

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING WAREHOUSE AND OTHER STRUCTURES (CAR REPAIR SHOP) AND ALLOW THE CONSTRUCTION OF A NEW RETAIL STORE (3,814 SQUARE FEET), GASOLINE STATION WITH SIX FUEL DISPENSERS AND CANOPY (3,870 SQUARE FEET), DRIVE-THROUGH CAR WASH (1,086 SQUARE FEET), A DRIVE-THROUGH RESTAURANT (2,494 SQUARE FEET) WITH LATE-NIGHT USE TO 2:00 A.M., AND MINI-STORAGE BUILDINGS (TOTAL OF 92,116 SQUARE FEET) ON AN APPROXIMATELY 3.26-GROSS ACRE SITE, LOCATED AT NORTHWEST CORNER OF HORNING STREET AND OAKLAND ROAD (645 HORNING STREET)

FILE NO. PD16-027

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 29, 2016, an application (File No. PD16-027) was filed by the applicant, Muthana Ibrahim, on behalf of the owner, Jim Rubnitz, with the City of San José for a Planned Development Permit to allow the demolition of an existing warehouse and other structures (car repair shop) and allow the construction of a new retail store (3,814 square feet), gasoline station with six fuel dispensers and canopy (3,870 square feet), drive-through car wash (1,086 square feet), a drive-through restaurant (2,494 square feet) with late-night use to 2:00 a.m., and mini-storage buildings (total of 92,116 square feet) on an approximately 3.26-gross acre site, on that certain real property situated in the CIC(PD) Planned Development Zoning District and located at the northwest corner of Horning Street and Oakland Road (645 Horning Street, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on April 11, 2018, notice of which was duly given; and

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

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

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Gas Station, Convenience Store, Car Wash & Mini Storage," dated revised on 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 all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject 3.26-gross acre site is located at the northwest corner of Horning Street and Oakland Road. The site was developed between the 1930s and 1950s with multiple industrial buildings totaling approximately 35,671 square feet, and the buildings are currently used for indoor storage and a car fabrication/repair shop with outdoor storage. The subject site is located at the edge of an existing industrial area: to the west and south is a mix of light manufacturing, storage and retail uses; to the north is the Oakland Road off-ramp from U.S. Highway 101; to the west is Oakland Road, a six-lane major arterial, and across this street is an existing multi-family residential development. Ingress-egress access to the site is from two driveways off of Horning Street.
2. **Project Description.** On August 29, 2016, a Planned Development Rezoning, Planned Development Permit and Tentative Map applications were filed to rezone the subject site from the LI Light Industrial to the CIC(PD) Planned Development Zoning District and to allow the demolition of an existing warehouse and car repair shop and redevelopment of the site with a mix of commercial and industrial uses. The proposed project includes three mini-storage buildings totaling approximately 92,116 square feet, a new gasoline service station with six fuel dispensers and canopy (3,871 square feet), a retail store (3,814 square feet) with an attached drive-through car wash. In addition, the proposed project would include a restaurant (2,494 square feet) with drive-through and late night use until 2:00am at the southwest portion of the site. The project would subdivide the one lot into three lots on the subject 3.26-gross acre site.
3. **General Plan Conformance.** The project has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial (CIC). This land use designation is intended for a wide variety of commercial, office, industrial developments, or a compatible mix of these uses. The

proposed project would result in a mix of uses on the subject site, including mini-storage, gasoline service station, convenience store with attached drive-through car wash, and a restaurant with drive-through and late-night use. The proposed rezoning will allow both industrial and commercial uses to be located on the subject site and provide a buffer between existing residential and industrial uses in the area. The proposed site plan also includes design elements to improve connectivity and safety for both pedestrians and vehicles on the site.

- a. Land Use Policy LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

Analysis: Although the proposed project includes auto-oriented uses, such as two drive-throughs (restaurant and car wash), the proposed public improvements include a financial contribution towards a future pedestrian crosswalk at Oakland Road and Boardwalk Way. This would enhance pedestrian access on a long street corridor with limited crosswalks and connect nearby residential neighborhoods with commercial uses on the west side of Oakland Road.

- b. Land Use Policy LU-4.4: ; Allow limited industrial uses in commercially designated areas if such uses are of a scale, design, or intensity that creates less than significant negative impacts to surrounding uses.

Analysis: The proposed project includes both commercial (gasoline service station and car wash, retail, and restaurant services) and light industrial (mini-storage) uses on the site. The site is adjacent to a freeway off-ramp, access and circulation are limited, and aesthetic improvements are challenging. The proposed mini-storage would occupy the least accessible portion of the subject site and complement the existing commercial/industrial uses on adjacent properties. Overall, the proposed project would create a buffer and appropriate transition between the freeway and industrial uses and existing residential neighborhoods in the area.

- c. Land Use Policy LU-5.5: Encourage pedestrian and vehicular connections between adjacent commercial properties with reciprocal-access easements to encourage safe, convenient, and direct pedestrian access and “one-stop” shopping. Encourage and facilitate shared parking arrangements through parking easements and cross-access between commercial properties to minimize parking areas and curb-cuts.

Analysis: The proposed project includes a mix of commercial and industrial uses on one site. The proposed tentative map includes reciprocal rights of ingress, egress, and parking between all proposed uses and parcels. With shared access and parking easements, the project would require only one standard curb-cut and driveway from Horning Street.

- d. Vibrant Neighborhood Policy VN-1.7: Use new development within neighborhoods to enhance the public realm, provide for direct and convenient pedestrian access,

and visually connect to the surrounding neighborhood. As opportunities arise, improve existing development to meet these objectives as well.

Analysis: The existing street frontages along Horning Street and Oakland Road have limited sidewalks and vegetation. The proposed development would include new sidewalks with enhanced landscaping, trees, and pedestrian access to proposed commercial uses. In addition to new sidewalks, the project would provide a financial contribution for a new pedestrian crosswalk on Oakland Road and Boardwalk Way that would provide residents in the existing residential neighborhoods with a safer and more direct pedestrian connection to the new commercial uses.

4. Conformance with City of San José City Council Drive-Through Policy

The proposed project includes two different drive-through uses on the subject site: a drive-through car wash associated with the retail store and gasoline station, and a second drive-through in conjunction with a proposed restaurant use. The project would conform to the following applicable drive-through policy criteria:

- a. No drive-through use shall be approved with ingress or egress driveways within 300 feet of a signalized intersection operating at a Level of Service D, E, or F unless a traffic analysis demonstrates, to the satisfaction of the Director of Public Works, that vehicles entering or leaving said use will not impair the efficiency or operation of the intersection.

Analysis: The ingress and egress of the driveway is more than 300 feet vehicle path of travel from a signalized intersection.

- b. The drive-through stacking lane shall be situated so that any overflow from the stacking lane shall not spill out onto public streets or major aisles of any parking lot. Overflow capacity shall be 50 percent of required stacking for overflow restricted to the parking lot and 100 percent of required stacking if the overflow is directed to the street.

Analysis: The site plan demonstrates sufficient space to meet the requirements for eight cars to stack at the restaurant use and five cars to stack at the car wash use. Any potential overflow would not spill into the public right-of-way or major aisles of the parking lot.

- c. No pedestrian crossing of the drive-through lane shall be allowed.

Analysis: Proposed pedestrian crossings do not conflict with drive-through lanes.

- d. Drive-through speakers shall not be audible from adjacent residentially used, zoned, or General Planned properties. Drive-through speakers shall not be used when the drive-through lane abuts residentially used, zoned, or General Planned Property. Use of sound attenuation walls and landscaping shall be encouraged.

Analysis: The project is not adjacent to a residential use, zoned or General Planned property. The project is proposing a significant amount of trees and landscaping along Horning Street and indoor seating for the proposed restaurant use to encourage pedestrian means of travel and use. The site is adjacent to other light industrial and commercial uses, a freeway off-ramp, and a major arterial street. Noise analysis was conducted as part of the review of the project and the noise report concluded that, based on existing noise in the vicinity of the project site, the project-generated average day-night noise levels will likely be at or below ambient noise levels in the majority of the project area. Therefore, the project is consistent with the intent of the Council policy to limit new potential noise impacts from the proposed project, and would not result in adverse impacts to any sensitive receptors or residential uses in the vicinity.

- e. The drive-through stacking lane shall be separated physically from the user's parking lot and shall have a capacity of eight spaces for restaurants and five for self-service car washes.

Analysis: A minimum 500-foot separation is typically required between structures that include drive-through facilities. The proposed buildings for the car wash and restaurant are approximately 150 feet apart. However, the policy provides an exception for self-service car wash facilities that are in conjunction with a gasoline service station if it conforms to all the traffic criteria. As stated above, the project conforms to all traffic criteria with sufficient car stacking area, distance from signalized intersection, and no pedestrian crossing in the drive-through lane. The circulation path and distance of the stacking area is sufficient separated to minimize circulation conflict between the two drive-through uses.

The project is not consistent with the following criteria but meets the intent of the drive-through policy or has incorporated design elements to limit the potential conflicts or impacts.

- a. Primary ingress and egress to drive-through type use parking lots should be from at least a four-lane major street.

Analysis: Primary ingress and egress to the subject site is provided from Horning Street, which is not a four-lane major street. The site is situated adjacent to Oakland Road, a major arterial street, but direct access is precluded by the design of the Highway 101 off-ramp. The subject site has sufficient space for internal circulation and queuing to limit potential impacts to the two-lane Horning Street.

- b. Drive-through uses shall be located 200 feet or more from immediately adjacent or directly opposite residentially used, zoned, or General Planned properties.

Analysis: The queueing area for the proposed drive-through car wash is approximately 130 feet from the property boundary of a residential use. However, in the noise study, it states that that most noise will be generated at

the entrances and exit to the car wash tunnel because of the blowers and equipment use, and the openings for those tunnels are located more than 200 feet from the nearest residential property line. The noise study concluded that the given the existing noise levels in the vicinity of the project site, any project-generated average day-night noise levels to be at or below ambient noise levels in the majority of the project study area. Therefore, the project would meet the intent of providing adequate separation between the car wash and residential uses and limiting potential noise impacts to sensitive receptors.

Therefore, the proposed project conforms substantially to the criteria of Council Policy 6-10 and meets the intent of the Policy by minimizing impacts to traffic and residential uses with appropriate site design.

5. Conformance with City of San José City Council 24-Hour Use Policy.

Any use operating after midnight and before 6:00 a.m. must conform to the criteria provided in Council Policy 6-27. The applicant is requesting extended hours of operation to 2:00 a.m. for the proposed drive-through restaurant use. The intent of the policy is to minimize potential impacts associated with late-night uses, including proximity to residential use, littering, loitering, noise, etc. The project conforms to the following Council Policy 6-10 applicable criteria:

- a. Area Use Compatibility: Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area.

Analysis: The proposed use is a new restaurant within a larger mixed-use development that will include both commercial and industrial uses. As the site is separated from residential use by an arterial street and is adjacent to nearby commercial and industrial use and would redevelop an existing commercial site, the proposed use is compatible with the surrounding area.

- b. Use Separation: Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used.

Analysis: The proposed restaurant would be more than 300 feet from the nearest residential property line.

- c. Outdoor Activities. Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area.

Analysis: There are no proposed outdoor activities.

- d. Police Issues. Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses.

Analysis: The site is not located in an area that the San José Police Department has labeled as high crime area (more than 20% of the city crime report average). The Planned Development Permit includes conditions to require that the project not create a nuisance and provide proper maintenance of the site. The site would replace an existing industrial/commercial space that is had limited lighting and activation with a new multi-tenant development with new lighting and improved pedestrian activation.

- e. Noise. Use of sound attenuation walls and landscaping may be required at property lines in order to minimize noise emanating from the site. Special attention should be paid to the possibility of noise at late night hours such as car stereos, cars starting and conversations which may not be quantifiable, but can reasonably be expected to occur.

Analysis: The proposed late night use for the drive-through restaurant is located more 300 feet from the closest residential use. The noise report stated at 20 feet the maximum dBA is 58 and with the separation of the proposed use and Oakland Road, the restaurant is not anticipated to generate a noticeable amount of noise from the late-night use. (Additionally, see noise analysis in Section 7 below and Permit Condition No. 39.g.)

Given the location of the proposed drive-through and the provision of permit conditions to limit nuisances and require proper maintenance of the site, the project conforms to Council Policy 6-27 for late-night uses.

- 6. Zoning and Planned Development Zoning Conformance.** The site is currently in the LI Light Industrial Zoning District with a Combined Industrial / Commercial General Plan land use designation. The CIC(PD) Planned Development Zoning District would facilitate a development with both commercial and industrial uses on the subject site. A conventional CIC Combined Industrial/Commercial Zoning District would not permit a mini-storage use. Given that the subject site is adjacent to existing light industrial uses and south of an existing freeway off-ramp, the types of uses that could utilize the northern portion of the site are limited. Therefore, a Planned Development Zoning District that allows a mini-storage use together with additional commercial uses to serve travelers as well as nearby residential neighborhoods is a good use of the subject site. The proposed PD rezoning would allow a complementary mix of CIC Combined Industrial-Commercial, LI Light Industrial, and CG Commercial General uses on the site and enable full utilization of the site despite significant access constraints. The project is required to have a 15-foot front setback and rear and side setback of five feet. The project has a 15-foot front setback, a 10-foot side setback, and 15-foot rear setback. The maximum allowed height is 60 feet and the project has a maximum height of approximately 42 feet. The combined uses require 56 vehicle parking spaces and the project provides 56 vehicles spaces.

- 7. Environmental Review.** An Initial Study (IS) and Mitigated Negative Declaration (MND) were prepared by the Planning, Building and Code Enforcement for the subject Planned Development Rezoning, Planned Development Permit, and Tentative Map. The environmental review evaluated a rezoning from the LI Light Industrial Zoning District to the CIC(PD) Zoning District and Tentative Map to demolish size existing buildings, and remove all associated pavement, landscaping, and fencing; and to construct a mix of new commercial buildings including an approximately 3,814-square foot convenience store, six fueling stations (12 total fuel dispensers), an approximately 1,341-square foot automatic car wash, and approximately 2,494-square foot fast-food restaurant with a drive-through, and self-storage facility with three buildings totaling approximately 92,116 square feet on an approximate 3.26 gross acre site located along the at 645 Horning Street. The documents were circulated for public comment between August 24, 2017 to September 14, 2017 and three formal comments letters and/or emails were received from the public. Some of the concerns that were highlighted in the comment letters include: traffic, pedestrian accommodations, compatibility to the existing neighborhood, and overconcentration of the proposed uses. Environmental comments have been addressed by staff in a formal Responses to Comments document.

As stated in the IS/MND and associated noise report (appendix G of the IS/MND), the existing ambient noise (based on long-term noise monitoring) ranges from 71 to 74 dBA day-night noise level (DNL). Noise experienced at the short-term monitoring locations ST-01 through ST-03 was also predominately due to vehicular traffic on the local roadway network. Overall noise levels measured at the short-term environmental noise monitoring locations ranged from approximately 64 to 74 dBA Leq. The main noise generators in this site are roadway traffic noise and operations of the existing industrial uses. Based on the analysis presented, the project would add into this noise level. However, the project-related effects on the baseline ambient noise environment were calculated to result in a change of less than 1 dBA to approximately 2 dBA. In addition, while the project site is not immediately adjacent to any sensitive receptors, noise measures were also considered for these properties located across Oakland and Horning roadways. The project related effects on the baseline ambient noise environment at noise sensitive residential receptors were calculated to result in a change of less than 1 dBA. Therefore, the increase would be less than 3 or 5 dBA DNL and would not conflict with General Plan Goal EC-1.2 and would result in a less-than-significant impact under CEQA.

The primary environmental issues that required mitigation measures are air quality, biological resources, and hazards and hazardous materials resource areas. The IS/MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions in regards to lighting requirements, nuisance, and

maintenance of the site are included in the Planned Development Permit as conditions of approval to ensure all potential impacts have been addressed.

8. Planned Development Permit Findings: Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the proposed permit. In order to make the Planned Development Permit findings pursuant to Section 20.100.720 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

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

Analysis: As described above, the project is consistent with and furthers the policies of the General Plan in regards land use, pedestrian access and promoting a complimentary mix of commercial and industrial uses.

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

Analysis: The Planned Development Permit conforms in all respects to the proposed CIC(PD) Planned Development Zoning of the property, as the proposed uses are allowed, conform to the required 15-foot setback from Horning and 5-foot setback from the rear and side, and is below the maximum 60-foot height.

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

Analysis: As discussed above, the project is consistent with City Council Policy 6-10 in that the proposed project conforms to the intent of the drive-through policy to limit potential impacts from the proposed drive-through use on traffic circulation and adjacent uses. The project also conforms to the intent of Council Policy 6-27 for the evaluation of 24-hour uses in that operation of the proposed drive-through restaurant will be limited to 2:00 a.m. and the car wash would be limited to no later than 10:00 p.m., and the Planned Development Permit includes conditions to maintain adequate lighting and security at the subject site and otherwise limit the impact of the proposed use on nearby development.

As discussed below, the project is also in conformance with City Council Policy 6-30 Public Outreach. Staff received confirmation that the on-site sign was posted at the subject property in accordance with the City Council Policy 6-30. On July 25, 2017 a community meeting was held and approximately 12 members attended the meeting. Members of the public were able to review the projects and express their concerns about traffic, nuisance abatement, and the desire for a larger retail use. Staff and the applicant explained how access issues and other

site constraints severely limit potential retail options. Staff and the applicant also explained how the proposed site plan had been designed to minimize traffic impacts in the area and address security and nuisance concerns.

- 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;

Analysis: Given the location of the proposed development, the proposed project creates a buffer between the industrial and freeway uses to the west and south and existing residential neighborhoods to the north and east. The orientation and location of buildings on the site and the complementary height, massing and scale of buildings within the proposed development is intended to help activate Horning Street and limit potential impacts on Oakland Road. Additionally, the proposed landscaping along the street frontages and within the site as well as the trellis for the restaurant drive-through would provide some natural amenities within the existing industrial environment. The proposed buildings feature a variety of materials and colors that enhance the architectural design and provide visual interest. Therefore, the proposed project is compatible and aesthetically harmonious with surrounding development.

- e. The environmental impacts of the project, including, but not limited to aesthetics, air quality, noise, and transportation/traffic, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: The IS/MND prepared for the project identified construction and/or operational impacts from the proposed project on air quality, biological resources, and hazards/hazardous wastes and materials. Implementation of mitigation measures included in the IS/MND and the Mitigation Monitoring and Report Program would reduce those impacts to less-than-significant levels. The project is adjacent to non-sensitive uses (freeway off-ramp and light industrial/commercial uses). The site has been designed to allow all drive-through queueing on site and thus avoid traffic impacts on adjacent streets. A noise study conducted for the proposed project found that noise levels from the proposed car wash would exceed the City's zoning standard at the nearest residential property line. The final design of the project includes the use of a Proto-Vest Windshear II Dryer, a project condition has been included in the Planned Development Permit (Condition 39.g) to ensure compliance with the zoning code noise requirement.

- 9. **Demolition Findings:** Pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered by the Director of Planning to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The project will require the demolition of an existing warehouse building and other structures (car repair shop) on the subject site. Subsequent redevelopment will include the construction of new buildings and creation of a new access driveways from Horning Street and a new internal circulation pattern. The subject site will be completely redeveloped with a mix of new ministorage and commercial uses that furthers several General Plan Policies related to economic development and redevelopment of existing sites. These positive changes outweigh the impact of the demolition of the existing structures.

In accordance with the findings set forth above, a Planned Development Permit 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.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned Development 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 Planned Development Permit; 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.** The Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Planned Development 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 Planned Development 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.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
- 5. Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Gas Station Convenience Store, Car Wash & Mini Storage," dated revised on 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 Plan Set".
- 6. Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land

uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses. Issuance of this permit in no way negates the permittee's or property owner's obligation to fully and timely comply with each provision set forth in the Development Standards of Planned Development Zoning, File No. PDC16-041.

- 7. Scope and Use Authorization of the Planned Development Permit.** This Planned Development Permit authorizes the demolition of an existing warehouse and car repair building structures and allow the construction of a new retail store (3,814 square feet), gasoline station fuel dispensers and canopy (3,870 square feet), drive-through car wash (1,086 square feet), a drive-through restaurant (2,494 square feet) with late-night use to 2:00 a.m., and mini-storage buildings (total of 92,116 square feet) on an approximately 3.26-gross acre site.
- 8. Hours of Operation:** The restaurant drive-through shall be allowed to operate until 2:00 a.m. daily. The car wash facility shall not operate past 10:00 p.m. daily. These and all other uses shall conform to the municipal code 20.40.500, as amended, for late night use and hours of operation.
- 9. Speaker Noise.** Drive-through speakers shall not be audible from adjacent residentially used, zoned, or General Planned properties
- 10. Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
- 11. Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
- 12. Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
- 13. 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.
- 14. Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

- 15. Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
- 16. Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
- 17. Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
- 18. Covenant of Easement.** Prior to the issuance of the final map, the permittee shall receive a covenant of easement for the reciprocal rights for shared parking, ingress and egress.
- 19. Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- 20. Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
- 21. Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.
- 22. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. Construction Plans. The permit file number, PD16-027 shall be printed on all construction plans submitted to the Building Division.
 - b. Americans with Disabilities Act. The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA), including paths of travel connecting all buildings on the site.
 - c. Emergency Address Card. The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. Street Number Visibility. Street numbers of the buildings shall be easily visible at all times, day and night.
 - e. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- 23. Construction and Demolition Hours.** Construction, demolition, and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
- 24. Demolition of Structures.** Subsequent to permit approval, demolition of existing structures may:
- a. No demolition permits may be issued prior to the submittal of foundation or structural building permits.
- 25. Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
- 26. Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
- 27. Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
- 28. Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
- 29. Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- 30. Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

- 31. Lighting.** All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
- 32. Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
- 33. Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be located as shown on the approved plans and shall be screened from view.
- 34. Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
- 35. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:** A Traffic Impact Analysis was performed on November 10, 2017 by Department of Public Works for this project based on 145 AM and 142 PM peak hour trips. The analysis concluded that the subject project will be in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration, with implementation of the following project conditions, can be made with respect to traffic impacts.
 - i. This project is located adjacent to the US-101/Old Oakland interchange and may be subject to the City's US-101/Old Oakland/Mabury Transportation Development Policy. The US-101/Old Oakland/Mabury Transportation Development Policy requires new residential and commercial developments that generate vehicular trips at either of the Policy Interchanges to pay a Traffic Impact Fee (TIF) towards the upgrade of the US-101/Old Oakland Interchange and construction of the US-101/Mabury Interchange. The 2018 TIF is \$37,857 for each new project peak hour trip that travels through either the US-101/Old Oakland or US-101/Mabury Interchanges. This fee is subject to an annual

escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco.

- ii. Permittee shall provide a \$150,000 contribution towards the construction of a signal controlled pedestrian crosswalk at Old Oakland Road/Boardwalk Way.
- iii. Construct City standard sidewalks along project frontage on Old Oakland Road and Horning Street.
- iv. Construct a 32-foot wide City standard driveway along Horning Street project frontage.

c. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- e. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- f. **Park land Dedication Ordinance.** This development is subject to the requirements of either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code,) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions.
- g. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Horning Street prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2018 base fee is \$485 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued (based on 2018 rate, the fee is approximately \$230,055).
- h. **Street Improvements:**
 - i. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. The ultimate curb to curb width for Horning Street is 40 feet. Reconstruct the curb, gutter, and sidewalk along Horning Street project frontage to conform to the Horning Street ultimate curb to curb width.
 - iii. Construct bioretention facilities at back of walk along Horning Street project frontage.
 - iv. Construct 10-foot wide sidewalk with tree wells along Horning Street and Old Oakland Road project frontages.

- v. Irrevocable offer of dedication of up to 23 feet along Old Oakland Road will be required to conform to the US-101/Old Oakland Road plan line.
- vi. Install City standard handicap ramp at the northwest corner of Horning Street and Old Oakland Road.
- vii. Construct 32-foot wide City standard driveway on Horning Street project frontage.
- viii. Permittee shall provide a \$150,000 contribution towards the construction of a signal controlled pedestrian crosswalk at Old Oakland Road/Boardwalk Way.
- ix. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- i. **Electrical:**
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas.
 - iii. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.
- j. **Street Trees:** The locations of the street trees shall be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- k. **Referrals:** This project shall be referred to the California Department of Transportation (Caltrans).

36. Stormwater Peak Flow Control Measures: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

37. Flood: Zone D, The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area

where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.

38. Conformance to Mitigation Monitoring and Reporting Program. This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. _____.

39. Standard Environmental Permit Conditions

a. AIR QUALITY.

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- vi. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- x. Construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. Equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action

within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

b. BIOLOGICAL RESOURCES.

Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 3.4-1 below.

Table 3.4-1: Tree Replacement Ratios				
Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or more	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gal. container
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 18-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.				

If the project cannot replace according to the Table 3.4-1 above, one or more of the following measures will be implemented, to the satisfaction of the City's Environmental Principal Planner, at the development permit stage:

- i. The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
- ii. Replacement tree plantings may be accommodated at an alternative site(s). An alternative site may include local parks or schools, or an adjacent property where such plantings may be utilized for screening purposes. However, any alternatively proposed site would be pursuant to agreement with the Director of the Department of Planning, Building and Code Enforcement.

Habitat Plan. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit.

c. CULTURAL RESOURCES.

Structure of Merit. The following Standard Permit Conditions to address the loss of these historic resources that add to the historic fabric of the City of San José Historic Resources Inventory are required.

- i. *Documentation.* The documentation is to be prepared by a qualified consultant meeting the professional qualification standards of the Secretary of the Interior's Standard and Guidelines for Archeology and Historic Preservation. Submitted Department of Parks and Recreation, Primary Record (DPR A) and Building, Structure, and Object (DPR 523B) forms shall include the following:
 - 1) The bound and electronic copy of the Historic Report and/or DPR forms for the structures/site
 - 2) Non-HABS Archival Photo-Documentation:
 - 3) Cover sheet - The documentation shall include a cover sheet identifying the following:
 - a) Photographer, address of building, common or historic building name, date of construction, date of photographs and description of photographs.
 - b) Camera - A 35mm camera.
 - c) Lenses - May include normal focus length, wide angle and telephoto (no soft focus).
 - d) Filters - Photographer's choice. Use of a polar screen is encouraged.
 - e) Film - Must use black and white film; tri-X, Plus-X, or T-Max film is recommended.
 - f) View - Perspective view-front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure with aesthetic considerations necessary, but secondary.
 - g) Lighting - Sunlight is usually preferred for exteriors, especially of the front facade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
 - h) Technical - All areas of the photograph must be in sharp focus
- ii. *Submission of Photo-Documentation.* Evidence that the documentation, including the original prints and negatives, has been submitted to History San José (History San José, 1650 Senter Road, San José, CA 95112-2599, (408) 287-2290), shall be submitted to the Historic Preservation Officer. Digital photos may be provided as a supplement to, but not in place of, the above photo-documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted in fulfillment of standard measures for the loss of the Structure of Merit, which shall be named and the address stated.

- iii. *Relocation*. Prior to issuance of Public Works clearance, the structure(s) shall be advertised for relocation. The project applicant shall provide evidence that the structure has been retained and advertised for relocation by placing an advertisement in a newspaper of general circulation, posting on a website, and on-site posting for 30 days.
- iv. *Salvage*. If relocation is not successful, prior to issuance of Public Works Clearance, the structure and site shall be retained and advertised for salvage by placing an advertisement in a newspaper of general circulation, posting on a website, and on-site posting for 30 days.

Prehistoric/Historic Resources. In the event that any prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified archaeologist will examine the find and make appropriate recommendations prior to the issuance of a building. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring shall be submitted to the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement prior to issuance of building permits.

Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.

If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.

If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 24 hours after being notified by the NAHC.
- ii. The MLD identified fails to make a recommendation; or
- iii. The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

Paleontological Resources. If vertebrate fossils are discovered during construction, the Director of Planning, Building, and Code Enforcement shall be notified and all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project proponent will be responsible for implementing the recommendations of the paleontological monitor, and a final report documenting the implementation of the treatment program shall be provided to the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement.

d. GEOLOGY AND SOIL.

To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a design-level geotechnical investigation. The structural designs for the proposed development will account for repeatable horizontal ground accelerations. The report shall be reviewed and approved of by the City of San José's Building Division as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code Chapter 16, Section 1613, as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. In addition, the City of San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works Clearance. These standard practices, including the measures outlined below, would ensure that future buildings on the site are designed properly to account for soils-related hazards on the site and to prevent soil erosion.

- i. The project shall conform to the recommendations of a project-specific geotechnical report, including design considerations for proposed foundations.
- ii. The project shall prepare and implement an Erosion Control Plan in conformance with the requirements of the Department of Public Works.

e. HAZARDS AND HAZARDOUS MATERIALS.

Based on BAAQMD and Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers and others from ACMs.

- i. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers and others lead-based paint.

- vi. To identify and quantify building materials containing lead-based paint, a building survey, including sampling and testing, shall be completed prior to the commencement of demolition activities.
- vii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR 1532.1, including employee training, employee air monitoring and dust control.

- viii. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the waste being disposed.

f. HYDROLOGY AND WATER QUALITY.

The following project-specific measures, based on RWQCB BMPs, have been included in the project to reduce construction and development-related water quality impacts.

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- x. A Storm Water Permit will be administered by the State Water Resources Control Board (SWRCB). Prior to construction grading for the proposed land uses, the project proponent will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB Best Management Practices.
- xi. The SWPPP shall be posted at the project site and will be updated to reflect current site conditions.
- xii. When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction shall be filed with the SWRCB. The NOT shall

document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the site.

g. **NOISE.**

Construction-Related Noise. Noise minimization measures includes, but is not limited to, the following:

- i. Construction activities shall be limited to the hours between 7:00 am and 7:00 pm, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Unnecessary idling of internal combustion engines shall be strictly prohibited.
- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- vi. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, a temporary noise control blanket barrier shall be erected along surrounding building facades that face the construction sites.
- x. Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

- xi. Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

Prior to Issuance of Building Permits: Prior to construction, during the design phase of the building, an acoustical study shall be required to demonstrate to the City’s Chief Building Official that noise emissions from the car wash and fast-food restaurant speakers would conform to the City’s noise level requirements. The purpose of the acoustical study is to ensure that appropriate noise reducing equipment (Proto-Vest Windshear II Dryer with incorporated Proto-Vest silencer and sound attenuating speakers, or equivalent) is included in the final design as currently proposed. Completion of this study would be required prior to issuance of a building permit.

40. Revocation, Suspension, Modification. This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council, as applicable, 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 of Chapter 20.100 of 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**.

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EFFECTIVE DATE

The effective date of this Permit (File No. PD16-027) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC16-041 approved for publication on _____, 2018 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

LEGAL DESCRIPTION

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

PARCEL ONE:

ALL OF LOTS 1 AND 2, AND PORTION OF LOTS 3, 10, 11 AND 12, BLOCK 9, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF L. B. LATHROP'S ADDITION TO SAN JOSE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MARCH 4, 1868 IN BOOK A OF MAPS, AT PAGE 79, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRTEENTH STREET, FORMERLY TWELFTH STREET, WITH THE NORTHWESTERLY LINE OF HORNING STREET, FORMERLY WILLOW STREET; RUNNING THENCE NORTH 30 DEG. 42' WEST ALONG THE SAID NORTHEASTERLY LINE OF THIRTEENTH STREET 412.50 FEET TO THE COMMON CORNER OF LOTS 3 AND 4, IN BLOCK 9, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP ABOVE REFERRED TO; RUNNING THENCE NORTH 59 DEG. 07' 30" EAST ALONG THE SAID DIVIDING LINE BETWEEN LOTS 3 AND 4, FOR A DISTANCE OF 159.25 FEET TO THE WESTERNMOST CORNER OF THAT CERTAIN 0.77 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM WILLIAM FRANCIS GIACOMAZZI, ETAL, TO STATE OF CALIFORNIA, DATED MARCH 6, 1937, RECORDED MARCH 30, 1937 IN BOOK 813 OF OFFICIAL RECORDS, PAGE 465, SANTA CLARA COUNTY RECORDS; RUNNING THENCE ALONG THE SOUTHWESTERLY LINE OF SAID 0.77 ACRE TRACT SOUTH 82 DEG. 57' EAST 215.11 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 150.00 FEET THROUGH AN ANGLE OF 75 DEG. 52' 30" FOR A DISTANCE OF 198.64 FEET TO A POINT ON THE WESTERLY LINE OF THE SAN JOSE-OAKLAND HIGHWAY; RUNNING THENCE SOUTH 7 DEG. 05' 30" WEST ALONG SAID LAST NAMED LINE 120 FEET, MORE OR LESS, TO A POINT ON THE SAID NORTHWESTERLY LINE OF HORNING STREET, FORMERLY WILLOW STREET, RUNNING THENCE SOUTH 59 DEG. 18' WEST ALONG THE SAID NORTHWESTERLY LINE OF HORNING STREET, 325.11 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JULY 22, 1954 IN BOOK 2920, PAGE 326 OF OFFICIAL RECORDS.

PARCEL TWO:

PORTION OF LOT 4, IN BLOCK 9, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF L. B. LATHROP'S ADDITION TO SAN JOSE", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MARCH 4, 1868 IN BOOK A OF MAPS, AT PAGE 79, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 4, AS SAID LOT IS SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE ALONG THE SOUTHEASTERLY LINE THEREOF NORTH 59 DEG. 07' 30" EAST 159.25 FEET A POINT IN A LINE PARALLEL TO AND 62.50 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY BETWEEN AGNEW UNDERPASS AND THE SAN JOSE-MILPITAS ROAD; THENCE ALONG SAID PARALLEL LINE AND ITS EXTENSION WESTERLY NORTH 82 DEG. 58' WEST 120.59 FEET; THENCE TANGENT TO THE LAST DESCRIBED COURSE, ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 1425 FEET THROUGH AN ANGLE OF 3 DEG. 20' 42" A DISTANCE OF 83.19 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 4; THENCE ALONG