

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AMENDMENT AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF A FULL-RANGE OF ALCOHOLIC BEVERAGES AS INCIDENTAL TO A NEW 6,600 SQUARE FOOT GROCERY STORE IN A VACANT TENANT SPACE ON A 2.25-GROSS ACRE SITE, LOCATED AT THE SOUTHEAST CORNER OF SOUTHWEST EXPRESSWAY AND FRUITDALE AVENUE (1520 SOUTHWEST EXPRESSWAY)**

**FILE NOS. PDA07-007-02 and ABC18-003**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 15, 2017, and May 29, 2018 applications (File Nos. PDA07-007-02 and ABC18-003, respectively) were filed by the applicant, Jeremy Haggberg of Southwest Expressway Investors, with the City of San José for a Planned Development Permit Amendment to allow the off-sale of a full-range of alcoholic beverages (Type 21) at a new 6,600-square foot grocery store in a vacant tenant space, and to grant a Determination of Public Convenience or Necessity for off-sale of a full range of alcoholic beverages at a grocery store for a proposed retail use at the 2.25 gross-acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located at the southeast corner of Southwest Expressway and Fruitdale Avenue (1520 Southwest Expressway, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described and depicted in Exhibit “A,” entitled “Legal Description and Map,” 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 September 12, 2018, notice of which was duly given; and

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

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

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

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Fruitdale Station - Block E Deli/ Market," dated received August 30, 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 and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The project site is located on the southeast corner of Southwest Expressway and Fruitdale Avenue, at 1520 Southwest Expressway and is located within the Southwest Expressway Urban Village. The project site is located within a vacant 6,600-square foot ground floor retail tenant space of a mixed-use building known as the "Fruitdale Station Apartments". Land uses surrounding the site include a convenience store to the east, single and multi-family residences to the west, multi-family residences to the north, and a mixed-use development to the south. The nearest residential use is directly above the grocery store. The Fruitdale Light Rail Station is located to the west across Southwest Expressway. The project site is paved with a 96-space parking lot that is shared by the various retail tenants of Fruitdale Station. Development of the project site was approved by the Planning Director on March 21, 2008 under File No. PD07-007.

The project site's Zoning District was established through Planned Development Rezoning File No. PDC05-095 on June 20, 2006, to increase the maximum number of attached residential units from 500 to 502, to eliminate 250,000 square feet of commercial (office and retail), to reduce the maximum amount of retail from 30,000 square feet to 29,225 square feet and to modify the development standards on 12.7 acres. Planned Development Permit No. PD07-007 approved in 2008 allowed construction of 256 single-family attached residences and 29,799 square feet of commercial construction on a 5.8 gross acre site.

## **2. Project Description.**

This project is a Planned Development Permit Amendment amending Planned Development Permit No. PD07-007 to allow the off-sale of alcohol for a 6,600-square foot ground floor retail tenant space and a Determination of Public Convenience or Necessity for off-sale of alcohol (beer, wine and liquor) for a proposed Zanolto's Market and Café. Zanolto's is a full-service specialty grocery store and deli offering meats, pastas, fresh produce, deli foods, and other specialty items. The grocery store and café would operate from 7:00 a.m. to 12:00 a.m. daily and it is anticipated to employ up to 20 people. There are 96 retail parking spaces at the project site.

The off-sale of alcohol would consist of an approximately 290-square foot portion of the store's 6,600-square foot proposed sales area, which is approximately 5% of the total sales area. The café portion of the store would encompass 1,125 square feet of the total grocery store square footage. Alcohol would not be served in the café. A State Alcoholic Beverage Control (ABC) Type 21 License is required for the sale of alcohol (beer, wine and distilled spirits) for consumption off the premises where other items are sold.

- 3. General Plan Conformance.** The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use, and public interaction.

This project is consistent with the following General Plan policies:

- a. Land Use Policy LU-5.6: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

Vibrant Neighborhood Policy VN-1.3: Encourage the development and maintenance of compatible neighborhood retail and services within walking distance of residences as a means to promote the creation of "complete" neighborhoods.

*Analysis: The project is consistent with the policy in that the full-service grocery store is located on the ground floor of a mixed-use project consisting of 29,800 square feet of retail and 256 multi-family residential units. The grocery store and café would help to activate the ground floor and provide a new grocery store close to Fruitdale Station and the surrounding neighborhood.*

*The grocery store is consistent with the policies in that the establishment offers a full range of food choices for the adjacent residential uses, and the grocery store is easily accessible with fresh fruits and vegetables, meat, and a full range of alcohol.*

- b. 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: Consistency with this policy is shown in that this full-service grocery store will offer a range of foods including fresh fruit, vegetables, and meat.*

- c. Vibrant Neighborhood Policy VN-1.3 Encourage the development and maintenance of compatible neighborhood retail and services within walking distance of residences as a means to promote the creation of “complete” neighborhoods.

*Analysis: The full-service grocery store is consistent with the policy in that the establishment offers a full range of food choices for the adjacent residential uses, and the grocery store is easily accessible with fresh fruits and vegetables, meat, and a full range of alcohol for offsite consumption.*

- d. Vibrant Neighborhoods Policy VN-3.1: Encourage the location of full service grocery stores within or adjacent to the neighborhoods with limited access to healthful foods with the goal that all San José residents be able to live within a ½ mile walking distance of full service grocery store.

*Analysis: The goal of Policy VN-3.1 is that all San José residents be able to live within a one-half mile walking distance of a full-service grocery store. The project is a new full-service grocery store with a full range of grocery and off-sale alcohol sales at the subject site which will better serve the community in terms of convenience and walking distance. Therefore, the project is consistent with this policy.*

**4. Zoning Ordinance Compliance.** This project complies with all applicable provisions of the Zoning Ordinance in that the proposed project is located in the A(PD) Planned Development Zoning District which requires a Planned Development Permit Amendment and Determination of Public Convenience or Necessity for a the off-sale of alcohol, which is satisfied through this Planned Development Permit Amendment and Determination of Public Convenience or Necessity.

- a. **Setbacks and Height.** The project will occupy a 6,600-square foot ground floor retail tenant space within an existing building located in the Fruitdale Station development, and no exterior changes are proposed. Specific development standards for buildings on this site, such as setbacks and height, were previously approved under File No. PDC05-095, which conforms to the approved General Development Plan of the Planned Development Zoning District. The project does not require any exterior changes to the building or expansion of the building footprint.
- b. **Parking.** The subject site is located within the Southwest Urban Village. This urban village is in Horizon II and has not been adopted yet. Therefore, parking requirements would be pursuant to San José Municipal Code and development standards for the site. The developmet standards for the approved Planned Development Rezoning File No. PDC05-095 shows that commercial tenants greater than 5,000 square feet are subject to the Zoning Code parking requirements; tenant spaces of 5,000 square feet or less are exempt from parking space requirements. Pursuant to Section 20.90.220.C of the Zoning Code, the project has a parking ratio of 1:400. As shown

in the table below, the Fruitdale Station site for all retail tenants requires a total of 24 parking spaces, with the project requiring 17 of those spaces. Fruitdale Station provides 96 parking spaces total, with the grocery store providing its required 17 spaces.

Type of business *	Square Feet	Required Retail Parking Spaces	Retail parking Spaces provided
Grocery store (Zanotto's)	6,600	17	17
Restaruant (Tasso's)	2,748	7	7
Personal Service (Massage)	1,260	0	0
Personal Service (Haircuts)	1,045	0	0
Personal Service (Dry Cleaning)	1,000	0	0
Additional parking	--	--	72
<b>Total</b>	<b>12,653</b>	<b>24</b>	<b>96</b>
* File No. PDC05-095 allows for neighborhood serving retail uses of 5,000 square feet or less to be exempt from parking requirements if uses will predominately serve nearby residents and employees, and will not create undue parking impacts.			

- 5. Environmental Review.** Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended (CEQA). Section 15301 (Existing Facilities) exemption applies to 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 project qualifies for this exemption as the proposed off-sale of alcohol, is located in a 290 square foot area within an existing 6,600 square foot retail space. The use will occur inside of the grocery store and does not require any exterior modifications or expansion of the building footprint.

## 6. Planned Development Permit Amendment Findings (§20.100.940 and §20.100.950)

The City Council may approve a Planned Development Permit Amendment only if it has made the following findings:

- a. As discussed in detail above, the Planned Development Permit Amendment, as issued, furthers the policies of the General Plan.

*The project is consistent with the Neighborhood/Community Commercial General Plan designation in that the project will provide neighborhood-serving ground floor retail that will provide accessible goods to the surrounding neighborhood and residents.*

- b. As discussed in detail above, the Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property.

*The project is located within an existing building that was approved pursuant to File No. PD07-007 and conforms to the setback, height, parking, and use requirements of the approved Planned Development Zoning.*

- c. As discussed in detail above, the Planned Development Permit Amendment, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*The project is consistent with City Council Policy 6-30 Public Noticing where 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.*

- d. As discussed in detail above, the interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses onsite are appropriate, compatible and aesthetically harmonious.

*The project is located within an existing ground floor tenant space in a mixed-use development approved under File No. PD07-007 (approved by the Director of Planning, Building and Code Enforcement on March 21, 2008). The existing structure meets all of the development standards approved in File No. PD07-007, which conforms to the approved General Development Plan of the Planned Development Zoning District. Therefore, this finding can be made.*

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

*The grocery store would be located within a vacant tenant space in an existing building with no exterior changes, expansion of the building, or outdoor activities proposed. The use would not have any impacts on the environment as the off-sale of alcohol is fully contained in a 290 square foot area within the existing 6,600 square foot retail tenant space (5% of the floor space) and would not generate additional noise, vibration, dust, drainage, erosion, storm water runoff or odor. Therefore, this finding can be made.*

## **7. Findings for Off-Sale of Alcohol (§20.80.900)**

The following three findings would need to be made by the decision-making body to allow the off-sale of alcoholic beverages:

- a. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand 1,000-foot radius from the proposed location.

*Analysis: There is only one other use involving the off-sale of alcoholic beverages within a 500-foot radius of the proposed site at a convenience store (7-Eleven) 170 feet east of the project site, across the parking lot. The off-sale alcohol use would be the second within a 1,000-foot radius. Therefore, this finding **can** be made.*

- b. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, 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 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
  - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
  - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
  - iii. Be detrimental to public health, safety or general welfare.

*Analysis: The project would result in two off-sale uses currently within 1,000-foot radius, making this finding not applicable. This use is a grocery store with permissible hours of operation within the by right allowances under the Code (between 6:00 a.m. to midnight). A memorandum (dated 9/23/18) provided by the San José Police Department (SJPd) states that the use is not located within an area of high crime; however, the project site is located within a census tract which exceeds the ratio of existing retail off-sale license to population, with a maximum of three off-sale licenses permitted for this census tract. Currently, there are four off-sale licenses, with the project being the fifth, thus making it*



*overconcentrated. Therefore, the project requires a Determination of Public Convenience and Necessity, as described below. The SJPD is neutral to the off-sale of alcohol, as long as the location is prohibited from selling single cans or bottles of beer 40 ounces and under. The SJPD will work with the State of California Department of Beverage Control (ABC), which issues state alcohol licenses, on whether single cans or bottles will be allowed at the subject site. Additionally, there is a condition in the resolution that requires a Disturbance Coordinator who will help monitor off-sale operations. These facts support the proposed use.*

- c. For such a use at a location closer than 500 feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150 feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis: The project is not located within 500 feet of a school, day care center or public park, but it is located within 350 feet of Crestwood Behavioral Health, which is a private facility providing mental health services and residential care for the elderly. Crestwood Behavioral Health is located within 350 feet of the proposed project "as the crow flies". However, if a person were to walk between Zanotto's and Crestwood Behavioral Health the distance is approximately 600 feet. In addition, Crestwood Behavioral Health provided a letter in support of Zanotto's Market (dated July 2, 2018).*

*The site is also located within an existing mixed-use development in the Southwest Expressway Urban Village with residential units immediately above the proposed grocery store. While this finding **cannot** be made, the intent of a mixed-use project is to have commercial uses on the ground floor that provide services for nearby residents. Only 290 square feet (5%) of the floor area will be dedicated to alcohol sales. Additionally, the project has a condition of approval for a designated on-site Disturbance Coordinator who would receive and respond to any nuisance compliance concerns.*

## **8. Findings for Determination of Public Convenience or Necessity (§6.84.030)**

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area," unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An "undue concentration" is defined as follows:

- The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
- The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

*Analysis: The project site is located within a census tract which exceeds the ratio of existing retail off-sale license to population, with a maximum of three off-sale licenses permitted for this census tract. Currently, there are four off-sale licenses, making it overconcentrated. This proposal would be the fifth off-sale license. Therefore, in order for State of California Department of Alcohol and Beverage Control (ABC), to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The determination is based on the required findings identified in Title 6 of the San José Municipal Code.*

Title 6 of the San José Municipal Code identifies the process and findings for off-sale of alcohol and specifies that a Determination of Public Convenience and Necessity may be issued only after first making all of the findings specified below (see section 6.84.030):

- a. The proposed use is not located within a SNI or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:
  - i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
  - ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The subject site is not located within a Strong Neighborhoods Initiative area (SNI), neighborhood revitalization area, or other area designated by the City for targeted neighborhood enhancement services or programs. The SJPD has indicated that they are neutral to the off-sale of alcohol at this site unless single cans or bottles under 40 ounces are sold. The SJPD and the State Department of ABC create the conditions for the ABC license. Therefore, this finding can be made.*

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

*Analysis: The project would result in two off-sale establishments in a 1,000-foot radius. This would be the second off-sale establishment; therefore, this finding can be made.*

- c. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The project is not located within 500 feet of a school, day care center or public park, but is within 350 feet of Crestwood Behavioral Health. It is a private facility providing mental health services and residential care for the elderly and is located within 350 feet of the proposed use "as the crow flies." However, if a person were to walk between Zannotto's and Crestwood Behavioral Health the distance is approximately 600 feet. Additionally, Crestwood Behavioral Health provided a letter in support of Zannotto's (dated July 2, 2018).*

*Additionally, the site is located within an existing mixed-use development in the Southwest Expressway Urban Village with residential units immediately above the grocery store. File No. PD07-007 approved the existing mixed-use project including 256 residential units and 29,800 square feet of ground floor commercial. While this finding **cannot** be made, the intent of a mixed-use project is to have commercial uses on the ground floor that provide services for nearby residents.*

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

*Analysis: Alcoholic beverage sales would not represent a majority of the proposed use. The grocery store is 6,600 square feet and 290 square feet of the floor area is dedicated to alcohol sales, approximately 5%. 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

*The census tract is configured normally, and the project is not considered to be located in an underserved area of the community. This finding **cannot** be made.*

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

*Analysis: The project is consistent with this finding in that the project would activate the ground floor use of the building and promote the full development of a mixed-use development. The off-sale of alcohol is incidental to the full range of produce and meats offered, thus facilitating a more complete*

*shopping experience. Additionally, the grocery store and café would provide a convenience for local residents. Therefore, this finding **can** be made.*

- iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over- concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

*The census tract does not have a low population density; 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: As stated above, the off-sale of alcohol is incidental to the full range of produce and meats offered, and facilitates a more complete shopping experience. The grocery store and café are 6,600 square feet and 290 square feet of floor area (5%) is dedicated to alcohol sales. This finding **can** be made.*

Given the above-stated analysis, all but two of the findings for PCN cannot be made for the proposed off-sale of alcohol:

- Over-concentration within the census tract (Finding 7b);
- The project is within 150 feet of a residence (Finding 8c);

*Based on all of the foregoing, the City Council identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use. The off-sale of alcohol meets the General Plan goals and policies of (i) providing a walkable location for grocery stores that offer a broad array of goods to the community; (i) jobs, employment, and economic development by activating a vacant tenant space within an existing retail space; (iii) giving preference to off-sale of alcohol to stores that also provide fruits, vegetables, and healthy products; and (iv) implementation of conditions to ensure the off-sale of alcohol will not be detrimental to the community or to public health and safety.*

*Although the project is immediately adjacent to a 24-hour convenience store (7-Eleven) with off-sale of alcohol (Type 20 for beer and wine), the project's off-sale alcohol sales are incidental to the full-range grocery store, creating a more complete shopping experience. Additionally, only 290 square feet of floor area (5%) of the 6,600 square foot grocery store is dedicated to alcohol sales.*

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 **approved**. The 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 Amendment.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Planned Development Permit Amendment 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 Amendment 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 Planned Development Permit Amendment shall automatically expire two years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer

system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

4. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Fruitdale Station - Block E," dated received August 30, 2018, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Use Authorization.** Subject to all terms, conditions, and requirements set forth herein in this Resolution, this Planned Development Permit Amendment and Determination of Public Convenience or Necessity authorizes the off-sale of alcohol (beer, wine, and distilled spirits Type 21 ABC license).
6. **Conformance to Other Permits.** Unless specifically modified with this Permit Amendment, this project shall conform to all of the requirements of Planned Development Permit File No. PD07-007.
7. **Off-Sale of Alcohol.** This Planned Development Permit Amendment authorizes the off-sale of alcohol (beer, wine, and distilled spirits) at the proposed grocery store and successors of said tenant space whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
8. **Alcohol Service and Sale.** Alcohol service and sale shall be conducted in full compliance with the issued ABC licenses.
9. **Hours.** This facility shall be limited to operation between the hours of 6:00 a.m. to 12:00 a.m. (midnight), unless a Conditional Use Permit or Planned Development Permit, as applicable, is approved by the City for other hours of operation.
10. **Disturbance Coordinator.** The permittee shall implement the following:
  - a. Provide an on-site disturbance coordinator during all hours of operation;
  - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;
  - c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint;
  - d. Ensure that the log is kept current and is available on the project site for inspection by City staff.
11. **Posting of Telephone Number.** The name and phone number of the Construction/Disturbance coordinator, the hours of construction, City File Number

PDA07-007-02 and Code Enforcement, (408) 535-7770, shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.

12. **Certificate of Occupancy.** The permittee shall obtain a Certificate of Occupancy. Procurement of a Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
13. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages shall only be allowed in strict conformance with the requirements of the Department of Alcoholic Beverage Control (ABC). The permittee shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
14. **Limitations on 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 full-service grocery store. "Full-service grocery store" as used herein means a retail establishment that provides a full and wide complement of fresh produce, grains, dairy goods, and baked products, together with other food and household merchandise for general public consumption. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5% percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.
15. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
16. **Parking.** All retail parking must be kept free, open, and accessible during the retail hours.
17. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
18. **Building and Property Maintenance.** The property owner or operator shall maintain the property in good visual and functional condition. This shall include, but not be

limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

19. **Generators.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
20. **Performance Standards.** Meet the performance standards of Title 20, as amended or as determined by the Planning Official.
21. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
22. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
23. **Outdoor Uses.** There shall be no outdoor uses approved through issuance of this Permit.
24. **Loading Activity Hours.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
25. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
26. **Anti-Graffiti.** The operator shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
27. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
  - b. The operator of the proposed use shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
28. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
29. **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.

**30. Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This Permit file number, PDA07-007-02 and ABC18-003 shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.

**31. Revocation, Suspension, Modification.** This Planned Development Permit and Determination of Public Convenience or Necessity may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

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

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ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

#### NOTICE TO PARTIES

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

Your Reference:

Chicago Title Company

**EXHIBIT A**  
**LEGAL DESCRIPTION**

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

Lots 5 as shown upon that certain Map entitled, "Tract No. 9477", said Map filed for record on April 15, 2013 in Book 860 of Maps, at Page(s) 44-52, Santa Clara County Records.

APN: 284-02-016

