning District allows Permitted Conditional, and Special Uses of the CIC Combined Industrial/Commercial, LI Light Industrial, and CG Commercial General Zoning Districts of Title 20 of the San José Municipal Code, as may be amended. Conditional and Special Uses as identified in the CIC, LI, and CG Zoning Districts shall be subject to approval of a Planned Development Permit or Amendment.

As the off-sale of alcohol (beer and wine only) is a Conditional Use within the CIC and CG Zoning Districts, this Planned Development Permit Amendment would be the appropriate permit to allow the off-sale of alcohol at this site.

##### Development Standards

The off-sale of alcohol at this site is consistent with the development standards of the CIC(PD) Planned Development Zoning District File No. PDC16-041 as the Project does not include modifications to the exterior of the convenience store. The table below outlines the development standards of the Zoning District, approved under File No. PDC16-041.

Planned Development Zoning District (File No. PDC16-041) Development Standards:

<b>Development Standard</b>	<b>Required</b>	<b>Existing Convenience Store</b>
Front setback (Horning Street)	15 feet minimum	Approximately 130 feet
Side and Rear Setback	5 feet minimum	Approximately 5 feet
Parcel Size	30,000 square feet minimum	Approximately 30,101 square feet
Building Height	60 feet maximum with an additional 10 feet for architectural projections	Approximately 28 feet

As shown in the table above, the convenience store will remain consistent with the development standards of the Zoning District.

##### Parking

Pursuant to the Planned Development Zoning District, vehicle parking shall be provided per Title 20 of the San José Municipal Code, Chapter 20.90, as may be

amended. The Project does not increase or decrease the number of vehicle parking spaces on site. The construction of the convenience store, fuel service station, and ministorage facility required 56 vehicle parking spaces under Planned Development Permit File No. PD16-027. Fifty-six vehicle parking spaces were provided. This Planned Development Permit Amendment for off-sale alcohol does not trigger additional parking requirements over the primary uses on site.

### Noise

Pursuant to the Planned Development Zoning District, Projects shall comply with Section 20.40.600 and 20.50.300 of the San José Municipal Code, as may be amended. As off-sale alcohol is considered a commercial use, the noise standards for commercial uses shall apply. Pursuant to Section 20.40.600, the maximum allowed noise level is 55 decibels for commercial uses adjacent to residential properties and 60 decibels for commercial uses adjacent to commercial properties. All activity related to the off-sale of alcoholic beverages will take place indoors. Consumption of alcoholic beverages will not be permitted on the premises, as specified in the Operations Plan. As construction for the Project will consist solely of interior improvements, the Project is consistent with the above noise standards.

5. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the Project. On-site signs have been posted on the Project frontages since August 10, 2023. Staff received nine letters from neighboring residents and businesses, all in support of the off-sale alcohol proposal. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the Project site and posted on the City website. Staff has also been available to respond to questions from the public.
6. **Environmental Review.** Under the provisions of Section 15301(a) for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this Project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Zoning Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the Project involves negligible or no expansion of an existing use. The Project does not involve any structural modifications or expansion to the footprint of the existing retail building.

The Project will allow off-sale alcohol within an existing convenience store's interior space and 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 sections above, the Project will

not significantly affect the environment. Therefore, the Project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

**7. Planned Development Permit Amendment Findings:** Section 20.100.940 of the San José Municipal Code specifies the required findings for the approval of a Planned Development Permit Amendment.

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

*Analysis: The Project is consistent with the General Plan land use designation of Combined Industrial/Commercial, which is intended for commercial, office, or industrial developments. The Project will not alter the site's existing commercial uses. The Project is consistent with General Plan policies regarding retail development. The off-sale alcohol at the existing ExtraMile convenience store will provide an additional revenue-generating opportunity for the convenience store, while providing a benefit to convenience store customers who may purchase beer and wine along with the other food items sold.*

- b. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: The Project conforms with the Use Regulations and Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC16-041). As discussed in the San José Municipal Code Conformance section above, the Project is consistent with all required setbacks, heights, parking, and noise requirements of the Planned Development Zoning District.*

- c. The Planned Development Permit Amendment, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed Project. On-site signs have been posted on the Project frontages since August 10, 2023. As of the date this staff report was published, staff received nine letters from neighboring residents and businesses, all in support of the off-sale alcohol proposal. 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 also 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 Project will not alter the exterior of the existing ExtraMile convenience store. The convenience store will continue to be compatible with the associated fuel service station and drive-through car wash.*

- e. The environmental impacts of the Project, including, but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the CEQA, will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: The off-sale of alcohol within the ExtraMile convenience store will only result in interior modifications and tenant improvements for the storage of beer and wine. As a result, environmental impacts related to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor will not occur. Therefore, the Project will not have an unacceptable negative effect on adjacent properties. The Project is categorically exempt from further environmental review pursuant to CEQA Section 15301(a) for Existing Facilities.*

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

- a. For such use at a location closer than five hundred feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the city, that the proposed location of the off-sale alcohol use 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: Only one establishment (La Plaza Market) is located within 1,000 feet of the Project site. Therefore, this finding can be made.*

- b. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use 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 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 stated above in Section 8.a, only one establishment (La Plaza Market), is located within 1,000 feet of the Project site. 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 Project site is not closer than 500 feet from any childcare center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college, or university. The nearest of these facilities is a public park (Luna Park) located approximately 570 feet to the southeast across Oakland Road, measured from the entrance of the convenience store.*

*The Project site is not closer than 150 feet from any residentially zoned property or residential use. The nearest residential uses are multifamily residences located approximately 230 feet to the east across Oakland Road, measured from the entrance of the convenience store. Therefore, this finding **can** be made.*

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

- a. The proposed use is not located within a Strong Neighborhoods Initiative or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:
  - i. 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 located within the 13th Street Strong Neighborhood Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. The Police Department Memorandum states that the Police Department is neutral to the off-sale alcohol proposal at this location. The Operations Plan includes provisions for the removal of trash and graffiti, interior and exterior video surveillance cameras, and employee training for alcohol sales. The off-sale of alcohol will also be limited to the hours of 6:00 a.m. to 12:00 a.m. midnight, seven days a week, coinciding with ExtraMile's hours of operation. Therefore, the off-sale of alcohol will 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. However, because the subject site is located within an SNI area, this finding **cannot** be made.*

- 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 off-sale of alcohol at this location will not lead to the grouping of more than four off-sale establishments within a 1,000-foot radius of the ExtraMile convenience store. The nearest off-sale establishment is La Plaza Market. La Plaza Market is the only other off-sale establishment within a 1,000-foot radius of the convenience store. Therefore, this finding **can** be made.*

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

*Analysis: The off-sale of alcohol at the ExtraMile convenience store is not located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility. The convenience store is not located within 150 feet of a residence. Therefore, this finding **can** be made.*

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

*Analysis: Approximately 243 square feet of the 3,814-square-foot ExtraMile convenience store (6.4% of the gross floor area) will be used for alcohol sales. This will not represent a majority of the existing convenience store use. 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. 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 off-sale of alcohol will occur within the existing ExtraMile convenience store. The convenience store provides the surrounding neighborhood with access to grocery items. The Project will allow the convenience store to complement its current products with the sale of beer and wine for off-site consumption. The Police Department is neutral to the off-sale alcohol proposal at this location. The Operations Plan includes provisions for trash and graffiti removal, the installation of security cameras inside and outside*

*of the convenience store, and employee training for alcohol sales. Therefore, off-sale of alcohol will not significantly impact public health or safety, and 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: The off-sale of alcohol at the ExtraMile convenience store will contribute to an over-concentration in the number of off-sale establishments in the census tract area, as there are currently six active off-sale licenses. The census tract's population allows for four active off-sale licenses. 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 243 square feet of the 3,814-square-foot ExtraMile convenience store (6.4% of the gross floor area) will be used for alcohol sales. The remainder of the floor area will be dedicated to the sales of grocery items such as beverages, pre-packaged sandwiches and burritos, pastries, fresh fruit, and snacks. Therefore, this finding **can** be made.*

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

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

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

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

*Analysis: While all of the required findings for the Determination of Public Convenience or Necessity cannot be made (findings a., e.i., and e.iii), the off-sale of alcohol within the ExtraMile convenience store will provide significant and overriding public benefits. The Project site is located near the Highway 101 Oakland Road entrance and exit, making this location convenient for customers traveling along Highway 101 to access the convenience store and those who are stopping at the fuel service station. The off-sale of beer and wine will be incidental*

*to the convenience store retail use, which currently offers pre-packaged sandwiches, burritos, pastries, fresh fruit, and snacks. The addition of beer and wine will reduce the number of additional trips customers will need to visit to fulfill their shopping needs and provide additional retail outlets.*

*Furthermore, the convenience store is not located within an area of high crime, as indicated in the Police Memorandum. While the Project is located within an over-concentrated census tract, it will not result in grouping four or more off-sale establishments within a 1,000-foot radius of the site. The Operations Plan includes measures to install interior and exterior security cameras, clean trash and graffiti, and address loitering and noise. These measures aim to ensure that off-sale operations are conducted without disturbances to the surrounding neighborhood. Therefore, staff recommends that the City Council determine that the Project will provide a significant and overriding public benefit and approve the Planned Development Permit Amendment for off-sale alcohol and Determination of Public Convenience or Necessity.*

In accordance with the findings set forth above, a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **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 Amendment ("Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building, and Code Enforcement may

approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility- represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Use Authorization.** Subject to all conditions herein, this Permit allows a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 20 ABC License – beer and wine) at an existing 3,814-square foot retail store on an approximately 0.69-gross-acre site. The Permittee shall comply with the Operations Plan, which is incorporated herein by reference.
  - a. This Planned Development Permit Amendment allows only the sale of beer and wine through a Type 20 ABC License and does not allow the sale of distilled spirits. If the Permittee wishes to sell distilled spirits, a new Planned Development Permit Amendment shall be required before obtaining a Type 21 ABC License.

- b. Sales of alcoholic beverages are permitted only between the hours of 6:00 a.m. and 12:00 a.m. midnight, seven days a week.
  - c. No individual containers of beer or malt beverage products shall be sold, regardless of container size, unless the containers are in manufactured pre-packaged, multi-unit quantities, or sold individually in quantities of more than one.
  - d. All employees shall complete training regarding the sale of age-restricted products (alcohol/tobacco).
  - e. The interior and exterior of the convenience store shall be monitored at all times by security personnel and video surveillance cameras. 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.
  - f. The convenience store site shall be well-maintained, clean, and free of litter, graffiti, etc.
  - g. Loitering and panhandling will not be tolerated, and the Permittee 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 José Police to obtain proper language). All loitering and panhandling issues will be dealt with in a swift and consistent manner by notifying local police. No consumption or open alcoholic beverages will be permitted on the premises. Signs specifically prohibiting this activity will also be placed in conspicuous places in both Spanish and English.
  - h. The Permittee will be available to meet with neighbors to address any concerns that arise.
  - i. All lighting issues, such as inadequate lighting or burned-out lights, will be addressed promptly by the Permittee's 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.
  - j. The Project will conform to all local noise performance standards as required by the Municipal Code. All efforts will be made to limit the amount of noise emanating from the business at all times. No entertainment uses shall occur in or around the site. Any music played will be kept to ambient background music.
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit Amendment plans entitled, "Gas Station, Convenience Store, Carwash, QSR & Mini Storage – 645 Horning Street, San José, CA" dated March 22, 2018, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."

7. **Conformance with ABC Requirements.** The off-sale of alcohol (Type 20 – beer and wine) is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The Permittee shall obtain and maintain full compliance with its ABC license and remain in good standing with the Department of Alcoholic Beverage Control.
8. **Limitations on the Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Permit shall be limited and incidental to the primary use of a retail store. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 243 square feet (approximately 6.4%) of the gross floor area (3,814 square feet) of the retail space. Alcohol product displays shall not be placed outside the retail tenant space.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, 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. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for Projects under construction, within 48 hours of defacement.
15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
16. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building, and Code Enforcement through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.

18. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
19. **Store Operator Point of Contact.** Store operator shall post in a visible location on the Store premises a phone number, and other applicable contact information for the public to address questions and comments regarding management and maintenance of the subject store and frontage.
20. **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, Building, and Code Enforcement through a subsequent Permit Adjustment.
21. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators will require a separate administrative Backup/Standby Generator Facility Permit and shall conform to the regulations of Title 20 of the Municipal Code.
22. **Building Division Clearance for Issuing Permits:** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit File No. PDA16-027-03 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Construction Plan Conformance.* A Project construction plan conformance review by the Planning Division is required. Planning Division review for Project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
  - d. *Other.* Such other requirements as may be specified by the Chief Building Official.
23. **Bureau of Fire Department Clearance for Issuing Permits:** Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted by the City.
24. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment may be revoked, suspended, or modified by the City Council, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Planned Development Permit Amendment 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 \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
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" (File No. PDA16-027-03)**

657 Horning Legal Description

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED DECEMBER 4, 2019 IN BOOK 927 OF MAPS,  
PAGES 42-45, SANTA CLARA COUNTY RECORDS.  
APN: 235-18-022